# DEFENSE LOGISTICS ACQUISITION DIRECTIVE (DLAD)

**Revision 5**

**(Originally issued May 11, 2000 - this revision replaces Revision 4)**

***(Revised April 14, 2016 through PROCLTR 2016-06)***

April 2016

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*(Revised October 20 through PROCLTR 2016-01)*

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## SUBPART 1.1 – PURPOSE, AUTHORITY, ISSUANCE

*(Revised October 20, 2015 through PROCLTR 2016-01)*

**1.105 Issuance.**

**1.105-3 Copies.**

The DLAD is posted on the Acquisition Website at http://www.dla.mil/Acquisition/Pages/DLAD.aspx and on the Federal Acquisition Regulation Site (FARSite) at http://farsite.hill.af.mil/. The DLA Issuances Public Repository is posted at http://www.dla.mil/ISSUANCES/Pages/default.aspx.

**1.170 Peer reviews.**

(a) DoD peer reviews.

(1) An Integrated Acquisition Review Board (IARB) as defined in 2.101 is required prior to a DPAP peer review.

(2) If there is a discrepancy between the acquisition strategy and the DPAP peer review recommendations, the HCA shall confer with the DLA Acquisition Director to determine appropriate action.

(3) Within 15 calendar days after the date of the DPAP peer review report, the contracting officer shall document the disposition of all DPAP peer review recommendations in a memorandum for the record and furnish a copy to the DLA Acquisition Operations Division. If the contracting officer takes exceptions to any DPAP recommendations, they shall route the report through their HCA who will notify the DLA Acquisition Director and DLA Acquisition Operations Division prior to providing the response to DPAP. If the DLA Acquisition Director recommends any changes, he will discuss them with the HCA.

(b) Component peer reviews.

(1) HCAs are responsible for—

(i) Executing peer reviews in accordance with DoDI 5000.02 and DFARS Part 201; and

(ii) Conducting a minimum of two (2) reviews per fiscal year.

(2) Team members shall include representatives from other DLA contracting activities, DLA Acquisition, Office of Counsel, and Small Business Programs. The senior member chairs the review team.

(3) The DLA Acquisition Operations Division is responsible for oversight of peer reviews.

## SUBPART 1.2 – ADMINISTRATION

*(Revised October 20, 2015 through PROCLTR 2016-01)*

**1.201-90 Maintenance of the DLAD.**

**1.201-91 Amendment of regulations.**

Recommendations for amending the FAR or the DFARS shall be submitted to the DLA Acquisition Policy Division for approval by the DLA Acquisition Director and submission to the DAR Council.

## SUBPART 1.3 – AGENCY ACQUISITION REGULATIONS

*(Revised October 20, 2015 through PROCLTR 2016-01)*

### 1.301 Policy.

(a)(1)(i) The Defense Logistics Agency (DLA) Director has authorized the DLA Acquisition Director to issue the Defense Logistics Acquisition Directive (DLAD). The DLAD implements and supplements requirements of the Federal Acquisition Regulation (FAR), the Defense FAR Supplement (DFARS), DFARS Procedures, Guidance and Information (PGI), Department of Defense publications, and DLA Issuances. Pursuant to FAR 1.304, the DLAD establishes DLA regulations relating to the acquisition of supplies and services under the authority of Title 10 USC Chapter 137, or other statutory authority.

(ii) Only the DLA Acquisition Director is authorized to issue acquisition policies and procedures for use by acquisition personnel. Procuring organizations shall not issue acquisition policies or procedures. The DLA Acquisition Director approves all revisions to the DLAD, which are issued by numbered procurement policy PROCLTRs. Policies issued by PROCLTR are effective immediately, unless stated otherwise in the PROCLTR, and take precedence over the published version of the DLAD maintained on the Acquisition page in eWorkplace until the revisions are incorporated into the published version. PROCLTRs are maintained in eWorkplace under Organizations>Acquisition (J7)>Shared Documents>J-71>PROCLTR Archive.

(iii) Provisions and clauses. When solicitation provisions or contract clauses are required, the following procedures apply:

(A) The CCO may approve provisions and clauses developed for a single procurement that fulfill a specific and unique requirement of the acquisition or are a result of negotiations, subject to review by Office of Counsel prior to incorporation into a solicitation or contract. Such provisions and clauses shall not constitute a deviation from higher-level regulations or from the DLAD, or otherwise require DPAP approval. The CCO may delegate this authority to a level not lower than the Procurement Policy Chief. These provisions and clauses can be approved for one-time use only in a single acquisition or contract. One-time use provisions and clauses are not assigned DLAD numbers, but shall be identified in accordance with FAR 52.103 by title, date, and name of procuring organization that developed them.

(B) For a proposed repetitive-use provision or clause or for a substantive change to an existing provision or clause, requests shall be submitted to the DLA Acquisition Policy Division. The request shall be accompanied by prescriptive policy for use of the provision or clause on either an enterprise or non-enterprise basis.

(a)(2) Procuring organizations are authorized by the DLA Acquisition Director to issue internal guidance within the limitations of FAR 1.301(a)(2).

### 1.304 Agency control and compliance procedures.

(1)(i) Requests for approvals required by DFARS 201.304(1)(i) shall be submitted to the DLA Acquisition Policy Division.

## SUBPART 1.4 – DEVIATIONS FROM THE FAR

*(Revised October 20, 2015 through PROCLTR 2016-01)*

1.402 Policy.

(S-90) All requests for deviations shall be submitted to the DLA Acquisition Policy Division.

(S-91) The DLA Acquisition Policy Division shall maintain a list of deviations granted to FAR, DFARS, and DLAD policies. Each deviation shall be formatted as FAR System (FARS) Deviation (DEV), Fiscal Year, and number. FARS DEVs are posted on the Acquisition Website at https://eworkplace.dla.mil/sites/S2/Pages/FARSDeviation%27s.aspx.

## SUBPART 1.5 – AGENCY AND PUBLIC PARTICIPATION

*(Revised October 20, 2015 through PROCLTR 2016-01)*

**1.501-2 Opportunity for public comments.**

(b)(2) Comments on proposed rules in the Federal Register shall be submitted to the DLA Acquisition Policy Division.

## SUBPART 1.6 –CAREER DEVELOPMENT, CONTRACTING AUTHORITY AND RESPONSIBILITIES

*(Revised October 20, 2015 through PROCLTR 2016-01)*

**1.601 General.**

(a)(S-90) Contracting authority flows from the DLA Acquisition Director to the five HCAs for the DLA contracting activities designated in DFARS PGI 202.101.

(a)(S-91) Authority conferred upon the HCA or the CCO under any paragraph of the DLAD may be delegated with power of redelegation to other officials, except when specifically limited by law or the FAR, DFARS, or DLAD. The CCOs will maintain a list of all their delegations and the delegations made by their respective HCAs, as authorized in this subpart. Written delegations of authority shall be uploaded in Document Automated Content Services-Records Management (DACS-RM) via https://www.dacsp.documentservices.dla.mil/landing_page/. (DACS-RM training and access are required.)

(a)(S-92) Any acquisition documentation requiring review and/or approval by the SPE or CAE shall be reviewed by the Office of Counsel and submitted through the HCA.

**1.601-90 Critical acquisition responsibilities.**

The HCA is responsible for maintaining oversight of the contracting function, which includes ensuring adequate oversight of all acquisitions conducted by the contracting activity and the fundamental integrity of its contracting system.

**1.601-91 Contract Quality Review (CQR) Program.**

(a) The CQR Program institutes a data-driven evaluation of each procuring organization and its contracting officers. The evaluation shall objectively measure quality performance to the standard outlined in the CQR manual referenced in paragraph (b) and present that evaluation in such a manner that enhances oversight and improves contract quality. This continuous review cycle, using a standardized checklist, collects and maintains data in a central repository to enable enterprise oversight, decision making, and corrective action. The CQR is synchronized with Contracting Officer (KO) Warrant Program reviews (see 1.602-90).

(b) For procedures associated with CQR Program roles and responsibilities, see DLAM 5025.03 at https://hqc.dla.mil/issuances/Pages/default.aspx.

**1.602 Contracting officers.**

**1.602-2 Responsibilities.**

(d)(S-90) *Contracting Officer's Representative (COR).* For information on COR function and requirements, see DoDI 5000.72, DoD Standard for Contracting Officer's Representative (COR) Certification, at http://www.dtic.mil/whs/directives/corres/pdf/500072p.pdf.

(d)(S-91) *Contracting Officer's Representative Tracking (CORT) Tool Program.*

(i) See http://www.acq.osd.mil/dpap/pdi/eb/cor.html for procedures associated with the CORT Tool, training requirements, User's Guide, Frequently Asked Questions (FAQs), and a list of CORT Tool Department Administrators. DLA-provided ethics training meets the annual ethics training requirements for CORT Tool.

(iii) CORT Tool Department Administrators at each procuring organization can assist with access and navigation issues. A list of CORT Tool Department Administrators by location and DoDAAC can be accessed in eWorkplace under Organizations>Acquisition Organizations>Acquisition (J7)>Shared Documents>J73 Compliance Oversight and Acquisition Workforce>Contracting Officer's Representative Tracking Tool (CORT Tool).

**1.602-2-90 Automated Procurement Systems Internal Controls (APSIC) Program.**

(a) The APSIC Program standardizes the oversight of automated procurement system functional outcomes, pricing and responsibility logic, contracting officer training and documentation, postaward reviews of automated award files, and price trend analysis.

(b) For procedures associated with the APSIC Program, see DLAM 5025.06 at https://hqc.dla.mil/issuances/Pages/default.aspx.

**1.602-3 Ratification of unauthorized commitments.**
The authority to ratify unauthorized commitments valued over the SAT is delegated to the HCA and cannot be further delegated. The authority to ratify unauthorized commitments valued at or below the SAT is delegated to the CCO and cannot be further delegated. A Ratification of Unauthorized Commitments Checklist can be accessed in eWorkplace under Organizations>Acquisition (J7)>Share Documents>J-71> PROCLTR Archive.

**1.602-3-90 Quantum meruit actions.**
In accordance with DODI 1340.21, Enclosure 6, the authority to resolve disputes regarding quantum meruit claims has been delegated to the CAE and cannot be further delegated. The CAE will issue an initial determination and notice to the claimant. A Quantum Meruit Checklist can be accessed in eWorkplace under Organizations>Acquisition Acquisition (J7)>Share Documents>J-71> PROCLTR Archive.

**1.602-90 Contracting Officer (KO) Warrant Program.**

(a) The KO Warrant Program establishes a standard program for the selection, appointment, termination, and reinstatement of contracting officers to ensure that only those individuals who fully meet selection criteria are appointed and retained as contracting officers. Warrant candidates must satisfy prequalification appointment standards and proficiency assessments. KO Warrant Program reviews are synchronized with CQRs (see 1.601-91) and conducted to objectively assess compliance outcomes. Individual proficiency reviews are conducted continuously to ensure integrity of all warranted KOs through comprehensive work product reviews. All evidentiary matter is maintained in a central repository.

(b) For procedures associated with the KO Warrant Program, see DLAM 5025.04 at https://hqc.dla.mil/issuances/Pages/default.aspx.

**1.602-91 Nonappropriated funds.**
DoD policy for contracting actions using nonappropriated funds is in DoD Directive (DoDD) 4105.67 and Army Regulation (AR) 215-4, Nonappropriated Fund Contracting.

**1.603-3-90 Micro-purchase contracting authority**.

(a) Holders of a Government-Wide Commercial Purchase Card (GPC) have authority to make micro-purchases in accordance with DTM 13-001, Government Purchase Card, which can be accessed at http://www.dla.mil/issuances/Documents/DTM%2013-001.pdf. Written appointments of GPC holders shall be uploaded in Document Automated Content Services-Records Management (DACS-RM) via https://www.dacsp.documentservices.dla.mil/landing_page/. (DACS-RM training and access are required.)

(b) Individuals authorized to make micro-purchases by means other than the GPC shall be so designated, in writing, and are required to complete CON 237, Simplified Acquisition Procedures. Written designations shall be uploaded in DACS-RM via https://dacsp.documentservices.dla.mil/landing_page/. (DACS-RM training and access are required.)

**1.603-3-91 Ordering Officers.**
Written designations of ordering officers shall be uploaded in Document Automated Content Services-Records Management (DACS-RM) via https://dacsp.documentservices.dla.mil/landing_page/. (DACS-RM training and access are required.)

**1.604 Contracting officer's representative (COR).**
For policies regarding CORs and the COR Tracking (CORT) Tool program, see 1.602-2.

**1.690 Contract clearance and oversight.**

**1.690-1 Establishment of clearance authority.**
The DLA Acquisition Director has delegated clearance authority to the lowest possible level consistent with law and regulation. Clearance for purposes of this section is the authorization to proceed to the next stage in the acquisition.

(a) Clearance authority for MAIS/MDAP is OSD for ACAT I unless authority has been delegated to DLA.

(b) Clearance authority for MAIS/MDAP is the CAE for ACAT II. This authority cannot be further delegated.

(c) Clearance authority for the acquisition of services over $250M and less than $1B (less than $500M for IT services) is the SPE. This authority cannot be further delegated.

(d) Clearance authority for all supply acquisitions is the HCA. HCAs are authorized to redelegate, in writing, HCA clearance authorities within their contracting activity.

(e) Clearance authority for the acquisition of services up to $250M is the HCA. HCAs are authorized to redelegate, in writing, HCA clearance authorities within their contracting activity.

**1.690-2 Portfolio reviews.**

The SPE will conduct biannual portfolio reviews of each contracting activity. The reviews will address:

(a) Oversight program.

(b) Pricing.

(c) Competition.

(d) Systems support.

(e) Better Buying Power implementation and metrics.

(f) Small Business program and implementation.

(g) Strategic acquisitions.

(h) Feedback from CCOs and contracting officer supervisors.

**1.690-3 Strategic contract (STRATCON) oversight.**

(a) The SPE and the Senior Services Manager (SSM) (for acquisition of services) reserve the right to review any acquisition.

(b) Procuring organizations shall report forecasted strategic contracts as defined in DLAD 2.101 to the DLA Acquisition Operations Division by the 10th of each month. The DLA Acquisition Operations Division will recommend acquisitions or contracts to be reviewed by the SPE/SSM.

(c) The SPE/SSM shall advise the HCAs of acquisitions that have been selected for review.

(d) HCAs shall consider holding Acquisition Strategy Review Panels (ASRPs) and Integrated Acquisition Review Boards (IARBs) for strategic contracts (see definitions in 2.101).

**1.691 Legal review.**

(a) Legal advice and assistance of Office of Counsel shall be obtained in the preparation of provisions or clauses other than standard FAR, DFARS, DLAD, or DLA Acquisition-approved provisions or clauses which are to be contained in solicitations, including all EPA clauses and revisions to EPA clauses; prior to taking action to resolve any instance of defective cost or pricing data or false claim; in the preparation and review of acquisition documents for procurements that are subject to the ASRP and IARB; and on any questionable legal areas in acquisitions, such as the preparation and/or execution of contractual documents.

(b) For purposes of this section, "contract action" includes both FAR and non-FAR procurements and related actions, including modifications and procurement actions that are not contracts per se, such as blanket purchase agreements (BPAs); and "simplified acquisition threshold" (SAT) means the threshold amount stated in its definition in FAR Subpart 2.1, without adjustment for special circumstances.

(c)(1) Contracting activities shall, at a minimum, require legal review for all contract actions that require review and/or approval by the HCA or CCO; review will include but not be limited to the following preaward documents:

(i) Solicitation packages, including solicitation documents (e.g., RFP, RFQ) with SOW/PWS/SOO, acquisition plans, source selection plans, justifications and approvals/limited source justifications, required determinations and findings, and related documents; and

(ii) Negotiation and preaward documents for best value awards, including competitive range determinations and award documentation (e.g., price negotiation memorandum and source selection decision document).

(2) In addition, contracting activities shall require legal review for all postaward contract administration actions that require review and/or approval by the HCA or CCO, including option exercises and funding and other modifications, but excluding administrative modifications not requiring the exercise of discretion by the contracting officer.

(d) Contracting offices under the DLA Acquisition contracting activity shall ensure that legal review is accomplished on all contract actions and supporting documents (such as required determinations and findings) with an estimated value over the following thresholds.

(1) DLA Contracting Services Office - $500,000;

(2) DLA Disposition Services - $700,000;

(3) DLA Document Services - SAT

(4) DLA Distribution - $1 million;

(5) DLA Strategic Materials - $700,000.

(e) For all procuring organizations, legal review is required for all acquisition matters listed below. When legal review is required by or conducted in accordance with another section of the FAR/DFARS/DLAD, the requirements of that section will govern. Legal review will be conducted for all listed actions that are not subject to legal review in accordance with another section of the FAR/DFARS/DLAD. Legal review is not required for routine issuance of task or delivery orders against existing DLA contracts, contracts developed by another agency in conjunction with DLA (e.g., Department of Veterans Affairs medical/pharmaceutical contracts), or for administrative modifications not requiring the exercise of discretion by the contracting officer.

(1) Letter contracts and other undefinitized contract actions (see Subpart 17.74);

(2) Justifications and approvals/limited source justifications/brand name justifications for procurements valued over the SAT;

(3) Solicitation and award of non-firm-fixed price and non-fixed price with EPA type contracts/orders valued over the SAT;

(4) Bundling and/or consolidation memoranda;

(5) Procurements valued over the SAT using non-DOD contracts (direct or assisted);

(6) Requests from non-DLA activities and agencies for contracting support or by other countries for Acquisition and Cross-Servicing Agreement (ACSA) or Fuel Support Agreement support;

(7) Procurement fiscal issues (for example, type and year of funding, incremental funding);

(8) Revisions or additions to procurement policy;

(9) Equipment or vehicle leases valued over the SAT;

(10) Research and development procurements and broad agency announcements valued over the SAT;

(11) Conflict of interest issues and determinations;

(12) Requests for equitable adjustment valued over the SAT and contracting officer final decisions;

(13) Claims, disputes, and protests;

(14) Ratifications valued over the SAT and all Quantum Meruit Claims;

(15) Cure/show cause notices in procurements valued over the SAT;

(16) Terminations for default/cause or convenience (not applicable to unilateral purchase orders);

(17) Mistake in bid/offer type issues;

(18) Multi-year contract determinations (see FAR Subpart 17.1);

(19) Waivers of certified cost or pricing data requirements;

(20) Cost Accounting Standards issues to include waivers;

(21) Cost allowability/reasonableness/allocability determinations;

(22) Advance payments and contract financing (see FAR Subparts 32.1 through 32.5, and 32.10);

(23) Novation and change of name agreements;

(24) Bankruptcy related issues;

(25) Buy American Act, Balance of Payments Program, and/or Trade Agreements Act waivers;

(26) No-cost contracts; and

(27) Requests for extraordinary contract relief (see FAR Part 50).

(f) Procuring organizations shall promptly refer matters for legal review. All acquisition matters referred for legal review shall be accompanied by a complete file with supporting material as appropriate (hardcopy or digital) or with a link to the relevant contract documents if maintained on a networked system to which the legal office has access. Procuring organizations should consider and include the anticipated time for legal review in acquisition planning timelines. If a procuring organization is contacted by a non-government attorney, the activity or office will immediately notify Office of Counsel.

(g) This policy shall not be further supplemented without the approval of the DLA Acquisition Director in consultation with the DLA General Counsel. Procuring organizations may submit a request for exception to a specific part of the policy in this section to the DLA Acquisition Director, who will determine whether to grant an exception in consultation with the DLA General Counsel. Requests for exception shall be coordinated with the Office of Counsel and shall include a detailed and complete rationale for the exception.

# PART 2 – DEFINITIONS OF WORDS AND TERMS

*(Revised October 20, 2015 through PROCLTR 2016-01)*

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2.101 Definitions.

## SUBPART 2.1 – DEFINITIONS

*(Revised October 20, 2015 through PROCLTR 2016-01)*

## SUBPART 2.1 – DEFINITIONS

### 2.101 Definitions.

*"Acquisition Strategy Review Panel (ASRP)"* means an oversight group that conducts a review after completion of the market research report and the Business Case Analysis (BCA) and prior to development of the acquisition plan to analyze and approve the proposed contracting approach. The HCA is the chairman and clearance authority; unless the SPE requires an ASRP, in which case the SPE is the ASRP chair. Panel members shall include the following: DLA Acquisition Director; DLA Logistics Operations Director; DLA Information Operations Director; DLA Comptroller; HCA and/or Director or Commander of contracting office; Technical, Program, or Service Manager of procuring organization; and the Military Service Program or Technical Manager. Panel advisors shall include the following: DLA Competition Advocate (COMPAD); DLA General Counsel; DLA Small Business Programs Director; and, for acquisition of services, the SSM and Component Level Lead (CLL) and Portfolio Manager.

*"Bridge contract"* means a non-competitive contract/order or contract/order extension with an existing contractor to bridge the time between the original end of that contractor's contract/order (following exercise of all options or extension provisions meeting the requirements of FAR 17.207) and the competitive award of a follow-on contract/order.

"*Chief of the Contracting Office (CCO)*" means a Government employee with certification in the acquisition career field who has direct managerial responsibility for the operation of a contracting office as defined in FAR 2.1. CCOs are listed below.

| Contracting Activity | Contracting Office | CCO |
|---|---|---|
| DLA Aviation | DLA Aviation Supplier Operations at Richmond (FA) | Deputy Directors, Supplier Operations |
| | DLA Aviation Strategic Acquisition at Richmond (A) | Director and Deputy Director, Strategic Acquisition |
| | DLA Aviation at Ogden (AU) | Director, Procurement Operations |
| | DLA Aviation at Oklahoma City (AO) | Director, Procurement Operations |
| | DLA Aviation at Warner Robins (AW) | Director, Procurement Operations |
| | DLA Aviation at Philadelphia (AP) | Director, Procurement Operations |
| | DLA Aviation at Huntsville (AH) | Director, Procurement Operations |
| DLA Energy | DLA Energy | Director, Procurement Process Support |

| | | |
|---|---|---|
| | | Directorate |
| DLA Land and Maritime | DLA Land and Maritime Procurement Process Support Directorate (BP) | Director, Procurement Process Support Directorate |
| | DLA Land at Warren (ZG) | Director, Procurement Operations |
| | DLA Land at Aberdeen (ZL) | Director, Procurement Operations |
| | DLA Land at Albany (ZB) | Director, Procurement Process Support Directorate |
| | DLA Maritime at Mechanicsburg (ZI) | Director, Procurement Operations |
| DLA Troop Support | DLA Troop Support (includes Medical, Subsistence, Clothing and Textile (C&T), Construction and Equipment (C&E), and Industrial Hardware Supply Chains; DLA Troop Support Europe and Africa; and DLA Troop Support Pacific) | Director, Procurement Process Support Directorate |
| DLA Acquisition | DLA Contracting Services Office (including locations at Philadelphia, Richmond, Columbus, Fort Belvoir, and Battle Creek) | Director, DLA Contracting Services Office |
| | DLA Disposition Services | Director, Acquisition Directorate |
| | DLA Distribution | Chief, Contracting Division |
| | DLA Strategic Materials | Director of Contracting |
| | DLA Document Services | Director, Contracting |
| | Defense Media Activity (DMA), including DMA Riverside Contracting Office and DMA Fort Meade Contracting Office | Director, Acquisition and Procurement |
| | Joint Contingency Acquisition Support Office | Chief, Contingency Contracting Office |

"*Integrated Acquisition Review Board (IARB)*" means an oversight group that conducts a review at key decision points after the contracting approach has been approved by the ASRP. The IARB has the authority to continue the acquisition, modify the strategy, terminate the process, or determine how next phases should proceed. The HCA is the chairman and clearance authority. Board members shall include the following: DLA Acquisition Director, DLA Logistics Operations Director, DLA Information Operations Director, DLA Comptroller, HCA and/or Director or Commander of contracting office; Technical, Program, or Service Manager of procuring organization; and Military Service Program or Technical Manager. Board advisors shall include the following: DLA General Counsel; DLA Small Business Programs Director; DLA Competition Advocate (COMPAD); DLA Center of Excellence for Pricing (COEP); DLA Acquisition Division Chiefs or Deputy Chiefs; DLA Acquisition Peer Review Manager; procuring organization Office of Counsel, COMPAD, and price analyst(s); and, for acquisition of services, the SSM and Component Level Lead (CLL) and Portfolio Manager.

"*Procuring Organizations*" means all DLA activities with contracting authority, and includes both contracting activities and contracting offices.

"*Strategic contracts (STRATCON")* means those acquisitions that represent the highest risk and impact to mission criticality, warfighter operational support, financial investment, and stewardship responsibilities. Strategic contracts may include, but are not limited to, the following:

(1) Acquisitions subject to DoD Peer Review thresholds;

(2) Prime Vendor/Tailored Logistics Support;

(3) Performance-Based Logistics;

(4) Implementation of Captains of Industry recommendations and/or initiatives;

(5) Bridge contracts for existing Strategic Contracts;

(6) OCONUS acquisitions critical to current contingencies or major military operations;

(7) Acquisitions as identified by the DLA Director, DLA Vice Director, SPE, or SSM, including Strategic Partnerships with other Agencies, Undefinitized Contract Actions (UCA), and/or specified corporate contracts; and

(8) Acquisitions where there is known special or significant interest by members of Congress, the White House, media, Government Accountability Office, DoD Inspector General Office, Office of the Under Secretary of Defense for Acquisition, Technology and Logistics or its subordinate organizations, other Office of the Secretary of Defense organizations, or a high potential to attract such interest.

"*Tailored Logistics Support (TLS) Contract*" means an acquisition that targets support to the point of the customer's need, and supports the full range of logistics functions, including shipping, receiving, storage, inventory management, and transportation or traffic visibility, to achieve a solution for a customer.

# PART 3 – IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

*(Revised November 19, 2013, through PROCLTR 2014-34)*

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3.806 Processing Suspected Violations.

## SUBPART 3.1 – SAFEGUARDS

### 3.103-90 Independent pricing.

(a) Disclosure of prices during a reverse auction conducted by the Government, in which each offeror consents to public disclosure of its prices, including to other offerors, does not constitute a "disclosure" under FAR 52.203-2(a)(2).

### 3.104 Procurement integrity.

### 3.104-1 Definitions.

(a) Designated agency ethics official. The DLA designated agency ethics official is the General Counsel. The chief counsels of each DLA primary level field activity (PLFA) are designated as deputy designated agency ethics officials.

**3.104-3 (a) (S-90) Statutory and related prohibitions, restrictions, and requirements.**

In accordance with 41 U.S.C. 2107(1), offerors participating in a particular DLA reverse auction and their employees designated to participate in that auction are authorized to receive the prices submitted by all offerors participating in that reverse auction. Commercial reverse auction providers and their employees are authorized to receive the prices submitted by all offerors participating in all DLA reverse auctions conducted by that commercial reverse auction provider.

**3.104-4-90 Statutory and related prohibitions, restrictions, and requirements.**

(a) In addition to the contracting officer, the Director, DLA Acquisition, Commanders/Directors of DLA contracting offices (see 2.101), Heads of Contracting Activities, and chiefs of the contracting office (see 2.101) have the authority to authorize persons or classes of persons to receive contractor bid or proposal information or source selection information when necessary to the conduct of the procurement. The following persons are authorized access to contractor bid or proposal information or source selection information regarding any DLA procurement (including information in the electronic contract folder):

(1) The contracting officer, the bid opening officer, the procurement agent, the contracting officer's supervisor and contracting office executive, management, policy, contract review, pricing, technical, legal counsel, small business advisory, associated administrative and clerical personnel, Defense Contract Management Agency (DCMA) pricing personnel, preaward survey team members, preaward survey monitor, Defense Contract Audit Agency (DCAA) auditors, and respective engineering support activity personnel.

(2) The DLA Director, the DLA Vice Director, the Director, Defense Contract Management Agency, the Director, DLA Acquisition; their executive directors; and supporting staff.

(3) The source selection authority, and the source selection evaluation board, technical evaluation panel, and source selection advisory council members and advisors.

(4) Any person or class of persons not listed above who is authorized access to automated systems contract files, contract file information, or procurement information.

**3.104-6 Ethics advisory opinions regarding prohibitions on a former official's acceptance of compensation from a contractor.**

(a) Requests for ethics advisory opinions shall be submitted to the General Counsel, or the appropriate deputy designated agency ethics official, as defined in DoD 5500.7-R, Joint Ethics Regulation.

**3.104-7 Violations or possible violations.**

(a)(1) When the contracting officer concludes there is no impact, with the concurrence of the chief of the contracting office and Office of Counsel, the contracting officer may proceed with award.

(b) Office of Counsel shall recommend the action to be taken.

(d)(2) If the contracting officer concludes that profit on the contract or modification involved should be recaptured in accordance with the clause at FAR 52.203-10, Price or Fee Adjustment for Illegal or Improper Activity, or that the contract should be voided or rescinded in accordance with FAR 3.104-7(d)(2)(ii) and 3.705, the contracting officer shall prepare a report documenting the facts giving rise to the conclusion that a violation of the Act has occurred. That report shall be prepared in consultation with Office of Counsel and include the contracting officer's recommendation for the action to be taken. When profit recapture is recommended, the contracting officer will recommend an amount to be recaptured. When rescission or voiding of the contract(s) is recommended, the contracting officer will estimate the value of the tangible benefits received and retained under the contract(s) in question. The report shall be forwarded to the General Counsel for action.

(f) Notification shall be submitted through the DLA Acquisition Director to the DLA Director by letter signed by the Commander or Director of the reporting activity.

## SUBPART 3.2 - CONTRACTOR GRATUITIES TO GOVERNMENT PERSONNEL

### 3.203 Reporting suspected violations of the FAR Gratuities clause.

(a) See DFARS 203.070. Send information related to the suspected violation for initial evaluation and appropriate action to the cognizant chief of the contracting office (CCO). A courtesy copy of the information will also be provided to the local field activity office of counsel.

(1) If the initial evaluation by the CCO supports a finding that action may be taken under the contract’s Gratuities clause, the CCO will refer the matter directly to the cognizant HCA and to local field activity business integrity/fraud counsel with the following information:

(i) The name and address of the contractor, with a statement as to form of organization, including names and addresses of principals.

(ii) Complete contract data, including number, date, estimated day of completion of performance, general description of supplies or services procured, dollar amount, status of performance and payment, urgency of requirements and availability of the supplies or services from other sources.

(iii) A summary of the facts concerning the suspected violation, with names and addresses, dates and references to documentary evidence available.

(iv) The status of any ongoing investigation with the name of the agency conducting the investigation, with an estimated date upon which the report of investigation will be submitted.

(2) The contracting officer will fully cooperate with local field activity business integrity/fraud counsel, and is reminded to carefully preserve documentary evidence and exhibits, since action adverse to a contractor under the Gratuities clause is subject to review by a competent court.

(3) Local field activity business integrity/fraud counsel will identify the appropriate organization responsible for conducting an investigation of the suspected violation and will coordinate with that organization to obtain a copy of a written report outlining the findings of the investigation conducted.

A copy of the report will be provided to the cognizant field activity HCA or CCO for contracting offices where the Director DLA Acquisition is the HCA.

(4) The HCA or CCO, as applicable, will coordinate with local business integrity/fraud counsel after receiving the report of investigation from the appropriate organization responsible for conducting an investigation of the suspected violation to determine whether further action is necessary.

(i) If no further action is necessary, the HCA or CCO will issue a written determination stating that no action will be taken against the contractor under the Gratuities clause and the basis for such a determination.

(ii) If further action is necessary, the HCA or CCO will coordinate with local business integrity/fraud counsel to provide the contractor appropriate notice and opportunity for hearing.

(A) If the contractor requests a hearing, the HCA or CCO will schedule and conduct a hearing in coordination with local business integrity/fraud counsel. Information submitted by the contractor during the hearing will be considered in reaching a final decision.

(B) If the contractor elects not to have a hearing but submits information, that information will be considered in reaching a final decision.

(5) After the contractor is given appropriate notice and opportunity for hearing and a hearing has occurred, the contractor did not request a hearing but submitted information, the contractor did not request a hearing, or failed to appear after requesting a hearing and did not submit information, the HCA or CCO, as applicable, will coordinate with local business integrity/fraud counsel to determine whether further action is necessary.

(i) If no further action is necessary, the HCA or CCO will issue a written determination stating that no action will be taken against the contractor under the Gratuities clause and the basis for such a determination.

(ii) If further action is necessary, the HCA or CCO will coordinate with local business integrity/fraud counsel and draft a written determination and findings outlining the basis for the determination and the amount of exemplary damages, in accordance with the requirements of FAR 52.203-3(c)(2).

(6) In determining the appropriate action that should be taken, the HCA or CCO, as applicable, will provide a draft copy of the written determination with supporting documentation along with a report summarizing the hearing offered to the contractor and any information provided by the contractor, to the Director, DLA Acquisition (J7) for headquarters review and comment by J7 divisions, and DG.

(7) The determinations required by FAR 52.203-2(a) and FAR 52.203-3(c)(2) will be made by the cognizant HCA.

(8) HCAs approve and sign the determination for their contracting activity. For contracting offices for which the DLA Acquisition Deputy Director is the HCA, CCOs will forward draft determinations with supporting documentation, including the DLA IG Report and the CCO's recommendation, to the DLA Acquisition Deputy Director, who is the approval authority for those contracting offices.

## SUBPART 3.3 – REPORTS OF SUSPECTED ANTITRUST VIOLATIONS

### 3.301 General.

(b) Whenever the contracting officer finds evidence of suspected antitrust violations, he/she shall forward to local counsel, a report of information available to establish possible violation of the antitrust laws.

(b)(S-90) Exchange of information regarding questionable contractor business practices. Information revealed by postaward reviews, audits, or similar sources on price overcharges and other questionable business practices may be of concern to other DoD activities that conduct business with the firm involved. Sound business practices dictate that this information be made available to DoD activities upon request. Also, such information, including the name and address of the firm involved, a brief description of the questionable business practice, and the manner in which it was revealed, shall be forwarded in writing to the chief of the contracting office and cognizant DCMA.

## SUBPART 3.5 – OTHER IMPROPER BUSINESS PRACTICES

### 3.590 Prohibition against the solicitation of "free issues."

(a) The solicitation of supplies or services from individuals or firms at no cost (known as "free issues") may lead to a perception on the part of these individuals or firms that either there is a benefit to accrue to them in the future if they satisfy the request at no cost, or that they are under an obligation to satisfy the request at no cost as a condition of receiving future Government business. These perceptions must be avoided. The solicitation of supplies or services from individuals or firms at no cost is therefore prohibited.

(b) However, when an individual or a firm voluntarily offers to provide supplies or services at no cost, under certain circumstances the Government may accept such offers without compensating the supplier therefore. Consult with servicing Counsel for guidance with regard to when this may be done. In no case will gratuitous items or services be accepted without the concurrence of Counsel.

## SUBPART 3.7 – VOIDING AND RESCINDING CONTRACTS

### 3.704 Policy.

(a) For purposes of this subpart, the Head of the agency designee is the Special Assistant for Contracting Integrity (SACI), General Counsel.

### 3.705 Procedures.

(a) Reporting. The facts concerning a final conviction for any violation of 18 U.S.C. 201-224 shall be reported by the contracting officer to the Associate General Counsel for Business Integrity within 20 days after the contracting officer learns of the final conviction. The report shall be signed by the contracting officer and submitted through local Counsel. The report shall:

(1) Identify and include a copy of the contracts(s) involved;

(2) Include a copy of the judgment order evidencing or confirming a final conviction as defined in FAR 3.702;

(3) List in detail the tangible benefits received and retained by the reporting activity in connection with the performance of the contract(s) which relate to the final conviction;

(4) Provide the contracting officer's estimate of the fair value of benefits received and retained and include an explanation of how that estimate was calculated;

(5) Include a recommendation concerning the amount to be recovered and the property to be returned as a result of action under this subpart; and

(6) Indicate whether a report recommending debarment of the parties involved has been forwarded to General Counsel. After review, the Associate General Counsel for Business Integrity will refer the contracting officer's report to the SACI for action. The SACI shall promptly notify the Civil Division of the Department of Justice when action is contemplated under Subpart 3.7 of the FAR.

## SUBPART 3.8 – LIMITATION ON THE PAYMENT OF FUNDS TO INFLUENCE FEDERAL TRANSACTIONS

### 3.804 Policy.

(b) Reporting. Upon receipt of contractor disclosures, forward copies of the OMB Standard Form LLL, Disclosure of Lobbying Activities, to the DLA Acquisition Policy Division.

### 3.806 Processing suspected violations.

Suspected violations of the requirements of the act shall be referred to the local office of counsel.

# PART 4 – ADMINISTRATIVE MATTERS

*(Revised June 15, 2015 through PROCLTR 2015-09)*

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## SUBPART 4.5 – ELECTRONIC COMMERCE IN CONTRACTING

### 4.502-90 Electronic order transmission.

(b) Use 52.204-9001, Electronic Order Transmission, in all long term contract (LTC) solicitation/awards in which electronic ordering (or automated outline agreements) may be utilized for issuing delivery orders. Electronic data interchange (EDI) does not apply to automatic indefinite delivery purchase orders (AutoIDPOs).

## SUBPART 4.8 – GOVERNMENT CONTRACT FILES

### 4.802 Contract files.

(a) Contract files shall be maintained in electronic format in an electronic contract file (see FAR 2.101 for definition of contracts) unless electronic file storage is unavailable. Personnel responsible for copying paper documents into electronic format shall ensure that the copies are legible and complete. Documents requiring signature will be included in the electronic contract file with all required signatures; copies with a "/signed" or similar notation will not be substituted for copies of the actual signed documents. Oversized or voluminous documents that cannot be scanned into the electronic file will be maintained as a hard copy. A reference statement will be added to the electronic file notifying authorized users of the location of hardcopy documents.

(b) For complex or multi-NSN contracts, the contract file may be maintained either in electronic or paper format.

## SUBPART 4.13 – PERSONAL IDENTITY VERIFICATION

*(Revised August 28, 2015 through PROCLTR 2015-10)*

### 4.1302 Acquisition of approved products and services for personal identity verification.

(a) When acquiring personal identity verification products and services, the contracting officer is required to coordinate with Information Operations (J6) pursuant to FAR 4.1302(c) when not using the process at FAR 4.1302(b).

### 4.1303 – Contract Clause.

### 4.1303-90 Contract clause - personal identity verification of contractor personnel.

(a) Use clause 52.204-9000 in solicitations and contracts that contain FAR 52.204-9, Personal Identity Verification of Contractor Personnel, when contract performance requires contractors to have routine access to a Federally-controlled facility and/or routine access to a Federally-controlled information system. Contractors who require access only intermittently or for a period of less than six months, shall coordinate obtaining approval with the local Office of Counsel and the local installation security office through the contracting officer.

(b) When the Contractor employee(s) will be required to obtain a Common Access Card (CAC) and DLA will serve as the Trusted Agent, follow the procedures in the J7 Standard Operating Procedures for Contractor Common Access Card (CAC) Accountability, found at https://eworkplace.dla.mil/sites/S18/Pages/SOP.aspx.

(c) For all contracts where contractor CACs will be issued, contracting officers shall ensure that responsibilities for oversight and retrieval of contractor CACs are addressed in the COR designation letter. If a COR is not designated, the contracting officer is responsible for oversight and retrieval of contractor CACs issued under the contract.

(d) If contract performance is to occur at a non-DLA site and the site has physical site and/or information technology security requirements specific to that location, and in addition to the DLA CAC requirements, the contracting officer shall work with the customer to identify those requirements and ensure they are included in the solicitation and subsequent contract.

## SUBPART 4.70 – UNIFORM PROCUREMENT INSTRUMENT IDENTIFICATION NUMBERS

### 4.7003-90 Basic procurement instrument identification number (PIIN).

(a) The awarding activity will assign the basic PIIN in accordance with DFARS 204.7003. Elements of the thirteen character basic number are as follows.

(1) Positions 1 through 3 will be for EProcurement, a DLR site, or other contracts.

| Positions 1-3 Designators | |
|---|---|
| HQ0 | Defense Media Activity |

| | |
|---|---|
| SP3 | DLA Distribution |
| SP4 | DLA Disposition Services<br>DLA Contracting Services Office |
| SP7 | DLA Document Services |
| SP8 | DLA Strategic Materials |
| SPE | For EProcurement<br>DLA Aviation<br>DLA Energy<br>DLA Land and Maritime<br>DLA Troop Support |
| SPM | All others |
| SPR | For a DLR site |

(2) Position 4 identifies the physical location of the awarding contracting activity.

| Position 4 Designator | |
|---|---|
| 0 | Defense Media Activity<br>DLA Document Services<br>DLA Strategic Materials |
| 1 | DLA Distribution (prior to EProcurement)<br>DLA Troop Support |
| 2 | DLA Troop Support |
| 3 | DLA Distribution (EProcurement)<br>DLA Troop Support |
| 4 | DLA Aviation at Richmond |
| 5 | DLA Disposition Services<br>DLA Troop Support |
| 6 | DLA Energy |
| 7 | DLA Land and Maritime at Columbus, OH<br>DLA Contracting Services Office |
| 8 | DLA Troop Support |
| A | DLA Land at Albany, GA |
| B | DLA Land at Aberdeen, MD |
| D | DLA Land at Warren, MI |
| H | DLA Aviation at Ogden, UT |
| M | DLA Maritime at Mechanicsburg, PA |
| P | DLA Aviation at Philadelphia, PA |

| | |
|---|---|
| R | DLA Aviation at Huntsville, AL |
| T | DLA Aviation at Oklahoma City, OK |
| W | DLA Aviation at Warner Robins, GA |
| Y | Industrial Support Activities (for DLA Shipyards)<br>(note that Position 6 will denote location as follows):<br>1 = Norfolk, VA<br>2 = Puget Sound, WA<br>3 = Portsmouth, NH<br>4 = Pearl Harbor, HI |

(3) Position 5 identifies the supply chain.

| Position 5 designator | |
|---|---|
| A | Aviation |
| CL | Clothing and Textile |
| DM | Medical |
| ES | Construction & Equipment |
| LC | Land |
| M | Maritime |
| S | Subsistence |
| 0 | Energy<br>Distribution<br>Strategic Materials<br>Document Services<br>Contracting Services (note that Position 6 will denote location as follows)<br>0 = Headquarters<br>1 = Philadelphia<br>2 = Columbus<br>3 = Richmond<br>4 = Battle Creek<br>5 = Headquarters<br>6 = Energy<br>7 = Disposition Services in Battle Creek |
| 1 | Disposition Services in Battle Creek, (Operations Division) |
| 2 | Defense Media Activity<br>Disposition Services in Europe (Germany) |

| | |
|---|---|
| 3 | Disposition Services in Pacific (Hawaii) |

(4) The letter Y in the ninth position of the basic procurement instrument identification number is reserved to identify imprest fund orders posted to DLA automated systems.

(5) Use the number "9" in position 10 if awarding a corporate contract.

**4.7004-90 Supplementary PIINs.**

(a) Corporate contracts.

(1) Multiple PIINs may be cited on the basic contract if it is known at the time of award that there is a possibility of exhausting the supplementary PIINs for the contract.

(2) All contracting actions (delivery order processing, contract administration, etc. ) are the responsibility of the issuing contracting activity or office, not the contracting activity responsible for the NSN.

## SUBPART 4.71 – UNIFORM CONTRACT LINE ITEM NUMBERING SYSTEM

**4.7103-2-91 Numbering procedures.**

(a) In accordance with DLA HQ permanent class deviation DEV 2009-02, DLA Disposition Services, contracting offices are exempt from DFARS PGI 204.7103-2(a).

# PART 5 – PUBLICIZING CONTRACT ACTIONS

*(Revised June 15, 2015 through PROCLTR 2015-09)*

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## SUBPART 5.3 – SYNOPSES OF CONTRACT AWARDS

*(Revised April 25, 2014 through PROCLTR 2014-68)*

### 5.303 Announcement of contract awards.

(a)(S-90) Public announcement.

(1) Information on all proposed contracting actions valued over the threshold specified in DFARS 205.303(a)(i) shall be submitted on DLA Form 1693, Contract Announcements, to the DLA Public Affairs Office (DP) least 2 full working days prior to the date of award. Submissions shall be made by facsimile transmission to (703) 767-6312 or DSN 427-6312; or DP may be contacted at (703) 767-6200 or DSN 427-6200 for instructions on emailing the form. The value of contract actions subject to announcement will not include the amount of any Government furnished property.

(i) All required approvals and funding must be obtained prior to submission.

(ii) Changes, such as changes in the availability of funds, shall be submitted to the DLA Public Affairs Office (DP), who will forward the information to the Office of the Assistant Secretary of Defense (OASD) Public Affairs Office (PAO) and DLA Legislative Affairs Office..

(iii) Excluded from this requirement are mandatory orders placed with Federal Prison Industries, Inc. (FPI) and AbilityOne.

(2) Deviation 2002-07 (PERMANENT). In order for DLA Energy to take advantage of commercial practices and competition in the natural gas and electricity industries, DLA Energy will provide the notification required in paragraph (a)(S-90)(1) of this section no later than 4:00 p.m. on the day the contract is awarded.

(3) Refer to Defense Logistics Agency Instruction (DLAI) 5201 Contract Announcements for guidance in preparing DLA Form 1693 (the form may be found at http://www.dla.mil/dss/forms/fillables/DL1693.pdf.)

## SUBPART 5.4 – RELEASE OF INFORMATION

### 5.404 Release of long-range acquisition estimates.

**5.404-1 Release procedures.**

(a) Application. The authority at FAR 5.404-1(a) is delegated to heads of contracting activities or their designees.

# PART 6 – COMPETITION REQUIREMENTS

*(Revised June 15, 2015 through PROCLTR 2015-09)*

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## SUBPART 6.2 – FULL AND OPEN COMPETITION AFTER EXCLUSION OF SOURCES

### 6.202 Establishing or maintaining alternative sources.

(b)(1) Contracting officers shall prepare proposed D&Fs to exclude sources pursuant to FAR 6.202(b)(1). The DLA Acquisition Director has designated each DLA HCA as approval and signature authority for these D&Fs for procurements within their contracting activity. This authority may not be further delegated.

## SUBPART 6.3 – OTHER THAN FULL AND OPEN COMPETITION

*(Revised June 15, 2015 through PROCLTR 2015-09)*

### 6.302-2 Unusual and compelling urgency.

(b)(S-90) Justifications and Approvals (J&A) for issue priority group I (IPG I) requirements (i.e. priority designators 01, 02 and 03) citing not mission capable supply indicators (MILSTRIP position 62-64) of 999, N** or E** and/or Office of the Secretary of Defense/Joint Chiefs of Staff projects codes (MILSTRIP position 57-58) beginning with "9" shall cite both the priority and these additional indicators of urgency as the basis for limiting competition. No additional information is required to show harm to the Government. Contracting officers shall accept the assignment of these indicators (which are assigned by the Commanding Officer of the requisitioning unit or his designated representative) as the certification of urgency and harm to the Government by technical or requirements' personnel required by FAR Subpart 6.303-2. The requirements certification, in such cases, resides with the customer. Such certifications do not have to be on the J&A.

(b)(S-91) Requirements citing a priority designator 01, 02 or 03 with no other indicator of urgency may also cite the priority alone as the basis for urgency. If the circumstances of such procurements seem

questionable (for example, the item being procured seems routine in nature or items are repeatedly requisitioned with high priority designators), it may be appropriate to obtain additional information from the customer to further explain the urgency.

**6.302-7 Public interest.**

(c) Limitations.

(1)(i) Requests for D&Fs under authority of 10 U.S.C. 2304(c)(7), as implemented by FAR 6.302-7, shall be coordinated through the Chief of Contracting Office (CCO) and Counsel and, for activities with their own Head of Contracting Activity (HCA), through the HCA, and forwarded to the Acquisition Operations Division (J72). The request shall include a detailed justification supporting the proposed D&F.

**6.303 Justifications**.

**6.303-2 Content.**

(a)(S-90)(i) When the J&A will include items coded AMSC A and/or H, the following shall be inserted:

(A) Items identified by AMSC A or H on long term contracts are subject to review for possible assignment of a different or permanent AMSC. These items shall be continually reviewed, not less than annually, in part to determine if technical data is available to allow for assignment of a more permanent AMSC. Any item determined to be competitively available before contract award will be removed from the acquisition. Any item determined to be competitively available after contract award may be deleted from the contract and competitively re-solicited.

(B) The results of the reviews and reclassification actions for AMSC A and H items will be reported by the contracting officer to the local competition advocate, and may be reported to DLA Competition Advocate in accordance with DLA Acquisition requirements.

(C) If the review of an item classified as AMSC H does not result in the assignment of a more permanent AMSC within the later of one year of approval of this justification or one year of the item's placement on a contract covered by this justification, the contracting officer shall remove the item from the contract.

(ii) Add the following when the initial award under the J&A will not include all items covered by the J&A:

(A) To add other sole source parts covered by this justification to the initial award items identified in [*insert section number*], the review process described in an attachment to this justification must demonstrate that the parts are sole source to [*insert name of contractor*] at the time they are proposed for addition.

(a)(S-91) J&A's for awards made under broad agency announcements that support industrial mobilization.

(i) J&A's for noncompetitive awards made in support of industrial mobilization must properly address the compelling reasons for limiting awards to a particular source or sources and the unique capabilities of the targeted source(s) to support the industrial base. FAR 6.302-3(a)(2) requires that the contracting officer demonstrate that other than full and open competition is necessary in order to "keep vital facilities or suppliers in business or make them available" in case of a national emergency or to achieve industrial mobilization. Generally, the J&A must contain sufficient information about the item or service and the supporting industrial sector to demonstrate clearly that the contracting officer's determination to include a particular source or sources in, and exclude others from, the supply base for that item or service is appropriate.

(ii) The contracting officer shall address the following considerations in the J&A:

(A) The relationship between the agency's program objectives and the acquisition strategy employed;

(B) The nature of the item or service (e.g., complexity, criticality, unique features) and the supporting industrial sector (e.g., industry capacity, are sources domestic or foreign, small or large, planned producers, dependent on government business);

(C) The current supply environment (e.g., if the item is currently stocked in inventory, discuss why the agency cannot continue to buy this item in quantity and stock it; further, discuss why the agency must employ a different supply method, such as quick response or direct vendor delivery, in order to maintain defense readiness); and

(D) The unique capabilities of a particular source (or sources) to meet agency mobilization requirements, such as 24 hour delivery, surge capability, or dual-use technology.

(iii) The J&A shall also include the following information:

(A) A description of how the specific item or service was selected.

(B) How the volume of requirements to be awarded was determined appropriate;

(C) Volume and proposed disposition of any remaining requirements for the designated item or service;

(D) Future plans for implementing successful strategies using full and open competition.

(iv) The contracting officer shall consult with his/her Counsel in the preparation of J&A's in support of industrial mobilization.

(b)(S-90) In addition to the examples provided in FAR 6.303-2(b), requirements personnel shall certify that:

(i) The purchase request covers only that quantity needed to satisfy an unusual and compelling urgency; and

(ii) For stocked items, the items are out of stock or existing stock is insufficient to satisfy the requirement, and, if possible, an explanation of why existing stocks are insufficient or the item is out of stock; for non-stocked items, a statement to that effect.

**6.304 Approval of the justification.**

(a)(3)(S-90) Justifications for those contracting offices listed at 2.101 requiring approval by the DLA Acquisition Deputy Director, serving as the HCA for purposes of approval of the justification (including class justifications based on estimated total value of the class) shall be forwarded to DLA Acquisition Operations Division by staff summary sheet coordinated through the CCO and Counsel. The justification shall be forwarded sufficiently early as to allow for required reviews and approvals prior to the commencement of negotiations.

**6.305-90 Availability of the justification.**

(a) FAR 6.305 applies only to justifications required by FAR 6.303-1. Limited source justifications required by other FAR sections, such as FAR 8.405-6, 13.106(1)(b), 13.501, or 16.505(b)(2) are therefore not subject to the FAR 6.305 posting requirement. Contracting offices shall, however, follow the provisions of (d) below (with the exception of servicing Counsel review, which is optional in these cases) concerning any limited or sole source justification required to be publicly posted by any FAR section (e.g., FAR 5.102(a)(6), 8.405-6(d)). Contracting activities and offices shall post to FedBizOpps the approved justification, appropriately reviewed and redacted in accordance with (d) below. Attachments and supporting documentation will not be posted. Format instructions are contained in the February 13, 2009, Memorandum from the Director, Defense Procurement, "Public Disclosure of Justification and Approval (J&A) Documents for Noncompetitive Contracts," http://www.acq.osd.mil/dpap/policy/policyvault/USA000865-09-DPAP.pdf.

(b) HCAs, or CCOs when the DLA Acquisition Deputy Director is the HCA, shall ensure J&As are appropriately posted to FedBizOpps within the mandated statutory timeframes (see FAR 6.305(a) and (b)). Procurement management reviews will include J&A postings as one of their subjects for oversight.

(c) Review prior to posting.

(1) The contracting officer and the servicing Counsel shall review all J&As subject to FAR 6.305, regardless of dollar value, to ensure material exempt from disclosure under FAR 6.305(c) is redacted before posting the document to FedBizOpps. Counsel review for exempt material may be done as part of the normal review process for a J&A.

(2) Disclosure of information in a posted J&A.

(i) General. J&As shall be carefully screened to redact information exempt from public disclosure under FOIA, including but not limited to proprietary information, classified information, trade secrets, and Independent Government Cost Estimates and other source selection information.

(ii) Consult the servicing Counsel for guidance on whether a legal basis exists for redacting logistical details that could provide strategic information to the public that requiring activities would not want known, market research details specific to a contractor's capacity, references to specific sole source

parts needed for weapons systems, and other information, the disclosure of which could be used, either alone or in combination with other publicly available information, to the detriment of U.S. interests.

(iii) Titles, names, and signatures. Current DLA policy is to disclose only the names of the contracting officer, approval/review chain officials, and the approving official. When posting the approved J&A, only the signature of the approving official needs to be included in the posted J&A, and signatures below the approving official should be redacted. Names and signatures of persons outside the approval/review chain, such as technical certifying personnel, should be redacted. Consult the servicing Counsel for assistance in this area.

(d) Reviewing posted J&As. HCAs, or CCOs when the DLA Acquisition Deputy Director is the HCA, shall periodically spot check J&As posted by their activities to ensure only appropriate content is visible, in accordance with FAR 6.305(c), the DPAP Memorandum of February 13, 2009, above, the Freedom of Information Act (5 U.S.C. 552), and the prohibitions against disclosure in FAR 24.202.

(e) Agency web-site link requirement. The FAR 6.305(d)(2) requirement for providing the J&A on the website of the agency is satisfied by DLA's link at http://www.dla.mil/J7/adddocs.asp and http://www.dtc.dla.mil/dsbusiness/default.htm , which provide access to the posted J&As on FedBizOpps. Contracting organizations may also provide a link to the DLA links or to FedBizOpps from their own web pages, however, they shall not duplicate the effort by posting the approved and redacted J&As on their own websites.

## SUBPART 6.5 – COMPETITION ADVOCATES

### 6.501-90 Requirement.

(a) The Director, DLA Acquisition (J7) shall designate the Agency competition advocate.

(b) In accordance with delegated authority from the Director, DLA Acquisition, the HCAs shall appoint activity competition and an alternate activity competition advocates, as needed, for their respective procuring activities. Those activities for which the DLA Acquisition Deputy Director is the HCA will forward nomination recommendations to DLA Acquisition Operations Division signed by the CCO. FAR 6.501(b) and (c) shall be considered when appointing or nominating individuals to perform the duties and responsibilities outlined in FAR 6.502(a), and appointed or nominated individuals shall be Level III certified in contracting in accordance with the Defense Acquisition Workforce Improvement Act (DAWIA).

(c) Where more than one activity competition advocate is assigned for a procuring activity, the HCA shall designate one activity competition advocate to serve as the Manager of the activity's competition advocacy program.

### 6.502-90 Duties and responsibilities.

(a) Agency competition advocate.

(1) In addition to the duties and responsibilities outlined in FAR 6.502, the agency competition advocate shall perform the duties and responsibilities as follows:

(i) Review the annual competition goals submitted by activity competition advocates and establish DLA competition goals for the fiscal year no later than 30 days after the deadline established for receiving those goals from the activity competition advocates.

(ii) Analyze the annual reports submitted by activity competition advocates. Identify common concerns and impediments to competition and include these in the agency annual report to the SPE, along with recommended solutions, if applicable.

(iii) Prepare the agency annual report for submission to the SPE.

(iv) In the absence of the activity competition advocate, if there is no alternate activity competition advocate, the agency competition advocate shall serve as the alternate for an activity competition advocate when there is an urgent issue requiring participation by the activity competition advocate.

(b) Activity competition advocate.

(1) In addition to the duties and responsibilities outlined in FAR 6.502(a), the activity competition advocate shall perform the duties and responsibilities as follows:

(i) Act as advisor and have direct access to the HCA or, at DLA Strategic Materials, DLA Enterprise Support, DLA Document Services, and DLA Distribution, have direct access to the CCO, on competition matters and act as a focal point for promoting competition.

(ii) Challenge barriers to competition, including unnecessarily detailed specifications and unnecessarily restrictive statements of need.

(iii) Identify items or groups of items for which competition would provide the greatest benefits in terms of cost, schedule, and performance. Initiate efforts to develop competition for these items.

(iv) Recognize individuals who have made significant contributions to competition by establishing an award program or by recommending them for recognition in existing award programs.

(v) Promote market research efforts, including identifying manufacturers, attendance at conferences and workshops, web research, and contacting industrial, professional, and manufacturers associations for membership references.

(vi) Establish annual competition goals for each fiscal year and prepare an annual report for submission to the agency competition advocate. In establishing annual competition goals, the contracting office competition advocate shall consider various categories of congressionally-mandated socioeconomic programs such as small business, small disadvantaged business, service-disabled veteran owned small business, small business innovative research, and the establishment of minority business goals. The contracting office must use competitive procedures to the maximum extent possible, including when it utilizes commercial practices and implements prime vendor and long term contracting initiatives. Both the annual competition goals and the annual report shall be submitted jointly using the format detailed in 6.503.

**6.503 Annual reporting requirements.**

(a) The report shall be submitted to the agency competition advocate no later than 15 November of each year.

(b) Where more than one competition advocate is assigned for a contracting office, the manager of the competition advocacy program shall forward combined goals and the annual report which shall be broken out by the contracting offices, if appropriate.

(c) The annual report shall cover the previous fiscal year and shall be broken out by the contracting offices responsibilities, if appropriate. The report shall cover the following major topics:

**Annual Advocacy Report for FYXX Defense Logistics Agency (DLA)**

In accordance with FAR 6.502(b)(2), _____ submits the following report.

1. Competition rate achieved. Show the level of competition achieved against the approved goals. The information cited below will match the established Federal procurement data system next generation (FPDS-NG).

a. FY XX competition goals (by activity)
a. _____% of total procurement actions
b. _____% of total dollars obligated
b. FY XX competition rates achieved (by activity)
c. _____% of total procurement actions
d. _____% of total dollars obligated

2. Advocate's activities. Provide a brief synopsis of procurements or activities where competition was instrumental in achieving substantial cost savings or other benefits.

3. New initiatives required. Describe plans for improving competition, such as identifying change in contracting techniques or other operational procedures which will enhance the competitive aspects of procurement.

a. To increase the acquisition of commercial items
b. To increase competition
c. To ensure requirements are stated in terms of functions to be performed, performance required or essential physical characteristics

4. Any barriers to the acquisition of commercial items or competition that remain. If applicable, provide the reasons (conditions, actions, impediments) for not attaining these goals or mitigating actions/measures taken or planned to resolve the problems.

5. Other ways in which the agency has emphasized the acquisition of commercial items and competition in areas such as acquisition training and research. Describe other efforts or accomplishments for improving competition, such as identifying change in contracting techniques or other operational procedures which will enhance the competitive aspects of procurement. List workshops or conferences conducted or attended and tangible benefits derived from them.

6. Proposed FYXX competition goals for actions and dollars (by activity). The submission shall include the supporting rationale for establishing the goals. When projecting goals, previous fiscal year competition statistics, projected obligations, and performance statistics from FPDS-NG shall be considered.

Include a discussion of any significant obstacles encountered and/or issues experienced in the previous fiscal year which are expected to continue into the current fiscal year.

a. _____% of total procurement actions

b. _____% of total dollars obligated

c. Projected expenditure

d. Supporting rationale for the proposed competition goals

e. Plans for increasing competition on a fiscal year basis

The point of contact is _____, title, telephone number_____ or email_____.

# PART 7 – ACQUISITION PLANNING

*(Revised November 3, 2014 through PROCLTR 2015-04)*

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## SUBPART 7.1 – ACQUISITION PLANS

*(Revised November 3, 2014 through PROCLTR 2015-04)*

### 7.102-90 Policy.

(a) With the following exceptions, written acquisition plans are required for all acquisitions expected to exceed the Simplified Acquisition Threshold (SAT), including those accomplished by means of direct or assisted acquisitions using non-DoD contract vehicles such as Federal Supply Schedules. Actions exempt from this requirement are:

(1) Individual orders (except orders greater than the SAT against non-DoD contracts) against contracts when the contract-level acquisition plan is adequate to cover all anticipated orders and the order is issued in strict compliance with the terms of the basic contract.

(2) A modification of the contract.

(3) Acquisition of replenishment parts, below DFARS 207.103 thresholds.

(b) Acquisition Plans shall be completed and approved prior to solicitation issuance. The following table depicts approval levels of acquisition plans for supplies and services:

| |
|---|
| < $10M – Contracting Officer |
| =/>$10M but < $50M – One level above the Contracting Officer |
| =/>$50M but < $1B – Chief of the Contracting Office |
| =/>$1B - HCA |

(c) If the commerciality determination is documented in the acquisition plan and the acquisition is valued greater than $1M, the plan must be reviewed and approved at one level above the contracting officer.

(d) Acquisitions for supplies and services procured under FAR 13.5 shall use the Commercial Item Pre-Solicitation Documentation Memorandum for Record as documentation of the acquisition plan (see DLAD 13.500(S-91).

(e) The level of detail provided in the acquisition plan should be commensurate with the complexity and dollar value of the acquisition.

(1) For acquisitions with a dollar value above the SAT up to $10 million, contracting officers shall prepare a Streamlined Acquisition Plan (SAP) (see Part 53 for template that can be tailored for individual PLFA usage). At the discretion of the contracting officer, an acquisition plan prepared in accordance with FAR 7.105 and DFARS 207.105 may be used for those actions where it would be more appropriate.

(2) For acquisitions above $10 million and subject to an ASRP or IARB, the contracting officer shall prepare an acquisition plan in accordance with FAR 7.105 and DFARS 207.105. However, for all other acquisitions above $10 million, the contracting officer may prepare a SAP (see Part 53 for template that can be tailored for individual PLFA usage). At the discretion of the contracting officer, an acquisition plan, prepared in accordance with FAR 7.105 and DFARS 207.105, may be used for those actions where it would be more appropriate.

(3) Every acquisition plan for a services acquisition over $10 million that is not subject to ASRP or IARB review must include a request for coordination from the applicable services portfolio manager prior to final approval of the acquisition plan.

(i) Coordination may be concurrent with other coordinations/approvals, as long as the applicable portfolio manager is notified of any major change to the acquisition plan.

(ii) Portfolio managers shall have 3 business days to provide formal comment. Any comments received from the portfolio manager within the 3 business days should be considered and addressed in an MFR for the file and shared with the portfolio manager prior to solicitation issuance.

(A) Approval prior to solicitation issuance can be waived per PLFA guidance for urgent requirements.

(iii) Acquisition plans for awarded contracts for services valued between $1M and less than $10M shall be provided to the DLA Services Program Manager and/or applicable portfolio manager upon his/her review of FPDS-NG and subsequent request.

(4) If a DLA activity or functional unit that does not have contracting authority in its own right (e.g., a J-code activity) intends to acquire support through use of a non-DoD contracting vehicle on either a direct- or assisted-acquisition basis, that activity must contact the DLA contracting office that generally provides its contracting support, and request that contracting office to implement the appropriate review and approval procedures.

(5) Every program office that expends funds in its own right (that is, without requesting that its requirements be placed on contract by the local activity's or PLFA's contracting office) must involve DLA contracting personnel in the review and approval process for the proposed acquisition.

(6) Contracting offices that exercise this function on behalf of others must ensure that their supported activities are provided an explanation of this policy, and they must receive assurance from each such supported activity that the latter will not expend funds for contract support (including funds provided via military interdepartmental purchase request (MIPR)) without the express involvement of a DLA contracting office, at levels in accordance with the review and approval guidelines set forth in 1.690-3.

(7) The acquisition plan shall accompany justifications for other than full and open competition (see FAR 6.301, 6.304, and DLAD 6.304) when forwarded to the activity competition advocate. The activity competition advocate shall also be provided a copy of the acquisition plan for acquisitions where there is no history of receipt of more than one offer and price competition is not expected to be received on the acquisition.

**7.103 Agency-head responsibilities.**

(a) Requirements for contract actions, which must be awarded by the end of the fiscal year, must be submitted to the contracting office by 31 July of that fiscal year. Solicitations for requirements received after 31 July shall not be issued unless approved by the chief of the contracting office.

(b) A contract action log shall be maintained by the contracting office for all purchases of contracted advisory and assistance services, periodicals, pamphlets, and audiovisual products. Existing logs may be used for this purpose, provided some means is devised to readily identify these types of contract actions that are highly vulnerable to waste.

(c) Written acquisition plans required by 7.102-90 may be affected on a system basis using a comprehensive plan for a specified period of time (i.e., quarterly, semi-annually or annually).

**7.104-90 General procedures.**

(a)(1) The Defense Production Act (DPA) and the Defense Planning Guidance (DPG) require DoD to maintain an adequate production base to promote national security. In this regard, industrial preparedness actions are taken to ensure that the industrial base is adequate to offset war reserves shortfalls and provide combat support in emergencies.

(i) When an item is being considered as an item of supply from a new source, an industrial capabilities assessment for the item should be accomplished or updated. This assessment is especially important when the item will be supplied by a single source, as well as when it is a critical item with a war reserve shortfall, a critical item that has experienced high demand in previous contingencies, a military unique item, or a weapon system item coded essentiality codes 1, and 5, or 7. For these types of items, adequate capacity is necessary to meet surge and sustainment (S&S) requirements.

(ii) Assessment of newly sourced items is not required if previous analysis on capacity to do an entire family of items (that newly sourced items belong to) shows the new source already has sufficient equipment, facilities, personnel, and materials to meet S&S requirements for the newly sourced items.

(b)(2)(i) Measures to ensure S&S requirements (i.e., items, quantities, and delivery terms) are defined, S&S capability is developed, and S&S capability can be tested (as required in 17.9303)) must be undertaken for all new business arrangements (e.g., prime vendor, virtual prime vendor, corporate contracts, etc.) and long-term contracts. These measures are especially crucial when the new support method will eliminate or reduce DLA inventories.

(ii) Acquisition plans for these new arrangements and LTCs must address S&S requirements, capability, and testing. If surge and/or sustainment requirements are not included in the solicitation (e.g., they do not exist, they are covered under other contractual arrangements, they are covered via sufficient peacetime assets, etc.), state this in the acquisition plan and explain the basis for not including them.

**7.105-90 Additional requirements for tailored logistics support contracts.**

(a) Written acquisition plans for tailored logistic support contracts (see 17.95) shall also address the following:

(1) A discussion of the factors that indicate a tailored logistics support contract arrangement is the best acquisition strategy. Discussion should include the type and variety of incidental services included and why the proposed supply arrangement will provide the best support for the customer.

(2) A description of surge and sustainment requirements, capability, and testing;

(3) A description of how this acquisition will maximize opportunities for small business programs;

(4) A description of how the contractor will periodically assess and monitor its suppliers' compliance with domestic sourcing requirements (e.g. Berry Amendment), and a description of how DLA will monitor the contractor's compliance in this area;

(5) A description of the market basket approach being taken, such as number of items, dollar value, etc;

(6) A discussion of any system impacts, changes, and approvals needed before implementation of the initiative. Discuss how these are consonant with DLA system architecture and other agency system architectures;

(7) A discussion of post award pricing procedures.

(b)(19)(S-90) Contract management plan.

A contract management plan (CMP) describes how performance shall be monitored over the life of the contract. The CMP addresses the resources assigned to conduct and sustain contract monitoring procedures. The CMP makes it clear who is responsible for performing which functions, when, and at what intervals. The CMP shall be approved as part of the acquisition approval process prior to award of the contract. Examples of CMPs can be found in eWorkplace under the following path: Organizations, Troop Support, Shared Documents, Procurement Process Support, Contract Management Plans (CMP).

(i) CMPs are required for all tailored logistic support contracts (see 17.95), contracts that provide for performance based adjustments (such as incentives and disincentives), and long term contracts that contain provisions for repricing during the contract term as described in 15.403-4(a)(1)(i)(S-91)(D).

(ii) Each CMP shall be tailored to address the specific acquisition. At a minimum, the CMP should address resources required, responsibilities of each resource, assignment of a COR/COTR, order flow, post-award audits describing what shall be reviewed, when, and by whom, invoicing procedures, performance measurement metrics, incidental services required as part of the contract, assignment of contract administration responsibilities for orders, contracts, and subcontracting plans, options, post-award conferences, domestic preference provisions, special contract administration concerns, repricing actions such as economic price adjustments, responsibilities for monitoring contract performance, and contract closeout.

(iii) The CMP shall be updated in a timely manner when there is a change in the resources, functions, metrics, and methods of contract management. Updates to the CMP following contract award shall be approved at the same level as the original contract action, except that the CCO retains authority to approve CMP changes for any actions where the contract action approval authority was at a level higher than the CCO. The CCO may delegate authority to approve CMP changes to a lower level.

(iv) The approved CMP shall be included in the contract file.

**7.107 Additional requirements for acquisitions involving bundling.**

(S-90) For an acquisition requiring USD(AT&L)'s permission to proceed with the bundled requirement, the contracting officer shall submit the request for approval of the determination and finding to J72; it will be routed through Director, DLA Acquisition (J7), J3, DLA Small Business Programs and DLA General Counsel, and the Director, DLA, who will sign out the request to OSD. There are no timeframes in the statute or FAR for use of this procedure, but it is essential that justifications be submitted at the earliest possible date. Therefore, the contracting officer shall forward the request within 30 days of determining that the proposed acquisition will not generate savings in accordance with established levels, as set forth in FAR 7.107(b) (that is, within 30 days of performing a bundling analysis).

(S-91)(1) If a bundling analysis has already been performed on a contract action, it is not necessary to perform a new bundling analysis before exercising an option.

(2) For new acquisitions, procurement history should be analyzed from the three immediately preceding years to determine whether there have previously been separate, smaller contracts for these requirements that were or could have been performed by small businesses.

(3) For any contract containing an "add/delete" clause, the contracting officer shall perform a bundling analysis before adding individual/groups of items via clause exercise, if the change modifies the contract and constitutes a new requirement. On the other hand, if the add/delete clause is merely a mechanism by which items, always intended to be part of the acquisition and included in the initial analysis, are "phased in" (for pricing and other purposes), then the additions do not constitute a new requirement, and a new bundling analysis is not required.

(S-92) The SBA can appeal to the head of a contracting agency certain decisions made by the agency that SBA believes will adversely affect small businesses.

(1) One such appealable decision pertains to any bundling of contract requirements the SBA considers to be unnecessary or insufficiently justified. Whenever a proposed aggregation of requirements, at least some of which were formerly filled by small businesses, is likely to render the resultant contract unsuitable for award to a small business concern, the SBA may challenge that solicitation.

**7.170 Consolidation of contract requirements.**

**7.170-2 Definitions.**

(a) As used in DFARS 207.170-2 to describe the aggregation of two or more requirements into a solicitation to obtain offers for a single contract or a multiple award contract, the term "previously provided" refers to the current or most recent awards for the requirements' fulfillment, rather than to a "look back" for an indefinite number of years or for their entire acquisition history.

(b) If requirements are currently being solicited under a single solicitation that will result in multiple contracts not subject to FAR 16.5, and the immediately preceding contracts for the same requirements were also awarded under multiple contracts resulting from a single solicitation not subject to FAR 16.5, then these requirements are not consolidations. However, the inclusion or exclusion of the words, "all or none," in a solicitation for requirements that would otherwise be considered a consolidation does not have a bearing on whether or not the solicitation is, in fact, consolidated. If, at the time of acquisition planning, currently separate requirements are aggregated into a single solicitation with the possibility of their being awarded as a single or multiple award in accordance with the definition at DFARS 207.170-2, the acquisition is considered a consolidation, whether or not a different award determination is made upon receipt of offers.

(c) As with bundling, "substantial" benefits of consolidation are those that are essential, ample, and demonstratable. They should, but unlike bundling, need not absolutely be quantified.

**7.170-3 Policy and procedures.**

(a)(3) HCAs at DLA Aviation, DLA Land and Maritime, DLA Troop Support, and DLA Energy are authorized to execute determinations that a consolidation is necessary and justified for procurements valued up to $100 million, and CCOs are authorized to execute such determinations for procurements valued up to $10 million. This authority will not be further delegated.

## SUBPART 7.2 – PLANNING FOR THE PURCHASE OF SUPPLIES IN ECONOMIC QUANTITIES

**7.202 Policy.**

(b) For solicitations for IDCs and other long-term contracts covering voluminous items for which response by the offeror to the clause at FAR 52.207-4 is not practicable, see 7.203-90.

**7.203-90 Solicitation provisions and contract clauses.**

(a) The FAR provision shall be tailored, to obtain volume discounts, market basket discounts and/or separate prices at the offeror's price break quantities, across the range of potential order quantities, under IDC and other long-term contracts where response to the standard FAR provision is impracticable.

## SUBPART 7.3 – CONTRACTOR VERSUS GOVERNMENT PERFORMANCE

### 7.304 Procedures.

(a) Where the DLA Acquisition Deputy Director (J7) is the HCA (see 2.101), solicitations in which a comparison will be made between contractor and Government performance in accordance with OMB Circular A-76 shall be forwarded to DLA HQ, attention: J71 for review and approval prior to release.

(S-90) With respect to requests for information related to commercial activities cost studies, the contracting officer (or other authorized individual) must consider the guidelines contained in Title 32: National Defense Part 1285 – Defense Logistics Agency Freedom of Information Act Program and promptly determine if such information should be withheld or released. Requests shall not be required to be submitted under the Freedom of Information Act (FOIA) in order to be considered. If the information is to be withheld, the requestor shall be notified immediately of the decision to withhold the information and of the right to submit a written request for the information under FOIA, if the request was not submitted under FOIA initially. Requests for information may be an indication that the solicitation contains defects or ambiguities, or that the CA solicitation process would be improved by dissemination of the information to all prospective offerors. Therefore, as a part of the disposition of each request, the contracting officer shall consider the need to issue an amendment to the solicitation.

# PART 8 – REQUIRED SOURCES OF SUPPLIES AND SERVICES

*(Revised June 15, 2015 through PROCLTR 2015-09)*

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## SUBPART 8.4 – FEDERAL SUPPLY SCHEDULES

### 8.400-90 DoD electronic mall (EMALL).

(a) General. The DoD EMALL site can be accessed at https://dod-emall.dla.mil/acct/. DoD contractors may also be authorized to order on DoD EMALL pursuant to FAR Subpart 51.1. For Government Purchase Cardholders (GPCHs), see 13.301(S-91).

(b) Policy. Only DLA, military service, or GSA assigned/managed items shall be available for ordering on DoD EMALL. “Open market” catalogs, which are catalogs of products not under contract with DLA, a military service, or GSA, are not permitted on DoD EMALL. The DoD EMALL ordering system will inform all buyers that it is their responsibility to comply with applicable contracting regulations before

making DoD EMALL purchases. The DoD EMALL ordering systems will, to the extent practical, automatically enforce applicable ordering rules, such as competition requirements.

(c) Responsibilities.

(1) The Office of the Secretary of Defense (AT&L/Defense Procurement and Acquisition Policy) is the DoD Executive Agent for DoD EMALL, responsible for issuing overarching DoD EMALL policy, and DLA has responsibility for DoD EMALL operations.

(2) DLA's responsibility for DoD EMALL operations is divided as follows: DLA Logistics Information Service, DLIS DoD EMALL Office, which serves as the Center of Excellence (CEO) for all contracting of non-NSN items in support of DoD EMALL; DLA Acquisition J71, for contracting policy; DLA Finance J8, for program funding; and DLA Information Operations J6, for IA/IT architecture.

(3) The DOD EMALL Office will receive contracting authority from and be subject to the contracting oversight of DLA Disposition Services.

(d) Contracting.

(1) The DoD EMALL Office is responsible for DLA contracts that will be specifically awarded for placement on DoD EMALL and shall comply with the following:

(i) Establish contracts only for DLA-assigned and/or managed items and shall use the delegation of authority from GSA to establish Federal supply schedule (FSS) type contracts to the maximum extent practicable. (Refer to Appendix 7 of DoD 4140.1-R DOD Supply Chain Material Management Regulation.) The schedule groupings will be based on product type and other relevant considerations;

(ii) Consider applicable guidance and clauses in the GSA Acquisition Manual (GSAM) and GSA contracting practices in establishing FSS type contracts, although use of specific GSA clauses, procedures, and practices is discretionary, and these should be used only if found to be in the best interest of the Government. When establishing FSS-type contracts, comply with FAR Part 38;

(iii) Concur with DLIS rules of governance to which contractors will be held and include a requirement in DoD EMALL contracts stating that contractors must comply; and

(iv) Before a contract may be removed from DoD EMALL, the DoD EMALL contracting office must have determined that a termination of the contract is appropriate and initiated termination of the contract.

(2) Qualified product list and critical safety items shall not be included in DoD EMALL contracts. Other types of items, such as body armor, may be prohibited from placement on DoD EMALL contracts.

(i) The DoD EMALL Office will perform a preliminary review of catalogs to ensure part numbered items are cross-referenced to NSNs. Similar reviews will be performed periodically after a contract has been established and throughout the life of the contract.

(ii) DLA managed stocked NSNs should not be included on a DoD EMALL contract, unless that contract is placed within a unique ordering corridor available only to DLA personnel. The DoD EMALL Office, in coordination with DLA Acquisition J71, will develop lists of such prohibited items and enforce that list.

(iii) Contracts awarded for purposes other than placement on DoD EMALL may be made available for ordering through DoD EMALL, and the item restrictions in this paragraph are not applicable to orders placed through DoD EMALL against these non-DoD EMALL contracts.

(3) Each contracting activity or office shall review and approve their respective items for inclusion on DoD EMALL contracts. The contracting activity or office may delegate in writing to the DoD EMALL Office for contracting the authority to include their respective items unless instructed otherwise by that contracting activity or office. Additionally, each contracting activity or office shall designate a DoD EMALL point of contact to the DoD EMALL Office for contracting for processing reviews and approvals and to serve as a conduit for working issues related to the DoD EMALL program.

(4) A valid price analysis technique shall be used to determine price reasonableness of DoD EMALL contracts in accordance with FAR Subpart 15.4. Price analysis is required because DoD EMALL contracts are not directly competed on a price basis before being added to DoD EMALL.

(e) Ordering. Ordering against DoD EMALL contracts is subject to FAR and DFARS Subpart 8.4. Orders against non-DoD EMALL contracts available for ordering on DoD EMALL are subject to the ordering requirements applicable to the particular contract.

**8.406-4 Termination for cause.**

(e)(S-90) Reporting. In accordance with FAR 8.406-4(e), report termination information in Federal Awardee Performance and Integrity Information System (FAPIIS) (see 49.402-8(S-90)(a)).

## SUBPART 8.6 – ACQUISITION FROM FEDERAL PRISON INDUSTRIES, INC.

*(Revised June 15, 2015 through PROCLTR 2015-09)*

**8.600-90 Definitions.**

*"Current market price (CMP),"* as used in this subpart, means the actual current price for purchase of the item in the competitive market place in the quantities normally bought and sold and at customary terms and conditions. If actual sales prices are unavailable or nonexistent, the CMP means a price which is estimated in a similar manner as prescribed in FAR 19.807(b) and (c) (but see guidance on valid price comparisons in FAR 15.404-1(b)(2)(ii)(A)-(C)).

*"Unrestricted,"* as used in this subpart, refers to the portion of the acquisition not purchased from FPI, whether or not a set-aside has been made. (See Part 19).

**8.602 Policy.**

(a) In other than automated acquisitions, the contracting officer shall document in writing the basis for the comparability determination, to include the significance of each factor under the circumstances of the acquisition. The comparability determination must be retained in the contract file.

(1)(S-90) Use the provision at 52.208-9001 for acquisitions valued below the simplified acquisition threshold that involve items listed on the FPI Schedule when the solicitation will also serve as a market research tool. FPI will receive an order if its items are found comparable to items from private sources.

(2)(S-90) Competitive buys are subject to set-aside requirements, except that FPI will be solicited and permitted to compete, and could still receive the award, in acquisitions of these items that are otherwise set aside for small business participation. Small business concerns must be notified of this possibility when set-asides are used under these circumstances.

**8.604-90 Ordering procedures.**

(a) Awards to FPI shall be on a free on board (f.o.b.) origin basis unless otherwise specified.

(b) Prices for FPI contracts shall be rounded off to the nearest four decimal places.

(c) When a contract action involves allotment to FPI of the entire quantity of the required item and current market quotations are not available, prior contract prices (adjusted to reflect changes in market prices of components since the last contract and differences in any other cost factors, e.g., labor, operating supplies, employee fringe benefits) shall be used as the basis for determining the current market price.

(d) In no event shall a unit price higher than the highest award price, adjusted for any significant differences between the buys, be considered to be the current market price. Exclude a high price if resulting from a distressed bid, or bidder's mistake, or if the award price was inflated because of additional requirements.

(e) To ensure that the award price to FPI, for the partial or total quantity, does not exceed the current market price, the contracting officer shall:

(1) Request FPI to furnish its cost estimate, FPI Form 73 (Unit Cost Estimate) with supporting documentation, such as material quotes, for all first time buys and whenever current actual market prices are unavailable or when there is basis for concern regarding an FPI quote;

(2) Consider requesting FPI to furnish its cost history, FPI Form 9 (Production Order and Cost Sheet) for the most recently completed contract(s) for the item (if none, for the most comparable item), along with identification of any apparent errors;

(3) Obtain an independent cost/price analysis of purchases estimated to exceed $200,000 and other actions as deemed appropriate. (See 15.404-1(c)(S-91)). Coordinate with the contracting office's pricing division on the price or cost/price analyses performed on other large purchases with the cost and price analysis element in accordance with FAR, DFARS and DLAD 15.404-1(b) and (c);

(4) Establish prenegotiation objectives as appropriate considering whether the objective is based on pricing data or on cost data plus a weighted guideline profit analysis (see DFARS 215.404-72 for non-profit organizations);

(5) Negotiate with FPI to achieve price reasonableness (see FAR 15.405(d)), and that the price does not exceed the current market price. Elevate negotiation to higher levels of management as necessary;

(6) Document the price reasonableness determination in the contract file; and

(7) Refer instances of unreasonable price which cannot be corrected to a higher authority in accordance with FAR 15.405(d) and DLAD 15.405(d)(S-90). Include a price survey of other potential suppliers and a recommendation concerning whether a clearance request to purchase the item competitively is warranted and needed (see FAR 8.605).

(f) In awards involving multiple destinations, each destination, for purposes of determining the price to be paid FPI, shall be considered a separate award.

(g) When the price comparison involves Government furnished material (GFM) or Government furnished property (GFP), differences in transportation costs for the GFM or GFP shall be considered. Also consider differences in Government transportation costs of end items to the same destination points and any variations in the percentages of GFM usage and/or operating and maintenance costs of GFP.

**8.605 Clearances.**

(a)(2) Waiver procedures and a waiver form can be found at internet address: http://www.unicor.gov/customer/waiverform.htm. The mail address for waiver requests is:

UNICOR Customer Service Center
Post office (P.O.) Box 13640
Lexington, Kentucky 40583-3640
(c)(S-90) Use of the alternative dispute resolution process established by FPI should be considered whenever a clearance is denied. Waiver appeal request forms, at www.unicor.gov/unicor/appeal.html, may be addressed as follows, with an information copy provided the local SADBU:

Ombudsman
Federal Prison Industries
320 First Street NW
Washington, District of Columbia 20534

The ombudsman may also be contacted at telephone: (202) 305-3515; fax: (202) 305-7340.

## SUBPART 8.7 – ACQUISITION FROM NONPROFIT AGENCIES EMPLOYING PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

**8.702-90 General.**

(a) It is DLA policy to cooperate fully with AbilityOne and its central nonprofit agencies (CNAs) in accordance with statutory and regulatory mandates, and to provide the maximum practicable opportunity by which AbilityOne entities may become full partners with DLA at either the prime or subcontract level.

(b) Contractor participation in a program of support for AbilityOne entities shall be the focus of an evaluation factor to be included in solicitations or other announcements for contracting arrangements that use negotiated source selection procedures; see 15.304(c)(S-91).

(c) When making a decision whether to exercise an option, the contracting officer shall evaluate whether the contractor has satisfactorily performed in accordance with the contract terms and conditions and the contractor's proposal or plan, if applicable, relating its commitment to use of AbilityOne entities. Field elements of the Defense Contract Management Agency shall be used to assist in assessing a contractor's compliance with these requirements.

(d) In addition to using an evaluation factor in accordance with 8.702-90(b) of this section, the contracting officer shall provide incentives, through measures such as the following, for prime contractors to subcontract with AbilityOne entities, to the maximum extent possible, even when not statutorily obligated to do so.

(1) Use of AbilityOne entities under previous contracts as part of the overall past performance evaluation factor in source selection;

(2) Evaluation of present performance regarding subcontracting with AbilityOne entities in determining placement of orders under multiple-award contracts; and/or

(3) Consideration of contractor present and past performance with reference to AbilityOne entities in the exercise of options (see 8.702-90(c)).

**8.703-90 Policy for additions of AbilityOne products to the procurement list.**

(a) DoD 4140.1-R, Appendix 7, Supply Management Relationship Agreement between DoD and GSA, gives DoD authority to procure assigned products for the entire Federal Government; this authority has been assigned by DoD to DLA.

(b) DLA will participate in the AbilityOne process for adding new DLA-managed/procured items to its procurement list. See PGI 8.703-90(b) for procedural guidance.

(1) Refer to Ability One's site for general guidance at http://www.abilityone.gov/procurement_list/services_commodity.html.

(2) When AbilityOne seeks to add items to the procurement list for DLA or DoD use only, the AbilityOne liaison will work directly with the contracting officer responsible for the item in conjunction with the small business office on obtaining concurrence for the proposed addition as well as requirements, pricing/costs, drawing/specifications, and proposed delivery schedules. The contracting officer signs the price concurrence letter, which is AbilityOne form CBSD 1005, when an agreeable price proposal is submitted. The contracting officer will attempt to complete these actions within 30 days.

(3) When AbilityOne seeks to add items to the procurement list for aTotal Government Requirement (TGR) or for a Broad Government Requirement (BGR) that are assigned to DLA for management and/or procurement, AbilityOne is required to submit a business case analysis (BCA) and supporting documents to DLA Technical and Quality Assurance (J334) for consideration.

(i) The BCA package is submitted by a central nonprofit agency (CNA), NIB or NISH, for AbilityOne to J334, which determines if the national stock number (NSN) is managed by GSA or DLA. If responsibility is with GSA, J334 notifies the submitting central nonprofit agency that items are not managed by DLA and no further action by DLA will be required. If management responsibility is found

to be with DLA or if DLA is assigned procurement responsibility for an item, a copy of the BCA is sent to the small business office AbilityOne liaison to begin the review. The small business office will contact the appropriate technical and quality point of contact.

(ii) The contracting officer shall work with the cognizant technical and quality point of contact to ensure the following review is accomplished.

(A) For existing NSNs, the technical and quality point of contact reviews the item's technical information for potential technical limitations to AbilityOne providing the support, such as controlled sources.

(B) For proposed new items, the technical services branch determines if there is sufficient information provided to develop an adequate procurement item description (PID) or if an existing NSN can be revised to allow acceptance of the proposed item. An existing customer demand/supply request form is not required. If the BCA adequately supports the need to add the new item, the technical and quality point of contact will work with DLA Logistics Information Service to catalog the new item. The technical and quality point of contact provides a summary of their findings to the appropriate supply chain small business office.

(C) The contracting activity shall designate a contracting officer to review the BCA and evaluate the AbilityOne request. The designated contracting officer shall normally have responsibility for the DLA-managed/procured item(s) that is/are proposed for addition to the procurement list. The designated contracting officer is responsible for the following:

*(1)* Reviewing the BCA file, all supporting data, and market comparisons to determine price reasonableness. The price must be fair and reasonable based on a range of other current quotes or market comparisons; AbilityOne is not expected to be the absolutely lowest price, nor are they expected to match out-of-date prices, loss leaders, salvage prices, sale prices especially when using raw materials that have high market volatility. AbilityOne prices are free on board (f.o.b.) origin.

*(2)* Including a statement of price reasonableness in the contract file. An existing customer demand/supply request form is not required. If the BCA adequately identifies a need it should be considered for sponsorship regardless of demand history.

*(i)* If the proposed addition is for an existing NSN for which there is long term contract coverage, the contracting officer may base price reasonableness on comparison with the current contract price.

*(ii)* When comparing the proposed fair market price (FMP) to an f.o.b. destination contract price, the contracting officer may add the estimated freight to the proposed fair market price for an accurate comparison. The proposed fair market price plus the estimated freight cost should be reviewed in accordance with standard price analysis in order to determine contract price for procurement list addition concurrence.

*(iii)* If the proposed fair market price plus the estimated freight is unreasonably higher than the DLA f.o.b. destination contract price, the contracting officer shall not concur with the proposed addition to the procurement list.

*(A)* The contracting officer shall notify the small business office AbilityOne liaison that it is not in the best interest of the Government to support the procurement list addition at a price unreasonably higher than the current contract price.

*(B)* The AbilityOne liaison notifies the appropriate central nonprofit agency, J334, and DLA Acquisition Programs (J74) of the denial. The central nonprofit agency may either propose a lower price or withdraw the BCA.

*(iv)* If the proposed addition is for a new NSN, the contracting officer shall base price reasonableness on comparison with similar items, market research or a method found at FAR 13.106-3 or, if necessary, FAR 15.404-1.

*(3)* If the contracting officer concurs with the proposed addition, the contracting officer shall sign and electronically send the signed AbilityOne form CBSD 1005 to the small business office AbilityOne liaison with a brief statement in the email that he/she concurs with the proposal; include the BCA number for the proposal that was provided as reference. The contracting officer will attempt to complete these actions within 30 days. The AbilityOne liaison will be responsible for sending the information, with BCA number as reference, to the applicable central nonprofit agency, J334, and J74.

*(4)* Upon receipt of the procurement list addition notice and confirmation that the non-profit agency is ready for production, the contracting officer determines the appropriate contracting vehicle for the item. The contracting officer should consider the Government-wide nature of the procurement list and ensure the item is available to all Federal agencies.

*(i)* If the item is an existing NSN that is on a term contract or blanket purchase agreement (BPA), the contracting officer coordinates with the stock procuring contracting officer to find out when the current option period expires.

*(ii)* New additions for new NSNs may be added to AbilityOne agreements any time after receipt of the procurement list addition notice and production-ready letter.

*(iii)* Additions for existing NSNs that are on requirements contracts cannot be added to an AbilityOne agreement until after the current option period expires.

*(iv)* If the addition is for existing NSNs on a prime vendor contract, the contracting officer will determine whether to require the prime vendor to acquire the product from AbilityOne or to remove the NSN(s) from the contract and add to an AbilityOne agreement.

## SUBPART 8.8 – ACQUISITION OF PRINTING AND RELATED SUPPLIES

### 8.802-90 Policy.

(a) Policy and procedures for the acquisition or production of printing are contained in DLAI 5330.1, Publications, Forms, Printing, Duplicating, Micropublishing, Office Copying, and Automated Information Management Programs.

## SUBPART 8.70 – COORDINATED ACQUISITION

**8.7002 Assignment authority.**

(a)(4) Exclusions to Defense Logistics Agency or General Services Administration Assignments by Agreement. All proposed agreements in accordance with DFARS 208.7002(a)(4) to permit a Military Service to acquire Military Service-managed items for which the estimated obligation of a one-time authorization will exceed $150,000, or when the annual obligations are expected to exceed $150,000 for a continuing authorization, shall be submitted for review and approval by DLA HQ, attention: J71, prior to consummation of the agreement. Continuing authorizations will not be granted for periods exceeding 12 months, notwithstanding the amount of estimated annual obligations. Requests shall be submitted by letter in sufficient detail to support the proposed agreement and shall be signed at a level no lower than the Chief of the Contracting Office.

**8.7004 Procedures.**

**8.7004-2 Acceptance by acquiring department.**

(a) Upon receipt, MIPRs and other requests for non-DLA managed items should be routed directly to individuals responsible for procurement for processing. Simultaneously, such requests will be routed for review by staff elements with corollary interest (operational, functional or policy-type offices having oversight responsibility for technical/quality issues), as necessary. The contracting officer or designated acceptance official shall request that reviewing elements furnish comments within 10 days. This must be done within 20 days of receipt of the MIPR, in order to meet the 30 day acceptance time-frame. The acceptance official will act as the team leader to obtain any necessary advice and counsel from local experts in order to accomplish the acquisition mission successfully.

(S-90) Each procurement, whether covering a military service-managed or DLA-managed item, will take its priority position based on the factors surrounding the particular procurement and not on the type of item or origin of the purchase request.

**8.7004-3 Use of advance military interdepartmental purchase requests (MIPRs).**

(f) Actions in accordance with DFARS 208.7004-3 may be taken by a contracting activity or office upon receipt of an advance MIPR (or similar type purchase request), provided the purchase request contains a statement reading essentially as follows: "A firm requirement exists for the item(s) contained in this MIPR; purchase of the items will be supported by the commitment of funds which are expected to be made available (within the next *** days)/(prior to the end of this fiscal year)." Any other written advice from the requiring activity that the requirement is firm and that there is a reasonable expectation that funds will be made available for obligation purposes against the specific advance MIPR, may be accepted in lieu of a statement embodied in the MIPR. This advice will be used as the basis to proceed with the purchase action up to the point of award.

(1) Invitation for Bids (IFBs) or Request for Proposals (RFPs) issued on the basis of unfunded advance MIPRs shall clearly state that no awards will be made until such time as funds become available for obligation purposes. (See FAR 32.703-2.)

(2) In instances such as those authorized herein, the requiring activity will be notified of the scheduled award date of the IFB or RFP and that, if funds are not made available by that date, the

solicitation may be canceled. The scheduled award date may be extended at the discretion of the contracting office.

(3) If a requiring activity indicates that funds will not be forthcoming, the solicitation shall be canceled. All offerors shall be notified immediately of such cancellation (see FAR 14.404-3). If the solicitation is canceled prior to the solicitation opening or closing date, unopened offers shall be returned to offerors.

## SUBPART 8.73 – USE OF GOVERNMENT-OWNED PRECIOUS METALS

*(Revised June 15, 2015 through PROCLTR 2015-09)*

### 8.7300 General.

(a)(1) DoD has assigned DLA the mission to reclaim precious metals from precious metal bearing scrap and waste materials, and to make available reclaimed precious metals as Government-Furnished Property (GFP) in acquisition of items containing precious metals. This section implements DoD Directive 4160.22, Recovery and Utilization of Precious Metals, which establishes DoD policy governing the management of the recovery and the use of precious metals derived from precious metal bearing scrap and waste materials generated by all elements of DoD worldwide.

(2) DLA is assigned the responsibility for managing the overall program and has designated DLA Disposition Services as the activity charged with the responsibility for managing the retrieval and refining of precious metals. DLA Troop Support has been assigned the supply management function for precious metals.

### 8.7302 Policy.

(a) All DLA elements generating precious metal bearing scrap and waste materials shall establish and operate an internal program to assure the economical reclamation of precious metals, consistent with the overall DoD policy of effecting maximum use of excess property to meet DoD needs. Recovered precious metals, after refinement, will be made available to DoD elements for their use as Government furnished property (GFP) to reduce new acquisition costs.

(b) Responsibilities. Contracting activities, or for those DLA activities not designated as a contracting activity (see DFARS 202.101), the Commander, Director, or Administrator, are responsible for the following:

(1) Reporting precious metal bearing scrap and waste materials to the DLA Disposition services manager.

(2) Taking appropriate disposition action, including shipping, based on direction from the DLA Disposition services manager.

(3) Using the refined precious metals maintained in storage by the DLA Troop Support precious metals inventory manager, as GFP, whenever feasible, for contracts requiring use of precious metals.

### 8.7303 Procedures.

The procuring contracting officer (PCO) shall provide instructions to the administrative contracting officer (ACO) for metal disposal upon completion of the contract. In accordance with DoD 4160.21-M, Defense Materiel Disposition Manual, Chapter 11, Precious Metals Recovery Program (PMRP), the following procedures apply:

(a) Prior to soliciting offers for awards of contracts requiring precious metals, the contracting officer shall contact the DLA Troop Support precious metals supply planner, DLA Troop Support, phone: 215-737-8579, fax: 215-737-8588, indicating the item, quantity, and grade of precious metal required for the acquisition. If the required amount is available, request in writing to DLA Troop Support that the required quantity be reserved to cover the acquisition including the estimated delivery schedule. DLA Troop Support will reserve requested quantities of precious metals for 120 days.

(b) To requisition precious metals, the contracting officer shall submit a military standard requisitioning and issue procedure (MILSTRIP) requisition to DLA Troop Support. The requisition shall cite full troy ounces (partial ounces shall be rounded off to the nearest whole ounce). See instructions in 8.7303(d) for how to calculate. Exception data shall be cited in the “remarks” section of the requisition. The exception data are:

(1) An unclassified "ship to" address specifying exact location (building, office, and individual) and applicable zip code. The DoDAAC is not always sufficient for delivery;

(2) The number of the contract or work order on which the precious metal is to be used, for control and audit purposes;

(3) The end item application, the NSN, the part number, or any other data that identifies the item or component in which the precious metal shall be used, as well as the quantity of precious metal which shall be used for each item or component, if known ; and

(4) Name and telephone number of a point of contact at the requisitioning activity, to resolve any problem, as required.

(c) The Defense working capital fund issue price to the requiring activity is established by DLA Troop Support based on PMRP recovery costs plus an authorized surcharge (such as for administration, insurance, and transportation). Transportation is usually accomplished by premium method (armored van); therefore, multiple requisitions to the same destination should be consolidated whenever possible. Delivery normally will be accomplished within 3 weeks after receipt of the requisition by the DLA Troop Support supply planner.

(d) The formulas for computing the number of troy ounces of Government-Furnished (GF) precious metal are provided in 8.7303(d)(1)-(3). Quantities are rounded to the nearest whole number.

(1) If the end item being procured is in troy ounces: Multiply the number of end items being procured by the percent of precious metal in the end item.

Example: Requirement is for 30,000 troy ounces of precious metal brazing alloy, and each troy ounce of the alloy has a 31% precious metal content.

30,000 x .31 = 9,300 troy ounces of GF precious metal

(2) If the end item being procured is in avoirdupois (avoir) pounds (American pound weight): Multiply the total number of pounds being procured by the percent of precious metal in the end items; then multiply that total by 14.583 (equivalency used to convert avoir pound weight to troy ounces).

Example: Requirement is for 26,538 pounds of precious metal brazing alloy, and each pound of alloy has a 15.5% precious metal content.

26,538 x .155 = 4,113.39 (avoir pound of precious metal needed)

4,113.39 X 14.583 = 59,985.56 or 59,986 troy ounces of GF precious metal

(3) If the end item being procured is in troy pounds: Multiply the total number of troy pounds being procured by the percent of precious metal in the end item; then multiply the number of troy pounds of precious metal by 12 (number of troy ounces in a troy pound).

Example: Requirement is for 12,156 troy pound of precious metal brazing alloy, and each troy pound of alloy has a 15.5% precious metal content.

12,156 x .155 = 1,884.18 (troy pounds of precious metal)

1,884.18 x 12 = 22,610.16 or 22,610 troy ounces of GF precious metal

# PART 9 – CONTRACTOR QUALIFICATIONS

*(Revised October 20, 2015 through PROCLTR 2015-12)*

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## SUBPART 9.1 – RESPONSIBLE PROSPECTIVE CONTRACTORS

*(Revised June 15, 2015 through PROCLTR 2015-09)*

### 9.104-1-90 General standards.

(c)(1) Assuring that contracts are awarded to responsible prospective contractors necessitates the maintenance of contractor performance history and development of criteria for its use. Occasional quality

deficiencies in contractor performance may be unavoidable, but if the defects are of a critical or repetitive nature and the contractor is not amenable to taking corrective action, such circumstances may constitute support for finding a prospective contractor nonresponsible for award of contracts. Results, both positive and negative, from applicable quality history records (e.g., Quality Evaluation Program (QEP), Supply Discrepancy Reports (SDRs)) should be included in the contracting officer's determination and documentation of contractor responsibility.

(g)(1) Standards for drugs. The Food and Drug Administration (FDA) has cognizance of all quality aspects of certain medical items (predominantly drugs) in accordance with the Memorandum of Understanding (MOU) between DoD and FDA. At the request of DLA Troop Support, FDA will review the capability of a supplier to produce drugs and biologics of an appropriate quality whenever acquisition by DLA Troop Support of such an item is pending. It is within the discretion of the contracting officer to rely upon FDA conclusions regarding the capability of such offerors to meet required quality standards. A determination by FDA of unsatisfactory quality based on regulatory action shall necessitate a mandatory rejection of the offer by the contracting officer.

9.105 Procedures.

**9.105-1 Obtaining information.**

(90) Whenever updates are made to SAM (i.e., when contractors that have been identified as debarred, suspended, proposed for debarment, or otherwise ineligible for award), DLA Information Operations (J6) shall update the Defense Contractor Review List (DCRL) and distribute an updated version to all DCRL Monitors not less than quarterly.

(91) When making determinations of responsibility, contract specialists shall—

(1) For an automated procurement, in the event the prospective awardee is listed in SAM the procurement will be referred for manual review.

(2) Not more than two days prior to award, review SAM to ensure the prospective contractor is not listed, and include documentation in the file.

(3) Review the DCRL and comply with DCRL Special Attention Treatment Codes (see 9.105-1(93)) in Enterprise Central Component (SAP-ECC) and Supplier Relationship Management (SAP SRM/EProcurement) (where appropriate); and

(4) Determine whether application of any of the following additional information is mandatory and/or appropriate:

(i) Contractor performance history (CPH). (See 9.105-1(92)(d))

(ii) Federal Awardee Performance and Integrity Information System (FAPIIS). (See FAR 9.104-6.)

(iii) Financial reports. Each procuring organization has the discretion to establish a subscription (or subscriptions) with the commercial source(s) of financial reports. Available sources

include, but are not limited to, Dun and Bradstreet, Equifax, Infogroup, Experian, Moody's, and Standard and Poors. Factors that should be considered when selecting the source(s) include, but are not limited to, the scope of information provided and cost effectiveness.

(iv) Quality history. When a detailed review of a contractor's past quality performance is desired and a pre-award survey (PAS) is not being contemplated, the contract specialist may request a quality history from the product specialist. If a PAS is being contemplated, the contract specialist shall request the quality portion of the PAS.

(92) Defense contractor review list (DCRL).

(1) Entering a contractor on the DCRL.

(i) Referrals from a contract, technical, and quality control specialist, or contracting officer, the DLA Fraud Counsel, the Defense Contract Management Agency (DCMA), or investigative personnel/agency to the DCRL Monitor that could merit a contractor's addition to the DCRL include, but are not limited to the following:

(A) Delivery of defective products, suspected fraud, unauthorized product substitution, counterfeit material, unauthorized foreign items, initiation of investigation of the contractor, several Product Quality Discrepancy Reports (PQDRs), adverse Product Test Center results, failure to perform, late delivery, multiple cancellations, and/or other performance issues.

(B) The referral notification and the Treatment Codes should supply specific instructions for contract specialists to follow in the event of award.

(C) A DCRL Monitor considering listing a contractor on the DCRL will coordinate with all other DCRL Monitors before placing a contractor on the DCRL.

(2) Maintenance and dissemination.

(i) The DCRL Monitor is responsible for maintaining the DCRL for their specific contracting activity or office. The DCRL provides information to the acquisition workforce that has been collected related to a contractor's performance. A contractor listed on the DCRL has been referred to the DCRL Monitor for investigation, and the DCRL Monitor has found sufficient evidence to warrant implementation of a control action (listing Special Attention Reason and Treatment Codes with applicable comments) in the DCRL.

(ii) The DCRL is accessible by viewing the "DCRL" Field in Eprocurement. The DCRL field identifies contractors by CAGE Code that are on the DCRL.

(iii) The DCRL is "for official use only." Information contained in the DCRL shall be protected from improper disclosure.

(3) Effect of the listing.

(i) Contract specialists shall comply with DCRL Special Attention Treatment Codes, both "required" and "recommended." Contract specialists shall not make award decisions inconsistent with DCRL Treatment Code requirements unless the DCRL Monitor is consulted and the rationale is fully documented in the contract file.

(ii) The DCRL includes contractors that are undergoing close scrutiny by any of the contracting activities or offices. The DCRL is enterprise-wide, with Special Attention Reason and Treatment Codes from any of the three contracting activities (i.e., DLA Aviation, DLA Land and Maritime, or DLA Troop Support).

(iii) The DCRL includes contractors that are identified in SAM as debarred, suspended, proposed for debarment, or otherwise ineligible for award. In the event of an inconsistency, SAM data take precedence over DCRL data.

(iv) Contractors on the DCRL shall be considered for solicitation (except when the Special Attention Reason Code is "A" (see 9.105(93)(b)(1)) and/or the Special Attention Treatment Code is "08" (see 9.105(92)(b)(2)).

(v) Information on the DCRL may or may not be sufficient to determine a contractor nonresponsible.

(4) Contractor performance history (CPH). When the DCRL Special Attention Treatment Code description states "review contractor performance history," request a CPH, including specific actions recommended for the current procurement.

(5) Reviewing/updating information on DCRL.

(i) Contract specialists shall contact the DCRL Monitor if they become aware of circumstances that may warrant changes to DCRL information.

(ii) Contractors shall be removed from the DCRL when the DCRL Review Board determines—

(A) The conditions that warranted their inclusion on the DCRL no longer exist or have substantially improved; and/or

(B) The DCRL Monitor determines that information provided by acquisition personnel is not sufficient to justify retention of the contractor on the DCRL and there is no longer a need to list the contractor on the DCRL.

(6) The Quarterly DCRL Review Board is responsible for reviewing actions of the DCRL Monitors and ensuring the contractor listing is accurate and up to date.

(i) The Board should meet quarterly.

(ii) Conduct of the DCRL Review Board –

(A) DLA Acquisition Programs (J-74) shall host the board and act as the meeting chair.

(B) All DCRL Monitors, and the Land and Maritime, Aviation, and Troop Support Fraud Counsel shall participate as Review Board members.

(iii) Results of the DCRL Review Board –

(A) Review the list of the current authorized DCRL contractor entries.

(B) Resolve any concerns or questions pertaining to the DCRL purpose and processes for entry or removal of a contractor from the DCRL.

(C) Minutes from the meeting published and provided to DLA Acquisition (J7) and the HCAs not later than ten business days after the DCRL Review Board meeting.

(iv) Information in the DCRL consists of Reason/Treatment codes, the date the contractor was placed on the DCRL, and a brief recommendation/instructions narrative.

(93) The DCRL Special Attention Reason Codes and Treatment Codes.

(1) Recommendations/instructions are cited for each supplier/CAGE code listed and are to provide visibility of known/potential areas of concern and actions that shall be taken to address such issues. When a PAS results in a negative DCRL recommendation for a small business, then a Certificate of Competency is required. The only instances of “do not award” involve cases of debarment, suspension, and proposed debarment except as otherwise directed by the Fraud Monitor or Business Integrity (Fraud) Counsel.

(2) Special Attention Reason codes.

(i) For DCRL Special Attention Reason Code A, the EProcurement “Debarment Status” field will be coded as: “D” for Debarment, a “P” for proposed debarment/suspension, or “S” for suspended.

| DCRL Special Attention Reason Codes | Description | Help Text |
|---|---|---|
| A | Suspended or Debarred | Debarred, Suspended or Otherwise Ineligible.<br><br>This category includes firms or individuals that are ineligible for federal procurements due to a suspension, proposal for debarment or debarment pursuant to FAR 9.4. |
| B | Recommended for Debarment | Recommended For Debarment or Suspension.<br><br>This category includes contractors that have been recommended for debarment or suspension. Although these contractors are not ineligible for award, special procedures are required. |
| C | Responsibility Matters | Certification Regarding Responsibility Matters. This category includes contractors that have certified in accordance with FAR 52.209-5 that they have had a criminal conviction or civil judgment for fraud in the past three years or are currently indicted |

| | | |
|---|---|---|
| | | or otherwise criminally or civilly charged with fraud. |
| D | Termination for Default | Termination for Default. Contractors in this category have been terminated for default within the previous twelve months. |
| E | Financial Difficulties | Financial Difficulties (Including Chapter 11 Bankruptcy). Contractors are included in this category when information is received from DCMA or other sources that indicates the contractor is having financial difficulties. Such difficulties include contractor indebtedness that may jeopardize timely completion of the contract or contractor application for reorganization under bankruptcy laws (Chapter 11). Information may include formal bankruptcy notifications, or information informally obtained from credible sources. |
| F | Chapter 7 Bankruptcy | Business Closings (Including Chapter 7 Bankruptcy). This category includes contractors and individuals who have ceased business operations, are in the process of liquidating under bankruptcy laws (Chapter 7), or are otherwise going out of business. |
| G | Negative Pre-award Survey | Negative Pre-award Survey. Contractors are included in this category when a pre-award survey (PAS) that recommends no award has been received within the last twelve months |
| H | DCMA Imposed Corrective Action | DCMA Has Imposed Corrective Action. Contractors are included in this category when DCMA has found deficiencies in the contractors' quality system and has imposed a Corrective Action (CAR) Level III or IV Review |
| I | In DCMA Delivery Schedule Manager | DCMA Delivery Schedule Manager. DCMA has relevant information concerning contractors in this category. |
| J | Delinquent Performance | Delinquent Performance. This category includes contractors that have exhibited a pattern of delinquencies. |
| K | “Buy-Ins” or “Bid Shopping” | "Buy-ins" and "Bid Shopping." This category includes contractors that have had excessive cancellations, price increases and requests for modification after award. These practices indicate a "buy-in", "bid shopping", or other unacceptable bidding practices. This code applies to contractors that: (1) "Bid shop after award" that result in frequent inability to furnish supplies in accordance with the quotation that led to the award. (2) Submit frequent requests for deviations or waivers, clarification, and substitution of part numbers, most of which lacks substance but prevents compliance with the original delivery date. (3) Frequently return purchase orders for price increase. (4) Frequently notify the contracting activity that it will not perform under purchase orders just prior to due date in an apparent effort to reduce its delinquency rate. (5) Frequently fail to accept bilateral or perform unilateral purchase orders. |
| L | Pricing Discrepancies | Pricing Discrepancies (Excessive prices). Contractors are in this category when information indicates prices may not be fair and reasonable. |
| M | Fast Pay Discrepancies | Fast Pay Discrepancies/Abuse Contractors are included in this category when there is evidence that a contractor is violating or has violated the Fast Pay procedure (e.g., contractor has invoiced the Government without shipping the supplies). |
| N | Potentially Defective Material | Potentially Defective Material. Any DoD component has issued notifications regarding potentially defective material supplied by contracts in this category. |

| | | |
|---|---|---|
| O | Counterfeit Material and Unauthorized Substitution | Counterfeit Material and Unauthorized Product Substitution. Contractors in this category are under surveillance by the Counterfeit Material/Unauthorized Product Substitution (CM/UPS) Team. |
| P | Nonconforming Supplies | Nonconforming Supplies. This category includes contractors for which evidence has been provided that a contractor has supplied nonconforming material, has supplied surplus material without quoting surplus material, has supplied foreign material without identifying country of origin, or has other questionable quality practices. |
| Q | Failure to Provide Approved Part | Failure to Provide Approved Part. This category includes contractors that have a pattern of supplying unapproved parts or making an unauthorized substitution for CAGE code/part numbered items. |
| R | Miscellaneous | Miscellaneous (Other Information). This category serves as an informational category providing contracting personnel with current status of administrative changes, business closings, transfer of ownership, change of location, change of CAGE code, multiple contractors at the same location or any other information that may assist in the decision process. See the "Remarks" section of the DCRL for instructions. |
| S | Sensitive Information | Sensitive Information. Specific instructions apply to contractors listed in this category. These instructions are not necessarily related to responsibility and the reason for placement in this category shall not be stated in the DCRL due to sensitivity. The "Remarks" section of the DCRL may contain a point of contact for information regarding these contractors. Sensitive information regarding these contractors shall not be disclosed to unauthorized persons. |
| T | Delinquent on Delivery Reduction | Substantially Delinquent on Delivery Reduction Incentive/Delivery Evaluation Factor Awards. |
| U | Work Stoppage | Work Stoppage. |
| V | Suspected Fraud or Collusion | Suspected Fraud or Collusion/Deceptive Business Practices. |
| W | Combined CAGE Codes | Combined CAGE Codes. Performance history for two or more CAGE codes have been combined for PPIRS purposes. |
| X | Contractor Report No Receipt of PO | Contractor Reported for Non-Receipt of Purchase Order. |
| Y | Affiliated Contractor | Contractor is affiliated with one or more other contractors. More than one contractor within an affiliation is participating in the same bid. |

(ii) Special Attention Treatment codes.

| DCRL Special Attention Treatment Codes | Description | Help Text |
|---|---|---|
| 01 | Reserved | Reserved |
| 02 | Evidence of AID MFR Part Number | For Part Numbered items, get evidence item was acquired from Manufacturer (MFR) cited in the Acquisition Item Description (AID) |

| | | |
|---|---|---|
| 03 | Traceability requirements | For FSGs/FSCs/NSNs requiring additional risk mitigation and the offeror is not identified as an approved source, require the offeror to submit traceability documentation. |
| 04 | Withhold Fast Pay Recommended | Withholding of Fast Pay recommended |
| 05 | Recom PAS > SAT/ Verbal < SAT | Recommend Pre-award Surveys for large buys/verbal pre-award surveys for simplified buys |
| 06 | Fraud Monitor Coordination Required | Forward any proposed awards through Fraud Monitor |
| 07 | Source Inspection Recommended | Source Inspection recommended (use of source inspection evaluation factor authorized after formal notification to contractor) |
| 08 | Do not solicit or award | Do not solicit or award |
| 09 | Review Contractor Performance History | Review Contractor Performance History (CPH) |
| 10 | Report Suspect Material to Fraud Monitor | Report suspected material problems to Business Integrity (Fraud) Counsel |
| 11 | Coordinate with DCMA | Coordinate with DCMA |
| 12 | Corrective Action Report Level IV approval required | CAR Level IV, approval required for award |
| 13 | Bilateral Award Email to Fraud Monitor | Bilateral Award – email contractor's name and CAGE, contract/purchase order no., and NSN to Fraud Monitor |
| 14 | Coordinate Mods with Fraud Monitor | Post award – Coordinate all administrative actions (modifications) with Fraud Monitor or Fraud Counsel |
| 15 | Deter Resp/Nonresp required | Prepare formal determination of responsibility/nonresponsibility |
| 16 | CAGE Combined for PPIRS Info | This CAGE Code has been combined with other CAGE codes for PPIRS purposes (For Informational Purposes Only) |
| 17 | Coordinate Cost and Price Office | Coordinate with Cost and Price Office |
| 18 | Report to Fraud Counsel | Report to Business Integrity (Fraud) Counsel |
| 19 | Coordinate with Office of Counsel | Coordinate with Office of Counsel |
| 20 | Refer to DCRL Narrative Detail | Refer to DCRL Narrative for details |
| 21 | Product Testing Requirements | For FSGs/FSCs/NSNs requiring additional risk mitigation and the offeror is not identified as an approved source or if the quality of the product is questionable, test the offered product per listed requirements. |
| 22 | Recommend no DRI/DEF awards | Recommend no delivery reduction Incentive/Delivery Evaluation Factor Awards |
| 23 | Coordinate indust prep monitor | Coordinate with industrial preparedness monitor |
| 24 | Quality Review Required | Product specialist shall validate the product quality record |
| 25 | Reserved | Reserved |
| 26 | Recommend price reasonableness | Recommend documentation of price reasonableness |
| 27 | Suspend automated awards | Suspend from automated systems (case by case basis) |

### 9.105-2 Determinations and documentation.

(a) Determinations.

(1) If it is determined that award will be made to a contractor listed on the DCRL that has a questionable quality history but is determined responsible in accordance with FAR 9.104 and 9.105, the contract specialist shall—

(i) Document the contract file;

(ii) Revise inspection and acceptance (I&A) terms to specify that I&A shall take place at source; and

(iii) Forward a referral to the product specialist requesting a quality assurance letter of instruction (QALI). The product specialist shall submit the QALI to the activity responsible for Government quality assurance.

(b) Support documentation.

(2)(i)(S-90)(A) Prior to executing a non-responsibility determination meeting the conditions of FAR 9.105-2(b)(2)(i), the contracting officer shall submit an undated/unsigned draft determination with relevant supporting documents to the Office of Counsel for review. After receipt of written confirmation that Counsel has reviewed the determination, the contracting officer shall execute the determination

(B) For simplified acquisitions, an annotation on Form 395, Significant Events, in the Contract File is generally sufficient to document the contract specialist's actions.

(C) Distinguishing responsibility determination from past performance evaluation factor. Contract specialists shall not make a determination of responsibility based solely on past performance information that applies to evaluation of the contractor's offer (e.g., PPIRS score). A contractor may have favorable PPIRS scores but could be included on the DCRL for reasons that will preclude a determination of responsibility.

(D) Data shall be input into FAPIIS as follows:

*(1)* Each contracting activity or office shall identify a POC responsible for entering non-responsibility determinations into FAPIIS.

*(2)* Once the contracting officer or contract specialist has coordinated with the Office of Counsel on the determination, they shall notify their FAPIIS POC that they have a non-responsibility determination that is required to be reported in FAPIIS. The contracting officer or contract specialist shall provide the following information to their FAPIIS POC:

| |
|---|
| Action date (date the determination was signed by the contracting officer) |
| Solicitation number |
| NAICS code: |
| Product/service code |

| |
|---|
| Contractor's DUNS number |
| Contractor's CAGE code |
| Contractor's name |
| Contractor's address |
| Contracting officer's DODAAC |
| Contracting officer's name, phone number, and email address |
| Copy of the final determination (Note: Attachments must be properly marked; e.g. "For Official Use Only/Source Selection Sensitive – FAR 2.101 and 3.104) |
| Written confirmation that the determination was reviewed by Office of Counsel (no privileged information should be included in the documentation provided to the FAPIIS POC). |

*(3)* FAPIIS POCs are responsible for entering the record in FAPIIS within three working days from the action date. FAPIIS POCs shall notify the contracting officer when the record has been submitted. The contracting officer shall document the contract file to show that the non-responsibility determination was reported to FAPIIS.

**9.106-1 Conditions for preaward surveys (PAS).**

(a)(S-90)(1) A Formal PAS is a thorough evaluation of the prospective contractor's capability, experience, and performance history, which can be either an on-site (preferred) or desk survey. An Informal PAS is utilized when information is readily available and does not require a more in-depth evaluation. The following list identifies some of the situations where a survey is strongly recommended on a prospective contractor (manufacturer or non-manufacturer); contracting activities or offices may also request a survey in other situations when they deem it appropriate:

(i) Has been identified in SAM on the list of parties excluded from federal procurement programs within the past 3 years (or other determined time period);

(ii) Is (to the extent determinable from local records) a first-time Government contractor, or has had a performance break from Government business of 3 or more years' duration (or other determined time period);

(iii) Is undergoing or has undergone reorganization under bankruptcy laws within the past 3 years (or other determined time period);

(iv) Has been terminated within the past 3 years (or other determined time period) for default;

(v) Has negative quality records (e.g., PQDRs, SDRs.) in the Quality Evaluation Program (QEP) or is otherwise known to the contracting officer to have a poor or marginal performance history;

(vi) Has, within the past year (or other determined time period), received a negative PAS for any item within the same Federal Supply Class (FSC), or for the same type of service, as the item or service being purchased (found under DCMA Pre-award Survey System (PASS) eTOOLS);

(vii) Has failed to liquidate indebtedness to DLA (the extent of the indebtedness that would normally dictate a PAS shall be determined locally);

(viii) Is a transferee in interest of a former Government contractor; or

(ix) For any other reason that indicates that the contracting officer will need additional information to make a responsibility determination.

(2) To request a pre-award survey (PAS):

(i) If a formal PAS is requested for a simplified acquisition, the request shall be justified in writing.

(A) Before requesting a formal PAS, the contract specialist shall to the product specialist for a recommendation as to whether the quality portion of the PAS is required. The response from the product specialist can be used to determine whether to include or exclude the quality portion of the PAS. Product Specialist responses may include:

*(1)* Quality history indicates quality portion of the PAS is not required.

*(2)* No quality history exists. Recommend quality portion of PAS be conducted.

*(3)* Unique characteristics or manufacturing process require quality portion be done.

*(4)* The product specialist desires to participate in the PAS. (Supporting documentation will be required from the product specialist's organization.)

**9.106-2 Requests for pre-award surveys (PAS).**

(90)(a) Evaluation of a contractor as a planned producer will not affect the outcome of the PAS for other than industrial preparedness purposes. Any prospective contractor receiving a negative PAS for production or quality assurance capability with regard to an existing/potential Industrial Preparedness Planning List (IPPL) item should neither be solicited nor enrolled as a planned producer.

(b) For items assigned to the U.S. Department of Agriculture, the U.S. Department of Commerce, and/or the U.S. Army Veterinary Corps for source inspection, the quality assurance personnel representing the contracting officer, and other military agencies, as deemed necessary, will be requested to participate in the PAS, and their comments will be included in the quality assurance portion of the report.

**9.106-4 Reports.**

(a) The result of the survey will include performance history information and a recommendation for award or no award. The contracting officer makes the final responsibility determination.

(b) When a contracting officer's determination of contractor responsibility is inconsistent with the recommendation in the PAS report, the rationale shall be documented in the contract file. The PAS monitor shall advise the surveying facility of the contracting officer's decision.

(c) Contract specialists shall document the procurement file accordingly.

(d) When the contracting officer makes a determination regarding the prospective contractor's responsibility that is contrary to that recommended in the PAS report, the reason for not following the PAS report recommendation shall be included in the contract file. In each instance when the PAS report recommendation is not followed, the chief of the contracting office must review and concur with the rationale. The contracting officer shall provide written notice to the surveying activity that performed the PAS of the reason for not following the PAS recommendation.

**9.106-90 DLA pre-award survey monitors.**

(a) Each contracting activity or office will designate an organizational element to serve as the focal point for PAS and to be the principal point of contact with PAS monitors at surveying activities. The focal point will review PAS requests for completeness and accuracy before forwarding these requests to surveying activities. Upon receipt of completed PAS, the contracting officer will review the reports and shall consult with available technicians in particular areas, such as cost and price analysts, when there are doubts as to the validity of the information in the survey report. If the PAS contains information questioning a company's quality control, then the survey report shall be reviewed with the contracting activity’s or office’s quality assurance personnel. The PAS Monitor shall:

(1) Send one copy of the completed report to the contract specialist for placement in the contract file.

(2) Send one copy of all formal PAS documentation regarding a company's quality control (if information is included in the survey results) to the product specialist.

(3) Maintain one copy of each survey for a period of one year.

(4) A register of all PAS requests and responses shall be maintained in a current status by the PAS monitor at each contracting activity or office. In addition, maintain the tracking number (e.g., PAS number) as an audit trail.

## SUBPART 9.2 – QUALIFICATIONS REQUIREMENTS

*(Revised April 28, 2014 through PROCLTR 2014-67)*

**9.202 Policy.**

(a)(1)(S-90) The chief of the contracting office shall provide to DLA Acquisition J72 a brief summary of the proposed plan to establish a qualified products list (QPL), qualified manufacturers list (QML), or qualified bidders list (QBL) requirement. Approval by J72 and the Director, DLA Acquisition (J7) is not

required, unless J72 or the Director requests a review of the plan. The chief of the contracting office shall approve the establishment of a qualification requirement, subject to the requirements of FAR Subpart 9.2 and after considering any comments of the contracting activity or office competition advocate and the activity commercial advocate.

**9.203-90 Qualified product lists (QPLs), qualified Manufacturers lists (QMLs), Qualified Bidders Lists (QBLs) and Qualified Testing Suppliers Lists (QTSLs).**

(a) Solicitation provisions and contract clauses.

(1) QPL connector assemblies and QPL electrical contacts.

(2) Use 52.209-9000 in solicitations and awards when purchasing QPL connectors with contacts listed on other QPL(s). Qualified testing suppliers list. Use clause 52.209-9002 in solicitations and awards for Federal Supply Classes (FSCs) 5961 and 5962 items, including when the acquisition is conducted using FAR Part 12. If a QPL or QML is applicable, also insert FAR clause 52.209-1.

(3) Qualified Supplier List for Manufacturers (QSLM)/Qualified Suppliers List for Distributors (QSLD). Use clause 52.209-9012 in solicitations and contracts which have a QSLM and/or a QSLD requirement for the item. There must be an established QSLM/QSLD in place before inclusion of this clause.

(4) Component QPL/QML items. Use clause 52.209-9013 with FAR clause 52.209-1 in all solicitations and contracts that contain component QPL(s)/QML(s).

(5) QSLD for FSCs 5961 and 5962. Insert clause 52.209-9028 in solicitations and awards for all FSCs 5961 and 5962 items, including when the acquisition is conducted using FAR Part 12. If a QPL/QML is applicable, also insert FAR clause 52.209-1.

**9.206-2-90 Contract clause.**
In accordance with FARS DEV 09-04, the contracting officer shall not insert the clause at FAR 52.209-1 when the following conditions apply:

(a) A qualification requirement in the form of a QSLD or QSLM has been established by the contracting activity or office, in accordance with the requirements in FAR and DLAD 9.2;

(b) A DLAD clause that provides notice of QSLD or QSLM requirements, instructions for obtaining provisions governing qualification, and associated contract terms and conditions has been authorized for repetitive use in accordance with 1.301-91(b); and

(c) No additional qualification requirement in the form of a QPL, QBL, or QML applies.

**9.207 Changes in status regarding qualification requirements.**

(b) See 11.302-90 for policy regarding notification and assistance to sources removed from the item description.

**9.207-90 Solicitation provisions and contract clauses for DLA special supplies, equipment and other items.**

(a) Ensure that the ALRE provision 52.209-9001 is included in the solicitation for all ALRE requirements with a Special Procedures Code (SPC) of "01" and when the Acquisition Method Suffix Code (AMSC) is B, C, K, M, N, S, V, or Y.

## SUBPART 9.3 – FIRST ARTICLE TESTING AND APPROVAL

*(Revised October 20, 2015 through PROCLTR 2015-12)*

### 9.302 General

**9.302-90 DLR First Article Requirements.** First Article requirements supporting Depot Level Repairable (DLR) items shall be solicited, evaluated, and awarded as required by the specific service requirements. Requirements, including testing requirements, disposition of first article items, and clauses associated with the first article items shall be in accordance with the service DLR specifications.

### 9.306 Solicitation requirements.

(c)(1) Insert 52.209-9019 in solicitations and contracts for items that require first article testing, including when acquiring items using FAR Part 12; unless—

(i) The information provided by the product specialist in the Material Master (Classification section > Product Assurance tab) indicates the specification requires submission of drawings for Government approval prior to production of first article test units; for this exception, insert 52.209-9019 with its Alternate I; or

(ii) The acquisition is for DLA Aviation DLR items managed by Army Aviation and Missile Command (AMCOM); for this exception, insert 52.209-9019 with its Alternate II.

(f)(2) When FAR 52.209-4 applies and the Government's testing cost will be used as a factor in evaluating offers, insert provision 52.209-9016 in solicitations, including when acquiring items using FAR Part 12.

### 9.308 Contract clauses. .

### 9.308-1 Testing performed by the contractor.

(a) When it has been determined that first article approval is required and the testing will be performed by the contractor, the contracting officer shall follow the policies in 9.308-1(a)(90)-(93):

(90) Pre-solicitation.

(i) Ensure that—

(A) First article inspection and testing requirements are clearly stated;

(B) Sources currently waived for FAT are identified;

(C) The number of calendar days allotted for the contractor to produce and test the samples is commensurate with the amount of time it will take the contractor to obtain materials, produce the samples, perform all the required tests, and prepare and submit the test report; and

(ii) Use two-party, negotiated acquisition procedures when acquiring items that require first article testing. Micro-purchase procedures and simplified acquisition procedures that solicit and/or award automatically shall not be used.

(91) Solicitation.

(i)(A) Insert the clause at FAR 52.209-3 with its Alternate I. Complete the fill-ins, including the actual number of units required for testing, with information in the Material Master (Classification section > Product Assurance tab);

(B) Ensure the delivery schedule specified in the solicitation includes the number of calendar days allotted to the contractor for FAT and submission of the test report; and the number of calendar days allotted to the Government to evaluate the first article test report and provide disposition to the contractor; and

(C)(*1*) Select the Service Material Number S00000053 (Additive CLIN) for ““Contractor first article test (FAT) (including test report).” Within the Additive CLIN insert:

(*i*) The inspection and acceptance points;

(*ii*) Identify the “Contractor first article test (FAT) (including test report)” quantity as “1 TE (TEST);” and

(ii) Insert the clauses in solicitations and contracts as prescribed below, including when acquisitions are conducted using FAR Part 12:

(A) 52.209-9017, First Article – Contractor Test – Additional Requirements; with its alternates as prescribed below, when applicable:

*(2)* Use Alternate II for clothing and textile (C&T) items;

*(3)* Use Alternate III when the Material Master (Classification section > Product Assurance tab) specifies terms for disposition of approved first article units that differ from the terms in FAR 52.209-3. The contracting officer shall complete the appropriate fill-in;

*(4)* Use Alternate IV when progress payments are authorized for the first article. Circumstances that justify the need for progress payments (such as when exceptionally high start-up costs are anticipated) and the basis for determining the maximum dollar value and/or percentage of total contract price shall be thoroughly documented in the contract file.

*(5)* Use Alternate V when the product specialist has communicated to the contracting officer that the item requires in-process verification of the first article manufacture by the cognizant quality assurance representative (QAR).

(92) Evaluation of offers. Review the price offered for the "Contractor First Article Test (FAT) (including test report). The price offered must be determined fair and reasonable as well as the price offered for the production units. Evaluation shall be based in part on the terms for disposition of the first article units.

(93) Award of contract.

(i) When award is made for an item that requires Contractor FAT, the following requirements apply:

(A) Ensure the appropriate Service Material Numbers (Additive CLIN) are established for Contractor FAT in the award document and in SAP, upon funding of the award. Whether separately priced or not, a FAT Additive CLIN is a deliverable and must be accounted for. An Additive CLIN that was not separately priced in the quote/offer is still a deliverable, but it is not payable.

(B) Ensure all appropriate documents are placed in Records Management.

(*1*) Outline agreements. When awarding outline agreements that include items with FAT requirements, lock the Service Material line item on the delivery order, to prevent payment of the line prior to receipt of the testing/approval certification; and lock the "FAT" row in SAP.

(*2*) When FAR clause 52.209-3 was included in the solicitation, and it has been determined that the FAT and approval requirements will be waived for the awardee, the contracting officer shall reflect this in the award by deleting any reference to first article testing in the purchase order test (POT); and adding the following statement: FAT requirements are waived for this procurement.

**9.308-2 Testing performed by the Government.**

(a) When it has been determined that first article approval is required and the testing will be performed by the Government, the contracting officer shall follow the policies in 9.308-2(a)(90)-(93):

(90) Pre-solicitation.

(i) Ensure that—

(A) First article inspection and testing requirements are clearly stated;

(B) Sources currently waived for Government FAT are identified; and

(C) The number of calendar days allotted for the contractor to produce and deliver the first article units to the Government testing facility is commensurate with the amount of time it will take the contractor to obtain materials, produce the first article units, perform all the required tests, and deliver the first article units to the testing facility.

(ii) Use two-party, negotiated acquisition procedures when acquiring items that require Government FAT. FAT acquisitions can be Auto Solicited but not Auto Evaluated or Auto Awarded.

(91) Solicitation. Insert the clauses as prescribed below, with alternates, as applicable:

(i)(A) Insert the clause at FAR 52.209-4, First Article Approval – Government Testing, with its Alternate I;

(B) Complete the fill-ins in FAR 52.209-4 with information in the Material Master (Classification section > Product Assurance tab); and

(C) Ensure the delivery schedule specified in the solicitation includes the number of calendar days allotted to the contractor to produce and deliver the first article units; and the number of calendar days allotted to the Government to test the first article units and provide disposition to the contractor; and

(D) Select the Service Material Number S00000052 (Additive CLIN) for "Government First Article Test (FAT)." Within the Additive CLIN insert:.

*(1)* The inspection and acceptance points.

(*2)* The quantity and unit of issue as "1 EA."

(ii) Insert the clauses in solicitations and contracts as prescribed below; including when acquisitions are conducted using FAR Part 12:

(A) 52.209-9018 with its alternate(s) as prescribed below, if applicable—

(*1*) Use Alternate I when the product specialist has communicated to the contracting officer that the item requires in-process verification of the first article manufacture by the cognizant quality assurance representative (QAR).

(*2*) Use Alternate II for clothing and textile (C&T) items; and

(*6*) Use Alternate VI when the Material Master (Classification section > Product Assurance tab) specifies terms for disposition of the first article units that differ from the terms in FAR 52.209-4. The contracting officer shall complete the appropriate fill-in.

(92) Evaluation of offers. Review the price offered for the Government FAT. The price offered must be determined fair and reasonable, as well as the price offered for the production units. Evaluation shall be based in part on the terms for disposition of the first article units.

(93) Award.

(i) When award is made for an item that requires Government FAT, the following requirements apply:

(A) Ensure the Service Material Numbers (Additive CLIN) are established for Government FAT in the award document and in SAP, upon funding of the award. Whether separately priced or not, a FAT CLIN is a deliverable and must be accounted for. An additive CLIN that was not separately priced in the quote/offer is still a deliverable, but it is not a payable.

(B) Ensure all appropriate documents are placed in the electronic contract file (ECF).

(C) The FAT/Testing Monitor (or the contracting officer, when serving as the FAT/Testing Monitor) is responsible for providing notice to the testing facility upon receipt of the notice required from the contractor prior to the date when the contractor will present the first articles to the QAR for inspection.

(D) Outline agreements. When awarding outline agreements that include items that require "Government First Article Test (FAT)," lock the Service Material line item on the delivery order, to prevent payment of the line prior to receipt of test/approval certificate; and lock the FAT row in SAP.

(ii) Waiver of Government FAT. When clause 52.209-4 was included in the solicitation, and it has been determined that the FAT and approval requirements will be waived for the awardee, the contracting officer shall reflect this in the award by taking the following actions:

(A) Reduce the delivery schedule specified in the solicitation by the number of calendar days allotted to the contractor to produce and deliver the first article units; and the number of calendar days allotted to the Government to test the first article units and provide disposition to the contractor; and

(B) Correct the item description by –

(*1*) Deleting any reference to FAT; and

(*2*) Adding the following statement "FAT requirements are waived for this procurement."

## SUBPART 9.4 – DEBARMENT, SUSPENSION, AND INELIGIBILITY

*(Revised June 15, 2015 through PROCLTR 2015-09)*

**9.404 System for Award Management Exclusions.** The records required by FAR 9.404(b) are maintained for DLA by the Special Assistant for Contracting Integrity (SACI).

**9.405 Effect of listing.**

(a) In order to take one of the contracting actions identified in FAR 9.405, 9.405-1(b), or 9.405-2, the activity Commander or Director (or the CCO for contracting offices for which the DLA Acquisition Deputy Director, is the HCA) shall forward a written request, including supporting information and rationale that has been reviewed and approved by the HCA, to the SACI via the Office of Counsel for a determination that there is a compelling reason to make an exception. The proposed contracting action may not be taken until the SACI notifies the affected contracting activity or office that an exception has been approved. Upon approval of the exception, the SACI is responsible for providing a copy of the determination to the General Services Administration as required by DFARS 209.405(a).

(S-90)(a) From the time a report recommending debarment or suspension is forwarded to the General Counsel, until determination is made whether to initiate debarment or suspension action, the recommending activity or office and any other affected contracting activity or office that is aware of the recommendation will coordinate with the DLA General Counsel, before taking any of the following actions with respect to the subject contractor:

(1) Awarding a contract, issuing a purchase order, or entering the contractor's name in an automated purchase system.

(2) Renewing or otherwise extending an existing contract or subcontract.

(3) Consenting to or approving a subcontract to be awarded by or to the contractor.

(4) Authorizing novation of a contract or agreeing to change of name for the contractor.

(b) Upon submission to the DLA General Counsel of a report recommending debarment or suspension, contracting officers, in coordination with Office of Counsel, will consider removing the subject contractor's name from all automated purchase systems. If the removal is accomplished, one contracting officer at each affected contracting activity or office shall notify the contractor that the contractor has been removed from the systems and a report recommending the contractor's suspension or debarment has been submitted to DLA Suspension and Debarment Official. The notice shall include a brief summary of the reasons for the recommendation. Through Counsel, each affected activity or office shall notify the DLA General Counsel, by telephone when the contractor is removed from automated purchase systems. For simplified acquisition purchase procedures, for other than automated purchase systems see subparagraph (c)(3) below.

(c) Prior to a determination whether to suspend or debar a contractor recommended for debarment or suspension, if the subject contractor submits an offer that is otherwise in line for an award, the cognizant contracting officer will review the fact sheet furnished pursuant to 9.406-3(a)(S-90)(iv)(A) below and any other supporting data that the contracting officer deems relevant.

(1) After review of the fact sheet and supporting data, if the contracting officer proposes to award the contract to the subject contractor, the contracting officer, through the Office of Counsel, shall coordinate with the DLA General Counsel, prior to making the award.

(2) After review of the fact sheet and supporting data, if the contracting officer determines that the contractor is not responsible, the contracting officer shall notify the contractor of the determination in writing, advise the contractor that a recommendation to suspend or debar the contractor has been forwarded to the DLA Suspension and Debarment Official, and provide to the contractor a brief summary of the reasons for the recommendation and for the determination of nonresponsibility. If the contractor is a large business, the contracting officer shall proceed with award to the next low responsible offeror that has submitted a responsive bid or technically acceptable proposal.

(3) If a contractor inquires as to the status of a quote it submitted under simplified acquisition procedures other than by automated purchase systems, advise the contractor that a recommendation to suspend or debar the contractor has been forwarded to the DLA Suspension and Debarment Official whenever the facts supporting the recommendation are the basis for rejecting the contractor's quotation. Provide the contractor a brief summary of the reasons for the recommendation.

(4) The contracting officer, through the Office of Counsel, shall coordinate by telephone with DLA General Counsel, actions to be taken under subparagraphs (2) and (3) above.

(S-91) Review of files for potential claims and additional remedies.

(1) When a DLA contracting activity or office learns that a contractor has been suspended, debarred or proposed for debarment, or a report has been submitted pursuant to DFARS 209.406-3(a) recommending debarment or suspension, the contracting activity's or office's records shall be reviewed to determine whether the activity or office has current or has had past contractual relationships with the contractor or its affiliates and, if so, whether the Government may have any basis pursuant to those relationships for recovery of damages from, or other claims against, the contractor.

(2) If a contracting activity or office determines that there may be such a basis, information stating the factual basis in as much detail as practical shall be forwarded promptly toDLA General Counsel.

(S-92) Procedures and responsibilities. To preclude contractors that are debarred, suspended, or proposed for debarment from receiving contracts, contracting activities and offices shall ensure that procedures are in place—

(1) To notify the DCRL monitor when contractors that are identified as debarred, suspended, or proposed for debarment have been added to the System for Award Management (SAM) Exclusions;

(2) To preclude awards of automated delivery orders for long-term contracts (LTCs) to contractors that are debarred, suspended, or proposed for debarment;

(3) To block the automated processing of all purchase requests (PRs) in SAP when a contractor that is suspended, debarred, or proposed for debarment is identified as a sole source, and refer the PR for manual review by the contract specialist.

**9.405-1 Continuation of current contracts.**

(S-90) Authorization for novation of a contract or change of name agreement held by a contractor debarred or suspended by any Federal executive agency or proposed for debarment by any DoD component shall be coordinated with the DLA SACI through Office of Counsel, prior to such authorization.

**9.406 Debarment.**

**9.406-3 Procedures.**

(a)(S-90) Reports based on indictments or convictions.

(i) Submit reports recommending suspension based upon an indictment or criminal information to the General Counsel, within 2 weeks of the date of indictment or information and include a copy of the indictment (signed, with docket number and date).

(ii) For purposes of recommending debarment based on a conviction, submit the report within 2 weeks of the date of sentencing. Include a copy of the judgment or conviction order.

(iii) The contracting activity's or office's point of contact shall be an attorney in the Office of Counsel.

(iv) The report required by DFARS and DFARS PGI 209.406-3 shall be signed by the contracting officer, reviewed and approved by the contracting activity's HCA (DLA Acquisition Deputy Director for contracting offices) and submitted by the Commander or Director of the contracting activity recommending to the DLA General Counsel. Designate the report "For Official Use Only," unless the contents of the report warrant a security classification.

(v) When a report recommending debarment or suspension is forwarded to DLA General Counsel, provide notice of this action to contracting personnel at the recommending activity or office assigned to commodities for which solicitations are likely to result in offers from the contractor identified in the report and to other DLA contracting offices.

(c)(6) The effect includes the possibility that a PAS evaluation factor may be applied to offers from the debarred source for the period of time specified in 9.106-1(a)(S-90)(1) after the debarment is no longer in effect (see 15.605-90).

**9.406-90 Procedures for debarments based on poor performance.**

(a) Policy. Where poor performance is to be relied upon as a basis for debarment in accordance with FAR 9.406-2(b), the responsibility for ensuring that action is taken to initiate debarment proceedings lies primarily with the cognizant contracting officer.

(b) Referral. In accordance with the procedures contained in subparagraph (c) below, the cognizant contracting officer will refer to the Office of Counsel those instances of contractor nonperformance that are so serious as to justify consideration of possible debarment action.

(c) Decision-making process.

(1) Before referring a particular contractor to the Office of Counsel for possible preparation of a debarment report, the cognizant contracting officer must be able to document the poor performance which will form the basis for a debarment recommendation. The contracting officer must also be able to demonstrate why debarment is appropriate under the circumstances, including any mitigating information known to the contracting officer. Referrals to the Office of Counsel should include all current information necessary to support the business decision that is to be recommended to the DLA SACI. The contracting officer should be prepared to update the information provided once the debarment process is underway and to participate with counsel in presenting the case to the DLA SACI.

(2) When recommending a contractor to the Office of Counsel for consideration of a possible debarment recommendation on the basis of poor performance, the cognizant contracting officer shall provide:

(i) A clear identification of the contractor, including divisions, subsidiaries, and affiliates, and contractor employees, officers, and directors, specifically identifying the contractor personnel who have participated in the Government contracting process.

(ii) A detailed account of the contractor's current active contracts, recent, relevant performance history, and history of performance problems prompting the referral. While this detailed accounting of contracting performance will necessarily focus on contracts awarded by DLA, performance on other

Government contracts must also be addressed. In this connection, the assigned contract administration office should be asked to provide information, as well as comments, on the action being considered.

(iii) The reasons identified for the contractor's poor performance and the action taken by the Government to protect its business interests.

(iv) A discussion of whether a debarment action directed toward a specific division, organizational element, or commodity would adequately protect the Government's interests.

(v) A discussion of the period of debarment to be recommended to the DLA SACI, supported by rationale that addresses the likelihood that the contractor will be able to take corrective actions necessary to successfully perform in the future.

**9.407 Suspension.**

**9.407-3 Procedures.**

(c)(4) The effect includes the possibility that a preaward survey evaluation factor may be applied to offers from the suspended source for the period of time specified in 9.106-1(a)(S-90)(1) after the suspension is no longer in effect (see 15.304(c)(95)).

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**11.002 Policy.**

(a)(1)(ii)(S-90) Agencies are responsible for determining their requirements and the best strategy for meeting those requirements. An agency's requirement is not overly restrictive of competition as long as the agency can show that its decisions are –

(A) Based on actual experience, engineering analysis, or similar rational bases; and

(B) Rationally related to ensuring its legitimate requirements will be met.

(S-91) To ensure that the Government's needs are met in the most effective manner, agencies must define their requirements in terms that –

(A) Take optimum advantage of distribution and support options, methods for assuring reliability, and other capabilities available in the marketplace that the agency determines appropriate for the type of item or service being acquired; and

(B) Exclude those items or services that cannot meet the agency's legitimate requirements.

## SUBPART 11.1 – SELECTING AND DEVELOPING REQUIREMENTS DOCUMENTS

*(Revised October 20, 2015 through PROCLTR 2015-12)*

**11.103 Market acceptance.**

(a) Approval authority for requiring offerors to demonstrate market acceptance pursuant to FAR 11.103(a) is delegated to the contracting officer.

(S-90) A market acceptance requirement is a requirement that an item must have performed in a certain way in a specified environment that approximates or reasonably relates to the agency's intended application. The use of market acceptance criteria is consistent with the definition of full and open competition in FAR Part 6 as it relates to agency needs. A market acceptance requirement may be used to establish either –

(i) A minimum threshold or performance that will be considered a demonstration that the item has been adequately market-tested or field-proven; or

(ii) An evaluation method that awards partial credit for items that meet part of the requirement.

(b)(S-90) Market research provides the information from which it can be determined whether previously-developed items exist that can meet the agency's needs and what methods are used in that marketplace to assure reliability. Through a careful analysis of the intended application and the marketplace capabilities available, show that the optimum strategy for meeting the Government's needs is to require items that have been field-proven in specified ways.

(S-91) When an agency requires that an item must have achieved market acceptance, the agency must specify exactly what that means in the context of the particular acquisition. The meaning will vary widely, depending upon what benefit the agency is attempting to gain by using such a strategy.

(S-92) When an agency's primary goal is to acquire the latest technology, other methods of assuring reliability are more appropriate than market acceptance. Particularly when acquiring items in a rapidly evolving technological field over a long-term contract, an agency will not be able to demonstrate that an item that is currently field-proven would be the best item for meeting the agency's needs several years from now.

(e)(S-90) The preparing activity will maintain documentation that describes the technical aspects of the item and supports the market acceptance requirement.

(1) Rationale that could support requiring a market-tested item include:

(i) Minimize design and engineering risk;

(ii) Eliminate costly and time-consuming field-testing and debugging of complex items;

(iii) Assure an item can be fielded quickly enough to meet an urgent requirement;

(iv) Assure an established end item is routinely supported by spare and repair parts;

(v) Preclude untested or experimental units; or

(vi) Assure compliance with Federal safety and environmental requirements.

(2) The market acceptance requirement may be whatever can reasonably be demonstrated –based on past experience, engineering analysis, market research and similar rational bases –to be an indicator that the item will meet the intended application. Market acceptance criteria includes requirements that an item must –

(i) Have been announced to the public, indicating the manufacturer's commitment to produce the product;

(ii) be commercially available for delivery within a reasonable time;

(iii) be off-the-shelf, meaning that the products offered do not require substantial modification;

(iv) be in current production, meaning that the item is no longer in the design phase but is started on assembly line production with the expectation that such production will continue;

(v) be state-of-the-art, meaning that the product is the offeror's latest version of that product;

(vi) have been previously sold to commercial or other customers, sometimes for a specified period of time or with a user base of a specified number;

(vii) Have met specified reliability and performance requirements;

(viii) be supported by specified maintenance and logistics arrangements;

(ix) be the successor to a product having a specified history of sales and performance; or

(x) meet some combinations of the above criteria.

**11.107 Solicitation provisions.**

**11.107-90 Compliance with Coast Guard requirements.**

(a) Use 52.211-9039, Compliance with Coast Guard Requirements, when item description states that preproduction sample approval by Coast Guard is required. The buyer will establish a separate line item on PR and add an additional 145 days to time of delivery to allow time for sample submission and approval. When this clause was included in the solicitation and the proposed awardee is awaiting approval from the Coast Guard, add only 55 days for delivery of the sample quantities. If the offeror provides documentation that the item has already been approved by the Coast Guard, the requirement should be waived and no additional delivery time should be added.

(b) For simplified acquisitions, any resulting award that includes the approval requirement must be a bilateral purchase order. Include FAR clause 52.249-8 in any resulting bilateral award. Include FAR clause 52.212-4 in commercial acquisitions resulting in a bilateral award. If the contractor has provided proof of Coast Guard acceptance then the approval requirement is waived and the resulting award does not need to be bilateral.

## SUBPART 11.2 – USING AND MAINTAINING REQUIREMENTS DOCUMENTS

*(Revised October 20, 2015 through PROCLTR 2015-12)*

**11.201 Identification and availability of specifications.**

(b)(S-90) Solicitation provisions and contract clauses.

(1) Mylar drawings. When mylar drawings are listed in the item description, the contracting officer shall use the clause at 52.211-9018, Availability of Mylar Drawings, and adjust the required delivery schedule accordingly to allow time for the successful offeror to receive the drawings. This clause is not intended for use in commercial acquisitions.

(c)(S-90)(1) First Destination Packaging (FDP) Program. Acquisitions being made under the First Destination Packaging (FDP) program will use commercial packaging in accordance with the American Society for Testing and Materials (ASTM) standard, D 3951 and shall have a method of preservation of commercial pack (CP). This requirement will be reflected in the purchase request by the product or packaging specialist. The FDP program is intended to increase commercial packaging usage and thereby decrease costs to the Government.

(c)(S-90)(2) First Destination Transportation (FDT) Program. The FDT Program is intended to decrease transportation costs to the Government by using third-party logistics contractors and/or organic assets. The following categories are not authorized to use the FDT Program: FMS contracts, contracts with APO/FPO delivery points, contracts which have inspection at origin, Hazardous Material (HAZMAT) contracts, Bulk Fuel purchases, and contracts requiring Transportation Protective Services. As authorized in FARS DEV 2013-06 R1, items acquired under the FDT Program will be awarded based on f.o.b. origin prices, inspection and acceptance will occur at destination unless otherwise specified in the solicitation, and transportation costs will not be evaluated. Offers will be invited on an f.o.b. origin basis for delivery to a CONUS location. When an item has been identified for acquisition under the FDT Program, the product specialist will include a statement in the item description stating that the acquisition is under the FDT Program and the clause at 52.247-9058 applies to offerors whose shipments will originate from outside the contiguous United States (OCONUS). See prescription at 47.305-3(94) for clause at 52.247-9058, First Destination Transportation (FDT) Program – Shipments Originating From Outside the Contiguous United States (OCONUS).

**11.201-90 (a)** Contracting personnel are not authorized to make any change in the unit of issue on stock buys without approval from either technical or supply personnel in accordance with local procedures.

**11.204 Solicitation provisions and contract clauses.**

**11.204-90 Shipments of dangerous or hazardous goods or materials.**
Insert the clause at 52.211-9013 in all solicitations and awards requiring shipment of dangerous or hazardous goods or materials to an airport of embarkation (APOE).

**11.204-92 Pre-market notification.**
Use 52.211-9045, Pre-market Notification, in solicitations for medical devices, except for military unique items.

**11.204-95 Marking requirements for high and low pressure cylinders.**
Use 52.211-9031, Marking Requirements for High and Low Pressure Cylinders, in solicitations and awards for federal supply class (FSC) 8120, cylinders.

**11.204-97 Packaging/marking requirements for diminishing manufacturing sources (DMS) buys.**
Use 52.211-9034, Packaging/Marking Requirements for Diminishing Manufacturing Sources (DMS) Buys, in all simplified acquisition procedure solicitations and awards for FSC 5962 DMS buys requiring long term storage.

**11.204-98 Marking requirements.**
Use 52.211-9035, Marking Requirements, in all solicitations/contracts for electrical components in FSG 59.

**11.204-99 Physical identification/bare item marking.**
Use 52.211-9036, Physical Identification/Bare Item Marking, in all solicitations and awards for DLA Land and Maritime.

**11.204-100 Drawing limitations (Tank-Automotive Command (TACOM) DLR – DLA Land and Maritime).**
Insert the clause at 52.211-9064, Drawing Limitations (TACOM DLR – DLA Land and Maritime), in solicitations and awards for DLA Land and Maritime acquisitions of depot level repairable items managed by TACOM when the technical data package (TDP) transmittal form, STA FL-1, indicates any of the following:

(a) Block "a" is checked to indicate "technical data package (TDP) is competitive."

(b) The appropriate portion of Block "b" is checked to indicate "TDP competitive with purchased part(s) estimated at: ( ) less than 10%, ( ) 10-50% or ( ) more than 50% of the total item cost."

(c) Block "e" is checked to indicate "Top drawing is source controlled." When Block e is checked, the acquisition specialist shall ensure—

(1) Military and vendor part number(s) are listed in the solicitation; and

(2) Drawings attached to the STA FL-1 are incorporated into the order.

**11.204-105 Prohibited packing materials (DLA Maritime-Norfolk and Puget Sound).**
Insert the clause in full text at 52.211-9085, Prohibited Packing Materials, in all DLA Maritime-Norfolk and Puget Sound firm-fixed-price solicitations and awards.

**11.272-90 Alternate preservation, packaging, and packing.**
Use 52.211-9041, Lengths, Tickets, Packaging, Marking of Cuts or Pieces in solicitations and contracts for the manufacture of textile piece goods (i.e., all woven textiles purchased in continuous lengths), and in solicitations for dyeing, finishing, or similar services on Government furnished property (GFP) textile piece goods, where the applicable specification requires a minimum length for pieces or rolls.

**11.274 Item identification and valuation.**

**11.274-4 Contract clauses.**

**11.274-4(90) Solicitations for items identified by a generic national stock number (NSN).**
Use 52.211-9047, Manufacturer's Make or Model Number, in solicitations for items identified by a generic national stock number (NSN) as evidenced by acquisition advice code (AAC) W and a statement in the special message field of the purchase request (PR) trailer "NSN is AAC W and for acquisition purposes only."

**11.274-4(91) Subsistence acquisitions.**
Use 52.211-9048, Data Name Plates, in subsistence acquisitions for items in federal supply classes (FSCs) 4110, 7310 and 7320.

**11.290 Bar coding.**

(a) Policy. When using MIPR and non-DLA contracts, bar coding requirements must be addressed whenever possible. The lack of bar coding will not automatically preclude the use of such instruments. However, if a contract issued outside DLA is utilized repeatedly that doesn't have bar coding requirements, the issue should be raised with the contracting agency in an attempt to influence the decision towards the use of bar coding. The attempts should be fully documented.

(b) Contract clauses.

(1) Insert the clause at 52.211-9010, Shipping Label Documentation – Military Standard (MIL-STD) 129P, in all solicitations and awards that require contractor shipments of packaged materiel to the Government. For EProcurement acquisitions, insert the clause with its Alternate I. This clause is authorized for use in acquisitions of commercial items conducted using FAR Part 12 (see 12.301(f)(102)).

**11.291 Unit package marking requirement for component lead finish – contract clause.**
Insert the clause at 52.211-9063 in all solicitations and awards when the purchase order text (POT) states that 52.211-9063, Unit Package Marking Requirement for Component Lead Finish, applies; including when acquisitions are conducted using FAR Part 12.

**11.292 Palletization shipments.**
Use 52.211-9095, Palletization Shipments, in solicitations and contracts when items require special palletization instructions.

## SUBPART 11.3 – ACCEPTABLE MATERIAL

*(Revised October 20, 2015 through PROCLTR 2015-12)*

**11.301 Definitions.**

*"Actual manufacturer," "approved source," "critical safety item (CSI)," "design control activity," "prime contractor,"* and *"rebranding"* are defined in the clause at 52.211-9005, Conditions for Evaluation and Acceptance of Offers for Critical Safety Items.

*"Alternate product"* and *"exact product"* are defined in the provision at 52.217-9002, Conditions for Evaluation and Acceptance of Offers for Part Numbered Items.

*"Critical application item" (CAI)*, as used in this subpart, means an item that is essential to weapons performance, operation, the preservation of life, or safety of operating personnel, as determined by the military services.

*"Level I"* is the designation given to critical ship and submarine piping systems or other components requiring a high degree of assurance that chemical composition and mechanical properties of installed material meet the specified requirements.

*"Surplus material,"* as used in this subpart, means new, unused material that was purchased and accepted by the U.S. Government and subsequently sold by the DLA Disposition Services, by contractors authorized by DLA Disposition Services or through another Federal Government surplus program. The terms "surplus" and "Government surplus" are used interchangeably in this subpart.

**11.302 Policy.**

(b)(S-90)(1) DLA policy is to consider offers of surplus material in accordance with solicitation requirements and to make optimum use of surplus material when acceptance of such offers is in the best interest of the Government. This policy is intended to ensure that offers of surplus material receive consistent, timely and reasonable treatment. It is also intended to clarify DLA procedures and maximize streamlining. In all cases, surplus material accepted by the Government must conform to technical requirements in the solicitation. Proper consideration of surplus offers can significantly reduce material cost and delivery time, which benefits our customers and makes DLA a more attractive source of supply. Surplus material is usually readily available, which can make it particularly valuable for satisfying urgent requirements. The nature of DLA's business situation demands that we prudently use the services of surplus dealers, who provide a warehousing capability that helps meet our unprogrammed demands for material. (Guidance for technical/quality specialists to complement this policy is provided in the DLA Technical Support Policy and Procedures Deskbook.)

(i) When establishing LTCs, integrated supplier teams and strategic material sourcing groups shall–

(A) Conduct market research to determine availability of surplus material; and

(B)*(1)* If market research indicates all or a portion of the recommended buy (RB) quantity of an item is available as surplus material, reduce the RB quantity for that item by the quantity that is available as surplus; and

*(2)* Acquire the quantity removed from the LTC separately, using whatever procedures are appropriate to the circumstances (e.g., competitive solicitation, emergency support procedures for high priority requirements, etc.).

(ii) When an NSN is a candidate for addition to an existing LTC, integrated supplier teams and strategic material sourcing groups shall–

(A)*(1)* Obtain product specialist certification that item is sole source to holder of the long term contract;

*(2)* Post an announcement in FedBizOpps stating that the NSN has been targeted for addition to the LTC; and

(B) If responses to FedBizOpps notice indicate all or a portion of the recommended buy (RB) quantity of the item is available as surplus material, reduce the RB quantity for that item by the quantity that is available as surplus material before adding the item to the LTC. The quantity removed from the LTC will be acquired separately, using whatever procedures are appropriate to the circumstances (e.g., competitive solicitation, emergency support procedures for high priority requirements, etc.).

(iii) When an offer of surplus material is received in response to a solicitation for an LTC, the contracting officer shall consider whether the quantity of surplus material meets the requirements of the solicitation. If so, the contracting officer shall consider the offer of surplus material to be responsive to the solicitation. If not, the contracting officer shall reject the offer as not conforming to the solicitation and shall forward a summary of the offer to the item manager (supply planner). The item manager

(supply planner) shall take appropriate action in the best interest of the Government, based on the item manager's (supply planner's) judgment; such as initiating a separate, fixed-quantity purchase request, if warranted by the agency's supply position. Any action(s) by the item manager (supply planner) must be taken in coordination with the office that identified the item(s) for placement on an LTC (e.g., the strategic material sourcing group or integrated supplier team).

(A) Do not evaluate offers of surplus material when the technical/quality specialist has included a statement in the technical guidance information (TGI) field on the purchase request (PR) trailer advising that offers of surplus material will not be considered for the item being acquired. The ESA must provide written notice that offers of surplus material will not be considered for specified items or categories of items, with supporting documentation in sufficient detail to demonstrate that the restriction is necessary to satisfy the needs of the Government.

(B) Establish internal audit procedures to ensure that offers of surplus material are processed in accordance with the policy in this Subpart, 11.3.

(iv) Ensure that actions related to referrals, evaluations, notification of offerors, and award decisions are made in a consistent, timely and reasonable manner, in order to provide offerors with an opportunity to compete in accordance with the Competition in Contracting Act.

(v) Ensure that the following conditions, in and of themselves, are not treated as an acceptable basis for excluding an offer of surplus material from consideration:

(A) Dollar value of the acquisition;

(B) Age of the offered material;

(C) When the buy is for stock;
(D) When the offer is for less than the solicited quantity;

(E) When material is not in the original package; or

(F) Past or average engineering support activity (ESA) response times, unless substantiated by data specific to evaluations of surplus offers by the cognizant ESA.

(G) Offer is in response to a solicitation for a long-term contract (see 11.302(b), 11.304-91(a)(2), and 15.305(b)).

(vi) For automated offers, ensure that supporting documentation provided by an offeror of surplus material is promptly distributed to the contracting officer for timely consideration.

(vii) Ensure that technical acceptability of an offer of surplus material is applied only to the current procurement.

(A) Ensure that the technical/quality specialist has considered all information provided by the offeror concerning technical acceptability of the offered surplus material. If the offer of surplus material is found to be technically unacceptable, ensure the technical/quality specialist has documented the specific technical reasons why the surplus material is technically unacceptable.

(B) Ensure that when acquiring critical safety items, offerors meet the additional requirements in 52.211-9005 (see 11.302-91).

(2) Contracting officer responsibilities and procedures.

(i) Unless subparagraph (iii) of this section applies, insert the clause at 52.211-9000, Government Surplus Material, and the provision at 52.211-9003, Conditions for Evaluation of Offers of Government Surplus Material, as prescribed at 11.304-91(a), except that in automated solicitations these can be replaced by a statement referring offerors of surplus material to a source of information where complete conditions for evaluation are detailed (e.g., "Offerors of Surplus Material – See EBB Sign-On Instructions"). When acquiring critical safety items, also follow 11.302-91.

(ii) When use of a warranty provision is desired and offers of surplus property will be considered, incorporate a warranty clause as prescribed in FAR Subpart 46.7 or DFARS 46.7, to ensure that warranty provisions are applied to all contractors, whether manufacturers or dealers and whether or not surplus material is offered.

(iii) Insert the provision at 52.211-9009, Non-Acceptability of Government Surplus Material, as prescribed at 11.304-91(b), when the TGI field on the purchase request (PR) indicates that offers of surplus material will not be considered for the item being acquired.

(iv) When it is determined in accordance with 52.211-9003 that an offer of surplus material is otherwise in line for award, the contracting officer shall—

(A) Coordinate with the supply planner and the product specialist to confirm that there is sufficient time before proposed award to permit evaluation of the offer of surplus material, and that delay of award will not result in failure to meet customer need date or otherwise adversely affect the Government. This determination shall be based on the Agency supply position and lead time required for a technical evaluation. Benefits that may accrue to the Government, if the offer of surplus material were accepted, must be weighed against any adverse effects that would result from delay of award. If the benefits are significant, consideration shall be given to requesting expedited evaluation. If it is determined that award will not be delayed to evaluate the offer of surplus material, the contracting officer shall fully document the basis for this determination in the contract file;

(B) If it is determined that award will be delayed to evaluate the offer of surplus material, promptly refer the offer to the technical/quality specialist for a determination of technical acceptability.

*(1)* Do not hold up the technical referral while waiting for another offer or another offeror's supporting documentation. Include in the technical referral the completed 52.211-9000 and all supporting documentation provided by the offeror. While it is preferred that an offeror fill out the clause completely, failure to provide all information is not a basis for automatic rejection of the surplus offer. (For critical safety items, also include a copy of 52.211-9005 and supporting documentation provided by the offeror. See 11.302-91.)

*(2)* Provide all relevant information that will help the technical/quality specialist prioritize the evaluation. Such information includes, but is not limited to, the following: the priority or urgency of the requirement, the quantity being acquired, whether backorders exist, anticipated savings in

unit price and/or delivery time if the surplus offer is approved, whether there are other sources, if the surplus offer is the only offer received, etc.

(v) If the technical/quality specialist advises the material is technically acceptable, award can be made to the offeror of surplus material; except that award must not be made to a surplus offeror who is no longer in line for award (e.g., due to costs for special testing or inspection requirements that would have to be included in the contract).

(vi) If the technical/quality specialist has forwarded special inspection or testing requirements, ensure that these are incorporated into the award. Contract requirements must also ensure that the Government has the right to access contractor premises and to select the surplus material to be inspected or tested.

(vii) The product specialist must determine whether or not the surplus material offered conforms to the current technical requirements as stated in the solicitation, including the drawing revision level if any is designated. If an offer of surplus material is determined technically unacceptable, the product specialist must provide the contracting officer with supporting documentation that cites specific reasons why the material is technically unacceptable. If the surplus material was manufactured in accordance with a different drawing revision level than cited in the solicitation, the product specialist must identify the specific technical differences between the revision levels and determine whether or not the revision affects the material form, fit, or function. If the surplus material is rejected, the product specialist must describe the specific technical differences between the revisions that make the surplus material unacceptable for use. A general statement that the surplus material was manufactured in accordance with a different drawing revision level is not acceptable. The contracting officer shall promptly notify the offeror that the offer was rejected. In the notice to the offeror, the contracting officer must also provide the specific reasons why the surplus material was determined technically unacceptable, including the specific technical differences between drawing revision levels when applicable.

(viii) If the data provided by an offeror of surplus material are determined to be inadequate, the technical/quality specialist must provide supporting documentation that cites specific reasons why the data are inadequate. Promptly notify the offeror that the offer of surplus material will not be evaluated; or, if the contracting officer determines it is in the best interest of the Government, the offeror may be given an opportunity to provide the additional data. The request for additional data may be made by the contracting officer or technical/quality specialist, orally or in writing. If the technical/quality specialist is to contact the offeror, the contracting officer's coordination must be obtained.

(ix) If the item being acquired is otherwise procurable and the item manager does not concur in forwarding the surplus offer for ESA review or re-evaluation, the technical/quality specialist must advise the contracting officer and forward the item manager's rationale why the surplus offer will not be forwarded to the ESA. (However, if the time to effect delivery from the offeror next in line for award will exceed the time to evaluate and effect delivery of the surplus material, the item manager must concur in an ESA referral.) Promptly notify the surplus offeror that the offer of surplus material will not be evaluated. Award may be made to the offeror next in line for award; however, award must not be made for a quantity that exceeds the immediate need (e.g., the backordered quantities).

(x) If the cognizant ESA does not respond to a DLA Form 339, Request for Engineering Support, within the estimated timeframe established by the technical/quality specialist in accordance with Appendix L, the technical/quality specialist must contact the ESA to determine the status of the

evaluation. If the item being acquired is otherwise procurable, and the item manager confirms that the anticipated ESA response date is unacceptable, the technical/quality specialist must advise the contracting officer and forward the item manager's rationale why additional time cannot be allowed for the ESA to evaluate the surplus offer. Promptly notify the surplus offeror that the offer of surplus material will not be evaluated. Award may be made to the offeror next in line for award; however, award must not be made for a quantity that exceeds the immediate need (e.g., the backordered quantities).

(xi) When the following conditions apply, promptly notify an offeror of surplus material and provide the information as described below. Notification must be made electronically if possible and not later than upon release of award.

(A) When the contracting officer determines it is in the best interest of the Government to give the offeror an opportunity to submit additional data, provide specific data requirements to the offeror, provide a specific timeframe for the response to be submitted (generally 3-5 days), and advise that the offer may not be considered if the timeframe is not met.

(B) When the offer of surplus material will not be evaluated because –

*(1)* Data provided was inadequate for evaluation, and the offer has been deemed incomplete. Cite specific reasons why the data are inadequate.

*(2)* The offeror was given an opportunity to provide additional data to support its offer and failed to respond with adequate and timely information. Provide specific details to the offeror to support the contracting officer's statement(s).

*(3)* The item manager does not concur in forwarding the surplus offer for review or re-evaluation, or to accommodate an extension of the ESA response time. Use the rationale provided by the item manager and provide specific reasons to the offeror why the surplus offer will not be evaluated.

(C) When the offer of surplus material was evaluated and rejected, either locally or by the cognizant ESA, provide the specific technical reasons for the rejection (see 11.302(b)(S-90)(3)(vii)).

(xii) When an offeror of surplus material is the prospective awardee, the contracting officer shall refer the acquisition to the technical/quality specialist (product specialist), who shall determine whether quality assurance will take place at source or destination. If the technical/quality specialist (product specialist) determines inspection/acceptance (I/A) shall be at source and the award will be administered by DCMA, the technical/quality specialist (product specialist) shall prepare a Quality Assurance Letter of Instruction (QALI). The contracting officer shall advise the technical/quality specialist (product specialist) what should be included in the QALI. All QALIs shall include at a minimum:

(A) A copy of the completed clause at 52.211-9000, with instructions to verify the representations and documentation provided by the offeror. Inspection criteria must be consistent with the basis for determining the surplus material acceptable. If previous Government ownership was demonstrated by documentation other than a Government contract number, the current contract must not require the surplus material to be identified to a previous Government contract. Inspection criteria must include special inspection or testing requirements forwarded by the technical/quality specialist (product specialist), if any. Criteria may also include dimensional inspection, if appropriate; or destructive testing,

depending on the age of the material. Obtain the recommendation of the technical/quality specialist (product specialist) to determine the need for additional criteria.

(B) A requirement for the QAR to notify the contracting officer if, at the time of Government source inspection, the QAR is denied access to the contractor's plant or not permitted to select the material to be inspected.

(xiii) Take appropriate action, which may include cancelling the purchase order or terminating the contract for default, and assessing appropriate damages when –

(A) Surplus material tendered for acceptance does not conform to contract requirements; or

(B) The QAR advises that the contractor has refused to provide access to its plant or to permit the QAR to select the surplus material to be inspected at the time of Government source inspection.

**11.302-90 Use of approved sources.**
It is the policy of this agency to ensure that DLA acquires only items produced by, or under the direction of, approved sources. It is also agency policy to apprise DLA's suppliers of changes in their approval status by promptly notifying a source, pursuant to FAR 9.207(b), upon its removal from a purchase order text (POT) or procurement item description (PID), formerly known as an acquisition identification description (AID); and to actively facilitate approval of these sources (see subparagraphs (1) through(3) of this section).

(a) Roles of contracting officer and product specialist.

The requiring military service provides the data to procure the correct item. The product specialist (PS) is responsible for maintaining the accuracy and currency of the technical/quality requirements and for ensuring that only approved sources are identified in the POT or PID. (Detailed policy guidance for product specialists is provided in the DLA Technical Support Policy and Procedures Deskbook, which is maintained by the technical and quality policy division.

Contracting officers are responsible for performing all necessary actions for effective contracting. They must ensure compliance with laws, regulations, and procedures; safeguard Government interests; request and consider advice of appropriate specialists (audit, law, engineering, etc.); and exercise business judgment (see FAR 1.602-2). Contracting officers have a responsibility to ensure that the selected source has the intent and capability to provide the item in compliance with the terms of the contract, including the item description; and they have broad latitude to carry out their duties. However, the contracting officer is not authorized to determine what sources should be approved and cited in the POT or PID. Contracting officers must follow the guidance at 11.302-90(c) to determine when pre-award referral to the product specialist is required to ensure that a prospective contractor is technically acceptable.

(1) Providing notification to sources removed from a POT or PID.

(i) Whenever a product specialist removes a source from a POT or PID, the product specialist will concurrently prepare a source notification letter, with no date or signature block, and forward it to –

(A) The contracting officer, if a purchase request exists; or

(B) The competition advocate (or other designated office, pursuant to 17.7501(b)(4)(iv) or (v)), if there is no purchase request.

(ii) Upon receiving the letter from the product specialist advising that a source was removed from a POT or PID, the contracting officer or competition advocate (see 11.302-90(a)(1)(i) and (iv)) shall promptly review the letter to ensure it adequately states the specific reason(s) the source was removed and identifies the action(s) required for the source to become an approved source for the subject item. If so, the contracting officer or competition advocate shall ensure that the appropriate management-level signature block is added, and that the letter is promptly signed, dated and forwarded to the source that was removed from the POT or PID. If the letter requires revision, the contracting officer or competition advocate shall immediately return the letter to the product specialist, specifying the required revisions, and the product specialist will immediately revise the letter and return it.

(iii) If a source approval request (SAR) package is required to obtain approval for a source that was removed from a POT or PID, a quote/offer from that source shall be evaluated in accordance with the same procedures used for processing alternate offers, except that cost savings thresholds are waived when the removal was not contractor-caused.

(iv) In some instances, a purchase request will exist at the time an effort is initiated to approve a source that was removed from a POT or PID, but the contracting officer may have to proceed with award while the source approval decision is still pending. In such cases, the responsibility for tracking the request for source approval (see 11.302-90(a)(2)(ii)) shall transfer from the contracting officer to the competition advocate. The contracting officer shall forward a copy of the source notification letter to the competition advocate/designee and advise that the action is being transferred in accordance with 11.302-90(a)(1)(iv). The contracting officer shall also advise the product specialist to contact the competition advocate/designee in the future regarding the subject source approval request.

(2) Approval of a source that was removed from an AID.

(i) The product specialist will track all requests for approval of sources that were removed from a POT or PID. Requests for approval of sources include SARs, actions that are forwarded to the cognizant engineering support activity (ESA), and actions assigned to another technical authority (e.g., on-site).

(A) Upon receipt of a response from the ESA or other technical authority, the product specialist will promptly prepare a letter, with no date or signature block, to provide the approval or disapproval decision to the source that submitted the request for approval, and forward the letter to the contracting officer or competition advocate (see 11.302-90(a)(1)).

*(1)* For disapprovals, the contracting officer or competition advocate shall promptly review the letter to ensure it adequately states the specific reason(s) the request was disapproved. If so, the contracting officer or competition advocate shall ensure that the appropriate management-level signature block is added, and that the letter is promptly signed, dated and forwarded to the source that was removed from the POT or PID.

*(2)* If the letter requires revision, the contracting officer or competition advocate shall immediately return the letter to the product specialist, specifying the required revisions, and the product specialist will immediately revise the letter and return it.

(B) If the product specialist receives no response within the time frame agreed upon, the product specialist will promptly contact the ESA(s) or other technical authority and develop a good faith estimate of the revised response time. The product specialist will promptly prepare a letter, with no date or signature block, to provide the revised response time to the source that submitted the request for approval, and forward the letter to the contracting officer or competition advocate, who shall ensure that the appropriate management-level signature block is added, and that the letter is promptly signed, dated and forwarded to the source that was removed from the POT or PID.

(ii) Having been advised that the product specialist is seeking approval of a source that was removed from an AID, the contracting officer or competition advocate/designee (see 11.302-90(a)(1)(i) and (iv)) shall track the status of the request.

(A) If the product specialist does not provide a response to the contracting officer or competition advocate/designee within 5-10 days after the time frame agreed upon between the product specialist and the ESA(s) or other technical authority, the contracting officer or competition advocate/designee shall promptly contact the product specialist to determine the revised response time.

(B) The product specialist will promptly prepare a letter, with no date or signature block, to provide the revised response time to the source that submitted the request for approval, and forward the letter to the contracting officer or competition advocate/designee, who shall ensure that the appropriate management-level signature block is added, and that the letter is promptly signed, dated and forwarded to the source that was removed from the POT or PID.

(3) Special procedures for items designated as critical safety items (CSIs).

(i) When an item is identified as a CSI and the product specialist removes one or more sources from the POT or PID, the product specialist will identify all open purchase requests and open contracts to the assigned contracting officers or contract administrators. Contracting officers shall amend solicitations to reflect the updated POT or PID. If any open contract will result in delivery of an item made by, or under the direction of, a source that is no longer an approved source for that item, the contracting officer or contract administrator shall coordinate with the product specialist to see if it can be promptly determined that the ESA or other technical authority is willing to accept the material, or if any other action can be taken to preclude the need for a contractual change. If not, the contracting officer or contract administrator may be able to issue a change order in accordance with FAR Subpart 43.2.

(ii) If the contractor is a non-manufacturer and there is at least one additional approved source remaining, the contractor may be able to provide the product of the other source without changing the scope of the contract. If such an agreement cannot be made, the contracting officer or contract administrator must issue a stop-work order in accordance with FAR Subpart 42.13 and seek source approval from the ESA or other technical authority before authorizing continued production. If the stop-work order is lifted, the contractor can submit a request for an equitable adjustment for any additional costs incurred as a result of the stop-work order.

(iii) If the contractor, or its source, is not approved as a source for the subject item by the ESA or other technical authority, the ESA or other technical authority may still advise that the material is acceptable, but ordinarily the ESA or other technical authority will advise that products made by, or under the direction of, that source will be unacceptable to satisfy requirements for the subject item in the future until source approval is obtained. If the contractor, or its source, is not approved by the ESA or other

technical authority to continue production of the subject item under an open contract, the contracting officer or contract administrator must terminate the contract for convenience and negotiate a termination settlement with the contractor in accordance with FAR Subpart 49.1.

(b) Prior procurement history not an indication of current source approval. When a previous manufacturing source is listed in the prior procurement history, this does not mean that the source is currently an approved source. A manufacturing source is not an approved source unless it is currently identified in the POT or PID.

(1) If an offer is received from a manufacturing source that received one or more awards in the past but is not currently cited in the POT or PID, the contracting officer must refer that offer to the technical/quality specialist for approval prior to making an award.

(2) Procurement history cannot be relied on to indicate that a manufacturing source is currently approved, to include whether the previous award to the prior manufacturing source may have been made in error; the prior manufacturing source may have been approved for an earlier revision of the item but may no longer be approved for the latest revision; or parts made by the previous manufacturing source may have been defective, and the approved source cited in the POT or PID or the military service ESA may have revoked its approved status.

(c) Pre-award approval/referral requirements.

(1) Contracting officers must acquire the item cited in the AID (i.e., an exact product) from the source(s) cited in the POT or PID (i.e., an approved source); unless an exception is authorized in agency policy, or pre-award approval has been obtained from the technical/quality specialist. DLA policy is outlined in the table below. The table specifies when the contracting officer may proceed with the current award; or when the contracting officer is required, prior to award, to refer the offer to the technical/quality specialist and the ESA, and/or obtain approval of the award at one level above the contracting officer. Even when not required, contracting officers are responsible for obtaining technical, legal, or other advice whenever needed; therefore, contracting officers always have the discretion to go to the technical/quality specialist, the office of counsel, or other appropriate experts. (See 11.302-91 for additional procedures that apply to NSNs identified as CSIs.)

| Type Of Offer | Criticality Of Item | Contracting Officer (CO) Can Award? | Requires Referral To Technical/ Quality? | Requires Approval From ESA? | Award Requires Approval One Level above CO? |
|---|---|---|---|---|---|
| Approved source cited in POT or PID offering "exact product" cited in POT or PID | Noncritical or CIC Blank | Yes | No | No | No |
| | CAI | Yes | No | No | No |
| | CSI | Yes | No | No | Yes (Note 1) |
| Dealer/ Distributor (non-manufacturer) offering "exact product" | Noncritical or CIC Blank | Yes (Note 2) | No | No | No |
| | CAI | Yes (Note 2) | No | No | No |
| | CSI | Yes (Note 3) | *Yes* (Note 4) | No | Yes |
| Unapproved manufacturing source offering "exact product" | Noncritical or CIC Blank | No (Note 5) | Yes | (Note 6) | No |
| | CAI | No (Note 5) | Yes | Yes | No |
| | CSI | No (Note 5) | Yes | Yes | Yes |

| | | | | | |
|---|---|---|---|---|---|
| Any source offering "alternate product" | Noncritical or CIC Blank | No | Yes | (Note 6) | No |
| | CAI | No | Yes | Yes | No |
| | CSI | No | Yes | Yes | Yes |

Note 1 Does not apply to fully automated awards, if system only permits a fully automated award when an approved source cited in the POT or PID is offering an exact product cited in the POT or PID.
Note 2 Contracting officers must either obtain traceability documentation prior to award, or must require suppliers in accordance with 52.211-9014 to retain documentation and provide it for review at time of Government source inspection, if applicable (see 11.302-91(a)(11)) or during random or directed post-award audits.
Note 3 Contracting officers must obtain traceability documentation prior to award.
Note 4 The quality assurance specialist (QAS) must conduct pre-award review of traceability documentation on which quality assurance letter of instruction (QALI) will be based. Referral to the QAS is mandatory after award to finalize QALI. (See 11.302-91(a)(11).)
Note 5 Contracting officers must obtain traceability documentation and refer offer to the technical or quality specialist prior to award.
Note 6 The technical or quality specialists must follow the J3 Deskbook and local procedures to determine if ESA referral is required.

(2) The table at 11.302(90)(c)(1) only applies to the items and types of offers shown. It does not apply to items being acquired under a fully competitive technical data package (acquisition method suffix code (AMSC) G); to offers of Government surplus material, which are addressed separately in the procedures at 11.302(b)(90)); or to other types of referrals to the technical/quality specialist, which are addressed in the J3 deskbook and local procedures, such as, waiver requests, deviation requests or engineering change proposals.

**11.302-91 Management of critical safety items (CSIs).**
CSIs are a subset of a larger category of parts known as critical application items (CAIs); CAIs are items whose failure could affect mission, performance, readiness, or safety. CSIs are parts whose failure potentially can cause loss of life, serious injury, loss of an aircraft, or significant damage to an aircraft or associated equipment. Due to the catastrophic consequences that can result if a CSI fails to conform to design data or quality requirements, DLA personnel must follow strict policy guidelines for managing and procuring these items.

When the POT or PID includes the statement, "this is a critical safety item (CSI)," contracting officers must follow the guidance in the "acquisition requirement" which appears under the heading, "the following requirements apply to critical safety items" on the purchase request (PR) trailer.

Technical/quality specialists must follow the "technical requirement" and "quality assurance requirement" under the same heading and related guidance in the J3 deskbook.

(a) Guidance for acquisition personnel. Contracting officers must refer to the "Acquisition Requirement" on the purchase request (PR) trailer, which will be continuously maintained to reflect the most current requirements for CSIs. The following guidance is not intended to be all-inclusive; it highlights the most important elements of the "Acquisition Requirement" and clarifies some procedures unique to contracting. If there is a discrepancy between the DLAD guidance and the "acquisition requirement" on the PR trailer, the "Acquisition Requirement" will take precedence.

(1) Acquire CSIs only from source(s) cited in the purchase order text (POT) or procurement item description (PID); or from a dealer/distributor who is offering the exact product (CAGE and part number) cited in the POT or PID and who has furnished acceptable traceability documentation prior to award (see

11.302-90(c)(i), Note 3). Any variation from this requirement must be referred to the technical/quality specialist for evaluation. (See additional guidance at 11.302-90(c) and 11.304-90. For offers of surplus material, also see 11.302(b)) Referral to the technical/quality specialist is required whenever a source not currently cited in the POT or PID offers to manufacture an item for the Government; and for all offers of "alternate product."

(2) Review the technical guidance information (TGI) field in the CTDF, where sources will be identified that have been removed from the POT or PID pending revalidation by the ESA. Solicit these sources for the current buy. If, after evaluation of offers, one of these sources is in line for award but has not been added back into the POT or PID, the contracting officer must refer the offer to the technical/quality specialist for review as an unapproved source.

(3) Origin inspection is required. Certificate of conformance (COC) is not authorized, unless approved by the ESA.

(4) Refer all requests for waivers or deviations to the technical/quality specialist.

(5) Specifically withhold materiel review board (MRB) authority (also see 11.304-90(c)).

(6) Refer all offers of Government surplus material that are under consideration to the technical/quality specialist for evaluation (see 11.302(b)(90)).

(7) Automated solicitations may be used to solicit CSIs, and automated evaluation may be used to select a potential awardee; however, a fully automated award cannot be made, unless the system is programmed to only permit a fully automated award to an approved source cited in the POT or PID who is offering an exact product cited in the POT or PID. Automated awards can only be made to sources that do not currently appear in the POT or PID if the system is programmed to allow for manual evaluation of the documentation required in accordance with 52.211-9005 prior to award.

(8) For urgent requirements (IPG 1), generally allow 5 business days for a prospective awardee to provide documentation in accordance with 52.211-9005; generally allow 15 days for less urgent requirements, such as IPG 2 or 3; or buys for delivery into stock.

(9) Contract arrangements that authorize the contractor to select item sources, including, but not limited to, prime vendor (PV), industrial prime vendor (IPV), and virtual prime vendor (VPV), are not authorized for CSI items; unless contract terms will ensure that the contractor complies with agency policy requirements for CSIs, and prior approval is obtained from the DSC CSI focal point.

(10) Incorporate all quality requirements into the contract when specified (e.g., first article test, production lot testing). Do not waive any quality requirement without referring the purchase request to the technical/quality specialist.

(11) When award is made, notify the quality assurance specialist (QAS), who will determine if a quality assurance letter of instruction (QALI) is required. If award was made to a dealer or distributor, a QALI is mandatory; the QAS must have conducted a pre-award review of traceability documentation in accordance with the approval/review requirements at 11.302-90(c)(i) and Note 4. Advise the QAS what the QALI for a dealer/distributor should include, as follows:

(i) All QALIs must include the requirement to examine inventory control records, to establish that items offeror proposes to furnish under current award are in offeror's stock.

(ii) Specifically identify any documentation that offeror stated was unobtainable prior to award; or where a "copy" of documentation was provided prior to award, and an "original" should be examined at time of source inspection, such as, documentation of quotation from approved source; or documents on approved source's letterhead to include an invoice or packing slip.

(12) When multiple approved sources are identified in the POT or PID and a long-term contract is contemplated, consider using acquisition strategies that will help maintain more than one source, if otherwise appropriate; such as, for example, split awards or multiple awards. This will also minimize the need for referrals to the ESA for revalidation, which is required for CSIs whenever an alternate source has not received an award for over 3 years.

(13) Obtain approval at one level above the contracting officer prior to making award; except that fully automated awards do not require this approval if the system is programmed to only permit a fully automated award to be made to an approved source cited in the POT or PID who is offering an exact product cited in the POT or PID.

(14) After award to any source other than an approved source cited in the POT or PID, document in the contracting guidance information (CGI) field in the contracting technical data file (CTDF) the contract/purchase order number and the basis for approval of award (e.g., letter from approved source identifying awardee as authorized distributor).

(15) Carefully evaluate any post-award requests received from contractors for modifications to change a part number or anything pertaining to the representation of "exact product" in the contractor's original quote.

(i) Use the appropriate DCRL category code when contractors misrepresent their status as it pertains to offers of "exact product;" and provide an explanation in the "Remarks" field, so buyers on future procurements will request additional information from the vendor upon receipt of a quote or offer. Include adequate information in the DCRL "remarks" field about how the contractor has misrepresented itself, so the buyer will know to pursue the documentation requirement.

(ii) Ensure that when vendors have misrepresented themselves with regard to an offer of "exact product," they are excluded from receiving any fully automated awards without a prior manual review, consistent with the policy in 11.302(91)(a)(7). In most cases, such buys must be referred to the manual buyer.

(16) If a contractor identifies changes in its business arrangement with an approved source, in the item acquired, or in a manufacturing process/facility pursuant to 52.211-9006, notify the technical/quality specialist.

(i) Refer documentation to technical/quality specialist, if provided by the contractor. Request that the technical/quality specialist determine if the acquisition is still authorized from the contractor; if the correct item is being acquired under the contract; or if the manufacturing source is still approved, as applicable.

(ii) Take corrective action as needed, such as issuing a modification, terminating the contract, or cancelling the purchase order.

(17) See mandatory policies at 11.302-92, Obtaining and Assessing Adequacy of Traceability Documentation.

(b) For every CSI and Special Procedures Code (CSI) item award (both manual and automated), contracting officers must include in the award file a copy of DLA Form 13, Critical Safety Items and SPC Items Award Checklist, which can be accessed at http://www.dla.mil/officialForms/files1/dl0013.pdf. Parts I, II, and IV of the checklist must be completed and signed by the product specialist. Contracting officers must review and verify each statement within Part III of the checklist.

(c) Requirements for business unit and/or management personnel.

(1) Implement internal controls to ensure compliance with this policy.

(2) Participate in periodic reviews and audits.

**11.302-92 Traceability documentation.**

(a) General.

(1) It is critically important for contracting officers to be able to confirm a documentation trail from the supplier to the approved manufacturer. Accordingly, contracting officers shall request traceability documentation whenever additional information is needed to ensure product conformance and whenever they have any reason to be suspicious that offerors or contractors may be attempting to defraud the Government.

(2) It is not possible to identify all indicators of risk. This policy is intended to provide information based on past experience to assist contracting officers in identifying suspicious circumstances.

(b) Traceability documentation shall be obtained and associated actions shall be taken as specified in this section, when—

(1) *The offeror provided a quote as traceability documentation prior to award.*

(i) It is common practice for independent distributors and brokers, who do not keep inventory, to procure the offered product only after they are awarded the contract. Under such circumstances, the offeror typically furnishes a quote from the approved source or an authorized distributor, which is considered an acceptable form of traceability prior to award. When this has occurred, the post-award acquisition specialist shall ask the contractor to provide full traceability documentation demonstrating the complete line of ownership before the product is shipped.

(ii) If the awardee does not have full traceability information, the acquisition specialist shall contact the product specialist to recommend that product verification testing be invoked in accordance with the clause at 52.246-9004, Product Verification Testing (PVT).

(2) *Potential indicators of risk are present.* Potential indicators of fraud include, but are not limited to, the following:

(i) The supplier has no past DLA history;

(ii) The price offered is lower than price of approved source or its authorized distributor;

(iii) The price offered is out of line with other quotes or past pricing history;

(iv) The price offered for new product is lower than price offered for surplus material;

(v) The manufacturer's contractor and Government entity (CAGE) code identified in offer differs from CAGE code of approved manufacturing source in solicitation;

(vi) The offeror/contractor is reluctant or unable to provide traceability documentation;

(vii) The offeror's/contractor's phone number, address, e-mail, or other vital information is missing, invalid, or suspicious; and/or

(viii) The contractor invoices without delivering the supplies.

(3) *Protest is received questioning awardee's ability or intention to supply exact product at price awarded.*

(i) The acquisition specialist shall immediately request traceability documentation from the awardee upon receipt of a protest when the protestor has questioned the awardee's ability or intention of supplying the exact product at the price awarded.

(ii) By immediately requesting traceability, the response back to the protestor from the cognizant office of counsel will include the status/disposition of the award, based on the information received from the awardee.

(4) *The contractor requests a modification changing the part number or other information related to its exact product representation.*

(i) The post-award acquisition specialist shall carefully evaluate any requests for modifications from a contractor requesting a change to the part number or any other information pertaining to the exact product representation in its original quote.

(ii) The post-award acquisition specialist shall place any contractor that misrepresented its exact product status on the DCRL as special attention reason code Q and provide a detailed explanation as to how the contractor has misrepresented its product in the remarks field to alert pre-award acquisition specialists to require additional information from that supplier upon receipt of a quote on future procurements.

(iii) Placing the contractor on the Defense Contractor Review List (DCRL) as Special Attention Reason Code Q will ensure the contractor will not receive any Automated Contract Evaluation

System (Auto Eval) awards without a manual review by the second look team. In most cases, the second look team will reject the file from Auto Eval and refer to the manual acquisition specialist.

(c) Recourse when adequate traceability documentation not provided.

(1) If traceability documentation is requested prior to award and the offeror fails to provide sufficient information within the time frame requested, the pre-award acquisition specialist shall consider the offer technically unacceptable and make award to the offeror next in line for award.

(2) If traceability documentation is requested after award and the contractor fails to provide sufficient information within the time frame requested, this is grounds for cancellation of the award.

(3) If it is not in the Government's best interest to cancel the award, the pre-award acquisition specialist may contact the product specialist to recommend that product verification testing be invoked in accordance with the clause at 52.246-9004, Product Verification Testing (PVT).

(d) Assessing adequacy of traceability documentation.

(1) The contracting officer, at his or her sole discretion, determines the acceptability and sufficiency of traceability documentation or any other evidence of product authenticity. Therefore, the contracting officer may request whatever additional documentation he or she deems reasonably necessary to support a determination that the identity of the offered product and its manufacturing source has been adequately documented.

(2) When reviewing traceability documentation, the contracting officer shall read the entire document and check to ensure—

(i) The letterhead is correct and/or unaltered;

(ii) Signatures are legible and provided by authorized personnel;

(iii) There is no evidence of alteration by cutting and pasting/white out/scanning (see paragraph (e) of this section);

(iv) There are no missing documents;

(v) Dates are current;

(vi) Phone numbers are accurate;

(vii) Font styles are consistent;

(viii) There are no handwritten annotations on a typed document;

(ix) Line items reflect correct part numbers and quantities;

(x) Documents do not appear to have been reproduced repeatedly;

(xi) Documents do not have shaded areas, which may indicate information was covered up and the document recopied;

(xii) Correct division of manufacturing source is cited; and

(xiii) There are no disclaimers in the document (e.g., stating parts cannot be traced to the actual manufacturer or to any specific revision of the part, etc.).

(e) Unacceptability of redacted traceability documentation.

(1) When a pre-award or post-award acquisition specialist requires an offeror or contractor to submit traceability documentation, the acquisition specialist shall specifically require that the traceability documentation be unredacted. The offeror or contractor may not obscure or delete prices, dates, or any other information from traceability documents. The acquisition specialist shall reject traceability documentation that has been redacted.

(2) If any objections are raised, the acquisition specialist shall inform the offeror or contractor that failure to provide traceability documentation that is deemed acceptable by the contracting officer is a cause for rejection of its quote or offer or cancellation of its award and that redacted traceability documentation is unacceptable.

(3) The acquisition specialist may further advise the contractor that it may stamp its documentation as proprietary to protect it from release.

(4) In all cases, any traceability documentation provided by offerors or contractors shall be treated as proprietary information.

**11.304-90 Solicitation provision and contract clauses for critical safety items (CSIs) and level I items.**

(a) Insert the clause at 52.211-9005, Conditions for Evaluation and Acceptance of Offers for Critical Safety Items, in all solicitations and awards for critical safety items; unless a waiver or exemption applies (see 11.304-90(d)).

(b) Insert the clause at 52.211-9006, Changes in Contractor Status, Item Acquired, and/or Manufacturing Process/Facility – Critical Safety Items, in all solicitations and awards for critical safety items; unless a waiver or exemption applies (see 11.304-90(d)).

(c) Insert the clause at 52.211-9007, Withholding of Materiel Review Board (MRB) Authority – Critical Safety Items, in all solicitations and awards for critical safety items; unless a waiver or exemption applies (see 11.304-90(d)).

(d) Waivers and exemptions to CSI policies and clauses.

(i) The DLA Aviation technical oversight office (TOO) is authorized to maintain and disseminate all information regarding exemptions/waivers from CSI policies and clauses. The TOO will maintain this information and provide electronic access on their Web site

(ii) Service basic ordering agreements (BOAs) may be used without issuing modifications to incorporate the DLA CSI clauses (52.211-9005, 52.211-9006, and 52.211-9007).

(e) Insert the clause in full text at 52.211-9087, Level I Material Marking (DLA Maritime-Norfolk), in DLA Maritime-Norfolk firm-fixed-price solicitations and awards above the simplified acquisition threshold for level I items.

(f) Insert the clause in full text at 52.211-9088, Level I Pressure Boundary Markings (DLA Maritime-Norfolk), in DLA Maritime-Norfolk firm-fixed-price solicitations and awards below the simplified acquisition threshold for level I items.

(g) Insert the clause in full text at 52.211-9089, Level I Fastener Identification (DLA Maritime-Norfolk), in all DLA Maritime-Norfolk firm-fixed-price solicitations and awards for level I fasteners.

**11.304-91 Solicitation provisions and clauses for Government surplus material.**

(a)(1) When the clause at FAR 52.211-5 is used, the contracting officer shall insert the provision at 52.211-9003, Conditions for Evaluation of Offers of Government Surplus Material, and the clause at 52.211-9000, Government Surplus Material, in solicitations, including when the acquisition is conducted using FAR Part 12; unless offers of surplus material will not be considered pursuant to 11.304-91(b), in which case the contracting officer shall not insert the provision and clause in the solicitation.

(2) When a long-term contract (LTC) is contemplated, the contracting officer shall insert the provision at 52.211-9003 and the clause at 52.211-9000 in the solicitation.

(i) If an offer of surplus material is received in response to a solicitation for an LTC, the contracting officer shall consider whether the quantity of surplus material meets the requirements of the solicitation. If so, the contracting officer shall consider the offer to be responsive to the solicitation. If not, the contracting officer shall reject the offer as not conforming to the solicitation and shall forward a summary of the offer to the inventory manager.

(ii) The inventory manager shall take appropriate action in the best interest of the Government, based on the inventory manager's judgment; such as initiating a separate, fixed-quantity purchase request, if warranted by the agency's supply position.

(iii) After award of an LTC, the contractor has the discretion to propose the use of surplus material in contract performance, subject to contracting officer approval (see FAR 52.211-5). If the contractor proposes to use surplus material, the contracting officer shall provide a copy of the clause at 52.211-9000 for completion by the contractor at that time. The contractor is not excused from timely performance due to the time required to evaluate the surplus material.

(3) When acquiring DLA Aviation items that have been identified as life support items, the contracting officer shall insert the clause at 52.211-9000 with its Alternate I in solicitations.

(4) When an offeror of surplus material is the successful awardee, the contracting officer shall insert the clause at 52.211-9000 in the award.

(b) Insert the provision at 52.211-9009, Non-Acceptability of Government Surplus Material, in solicitations when offers of surplus material will not be considered (see 11.302(b)).

**11.304-92 Clauses for retention of traceability documentation, item substitution, and shelf-life items manufacturing restrictions**.

(a) Insert the clause at 52.211-9014, Contractor Retention of Traceability Documentation, in all solicitations and awards for supplies, including when acquisitions are conducted using FAR Part 12 Acquisition of Commercial Items; except that, in the event of any inconsistency, the clauses prescribed at 11.304-90(a) – (c) take precedence for critical safety items.

(b) The contracting officer shall use the clauses at 52.211-9022, Superseded Part-Numbered Items and 52.211-9023, Substitution of Item After Award , in solicitations and awards for part-numbered items, including when acquisitions are conducted using FAR Part 12.

**11.304-93 Solicitation provisions and contract clauses.**

(a) Use clause 52.211-9024, Shelf-Life Items Manufacturing Restrictions, when shelf-life requirements are specified in the purchase order text (POT). Do not use when procuring FSG 91, Fuels, Lubricants, Waxes and Oils. Use clause 52.211-9024 Alternate I, Shelf-Life Items Manufacturing Restrictions for Federal Supply Group (FSG) 91, Fuels, Lubricants, Waxes and Oils, when procuring FSG 91 and shelf-life requirements are specified in the POT.

(c)(2) Insert the provision 52.211-9042, Additional Documentation Requirements for Source Approval Request – Critical Application Item and Critical Safety Item, in solicitations for critical application items or critical safety items when 52.217-9002 is used. Note its use for FSCs 1560, 1670, and 1680.

(e) Insert the provision at 52.211-9071, Required Source Approval (Logistics Command (LOGCOM) Depot Level Repairable (DLR) – DLA Land and Maritime), in solicitations for DLA Land and Maritime chain acquisitions for depot level repairable items managed by LOGCOM, when restricting acquisitions to approved sources.

## SUBPART 11.4 – DELIVERY OR PERFORMANCE SCHEDULES

*(Revised October 20, 2015 through PROCLTR 2015-12)*

**11.401 General.**

In the absence of locally coordinated operating procedures, contracting personnel will not change production leadtimes or customer required delivery dates without prior coordination with the inventory manager and industrial specialist.

**11.401-90 Responsibilities.**

(a) General.

(1) The pre-award or post-award acquisition specialist shall use existing reports and tools to determine prioritization of workload and appropriate escalation to next higher level, consistent with customer need date and attainment to plan (ATP).

(2) Executing contract modifications to expedite delivery and any other contractually-binding decisions made by the acquisition specialist are subject to contracting officer approval if the acquisition specialist has no warrant. No contracting officer approval is required to respond to status requests or to

make non-binding agreements with contractors, such as obtaining an informal agreement that the contractor will attempt to expedite delivery.

(3) Policies and processes in Director, DLA Acquisition (J7) cross-process policy memoranda 05-001, Creating and Maintaining Externally Viewed Item Notes, and 05-002, Expedite Policy and Processes, apply. See 42.1190 regarding contract acceleration/status requests.

(b) Pre-award.

(1) Reports and tools. The open purchase request (PR) report lists all PRs received and includes the priority group for workload prioritization. The PR prioritization report provides lists of open and blocked PRs, summarized by priority groups, and includes PRs that exceed the award date. These reports are available on Business System Modernization (BSM) on-line help at https://dolh.bsm.dla.mil; see procurement, procurement job aids, reports.

(2) Anticipated delays in award.

(i) The pre-award acquisition specialist may become aware of an anticipated delay in award, such as when a vendor advises there will be a delay in providing a quote/offer. In such cases, the pre-award acquisition specialist shall document the following information on the text tab of the SAP purchase request (PR) in the header note text block:

(A) Date the information was entered in SAP PR;

(B) Reason the delay in award is anticipated;

(C) Approximate amount of time award is expected to be delayed;

(D) Status or resolution; and

(E) Name and phone number of pre-award acquisition specialist.

(ii) DLA direct items. Supply planners use the information in the text tab of SAP PR in the header note text block to create external SAP material master item notes on when required, such as when a customer account specialist (CAS) asks for status or requests an expedite.

(iii) Customer Direct items. A customer account specialist will contact the pre-award acquisition specialist directly for status. The customer account specialist will then annotate the sales order item notes with the results of the research or expedite request. (For customer direct items, external SAP material master item notes do not require updating.)

(c) Post-award.

(1) Reports and tools. Delinquency reports are available for both legacy and BSM acquisitions (i.e., the standard automated material management system (SAMMS) contract delinquency report (USPF-38) and the BSM post-award delinquency report). The post-award workload prioritization procurement business rule can be used as a guide when practical. Additional resources may be found at BSM on-line

help at https://dolh.bsm.dla.mil (procurement, procurement job aids, reports, and procurement R2.2 release notes).

(2) Anticipated delays in delivery.

(i) The post-award acquisition specialist may become aware of an anticipated delay in delivery, based on information from the contractor, the post-award delinquency report, or other sources. In such cases, the post-award acquisition specialist shall document the following information on the SAP purchase order (PO) in the delivery text block:

(A) Date the information was entered in SAP PO;

(B) Reason the delay in delivery is anticipated;

(C) Approximate delay anticipated;

(D) Status or resolution; and

(E) Name and phone number of post-award acquisition specialist.

(ii) DLA direct items. Supply planners use the information in the SAP PO delivery text block to create external SAP material master item notes on DLA direct items when required, such as when a customer account specialist asks for status or requests an expedite.

(iii) Customer direct items. A customer account specialist will contact the post-award acquisition specialist directly for status. The customer account specialist will then annotate the sales order item notes with the results of the research or expedite request. (For customer direct items, external SAP Material Master Item Notes do not require updating.)

**11.401-91 Obsolete components or materials.**
Subject to contracting officer approval if the pre-award acquisition specialist has no warrant, the pre-award acquisition specialist shall insert the clause at 52.211-9012 in solicitations and contracts when there is potential for obsolete components or materials, either based on specific historical data, or when a firm requests this clause due to possible difficulties with suppliers. If the pre-award acquisition specialist becomes aware of an anticipated delay in award, see 11.401-90(b)(2)(i). If the post-award acquisition specialist becomes aware of an anticipated delay in delivery, see 11.401-90(c)(2)(i). See 11.401-92 regarding potential alternative sourcing strategies.

**11.401-92 Potential alternative sourcing strategies.**
To resolve order fulfillment delays, the customer account specialist will research possible sources of support, in accordance with Director, DLA Acquisition (J7) memorandum 05-002, Expedite Policy and Processes. If contacted by a supply planner or customer account specialist, the post-award acquisition specialist, in coordination with the product specialist and industrial specialist, as applicable, may recommend consideration of one of the potential alternative sourcing strategies identified below, if appropriate. These potential alternatives would be in addition to any other actions being considered in accordance with policies at 11.401-90, 43.103(a)(90)(1)(i), and 49.101(c).

(a) If any vendor was recently removed from the purchase text acquisition identification description, an effort will be underway to facilitate that vendor's addition back into the purchase order text in accordance with 11.302-90(a)(1). If this is the case, determine if the projected time required for evaluation is less than the anticipated order fulfillment delay.

(b) Determine if the NATO logistics stock exchange (NLSE) MIPR process is appropriate for use. (See BSM on-line help at https://dolh.bsm.dla.mil, procurement, procurement job aid, NLSE.)

**11.402 Factors to consider in establishing schedules:**

(a)(1) The pre-award acquisition specialist, in coordination with supply planners and product specialists, shall ensure that delivery or performance schedules are realistic and meet time-phased inventory plan (TPIP)/customer requirements. When establishing a contract or delivery schedule, consideration shall be given to applicable factors in accordance with FAR.

(2) When establishing a contract or delivery schedule, consideration shall be given to applicable factors in accordance with FAR 11.402(a) which include urgency of need, industry standards, market conditions, and transportation time. Any contractually-binding decisions made by the pre-award acquisition specialist are subject to contracting officer approval if the pre-award acquisition specialist has no warrant (see 11.401-90(a)(2)). Contracting officers shall ensure that delivery or performance schedules are realistic and meet customer requirements.

(a)(S-90) When it is determined that a customer's need date may require a shorter delivery period than initially projected, the supply planner and the customer account specialist will follow the policies and processes for expediting delivery in Director, DLA Acquisition (J7) memorandum-002 dated June 13, 2005. As part of the investigation and resolution process, the supply planner or the customer account specialist may ask the acquisition specialist to attempt to expedite delivery. When expedited delivery is needed, follow the mandatory procedures in PGI 11.402(a)(90)

**11.402-90 Time definite delivery (TDD) standards.**

(a) Contracting officers must ensure that planned direct vendor delivery (DVD) contracts comply with TDD standards for requisition processing to the maximum extent practicable in accordance with DoD Materiel Management Regulation DoD 4140.1-R, Appendix 8.

(1) When cost considerations for obtaining TDD timeframes prove not to be justifiable or are impractical, contracting officers should consider other alternatives such as obtain and use DVD support for only those lower requisition priorities for which TDD can be met and use stock support for high priority requisitions, and contract for stock only.

(2) These business decisions must be fully supported by an economic analysis, business case analysis or vendor stock retention model analysis, where applicable, in accordance with PROCLTR 03-01.

(b) In certain cases, the inclusion of a "desired and required time of delivery" provision may be helpful in determining the costs as well as the vendors' ability to deliver rapidly.

(1) Consideration must be given to other factors including, but not limited to, those in the FAR reference listed above, in conjunction with the VSRM when developing the required BCA. There are suppliers that consistently deliver a high percentage of their contract line items rapidly and delivery may exceed TDD standards.

(2) If the additional time results in reduced prices and improved supply availability and readiness, this may be a situation where DVD is appropriate. In such cases, the analysis and determination should be well documented.

**11.402-91 Appropriate exclusions for applying TDD standards.**

(a) There are legitimate exceptions to the policy on TDD standards for DVD contracts.

(1) Contracting officers should recognize the following appropriate exclusions from TDD standards:

(i) Planned DVD contracts for kits used by maintenance depots;

(ii) Planned DVD items for commercially available items, specifically household or general purpose items only where the vendor can support a contract delivery date not more than 3 days greater than the TDD total order-to-receipt time (TORT);

(iii) Planned DVD contracts for a specific customer requiring support that is less demanding than the TDD standards; and/or

(iv) Planned DVD contracts for part numbered items or those parts with no NSN.

(2) DVD contracts/orders for non-stocked items (acquisition advice code (AAC) "J" which is not stocked, centrally procured non-stocked items). Although TDD guidelines do not apply to this type of support, expedited delivery is still a critical requirement for non-stocked high priority requisitions. DVD arrangements must recognize urgency of need, item criticality, and weapon system coding, if applicable. Both administrative lead time and procurement lead time must be minimized.

(3) The above exclusions do not apply to support for items assigned AAC D (which is a DoD integrated materiel-manager (IMM) stocked and issued item ) and AAC Z (which is an insurance/numeric stockage objective item). These items must meet appropriate TDD pipeline standards. DLA customers will expect support for planned DVDs as quickly as they are supported from stock. The TDD pipeline standards are DoD components targets that shall be met or improved upon whenever physically and economically feasible. More stringent time standards may be adopted for individual pipeline segments controlled by DLA when subsequent savings in time and improved service can be achieved.

(4) It is recognized that several Defense supply centers' (DSC) order processing systems currently use issue priority group (IPG) codes in assigning delivery dates, not category requisitions (categories 1-3) referenced in DoD 4140.1-R. DLA expects that this condition will be corrected through business system modernization efforts. Due to anticipated time and costs required to update current systems, DSCs are authorized to continue using IPG codes in assigning delivery dates until business system modernization changes are finalized.

**11.402-92** Materiel management review of DVD items. Defense Logistics Agency Instruction (DLAI) 2112, Subject: Procedures for Initiating and Monitoring Planned Customer Direct Long-Term Contracts (at http://www.dla.mil/issuances/Pages/default.aspx) establishes the roles, responsibilities and processes for developing, awarding, and monitoring planned customer contractual arrangements for DLA.

**11.402-93 DVD shipments in the DoD organic distribution system.**
The policy of this agency is that DVD arrangements will fully support DLA's asset visibility objectives and initiatives. DVD shipments must meet requirements of the Defense Transportation System (DTS) when those commercial shipments have to be diverted through DTS entry points. To support in transit visibility, including the customer's ability to track and trace DVD shipments, DVD contracts shall comply with guidance provided in 52.211-9010. To simplify vendor compliance with this requirement, vendors shall be strongly encouraged to implement the Agency's automated tool, the distribution planning and management system (DPMS) on a voluntary basis. The Agency goal will be to implement DPMS across the board to all vendors.

**11.402-94 Customer direct post-award monitoring and correction actions.**

(a) As stated in FAR 42.1103, the contractor is responsible for timely contract performance, however, the post-award acquisition specialist shall maintain surveillance of contractor performance as necessary to protect the interest of the Government. The post-award acquisition specialist must aggressively monitor customer direct contractor performance and take appropriate and immediate action to correct contracts that are not complying with TDD standards.

(b) The post-award acquisition specialist shall follow the policies at 11.401-90(c)(2)(i) to update delivery status. The post-award acquisition specialist shall take appropriate contract administration actions in accordance with FAR 42.302 and 43.204, if contract delinquency occurs.

(c) Any contractually-binding decisions made by the post-award acquisition specialist are subject to contracting officer approval if the post-award acquisition specialist has no warrant (see 11.401-90(a)(2)).

(d) The long term contract (LTC) database shall be used as a tool to monitor and obtain visibility of expiring and/or expired contract delivery dates (CDD). The DPMS may also be used to track and monitor contractor delivery performance.

(e) See 11.401-92 regarding potential alternative sourcing strategies.

**11.404 Solicitation provisions and contract clauses.**

(a)(S-90) Supplies or services.

(2) Solicitation provisions and contract clauses – delivery and/or ordering.

(i) Reduced delivery schedule – waiver of first article testing requirements. Insert the clause at 52.211-9019, Reduced Delivery Schedule Applies, when first article testing requirements are waived, in accordance with 9.306(f)(2).

(iii) Time of delivery – direct vendor delivery. Insert 52.211-9037, Time of Delivery – Direct Vendor Delivery (DVD), in solicitations/contracts for long term contracts with planned DVD support for customer direct deliveries.

(vi) Preparation for delivery – long term contracts. Use clause 52.211-9094, Preparation for Delivery, in long term contracts, commercial and non-commercial, unless using packaging sheets or specific packaging codes.

(3) Solicitation provisions and contract clauses for bulk lubricating oil. Insert the clause at 52.211-9032, Shipping and Routing, in solicitations and awards for bulk lubricating oil to include engine, grade OE/HDO 40, MIL-L-2104E.

## SUBPART 11.5 – LIQUIDATED DAMAGES

*(Revised October 20, 2015 through PROCLTR 2015-12)*

### 11.502 Policy.

(d) Recommendations concerning the remission of liquidated damages shall be transmitted to the General Counsel.

## SUBPART 11.6 – PRIORITIES AND ALLOCATIONS

*(Revised June 15, 2015 through PROCLTR 2015-09)*

### 11.602-90 General.

(a) Executive Order (E.O.) 12742 National Security Industrial Responsiveness dated January 18, 1991 implements Section 468 of the Selective Service Act (SSA). It allows for placing orders for the prompt delivery of articles or materials in support of the Armed Forces. This E.O. provides that all regulations and delegations made under the Defense Production Act (DPA), which includes the Defense Priorities and Allocations System (DPAS) regulation, remain in effect. Therefore, whenever the DPA lapses, the DPAS will continue in effect under authority of the E.O. and the SSA as the basis for rating DoD contracts to insure preferential scheduling and priority treatment by contractors.

(1) The Director, DLA Acquisition (J7) will re-delegate DPAS authority to Commanders of DLA field procuring activities.

(2) Commanders of DSCs will:

(i) Issue written delegations assigning the DSC primary officer and secondary DPAS officers as necessary or as recommended by the primary DPAS officer;

(ii) Re-delegate the authority to designate secondary DPAS officers to the primary DPAS officer when appropriate.

(c) The rating authority continued in effect under Executive Order (E.O.) 12742 also extends to food resources, which are operational rations, in support of troops in accordance with the memorandum of understanding between the Departments of Agriculture and Commerce and the determination made by the Under Secretary of Defense for Acquisition and Technology.

**11.603 (f) Rating authority criteria.**

(1) Department of Commerce (DoC) delegation 1 to 15 Code of Federal Regulations (CFR) 700 specifies that this rating authority may not be used to support procurement of end items that are commonly available in commercial markets for general consumption, do not require major modification when purchased for approved program use, and are readily available in sufficient quantity so as to cause no delay in meeting approved program requirements.

(i) This restriction applies only to end items and is not applicable to repair parts, spares and components which by their nature do not stand alone in their intended use but are incorporated into end items. On this basis, the DLA inventory control points (ICPs) cannot rate peacetime buys of commercial end items, unless they are not available in a timely manner which might cause an adverse impact in meeting approved program requirements.

(ii) The ICPs must ensure that the DPAS officer reviews contracts for end items to verify proper ratings are applied.

(iii) End items with surge and sustainment requirements for may qualify for rating eligibility even though peacetime requirements don't because of timely delivery requirements for emergencies or contingencies.

(iv) When contracts have a combination of commercial and non-commercial end items on the contract, they need to specify which items are rated. A commercial item is defined in FAR 2.101.

(2) Under the DPAS regulation a person is not required to place a priority rating on an order for less than $50,000 or one half the FAR simplified acquisition threshold, whichever is larger, provided that delivery can be obtained in a timely fashion without the use of the priority rating (15 CFR 700.17(f)). This does not preclude a person from rating an order under $50,000 if he chooses to do so to insure timely delivery. This threshold would also apply to the mandatory priority rating extension requirements for contractors in FAR 11.603(d)(2).

(3) Orders for eligible items placed against the various long term contracting vehicles and new business practice prime vendors/virtual prime vendors should be rated and contain a required delivery date. As a result, these orders will be considered a rated order as of the date received by the supplier, in accordance with 15 CFR 700.12(b). The basic contracting vehicle may have a rating on it, but because it does not have a specified delivery date, it is not technically considered a rated contract. It should contain a statement that orders placed against this contract will be considered rated orders. See the clause in 11.604.

**11.603-90 Procedures for placement of contracts when normal solicitations fail.**

(a) The following procedures, in consonance with the DPAS regulation (15 CFR 700), shall apply when industry fails to adequately respond to solicitations for supplies needed to support the Military Services as prescribed in FAR 11.603.

(2) To be reasonably certain that the companies upon which rated orders are placed unilaterally may not legally reject the orders (see DPAS 15 CFR 700.13(b) and (c)) and to assure that the placement of a rated order is practicable, rated orders issued unilaterally shall comply with the following:

(i) A rated order shall not be issued unilaterally to a company when a reasonable doubt exists as to its capability to produce an item.

(ii) A plant survey should be made by a Defense Contract Management Agency (DCMA) field office to determine that the company has the production capability, the financial capability, and the facilities to produce the item. The refusal of a company to permit such a survey, however, shall not alone be the basis for issuing a rated order.

(iii) The contracting office's decision in such cases will be based on the best information obtainable.

(3) The rated order that is issued unilaterally results in a "forced" action which may generate complaints or objections from suppliers. Therefore, extreme caution is required to assure equitable distribution of the orders to selected individual firms. Within the limits prescribed in subparagraph (2) above, the quantity to be included in each rated order and the number of companies to be selected shall be determined in accordance with the following criteria:

(i) When a production line must be established to produce the specific item, the rated order quantity shall not be less than a minimum economical production run.

(ii) When the total contract requirement represents a minimum economical production run for only one (or a few) of the capable producers, the rated order(s) shall be issued to the company or companies considered the most capable and on which the impact on production will be least adverse.

(iii) When there are a large number of companies capable of producing the total required quantity, the most qualified companies shall be selected. The quantity placed with each company shall not exceed 20 percent of each company's total capability to produce a like item during the production period, until the total quantity is covered. The 20 percent restriction may be exceeded when a company so desires. (Note: The 20 percent is applied against the company's total capability to produce the like or similar item, irrespective of whether the company has multiplant or single plant production facilities.)

(iv) When there are relatively few companies capable of producing the items, the total quantity shall be allocated among all qualified producers, regardless of the percentage of capacity utilized.

(v) Every effort shall be made in each case to spread the requirement in such a way as to minimize the overall impact on the affected industry.

(4) The price data for rated orders issued unilaterally shall be developed using the latest published industry pricing data or the last award price, adjusted as necessary to reflect current market pricing conditions. Further adjustment of these prices may be necessary to meet a quality producer's standard, or to provide for a differential for a job shop's cost as compared with mass production costs. It should be noted that when pricing rated orders, the applicable requirements of FAR and the DFARS pertaining to cost or pricing data shall be followed.

(6) Requirements for contract review and approval by the Director, DLA Acquisition (J7).

(i) The requirements of 1.690-6 for review and approval prior to award of certain type contracts are waived for contracts resulting from rated orders that are issued unilaterally. However, such contracts for which preaward review has been waived shall be submitted to DLA HQ for a postaward review when called for by J73.

(ii) Letter contracts still require authorization by DLA HQ in accordance with 1.690-6(g).

(7) A copy of all rated orders issued unilaterally will be forwarded to DLA HQ, attention: J74, at time of issue.

(8) There may be instances when suppliers refuse to accept rated orders issued unilaterally. In such situations, negotiations shall be conducted at the level of the chief of the contracting office to determine whether some accommodation can be reached. If, in the judgment of the contracting office, the DLA requirement is valid and no agreement was reached, the contractor's written refusal, citing reasons, together with a completed DoC Form BXA 999, Request for Special Priorities Assistance, shall be forwarded through established priorities assistance channels to DLA HQ, attention: J74, for action. It is emphasized that DoC may not direct any company to accept a rated order when the company has proper grounds for refusing the order. Each DLA contracting office will assure that the actions and determinations described, including a physical plant survey (for exception see subparagraph (2) above) by a DCMA field office, have been accomplished prior to requesting DLA HQ sponsorship of a request for special priorities assistance to the DoC.

**11.604-90 Contract clause.**

(b) Use 52.211-9053, Expedited Handling Shipments, in all Simplified Acquisitions including those using Part 12 procedures and large purchase solicitations and contracts that provide for direct vendor deliveries.

## SUBPART 11.7 – VARIATION IN QUANTITY

*(Revised June 15, 2015 through PROCLTR 2015-09)*

**11.701 Supply contracts.**

(a) DLA Energy is authorized to deviate from the requirements at FAR 11.701(a) and (b) and the clause at FAR 52.211-16. DLA Energy may express the permissible variation in quantity of supplies as a rail car, not a percentage.

**11.701-90 Procedure for closing contracts with inconsequential amounts undelivered.**
The contracting officer is authorized on a case-by-case basis to consider a contract completed when an inconsequential amount not falling within the variation in quantity clause remains undelivered or, in the case of brand name subsistence or less than carload lots (LCL) of perishable subsistence items, the undelivered amount is no longer required by the using activity, provided all of the following conditions exist:

(a) Provision for payment is on a unit price basis, and the contractor advises that no further deliveries will be made;

(b) Payment is made for the units actually received;

(c) The undelivered portion is inconsequential, or in the case of brand name subsistence or LCL perishable subsistence items, the undelivered amount is no longer required by the using activity, and the cost of executing a supplemental agreement (including, but not limited to, taking termination action) is excessive in relation to the benefits to the Government from such action; and

(d) The contracting officer includes in the file a memorandum stating that no rights of the Government are being waived by this procedure and a termination for default is not warranted. The contracting officer shall execute and distribute a standard form (SF) 30, Amendment of Solicitation/Modification of Contract, as an administrative change to the contract to deobligate funds. The change shall indicate that the above criteria have been met and the contract is considered complete, and shall reference the contractor's communication which advised that no further deliveries will be made.

**11.703 Contract clauses.**

(a) DLA Energy is authorized to use clause 52.211-9F16, Variation in Quantity (DEVIATION), in lieu of FAR clause 52.211-16. Variation in Quantity, in fixed-price, indefinite-delivery type solicitations and contracts for coal. See 11.701(a).

(b) Delivery of Excess Quantities of $250 or Less. Unless there is a valid reason to the contrary, the clause set forth in FAR 52.211-17 shall be included in all contracts, purchase orders, and Blanket Purchase Agreements.

**11.703-90 Aerial photographic film.**
Use 52.211-9050, in solicitations, purchase orders, and negotiated contracts for aerial photographic film, FSC 6750.

## SUBPART 11.90 – PRODUCT PHASE-OUT

*(Revised April 19, 2013 through PROCLTR 2013-43)*

**11.9001 General.**

(a) *Notification of product phase-out*. Production phase-out of DLA-managed critical application items by the manufacturer could jeopardize the Government's ability to provide continued support for weapon systems or other vital programs. Therefore, the contracting officer shall ensure that the contractor is advised in the event that manufacturing phase-out or discontinuance of production of such items is contemplated, that the contractor is required not only to publish the discontinuance in the Government-Industry Data Exchange Program (GIDEP) (refer to www.gidep.org/), where feasible, but also to provide advance notice to the applicable supply center diminishing manufacturing suppliers and material shortages (DMSMS) point of contact, as well as to the DLA DMSMS integrated support team (IST).

(b) Solicitation provisions and contract clauses.

(1) Use clause 52.211-9052, Notification to Government of and Contemplated Production Phase-out, in solicitations and awards for items designated as having "critical application."

(2) Relief From Diminishing Manufacturing Sources or Material Shortages Components (F-16 Program). Insert the clause at 52.211-9070, Relief From Diminishing Manufacturing Sources or Material Shortages Components (F-16 Program), in solicitations and awards for the F-16 program, when diminishing manufacturing sources or material shortage components are applicable.

# PART 12 – ACQUISITION OF COMMERCIAL ITEMS

*(Revised November 6, 2014 through PROCLTR 2014-09)*

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## SUBPART 12.1 – ACQUISITION OF COMMERCIAL ITEMS – GENERAL

### 12.102 Applicability.

(a)(90) Part 12 is mandatory for the acquisition of commercial items, except for the exemptions at FAR 12.102(e). There shall be appropriate coding in both EBS Eprocurement and EBS Non-EProcurement environments to indicate whether an item is or is not a commercial item. Once the KO has determined that the item is commercial, the acquisition specialist will provide the appropriate technical specialist with the commerciality documentation so that the commerciality coding can be updated in the electronic system for future procurements.

(a)(91) When an acquisition is conducted under the “AbilityOne” (see FAR Subpart 8.7), use of Part 12 is discretionary but strongly encouraged for commercial item acquisitions. The decision whether to conduct “AbilityOne” acquisitions using Part 12 can be based on cost-effectiveness, such as automated systems capabilities or other administrative considerations.

(90)(1)(i) Policy and guidance.

(A) The contracting officer, not the offeror or contractor, has the individual authority and responsibility to determine if an item or service meets the definition of "commercial item" at FAR 2.101.

(B) The statutory preference is to support commercial acquisition, unless a commerciality determination is clearly inappropriate. Contracting officers should consider whether applying commercial acquisition procedures would provide marketplace advantages resulting in lower overall costs to the Government; such as, for example, streamlined contractor proposal procedures, increased efficiencies for DLA, reduced customer wait times, increased buying leverage by joining a larger customer base, or access to improved acquisition strategies such as commercial distribution systems, contractor support services, or continuous upgrades.

(C) Contracting officers should not be unnecessarily restrictive in interpreting the commercial item definition. The normal sales pattern of an item could be that it is sold infrequently or only to a specialized market segment, and yet the item could still be considered commercial.

(D) Contracting officers must ensure that inappropriate factors are not considered when determining commerciality. A determination of commerciality is separate and independent from a determination of price reasonableness. Concerns about the future ability to determine offered prices fair and reasonable do not factor into the decision as to whether a product or service meets the commercial item definition.

(E) Issues related to quality or item criticality are also not a basis for determining commerciality. The fact that the Government has a different application for an item than the commercial application does not necessarily mean the item cannot be considered commercial. The Government must, however, minimize risk through such means as the application of quality assurance terms and conditions in the contract. For this reason, any contract requirements that have previously applied to an item should never be automatically relaxed or removed when an item is determined commercial. This is especially true for requirements involving issues such as quality, configuration control, preservation, packing, packaging, or marking. Therefore, prior contracting requirements shall not be changed unless market research has confirmed a change is appropriate and all procedures/controls for making such a change have been followed (e.g., coordination with the product specialist).

(F) The contracting officer must be able to demonstrate that the determination is reasonable; and the determination must be documented, consistent with the size and complexity of the acquisition. If a commerciality determination is challenged, GAO considers the broad statutory and regulatory framework for defining a commercial item, the requirements of a specific solicitation, the substantive features of the item proposed, and the agency's contemporaneous evaluation and source selection record.

(ii) The contracting officer makes the final determination of commerciality but is required to request and consider the advice of appropriate specialists (see FAR 1.602-2(c)). DCMA personnel can also provide assistance in obtaining information to help support the contracting officer's determination. If a requirement includes NSNs managed by another buying activity, the contracting officer must request and consider the advice of technical specialists at the managing activity. If technical advice from the managing activity is inconsistent with technical advice from the buying activity, the contracting officer must determine the reasons for the discrepancy and document how it was resolved. The contracting officer may make a determination of commerciality on the basis of that recommendation, unless there is

some reason to question it. Buying activities are only required to conduct market research to the extent "appropriate to the circumstances," in accordance with FAR and DLAD 10.001-90.

(2) To determine that an item is commercial pursuant to the definition, the contracting officer shall obtain appropriate documentation as necessary, such as commercial product literature, technical opinion as to the effect of a modification, etc. The following guidance may be used when applicable with regard to the noted subsections of the definition:

(i) Subsection (2). For items that upgrade frequently, through product updates, model changes, and product improvements (for example, new versions of software), buying activities could demonstrate that the item will be available in time to satisfy the Government requirement by, for example, obtaining an announcement documenting when the new product will be available to the public.

(ii) Subsections (1) and (3). When making a determination of the commercial item definition, risk to the Government is lowest if the buying activity can obtain sufficient technical documentation to demonstrate direct traceability from the modified item. If that is not possible, the buying activity may attempt to demonstrate commerciality by documenting that the offeror or contractor manufactures the Government-unique items on an integrated production line, with little differentiation between the commercial and Government items. Alternatively, the buying activity may attempt to demonstrate commerciality by documenting that the Government-unique item and comparable commercial items have similar characteristics and are made with similar manufacturing processes.

(A) To support a representation that an offered item, the commercial item definition, the offeror or contractor must demonstrate that a modification is of a type customarily available in the commercial marketplace. A modification can be a "major" modification. If an offeror or contractor claims their item meets the definition, the buying activity must conduct appropriate market research to confirm this. Modifications made for the purpose of meeting Federal Government requirements (i.e., Government-unique modifications) are not, by definition, "customarily available in the commercial marketplace."

(B) The offeror or contractor must demonstrate that a modification is a minor modification made for the Government. If an offeror or contractor claims a modification is minor, the buying activity must conduct an engineering analysis and/or exercise technical judgment to confirm this claim. This portion of the definition is intended to address modifications such as Government-unique paint color; special packaging; ruggedization; and minor changes in length, diameter, or headstyle of fasteners. In making a determination whether a modification is minor, the buying activity should consider the technical complexity of the change and the degree of risk associated with it. Risk can be gauged by the extent to which a change affects the contractor's operation and the price impact of the change. If the price of a modified item is significantly more than the price of the commercial item, this may indicate that the modification involves a substantial amount of risk and may not be minor.

(iii) Subsections (5) and (6). Services acquired by the Government do not have to be identical to those provided to commercial customers, if there are sufficient common characteristics between the commercial services and those required by the agency/activity. The established market price does not have to be published or written so long as it can be ascertained and documented as required by the definition. It is a current price that is established in the course of ordinary and usual trade between buyers and sellers free to bargain and that can be substantiated by data from sources independent of the offeror. A price is based on a catalog or market price if the service being purchased is sufficiently similar to the

catalog-priced or market-priced commercial service to ensure that any difference in prices can be identified and justified without using cost analysis.

(iv) Subsection (8). An item does not have to be developed at private expense to be commercial; except that nondevelopmental items must have been developed exclusively at private expense to be considered commercial. Even if the Government paid for development of an item, or if an item has a military origin, a commercial market can subsequently develop for that item. The issue of who paid for development should factor into the contract negotiations but is not part of the commercial item determination.

(3) Potential indicators of commerciality. The following guidance addresses some conditions that buying activities may consider as indicators that an item or service is potentially commercial. In most cases, buying activities will need to conduct additional market research to determine commerciality when these conditions exist.

(i) Commercial sales history.

(ii) Notices or brochures announcing new products or services.

(iii) Listing in catalogs or brochures.

(iv) Distributors. The existence of distributors may indicate an item or service is commercial. However, the contracting officer must determine the nature of the relationship between the manufacturer and the distributor, since some manufacturers use a distributor to handle Government sales. However, this does not necessarily mean the items or services are commercial.

(v) Components of commercial end items. If an end item has been determined to be commercial, many of the components of that end item are likely to be commercial. However, every component of a commercial end item cannot be presumed to be a commercial item. One way for the contracting officer to determine if all the components of a commercial end item can reasonably be considered commercial is to determine the basis for the commerciality determination of the end item. If an end item is a commercially available off-the-shelf (COTS) item, the contracting officer could reasonably make a determination that all the components of that end item are commercial. Generally, however, information on the end item alone will be insufficient to determine commerciality of the components, and information will be needed on the components themselves. This information could include sales and technical data.

(vi) Prior agency or department determinations. When acquisition personnel have previously determined that an item or service meets the commercial item definition, buying activities should consider this a potential indicator of commerciality. The preference is to accept a prior determination of commerciality, unless there is a reason not to. However, buying activities must conduct market research, to the extent appropriate to the circumstances, to determine if a prior commerciality designation is relevant to the current buy. Some factors to be considered include the circumstances of the prior determination, the extent of market research conducted, and similarities between the current acquisition and the prior buy. Prior determinations of commerciality do not relieve contracting officers from their individual responsibility to make determinations of commerciality on current buys, based on market research appropriate to the circumstances. In some cases, previous determinations of commerciality may

involve specific circumstances, and it cannot automatically be presumed the item is commercial for future buys.

(vii) Contractor/subcontractor determinations. Only the Government has the authority to determine if an item or service meets the commercial item definition at FAR 2.101. Buying activities should consider contractor or subcontractor determinations as potential indicators of commerciality and must conduct market research to an appropriate extent to determine if such a prior commerciality designation can be applied to a current buy.

(viii) Predominantly commercial facilities. When buying activities have evidence that an item is produced in a facility that is predominantly engaged in producing similar items for the commercial market, this should be considered a potential indicator of commerciality. Buying activities must conduct market research to an appropriate extent to determine if sufficient documentation can be obtained on which to base a commerciality determination. It cannot be presumed that all items in a predominantly commercial facility are commercial, because some facilities produce both commercial and Government-unique items that are manufactured independently. However, products manufactured on integrated production lines with little differentiation between the commercial and Government products can generally be considered commercial.

(4) Contracts must require that additions to catalogs are subject to a determination of commerciality.

(91) If a prospective contractor offers any item other than the exact approved item cited in the procurement item description (PID), the alternate item must be evaluated for technical acceptability. Quoters or offerors must comply with the requirement in FAR 52.212-1 to provide a technical description of the items being offered in sufficient detail to evaluate compliance with solicitation requirements.

(92) The contracting officer may negotiate the Part 12 terms and conditions into the purchase order or contract when the conditions described below apply. (This is not a solicitation amendment, because all parties receiving the synopsis notice and/or the solicitation had the same opportunity to identify and offer an alternate item, including a commercial item.)

(i) The solicitation was not issued in accordance with Part 12, because the agency had not identified any commercial items that could meet the Government's need (see FAR 10.002(d)(2)); and

(ii) An item is offered that is determined by the agency to meet the definition of commercial item at FAR 2.101 and to be technically acceptable in time for award under the instant acquisition.

(f)(1) The contracting officer is delegated the authority to make the determination that the acquisitions are to be used to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack. This determination should be placed in the contract file.

## SUBPART 12.2 – SPECIAL REQUIREMENTS FOR THE ACQUISITION OF COMMERCIAL ITEMS

### 12.207-90 Contract type.

(a) Indefinite-delivery contracts may also provide for economic price adjustment using a locally developed clause to set firm contract prices based on prevailing established catalog or market prices in accordance with FAR 16.501-2(c),

(b) See 16.601 (90) for additional requirements concerning use of time and material/labor hour CLINS, contracts, or task orders for commercial services.

**12.208-90 Contract quality assurance.**

(a) Reliance on contractors' quality assurance systems is preferred. However, other quality assurance practices, such as in-process, in-plant inspection for critical application or complex items, are considered consistent with customary commercial practice when market research indicates they are at least sometimes used in the industry for items that are the same as or similar to the ones being acquired

(1) When Government inspection and testing before tender for acceptance are determined necessary and cannot be considered consistent with customary commercial practices, the contracting officer may request a waiver in accordance with FAR and DLAD 12.302(c).

(2) When the Government needs to inspect before tender or deviate in any other way from FAR 52.212-4(a), Inspection/Acceptance, the contracting officer must tailor the solicitation/contract by attaching an addendum (see FAR 12.302(d)). If the tailoring invokes contract terms and conditions that are consistent with customary commercial practice; a waiver is not required in accordance with FAR 12.302(c). However, an addendum is still necessary to change the terms of the solicitation/contract. If FAR 52.212-4 is incorporated in the solicitation or contract reference with no addendum, the Government has only the rights explicitly stated in FAR 52.212-4(a) as written.

## SUBPART 12.3 – SOLICITATION PROVISIONS AND CONTRACT CLAUSES FOR THE ACQUISITION OF COMMERCIAL ITEMS

*(Revised October 20, 2015 through PROCLTR 2015-12)*

**12.301 Solicitation provisions and contract clauses for acquisition(s) of commercial items.**

(b)(3)(90) When FAR 52.213-1, Fast Payment, applies to an acquisition conducted using FAR Part 12, insert the clause at 52.212-9001.

(e) Discretionary use of FAR provisions and clauses. Pursuant to FAR 12.301 and 12.302, contracting officers must use their authority to tailor the standard FAR Part 12 terms and conditions as necessary to meet the Government's needs. See 12.208(90) concerning how to tailor FAR 52.212-4(a), Inspection/ Acceptance.) Subject to the procedures in FAR and DLAD 12.302, the contracting officer may –

(S-90) Include other DLAD provisions and clauses; and

(S-91) If necessary, make accompanying changes to the provision at FAR 52.212-1 and the clause at FAR 52.212-4.

(f) The DLA SPE has approved supplementation of the provisions and clauses in FAR Part 12 to require use of the following provisions and clauses, when applicable:

(90) 52.217-9006, Limitations on Surge and Sustainment (S&S) Investments, as prescribed in 17.9308(a), Solicitation and contract clauses.

(92) The provisions and clauses below, as prescribed in FAR 16.203-4(a), 16.506(a)-(f), and 17.208(c)(1). These terms and conditions are necessary to support certain DLA business practices, including long term contracts, prime vendor arrangements, and indefinite delivery contracts.

(i) FAR 52.216-2, Economic Price Adjustment – Standard Supplies, or a clause authorized in accordance with 16.203-3;

(ii) FAR 52.216-18, Ordering;

(iii) FAR 52.216-19, Order Limitations;

(iv) FAR 52.216-20, Definite Quantity;

(v) FAR 52.216-21, Requirements;

(vi) FAR 52.216-22, Indefinite Quantity;

(vii) FAR 52.216-27, Single or Multiple Awards; and

(viii) FAR 52.217-5, Evaluation of Options.

(93) The provision at FAR 52.215-20, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data, as prescribed in FAR 15.408(l); and the clause at 52.215-21, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data – Modifications, as prescribed in FAR 15.408(m).

(96) The provision at DFARS 252.209-7002, Disclosure of Ownership or Control by a Foreign Government, as prescribed in DFARS 209.104-70(b).

(97) The clause at 52.211-9005, Conditions for Evaluation and Acceptance of Offers for Critical Safety Items, as prescribed in 11.304-90(a).

(98) The clause at 52.211-9006, Changes in Contractor Status, Item Acquired, And/Or Manufacturing Process/Facility – Critical Safety Items, as prescribed in 11.304-90(b).

(99) The clause at 52.211-9007, Withholding of Materiel Review Board (MRB) Authority – Critical Safety Items, as prescribed in 11.304-90(c).

(100) Use of the clause at FAR 52.211-5, Material Requirements, as prescribed in FAR 11.304; and the clause at 52.211-9000, Government Surplus Material, and the provisions at 52.211-9003, Conditions for Evaluation of Offers of Government Surplus Material, and 52.211-9009, Non-Acceptability of Government Surplus Material, as prescribed in 11.304-91.

(101) The clause at 52.211-9010, Military Shipping Label (MSL) Requirements – MIL-STD-129P, as prescribed in 11.290(b).

(102) The clause at 52.211-9014, Contractor Retention of Traceability Documentation, as prescribed in 11.304-92.

(103) The clause at 52.247-9012, as prescribed in 47.305-1.

(104) The clause at 52.217-9017, Tailored Logistics Support Purchasing Reviews, as prescribed in 17.9508.

(105) The clause at FAR 52.232-17, Interest, as prescribed in FAR 32.617.

(106) The clause at FAR 52.242-13, Bankruptcy, as prescribed in FAR 42.903.

(107) The clause at FAR 52.242-15, Stop Work Order, as prescribed in FAR 42.1305(b)(1).

(108) The clause at 52.217-9002, Conditions for Evaluation and Acceptance of Offers for Part Numbered Items, as prescribed in 17.7501(b)(3)(i).]

(110) The provisions and clauses listed below, as necessary to support acquisitions of items that require first article testing:

(iii) 52.209-9017, First Article – Contractor Testing – Additional Requirements, and any applicable alternates, as prescribed in 9.308-1(a)(91)(ii)(A);

(iv) 52.209-9018, First Article – Government Test – Additional Requirements, and any applicable alternates, as prescribed in 9.308-2(a)(91)(ii)(A);

(v) 52.209-9019, Requests for Waiver of First Article Testing Requirements, as prescribed in 9.306(c)(1);

(vii) 52.209-9021, Drawing Approval Prior To Production, as prescribed in 9.306(c)(2)(ii); and

(viii) 52.211-9019, Reduced Delivery Schedule Applies When First Article Testing Requirements Are Waived, as prescribed in 9.306(f)(2) and 11.404-91.

(113) The clause at 52.211-9063, Unit Package Marking Requirement for Component Lead Finish, as prescribed in 11.291.

(114) The clauses at FAR 52.246-11, Higher-Level Contract Quality Requirement, 52.246-2, Inspection of Supplies – Fixed Price, and 52.246-9043, Higher-Level Contract Quality Requirement (Non-Manufacturers), as prescribed in 46.311.

(115) The clause at 52.246-9066, Documentation of Traceability, as prescribed in 46.490(c).

(116) The contracting officer shall insert clauses at 52.246-9085, Production Lot Testing – Government, as prescribed in 46.392(b)(2)(i), and 52.246-9086, Production Lot Testing – Contractor, or its Alternate I, as prescribed in 46.392(b)(2)(ii).

**12.302 Tailoring of provisions and clauses for the acquisition of commercial items.**

(a) Terms and conditions that can reasonably be presumed to have application in both government and commercial markets (e.g., shipping instructions for extreme climates) may be included in solicitations and contracts for commercial items without conducting additional market research.

(b)(3) When fast payment procedures are authorized (see subpart 13.3), contracting officers may revise the paragraph at FAR 52.212-4(i), Payment, as necessary to reflect fast payment procedures, which are authorized when specified conditions are met pursuant to the Prompt Payment Act and OMB Circular A-125.

(c) Tailoring inconsistent with customary commercial practice. Approval authority for waivers under FAR 12.302(c) is delegated to one level above the contracting officer.

(90) Contracting officers may delete from solicitations and contracts the portions of the provision at FAR 52.212-3 and the clause at FAR 52.212-5 that do not apply and replace them with applicable language, if any.

(92) Contracting officers must use their authority to tailor the standard FAR Part 12 terms and conditions as necessary to meet the Government's needs (see 12.301(e)).

## SUBPART 12.4 – UNIQUE REQUIREMENTS REGARDING TERMS AND CONDITIONS FOR COMMERCIAL ITEMS

**12.403 Termination.**

(c) *Termination for cause.* The DLA activity shall report the termination via email to DLA HQ Acquisition Policy and Systems Division (J71) within three (3) working days after the termination is reported to FAPIIS. The email shall be sent to HQJ71.Reports@dla.mil and include the contract number, date and type of termination, any change, and date data was reported to FAPIIS.

## SUBPART 12.5 – APPLICABILITY OF CERTAIN LAWS TO THE ACQUISITION OF COMMERCIAL ITEMS

**12.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.**

(S-90) For the purposes of flowdown requirements pursuant to Part 12, Distribution and Pricing Agreements (DAPA) shall be treated as subcontracts (see the clauses at FAR 52.212-5(e) and 52.244-6(c)).

## SUBPART 12.6 – STREAMLINED PROCEDURES FOR EVALUATION AND SOLICITATION FOR COMMERCIAL ITEMS

**12.603 Streamlined solicitation for commercial items.**

(a)(1) If the information necessary to prepare an offer exceeds the character space limitation of the synopsis format (see FAR 5.207(c), Item 17, Description), the information can be incorporated by

referencing a source (e.g., home page or other Internet site) where the information is available for viewing.

# PART 13 – SIMPLIFIED ACQUISITION PROCEDURES

*(Revised October 20, 2015 through PROCLTR 2015-12)*

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**13.003 Policy.**

(e) It is the policy of DLA that each contracting office shall use the automated solicitation, evaluation, and award processes to the fullest extent possible. Any requirements that are not satisfied as delivery orders against long-term contracting arrangements are candidates for automated procurement. Procedures for exclusions are as follows:

(i) *Exclusions from automated procurement*. Only those acquisitions that meet the following criteria are authorized to be excluded from automated procurement processes:

(A) Total dollar value exceeds the simplified acquisition threshold;

(B) Place of inspection code (PIC) equals 3 or 4;

(C) Essential national stock number (NSN) or material data is missing, to include:

*(1)* No approved sources on part number NSNs/materials;

*(2)* Acquisition method suffix code (AMSC) B, G, or T without basic document;

*(3)* No PIC; or

*(4)* No packaging data.

(D) Government-furnished material/property/tooling applies;

(E) First article testing applies;

(F) Items are flight safety critical;

(G) Items are life support equipment;

(H) Special data licensing agreements apply; or

(I) Document type equals one of the following:

*(1)* ZTAV – Order fulfillment;

*(2)* ZSFC – STORES/FAVORS customer direct;

*(3)* ZSFD – STORES/FAVORS DLA direct;

*(4)* ZN – Order fulfillment TAV processing (request for quote (RFQ));

*(5)* ZP – Order fulfillment procurement offset or RFQ;

*(6)* AN – Standard request for quote (RFQ); or

*(7)* Request for GP bid or RFQ.

(ii) *Process for authorizing additional exclusions*.

(A) *Approval level*. The HCA shall approve any exclusions other than those identified in 13.003(e)(i). Approval of the exceptions shall be in writing, and a copy of the exception to policy shall be kept in all contract files to which it is applicable. This authority is not delegable.

*(1)* Exclusion determinations shall include the following information:

*(i)* Point of contact;

*(ii)* Exclusion criteria: National stock number (NSN)/ federal supply class (FSC)/quality control code (QCC) or purchase request (PR);

*(iii)* Level of automation exclusion: Solicitation, evaluation, and/or award;

*(iv)* Exclusion code – See Appendix A, Automated Procurement Exclusion Codes;

*(v)* Duration of exclusion: temporary or permanent; and

*(vi)* Justification for exclusion.

*(2)* Implementation of approved exclusions. The HCA shall forward copies of the determination and justification to the Deputy Director, DLA Acquisition, J7, to the Procurement Systems Process Owner, J71, and to the automated solicitation/evaluation/award sub-process owner at DLA Land and Maritime for entry of the following data into the automated procurement exclusion tables:

*(i)* Federal supply class (FSC);

*(ii)* NSN;

*(iii)* Weapon system designator code;

*(iv)* Project code;

*(v)* Foreign military sales country code;

*(vi)* Special procedure code;

*(vii)* PR number;

*(viii)* Acquisition method suffix code (AMSC) and FSC combination;

*(ix)* Quality control code;

*(x)* Priority and project (all priority 01 and priority 02 and 03 with 999 required delivery dates are excluded agency-wide);

*(xi)* Advice code (2T or 2F are excluded agency-wide);

*(xii)* Precious metal indicator code – other than A, U, or null; and

*(xiii)* Document type.

*(3) Reporting*. Each contracting office shall submit a quarterly report providing status information and outcomes associated with their automated exclusions list as part of the DLA Acquisition Review & Analysis (R&A) metrics review.

(h) Only contracting officers have authority to award, modify, and terminate simplified acquisitions, including purchase orders and blanket purchase agreements. This authority shall not be delegated.

(S-90)(i) Manual acquisition procedures. Follow procedures in Table 13-1:

Table 13-1
Manual Procedures – Time to Award for Simplified Acquisitions Up to $150,000

| Standardized Processes: |
|---|
| Manual Solicitations – (Do Not Re-Solicit "T" Solicitations) |
| Micro Purchase – Oral/Fax/Email/DIBBS RFX – Open/Close period for RFXs 7 Days |
| >$3,000 to Simplified Acquisition Threshold – Open/Close period for RFXs 10 Days |
| Reference Master Solicitation in lieu of selecting provisions |
| 2579 – |
| ONLY on acquisitions >=$3,000 AND Unrestricted (dissolving special set asides may require additional coordination) |
| Quantity Increases – Proactively monitor work overview for quantity adjustments. If valid quotes have been received REJECT workflow. |
| Award Documentation – |
| First Time Buy <=$250 or <=$3000 With Buy History – Price Reasonableness Code is sufficient documentation that the Contracting Officer considers the price reasonable. Simplified Acquisition Award Documentation at 13.106-3(b) is not required but may be included in rare, exceptional circumstances. |
| First Time Buy >$250 or Actions >$3000 - <=SAT – Use Simplified Acquisition Award Documentation at 13.106-3(b). Select applicable price reasonableness determination, complete Narrative if required, and select any other applicable determinations. Complete Best Value Determination Narrative when awarding to other than lowest-priced, highest-scored offeror. |
| Referrals – |
| Will be processed in EProcurement. See EBS Procurement Job Aid – Records Management; Creating and Processing a Referral. |
| Awards – |
| Award Purchase Requests without clauses by referencing Master Solicitation for all orders that will not be administered by DCMA; except that clauses including mandatory fill-in requirements shall be selected. |

(S-90)(ii) Elevation timeline for simplified acquisitions. Follow procedures in Table 13-2:

Table 13-2
Elevation Timeline for Simplified Acquisitions

| PR Schedule | Action Officer | Action Item |
|---|---|---|
| 1 Day After Solicitation Closes (For Automated "T" solicitations, take action after Auto Evaluation Status (AES) Block converts to "M" or "S.") | Acquisition Specialist (AS) | Review offers for acceptability and address any technical and/or supply issues.<br>If issues cannot be resolved within 7 days, alert AS Supv.<br>If ESA referral required, follow Non-Procurable Purchase Requisition (PR) Policy*<br>If no quotes received, follow Non-Procurable PR Policy*<br>If pricing or other issues cannot be resolved within 7 days, elevate. |
| 7 Days After Solicitation Closes | Acquisition Specialist (AS) AS Supervisor (AS Supv) | AS: Elevate to AS Supv<br>AS Supv: If unable to resolve, elevate to DC by Day 15, and document file. |
| 15 Days After Solicitation Closes | Division Chief (DC) | DC: If unable to resolve, determine/facilitate resolution by Day 20, and document file. |

| | | |
|---|---|---|
| 20 Days After Solicitation Closes | AS | AS: Document file outlining actions taken, and award or follow Non-Procurable PR Policy* by Day 20. |

Above steps should take no longer than 20 calendar days. The following blocks shall be completed and placed in the purchase order file once all parties complete their actions.

| | |
|---|---|
| Acquisition Specialist Name | Signature and Date |
| Acquisition Specialist Comments (optional) | |
| Acquisition Specialist Supervisor Name | Signature and Date |
| Acquisition Specialist Supervisor Comments (optional) | |
| Division Chief Name | Signature and Date |
| Division Chief Comments (optional) | |

*DLA Non-Procurable Purchase Requisition (PR) Cross-Process Policy Memorandum, CP-13-001, dated December 11, 2012 (available on eWorkplace, Logistics Operations (J3), Shared Documents, J3 Policies and Procedures, Cross Process)

## SUBPART 13.1 – PROCEDURES

*(Revised October 20, 2015 through PROCLTR 2015-12)*

### 13.106 Soliciting competition, evaluation of quotations or offers, award and documentation.

### 13.106-2 Evaluation of quotations or offers.

(b) Evaluation procedures.

(S-90) Automated contract evaluation systems.

(i) The provision at 52.213-9008 shall be used in all automated solicitations valued at or below the simplified acquisition threshold that are to be evaluated under an automated contract evaluation system program. The terms of this provision are incorporated in the Master Solicitation for Automated Simplified Acquisitions.)

(ii) See 1.601-90(b)(3)(iv) and 1.602-2 for additional oversight, training, and documentation requirements for contracting officers whose electronic signatures are applied to fully automated awards generated by procurement systems that utilize automated solicitation, evaluation, and award processes to execute purchase orders.

(iii) HCAs shall perform an annual analysis to determine optimum percentage variance numbers for both competitive and non-competitive acquisitions by contracting office. The analysis shall outline the methodology and calculations utilized; and shall demonstrate that the percentages are optimal in terms of cost savings, number of automated awards, results of internal reviews, and workload impacts. HCAs shall submit their recommendations for establishment of new percentage variance numbers to DLA Acquisition J71 by January 31 of each year. The J71 Procurement Systems Process Owner will direct a system update to reflect the optimum variance percentage recommended by the HCA for price evaluation. If any interim changes are required, an updated recommendation with supporting analysis must be submitted to DLA Acquisition J71.

(iv) *Past Performance Information Retrieval System – Statistical Reporting (PPIRS-SR).*

(*A*) PPIRS-SR classifications. Contractor classifications may be reviewed and analyzed utilizing the solicitation inquiry report on the PPIRS-SR Website: http://www.ppirs.gov/.

(*B*) The evaluation criteria as to how PPIRS-S determines delivery and quality classifications and the sources of the data can be found in the PPIRS Reference Material "PPIRS-SR Evaluation Criteria" on the PPIRS-SR Website: http://www.ppirs.gov/ppirsfiles/reference.htm.

(v) *Award justification*. The contract file shall be documented with the rationale supporting all award decisions (see 13.106-3(b)). The award decision shall demonstrate how paying more than low price reduces performance risk or otherwise benefits the Government. The extent of the award justification shall be commensurate with the price difference between the awardee and the lowest-price, highest-scored quoter.

(b)(3)(ii)(D)*(*S-91*)* First Destination Packaging (FDP) Program evaluation. Contracting officers shall follow procedures at 15.402(a)(S-90)(2) when the commercial packaging standard, American Society for Testing and Materials (ASTM) D3951 applies; and ensure the Government achieves appropriate savings by negotiating the price on manually-awarded acquisitions of all dollar values under the First Destination Packaging (FDP) program when the packaging standard changes from MIL-STD 2073-1 to ASTM D 3951 (see 11.201(c)(S-90)(1).) Negotiation efforts shall be commensurate with the value of the procurement.

**13.106-3 Award and documentation.**

(b) File documentation and retention. Contracting officers shall document the basis for award and determination of price reasonableness as follows:

Simplified Acquisition Award Documentation

Buyer: _____ PR#: _____

Basis for Award – Price Reasonableness Determination – FAR 13.106-3(a):
(Check as applicable and explain as needed*)
[ ] Fair and Reasonable – Adequate Price Competition – Manufacturer Competition

[ ] Fair and Reasonable – Adequate Price Competition – Dealer/OEM Competition
[ ] Fair and Reasonable – No Competition (single quote or noncompetitive price range)
[ ] Fair and Reasonable – Adequate Price Competition Among Providers of Services
  [ ] Commercial Item $_____per unit
  [ ] Market Research
  [ ] Federal Supply Schedule (FSS) Number: _____ FSS Price: $_____
  [ ] Independent Government Estimate
  [ ] Comparison of the proposed price with prices found reasonable on previous purchases
    Contract: _____ Unit Price: $_____
    Price Reasonableness Code (PRC) (if applicable) – DLAD 15.406-3(a)(11): _____
  [ ] Comparison of similar items: NSN: _____ Unit Price: $_____
  [ ] Contracting Officer's knowledge of the item
  [ ] Any other reasonableness basis (i.e. Informal Cost Breakdown, Set by law or regulation, or other FAR Part 15 procedures)

***Narrative:**

DFARS 217.7505 Sole Source Price Increase Certification:
Base price as adjusted in accordance with DFARS 17.7505 has increased by more than the percentage or dollar value permitted in DLAD 17.7505. [ ] Yes [ ] No. If "Yes," the price has been evaluated and justified. Required notification prior to award has been completed.

Best Value Determination: (Required if Awarding to Other Than Lowest-Price, Highest-Scored Quoter):

*Narrative:

Other Determinations: (Check as applicable and explain as needed*)
[ ] Procurement is a First Time Buy
[ ] Fast Pay applicable
  [ ] PR complies with Fast Pay requirements IAW FAR 13.402(a)-(f)
  [ ] FARS DEV at DLAD 13.402 applies FARS DEV Number: _____
[ ] First Destination Packaging (FDP) Considerations:
  [ ] No change in level of packaging from previous buy
  [ ] If level of packaging changed from Military to commercial, unit price was negotiated:
    [ ] Yes [ ] Savings in unit price realized: $/% _____ [ ] No savings realized
    [ ] No negotiation due to low potential savings (IAW DLAD 13.106-2(b)(3)(ii)(D)(S-91) or 15.402(a)(S-90)(2))
[ ] First Destination Tramsportation (FDT) Program Considerations:
  [ ] No negotiation conducted
  [ ] Unit price was negotiated [ ] Savings in unit price realized: $/% _____ [ ] No savings realized
[ ] SAM.gov checked; awardee not proposed for suspension/debarment or debarred IAW FAR 9.405(d)(4)
  Date SAM Checked: _____

Contracting Officer's signature on the award document constitutes concurrence with all determinations made above.

## 13.106-90 Other solicitation issues.

(a) The provision at 52.213-9001, Evaluation Factor for Source Inspection, shall be inserted in all simplified acquisition solicitations. Use the provision with its Alternate I in all solicitations for contracts under which multiple orders may be placed, such as a long-term contract (LTC).

(c) Unsolicited quotations need not be evaluated except when it is feasible and practicable to do so in order to satisfy requirements at FAR 13.104 to provide for maximum practicable competition; or to consider alternate offers to provide competition for sole source items (see 17.7501(b)(4)).

## SUBPART 13.2 – ACTIONS AT OR BELOW THE MICRO-PURCHASE THRESHOLD

### 13.201 General.

(g)(1) For other than purchase card acquisitions, the authority is delegated to the contracting officer to determine that supplies or services will be used to support a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack. For purchase card acquisitions, the determination authority is delegated to the HCA; or, when J7 is the HCA, to the CCO. The billing official and cardholder shall obtain written pre-approval. The basis for the determination shall be documented in the contract file. Combining the authorities on a single procurement to take advantage of the most favorable aspects of each authority is not allowed. The contracting officer shall comply with the requirements of the specific authority used.

### 13.270 Use of the Governmentwide commercial purchase card.

(a) DLA contracting offices shall use the Government-wide commercial purchase card as the method of purchase and/or payment for purchases valued at or below the micro-purchase threshold for commercial supplies or services to the maximum extent practicable.

(1) Those micro-purchases shall be accomplished by designated, trained Government purchase card holders with oversight by an appointed billing official, in accordance with the DoD Government Charge Card Guidebook for Establishing and Managing Purchase, Travel, and Fuel Card Programs, as supplemented by DLA Instruction (DLAI) 2106, Government Purchase Card.

(i) Billing officials and cardholders shall be designated by a Level 4 agency/organization program coordinator via the Department of Defense (DD) Form 577 and letter of appointment.

(ii) The authority for appointment of Level 4 agency/organizational program coordinators has been delegated by the Director, DLA to the HCAs. For contracting offices not designated as “contracting activities” (see 2.101), the Director, DLA Acquisition (J7), as HCA, has delegated this authority to the Directors, Commanders, or Administrators of those offices. This authority is delegable, without power of redelegation to the CCO.

(2) A purchase shall only be excepted from the requirement at 13.270(a) if, in accordance with DFARS 213.270 (b)(1), a written determination is approved for a source or sources and the file documented. A contracting officer may then award a purchase order. The authority for award, modification, and termination shall not be delegated by the contracting officer.

(3) DLA Aviation and DLA Troop Support may request support for their purchase card program through the DLA Contracting Services Office (DCSO). The DCSO CCO will then appoint the Level 4 agency/organizational program coordinator.

## SUBPART 13.3 – SIMPLIFIED ACQUISITION METHODS

*(Revised November 5, 2014 through PROCLTR 2015-06)*

**13.301 Governmentwide commercial purchase card.**

(S-90) Issuance of a Government-wide Commercial Purchase Card (GPC) constitutes authority to make micro-purchases (see FAR 1.603-3(b)). This procurement authority is issued in accordance with the procedures in Directive-Type Memorandum (DTM) 13-001, Government Purchase Card, dated December 13, 2013; and is not subject to the limitation on delegation of authority for selection, appointment, or termination of contracting officer authority or the contracting officer review program at 1.603-1(S-92). The GPC may be used as a method of purchase and/or payment for purchases and orders under existing indefinite delivery/indefinite quantity contracts and for other contracts when the contract authorizes its use as an ordering/payment method.

(S-91) Use of On-Base AbilityOne Stores, the AbilityOne Website, and DOD EMALL for Government Purchase Cardholders (GPCHs).

(1) In accordance with FAR Subpart 8.7, GPCHs shall purchase AbilityOne items (supplies and/or services) when available. Non-AbilityOne items may be purchased from the on-base AbilityOne store and other AbilityOne sources only if the items are in stock. GPCHs will acquire items from on-base AbilityOne stores and the AbilityOne Website at http://www.abilityone.com.

(2) If the conditions in 13.301(S-91)(1) cannot be met, GPCHs shall use DOD EMALL, except as provided in (i) or (ii) below:

(i) If the GPCH determines the item is not available on DOD EMALL or from other AbilityOne sources, the GPCH may procure from other authorized sources (see FAR Part 8).

(ii) The Hierarchy Level 4 Agency/Organization Program Coordinator (HL4 A/OPC) may grant the Billing Official the authority to waive the requirement to use DOD EMALL when one or more of the circumstances identified in (A) through (C) applies. The waiver shall be documented using the DOD EMALL Waiver format at 53.9013(e).

(A) Use of DOD EMALL would not meet the delivery requirements;

(B) Use of DOD EMALL would result in unreasonable or excessive cost to the requiring activity;

(C) Use of DOD EMALL would violate requirements for use of mandatory sources.

(3) GPCHs using the exception at 13.301(S-91)(2)(i) shall identify the non-availability of requirements that cumulatively exceed $3,000 per fiscal year to the DOD EMALL Program Office to have the requirement identified for inclusion on DOD EMALL, using the following email address: EMALLAnalytics@dla.mil. The GPCH shall retain evidence of non-availability ("Print Screen" from DOD EMALL) and a copy of the email to the DOD EMALL Program Office in the transaction file.

**13.302-2 Unpriced purchase orders.**

(S-90) The requirements of DFARS Subpart 217.74 and DLAD Subpart 17.74 shall be followed for all unpriced purchase orders issued by DLA contracting offices.

**13.303 Blanket purchase agreements (BPAs).**

**13.303-2 Establishment of BPAs.**

(c)(3)(S-90) BPAs with federal supply schedule (FSS) contractors for non-FSS items shall contain a statement that the BPA excludes all items on FSSs. BPAs with an FSS contractor for items on an FSS shall be consistent with the provisions of the applicable FSS; the terms of the BPA should be limited to a simplification of purchasing techniques, such as placement of calls orally and provisions for submitting monthly consolidated billings.

**13.303-3 Preparation of BPAs.**

(a)(1) The maximum aggregate amount, if any, of all calls to be issued against one BPA shall be prescribed by the HCA.

**13.307-90 Forms.**

(a) DLA Form 1224, Shipping Instructions, may be used to issue automated calls made under a BPA.

**13.390 Indefinite delivery purchase orders (IDPOs).**

(a) An IDPO is a simplified acquisition procedure that applies indefinite delivery contract concepts to a procurement action not exceeding the simplified acquisition threshold; or, for acquisitions subject to FAR Subpart 13.5, not exceeding $6.5 million ($12 million for acquisitions as described in 13.500(e)). Use of an IDPO is appropriate when repetitive low dollar value purchases are made for the same item; the price of the item is expected to be stable; and expected yearly or other long–term demands are not sufficient to establish an indefinite delivery contract. An IDPO establishes a firm commitment that the contractor will perform under subsequent orders issued at the purchase order price for a definite period for an indefinite quantity of supplies. The decision to establish an IDPO shall be made by the contracting officer in coordination with the customer. Only one IDPO shall be established per item; except that multiple IDPOs for the same item may be awarded if the awardee's performance under each IDPO is limited to a separate and distinct region or physical location as specified in each IDPO.

(b) Only a warranted contracting officer shall award an IDPO and, as necessary, execute modifications or terminations. The contracting officer may designate a Contracting Officer’s Ordering Representative (COR) for one specific IDPO with authority to only issue orders.

(c) Order numbering. IDPO orders shall be numbered in accordance with the uniform procurement instrument identification numbering (PIIN) system (see DFARS 204.7003). The initial purchase order and subsequent orders shall be include a “D” in the ninth position and, when the system permits, insert a “5” in the tenth position of the PIIN. The initial purchase order shall be numbered with supplemental PIIN number 0001. Subsequent orders shall be serially numbered with supplemental PIIN numbers 0002 through 9999.

(d) Clauses for IDPOs.

(1) Insert the clause at 52.213-9010, Indefinite Delivery Purchase Order (IDPO) Evaluation, in solicitations for IDPOs.

(2) Insert the clause at 52.213-9011, Indefinite Delivery Purchase Order (IDPO) Agreement – Unilateral, in solicitations and awards when the contracting officer intends to determine the method of purchase that is in the best interest of the Government for a subsequent requirements, either by ordering against the IDPO or issuing a new request for quotes. When using 52.213-9011, include the clauses at FAR 52.216-19, FAR 52.216-22, and DFARS 252.216-7006.

(3) Insert the clause at 52.213-9012, Indefinite Delivery Purchase Order (IDPO) – Bilateral, in solicitations and awards when the contracting officer intends to establish a binding contract without obligation to place future orders against the IDPO. When using 52.213-9012, include the clauses at FAR 52.216-19, 52.216-22, 52.232-23, 52.243-1, and 52.249-8 and DFARS 252.216-7006 and 52.243-7001.

## SUBPART 13.4 – FAST PAYMENT PROCEDURE

*(Revised October 20, 2015 through PROCLTR 2015-12)*

### 13.402 Conditions for use.

(a) The following deviations apply:

(S-90) FARS DEV 2013-09, Class Deviation from FAR 13.4, Fast Payment Procedures, on Individual Orders Up to $100,000 Issued Against Prime Vendor and Other Long-Term Contracts Requiring Customer Direct Delivery, expires September 30, 2014.

(S-91) FARS DEV 06-05, One-Time Deviation from FAR 13.4, Fast Payment Procedures, for Contracts and Orders Resulting from Solicitation SPM4A2-06-R-0002, Compressed Gases and Cylinders Under BRAC Commodity Management Privatization Recommendation #175, expires October 19, 2016.

(S-92) FARS DEV 06-06, One-Time Deviation from FAR 13.4, Fast Payment Procedures, for Contracts and Orders Resulting from Solicitation SPM4A2-06-R-0001, Chemicals and Packaged Petroleum, Oils, and Lubricants Under BRAC Commodity Management Privatization Recommendation #175, expires October 19, 2016.

(S-93) FARS DEV 06-07, One-Time Deviation from FAR 13.4, Fast Payment Procedures, for Contracts and Orders Resulting from Solicitation SPO7002-06–R-7022, Land Tires under BRAC Commodity Management Privatization Recommendation #175, expires October 19, 2016.

(S-94) FARS DEV 06-08, One-Time Deviation from FAR 13.4, Fast Payment Procedures, for Contracts and Orders Resulting from Solicitation SPO7002-06-R-7023, Aircraft Tires under BRAC Commodity Management Privatization Recommendation #175, expires October 19, 2016.

(f)(1) Acquisition specialists shall comply with the following mandatory post-payment reconciliation procedures to ensure documentation of evidence of contractor performance:

(A) *Populations of fast payment transactions that require reconciliation.*

(*1*) A statistically valid sample of transactions valued up to $100,000 ($200,000 for OCONUS subsistence); or

*(2)* Every non-subsistence transaction valued over $100,000 ($200,000 for subsistence).

(B) *Sampling methodology*. The DLA Office of Operations Research and Resource Analysis (DORRA) compiles a quarterly sample of fast payment transactions using DCAA "E-Z Quant" and loads the data on the Joint Lessons Learned Information System (JLLIS) at https://www.jllis.mil/dlaf for access by the contracting offices.

(C) *Reconciliation process.*

*(1)* Reconciliations shall be performed by each contracting office on a quarterly basis beginning with the start of the fiscal year.

*(2)* Once the sample data are available on JLLIS, acquisition specialists shall perform receipt validation on each of the transactions in the sample. Reconciliation consists of comparing receipt documentation (receipt acknowledgement or receiving report) with contracting (purchase order or requisition) and accounting and payment data (invoice).

(*3*) The preferred method of receipt verification is the Material Receipt Acknowledgement (MRA). Transactions with discrepant MRAs must be further researched to determine whether the customer received the items. When an MRA is not available, acquisition specialists may validate receipt based on a Receiving Report in Wide Area Work Flow (WAWF), proof of delivery (POD) from the contractor or transporter, acknowledgement of receipt by the requisitioner, or other documentation verifying that the customer has received the material. For the portion of the sample population that required validation by means other than the MRA, contract files must include copies of documentation obtained to verify customer receipt.

(D) *Reporting of reconciliation results*. Each contracting office shall submit quarterly reports to J71 within 60 days after DORRA posts the fast payment transaction data for the subsequent verification period but not earlier than May 15 for Quarter 1 data, August 15 for Quarter 2 data, November 15 for Quarter 3 data, and February 15 for Quarter 4 data. Reconciliation reports shall identify the method of receipt validation.

*(1)* If the reconciliation exposes discrepancies between customer receipts and supplier invoices or system-generated receipts in more than 5 percent of the sample, an additional sample, of the same size as the original group subjected to reconciliation and excluding the transactions previously sampled, shall undergo the verification process. If more than 5 percent of this second sample is also discrepant, J7 may require verification of additional or all transactions.

(*2*) Consideration should be given to increasing the sample size or performing a 100% review for suppliers/customers with a problematic record.

(E) *Analysis of reports and oversight.* J71 shall review the quarterly reconciliation reports for negative trends and assess the need for potential corrective actions. Proper application of fast payment procedures and contract file documentation shall be a part of all regular procurement management reviews.

(S-92) Fast payment procedures shall not be used for—.

(1) Transactions greater than $100,000, with the exception of transactions for tires, OCONUS subsistence, and OCONUS medical;

(2) DLA Direct shipments, except for OCONUS stock buys supporting forward stock locations (FSL) initiatives when destination inspection and acceptance applies.

(3) Customer Direct shipments when Government source inspection is required or when subsistence requirements are shipped through a consolidation point prior to shipment overseas; except for shipments that go through a consolidation point (see 25.7302-90) when requirements for use of fast payment procedures are otherwise satisfied .

**13.404 Contract clause.**

(90) When fast payment procedures apply to an acquisition conducted using FAR Part 12, the contracting officer shall insert the clause at 52.212-9001.

## SUBPART 13.5 – TEST PROGRAM FOR CERTAIN COMMERCIAL ITEMS

**13.500 General.**

(S-90) The authority to use FAR 13.5 is in effect until January 1, 2015. The following requirements apply:

(1) *Market research*. Market research shall be performed for acquisitions with an estimated value in excess of the SAT. Market research can be conducted by reviewing previous procurements, conducting Internet searches, and/or contacting potential sources of supply. Use the Commercial Item Pre-Solicitation Memorandum for Record (MFR) at 13.500(S-91), Part I – Market Research, to document all market research efforts in order to comply with this requirement. When the acquisition exceeds $1,000,000 in value, the file shall include written documentation that the commercial item definition has been met and the procedures at DFARS PGI 212.102(a) were followed (see DFARS 212.102). Use the Commercial Item Pre-Solicitation MFR at 13.500(S-91), Part II – Commerciality Determination, to document compliance with these requirements. Acquisitions that exceed $1,000,000 shall be approved at one level above the contracting officer when the commerciality determination is based on FAR 2.101(1)(ii), (3), (4) or (6) (see DFARS 212.102(a)(i)(C)). Procurements for depot level reparables do not require completion of this form, as market research/commercial item determinations are executed by the Military Services.

(2) *Small Business Coordination*. Complete DD Form 2579 or comparable small business documentation and forward to the Small Business Office/Small Business Specialist for concurrence. A Blanket DD Form 2579 for sole source acquisitions (items with Acquisition Method Code (AMC) of 3 and only one approved manufacturing source in item description) can be used for proposed procurements valued $650,000 or less, which may be solicited without individual review of the DD Form 2579.

(3) *Acquisition Planning*. Use the Commercial Item Pre-Solicitation MFR at 13.500(S-91), Part III – Contract Type (FAR 7.103(d)), Part IV – Consolidation/Bundling, and Part V – Past Performance Evaluation.

(4) *Justification for Other Than Full And Open Competition*. A Justification and Approval (J&A) is required only for sole source acquisitions. The contracting officer may approve the J&A for acquisitions valued less than $650,000. Competition Advocate approval is required for acquisitions valued $650,000 - $12,500,000, and the J&A must include a completed Commercial Item Pre-Solicitation MFR (see 13.500(S-91).) Legal review is required on all J&As for acquisitions valued over the simplified acquisition threshold.

(5) *Synopsis*. Synopsis is required.

(i) A period of less than 15 days may be established for issuance of the solicitation after synopsis in the FedBizOpps (see FAR 5.203(a)). In an effort to reduce administrative lead-time (ALT), a period of 5 days is recommended, as applicable to procurement situation.

(ii) A period of less than 30 days may be established for the solicitation response time. In an effort to reduce ALT, a solicitation response time of 10 days is recommended. The response time shall afford offerors a reasonable amount of time to respond (see FAR 5.203(b)). If the item is competitive, the solicitation response time is less than 30 days, and only one quote is received, the acquisition specialist shall re-solicit for a period of 30 days or request a waiver from the HCA to proceed with award.

(iii) *EProcurement Users.* Follow guidance at 13.500(S-92), RFQ Procedures in EProcurement. This is the SRM version of the Combined Synopsis/Solicitation, which should be posted for maximum of 10 days.

(iv) Streamlined Procedures for Evaluation and Solicitation for Commercial Items may be used (see FAR 12.603(b)).

(6) *Issuance of Solicitation*. A Request for Quotation will generally be used to solicit quotations for commercial items up to $6,500,000. In EProcurement, follow guidance at 13.500(S-92), RFQ Procedures in EProcurement.

(7) *Evaluation and Award*. Use procedures in FAR Part 13 to the maximum extent practicable when evaluating quotations. Use of FAR Part 15 is at the discretion of the contracting officer.

(i) Price and Award Justification. An explanation of the basis for the award decision should be tailored to the size and complexity of the acquisition. It must include a brief description of the procedures used in awarding the contract and the number of offers received. It must adequately explain and support price reasonableness. This can be documented using the Commercial Item Pre-Solicitation MFR at 13.500(S-91). Procedures at DLAD 13.106-3(b) may be used to document pricing.

(ii) Determination of Responsibility (See FAR 9.1). Documentation of award decision and Determination of Reasonability can be accomplished on the Commercial Item Pre-Solicitation MFR at 13.500(S-91).

(iii) Subcontracting Plans (see FAR 19.704). Required for large businesses for acquisitions valued greater than $650,000.

(iv) Award Preparation. Use SF Form 1449 for awards. Prepare bilateral purchase order for all SEPA acquisitions that were solicited orally.

(8) *Mandatory FPDS Coding*.

(i) EProcurement Users – Enter the following in the FPDS Data tray of the Header tab:

(A) Block "10H" Commercial Item Acquisition, choose "A" – Commercial Item.

(B) Block "10J" Commercial Item Test Program, choose "Y" – Commercial Item Test Program – Acquisition uses FAR 13.5 for Certain Commercial Items.

(ii) Non-EProcurement Users – Code the fields "Commercial Item Acquisition Procedures" and "Commercial Item Test Program" in the contract-writing system; or in FPDS when completing the Contract Action Report (CAR) (see "Competition Information").

(S-91) Commercial item pre-solicitation documentation memorandum for record (MFR).

MEMORANDUM FOR RECORD

COMMERCIAL ITEM PRE-SOLICITATION DOCUMENTATION (FAR 10.002, 2.101, 13.5)

Commercial Test Procedures Under 13.5 are Applicable.
Market research was conducted prior to solicitation.

Solicitation #_____, NSN(s)_____, Item _____

Part I – Market Research
Check applicable block(s) for technique(s) used to conduct market research and determine commerciality:
( ) Commercial-Off-the-Shelf Field is coded ____ (attach supporting documentation, including review of Material Master in SAP);
( ) Reviewed results of recent market research undertaken to meet similar or identical requirements;
( ) Queried Government-wide database of contracts and other procurement instruments intended for use by multiple agencies available at https://www.fpds.gov and other Government and commercial databases that provide information relevant to agency acquisitions;
( ) Reviewed catalogs and other generally available product literature published by manufacturers, distributors, and dealers or available on-line; or
( ) Contacted knowledgeable individuals in Government and industry regarding market capabilities to meet requirements.

Part II – Commerciality Determination
Please check to indicate completion:
( ) In accordance with FAR 10.002(b) and FAR 2.101, Definitions, a review has been conducted of the item description(s) to determine if commercial items or non-developmental items are available to meet the Government's needs or could be modified to meet the Government's needs. The items are deemed commercial based on the above market research.

Part III – Contract Type
Please check to indicate the type of contract
( ) FFP ( ) FFP with EPA

Part IV – Consolidation/Bundling
Please check to indicate if Consolidation or Bundling is applicable:
( ) Consolidation (Please see attached report/determination)
( ) Bundling (Please see attached report/determination)

Part V – Past Performance Evaluation
( ) Past Performance applicable
( ) Past Performance is not appropriate due to:

CONCLUSION:
Based on the market research conducted, item(s) to be solicited against subject solicitation are determined to be commercial.
APPROVALS:

| | | | |
|---|---|---|---|
| _____ | _____ | _____ | _____ |
| Acquisition Specialist | Date | Contracting Officer | Date |

(S-92) Commercial evaluation/award documentation.

MEMORANDUM FOR RECORD
SUBJECT: COMMERCIAL ITEM AWARD DETERMINATION UNDER TEST PROGRAM (FAR SUBPART 13.5)

Part I
Determination of Responsibility: The awardee [*insert CAGE Code*] is hereby determined responsible.

Part II
Price is determined fair and reasonable based on:
___ Adequate competition

If only one response was received, price is determined fair and reasonable based on (insert narrative below):
___ Market Research
___ Comparison of proposed price with prices found reasonable on previous purchases
___ Current price lists, catalogs, or advertisements. (Inclusion of price in price list, catalog, or advertisement does not, in and of itself, establish fairness and reasonableness of the price.)
___ Comparison with similar items in a related industry
___ Contracting officer's personal knowledge of item being purchased
___ Comparison to independent Government estimate OR
___ Any other reasonable basis.

Additional Remarks:

Part III
Award Justification: [*Insert narrative*]

APPROVALS:

| | | | |
|---|---|---|---|
| _____ | _____ | _____ | _____ |
| Acquisition Specialist | Date | Contracting Officer | Date |

(S-93) RFQ Procedures in EProcurement. The acquisition specialist should address the same situations that apply to a non-commercial procurement (e.g., part number, critical item, configuration control, stock item, SBSA, PPIRS-SR, etc.). Use the SF 1449 to solicit commercial acquisitions. The only difference in soliciting is that the acquisition specialist must include commercial clauses.

(1) In Document Builder under the Header Tab, change Doc Selection to ZRFPCOM (for solicitation) and type in information.

(2) On Dialog Tab, select "Solicitation Type" under Document data group. Change Solicitation Type to Request for Quote (Part 12, Commercial or Request for Proposal (Part 12, Commercial). This option can be selected from the drop down menu.

(3) Click "Next" to move to "Select Solicitation Form," and select SF 1449 from drop down menu.

(4) Click "Next" to move to "Selection Criteria," and select Part 12 (Commercial) any Dollar Value. This selection can be made from the drop down menu.

(5) Click "Next" to move to "Overprints," and select any applicable overprints. Please note there are no overprints for commercial.

(6) Click "Next" to move to "Provisions and Clauses," and select appropriate clauses.

(7) Click "Next" to move to "Government Fill-ins."

(S-94) FAR 13.5 procedures.

FAR 13.5 Procedures
For Acquisitions Exceeding the SAT But Less Than $6,500,000
(Document file in accordance with FAR 13.501(c).)

| Standardized Processes | Days |
|---|---|
| Market Research and Commercial Item Determination Memorandum Required<br>(FAR 10.001(a)(2)(ii), FAR 10.002, DFARS 212.102) – Conduct market research via review of prior buys, Internet, and/or phone calls to potential sources. Complete MFR<br>"MEMORANDUM FOR RECORD" (DLAD 13.500(S-91)) | 1 |
| DD2579 – Required (DFARS 219.201) – Complete and send to Small Business Office. | 2 |
| Acquisition Plan- Not required per DFARS 207.103 but input into Milestone Tracker. | 1 |
| o Complete MFR "MEMORANDUM FOR RECORD" (DLAD 13.500(S-91))<br>1. Document selection of contract type (FAR 7.103(d))<br>2. Past Performance should be evaluated unless Contracting Officer documents the reasons why past performance is not an appropriate evaluation factor.<br>3. Bundling/consolidation need to be addressed if prior procurements were single NSN and requirement now combines multiple NSNs. | |
| Justification for Other Than Full and Open Competition – Required for non-competitive acquisitions (FAR 13.501, FAR 6.302, DFARS 206.302). Complete and have signed at appropriate level (<$650K, Contracting Officer; >$650K, Competition Advocate). | 2 |
| Higher Level/Legal Reviews – Documents below SAT remain at KO Level for review/approval | |
| Synopsis/Solicitation: Required. (FAR 5.201, 12.204(b), 12.205(c) | 10 (max) |

| | |
|---|---|
| This may be accomplished through 2 methods-<br>o (1) Synopsize in FedBizOpps. Recommend 5 days, but may shorten. Call suppliers for offers, allowing maximum of 5 days to respond to oral RFQ; OR<br>o (2) Issue combined synopsis/solicitation for maximum of 10 days. In EProcurement, use "RFQ Procedures in EProcurement" (DLAD 13.500(S-93)).<br>O NOTE 1: If acquisition is covered by World Trade Organization Government Procurement Agreement or Free Trade Agreement, longer synopsis times are required.<br>O NOTE 2: If only one offer received when competitive procedures are used, comply with DFARS 215.371-2.<br>O NOTE 3: Subcontracting Plans required for large businesses for acquisitions >$650,000. | |
| Evaluating and Awarding: Use FAR Part 13 procedures to maximum extent (FAR 12.203, 12.209, 13.106-2, 13.106-3). Use of FAR Part 15 is at discretion of Contracting Officer. | 1 |
| o Ensure offers meet terms and conditions of RFQ (FAR 13.106-2).<br>O Evaluate past performance (unless waived).<br>O Evaluate pricing IAW FAR Part 13<br>o Negotiate if necessary. If Reverse Auction conducted, 2 days may be extended to 5 days.<br>O Document pricing on same basis as procurements valued between $25,000 and $150,000 (DLAD 13.106-3(b)).<br>O Document award decision/Determination of Responsibility (FAR 9.1, FAR 9.105-2, DFARS 209.1, DFARS PGI 209.1) on Commercial Item Pre-Solicitation MFR (DLAD 13.500(S-91).<br>O Complete award document; use SF1449, and insert commercial clauses:<br>o If solicited orally, develop bilateral purchase order;<br>o If solicited via RFQ, develop unilateral purchase order. | 1<br>3<br><br>2<br><br>2<br><br>2<br><br>2 |
| TOTAL | 29 |

# PART 15 – CONTRACTING BY NEGOTIATION

*(Revised November 19, 2013 through PROCLTR 2014-28)*

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## SUBPART 15.1 – SOURCE SELECTION PROCESSES AND TECHNIQUES

*(Revised November 5, 2013 through PROCLTR 2014-06)*

### 15.101-90 Phased competition.

(a) Definition – Phased competition is a risk reduction strategy that provides for the development of business approaches or systems development under contract with subsequent down-select competitions among contractors for further development or full performance within the same contract.

(b) Application – Phased competition procedures may be appropriate when state of the art solutions are sought and significant development work is required by industry.

(1) The Government must first explore existing commercial methods and determine whether commercial solutions are available or can be readily adapted to the Government problem or requirement. Where a best commercial alternative is not apparent, or where limited development and adaptation are required, early industry involvement in exploring solutions can be elicited in the presolicitation stage through several alternative approaches addressed in 15.201 and 35.016.

(2) However, when state of the art solutions are sought and significant development work is required by industry, reliance on either a single Government solution or an untested commercial solution increases risk for both parties.

(3) Risk can be reduced for both parties if development and testing are accomplished under contract through the use of a phased competition. Before using a phased competition, the Government must carefully weigh the costs and benefits inherent in this approach.

(c) The statement of work (SOW).

(1) Either a general statement of need or a SOW as described below may be used for the first phase of a phased competition. A SOW that engages industry participation would have the following features:

(i) It addresses the current state of operations and provides insight into future operating conditions;

(ii) It defines the desired business process future state in terms of the goals of the reengineering effort, and;

(iii) It limits specific requirements to essential Government needs, such as systems interface requirements, that must be met in the reengineered business process.

(2) The solicitation allows offerors the freedom to propose solutions to the Government and to describe how the proposal will meet the goals of the reengineering effort.

(d) SOW for subsequent phases. Solicitations should describe the content and format for deliverables at each phase of the competition. When this procedure is followed, the contractor's proposed approach, a deliverable which may require revision during negotiations, becomes the SOW for the subsequent phase. Task orders should incorporate the contractor's proposal by reference to prevent the disclosure of the contractor's strategy to competitors.

(e) Pricing of phases. The Government cannot reasonably expect industry to price each phase of development, testing, and/or implementation as of the closing date of the solicitation. Price proposals for phases beyond the initial priced phase can be obtained as deliverables under each subsequent phase of the contract when requirements for each subsequent phases are more fully defined. Under these circumstances, the SOW for the first phase should include a requirement for deliverables, such as the statement of work for contractor-proposed tasks for the second phase, and the prices proposed to accomplish this work. This procedure can be repeated in subsequent phases, as necessary.

(f) Competition. A phased competition is full and open competition. The competition includes the evaluation of written proposals for the first phase, and continues as the Government evaluates deliverables and performance during the subsequent phase(s). No justification and approval is required to issue task orders to continue performance in subsequent phases of a phased competition when the phases were included in the synopsis and the solicitation clearly describes the phased approach contemplated.

(g) Source selection through phased competition.

(1) During early industry involvement in this process, the Government may propose phases or work with industry to define the phases that will be used to develop, test, and implement contractual solutions for reengineering processes. Examples of phases that might be used are: concept development, proof of concept, and full implementation or production. During the first phase, the primary goal of the source selection should be to select capable contractors that have a sound understanding of the goals of the acquisition and a reasonable approach. Source selection should also consider the degree of difference in competing proposals to ensure the Government does not pay for duplicate development and testing. In the final phase, evaluation criteria should ensure that the prospective contractor(s) have sufficient background and resources to carry their proposed concept through to fruition.

(2) The SOWs for phases beyond the first phase will develop and evolve through the phased competition process. For this reason, the solicitation should generally request proposals only for the first phase. While the solicitation must include the criteria that will be used to evaluate performance and/or deliverables in each phase, the evaluation criteria for subsequent phases can be described only in general terms initially in the solicitation. However, definitized evaluation criteria must be developed and incorporated into the contract(s) before performance in the next phase is ordered. The same evaluation criteria must apply to all contractors.

(3) Contractors may be asked at any phase to recommend additional evaluation criteria for subsequent phases. However, the same evaluation factors must apply to all contractors involved in a particular phase. When contract proposals differ greatly in their approach, the evaluation factors should allow evaluation of deliverables and performance in terms of the reengineering goals. This method affords the Government the flexibility to make a comparative assessment of different solutions. If

evaluation criteria based on contractor suggestions are used, Government personnel must carefully review these factors before including them to ensure their applicability to all potential solutions, and that the use of these factors would not result in favoring one contractor over another.

(4) The solicitation must clearly describe how the Government will conduct the procurement. The following types of statements must be included in a description of the procedures:

(i) The procurement uses a phased competitive approach in which the Government will evaluate deliverables and performance at the completion of each phase to determine which contractor(s) will be selected to continue into the subsequent phase(s);

(ii) Only contractors participating in the immediately preceding phase will be considered for participation in the next phase;

(iii) The Government intends for performance under full implementation or production to be performed by a contractor or contractors who have tested and developed their services/products under all previous phases of competition. Offerors selected must have sound concepts and the resources and background to carry this competition through to fruition;

(iv) The Government reserves the right to make one or more awards as a result of the solicitation, and award to other than the lowest priced offeror after assessment of each offeror's technical and business proposal. The contract should also include the appropriate clauses and provisions regarding task and delivery order procedures under FAR Subpart 16.5; and,

(v) The Government reserves the right to discontinue performance at any phase of the competition.

(5) Normally, multiple awards are made for the initial phase with competitive down- selections in subsequent phases to determine the most promising contractor(s). However, if it is determined that only one of the proposals received is promising, the resulting contract should continue to allow Government evaluation of development and testing for each phase in the Government environment to manage the risk associated with a single strategy.

(h) Notification and debriefing of unsuccessful offerors/contractors. Care must be taken during debriefings to ensure no data is released that would affect the ongoing competition. The names of contractors selected should be fully disclosed at the time the initial award is made and later when subsequent orders are placed. Contractors shall be afforded the opportunity for a debriefing whenever they are eliminated from further participation in the contract. Adequate safeguards must be in place throughout all phases to protect proprietary information.

(i) Contract award. The scope of each contract awarded includes the potential for orders for all phases of contract performance. Task orders will be placed for work to be performed in each phase and this contract will be used, while the contractor remains in the competition, to move through each phase of contract performance.

(j) Cost or pricing data. Normally, cost or pricing data should not be requested in the initial phase of a phased competition, or when more than one contractor will participate in any subsequent phase. It may

be appropriate to request information other than cost or pricing data (see FAR 15.403 for additional guidance), however, especially when contractor concepts differ greatly in their approach.

(k) Options. The contract may include horizontal options for additional periods of performance or vertical options for additional quantities during any single phase. The Government may include an option in the solicitation to test solutions at more than one site or an option for additional years of performance by the selected contractor(s).

(l) Communications/dialog with contractors. During contract performance, the timely and accurate exchange of appropriate information between the Government and participating contractor(s) is essential.

(m) Type of contract. Both offerors and the contractors selected should be allowed the flexibility in their proposals to suggest the type of contract for each phase. Contract type may differ in each phase, resulting in a hybrid contract; therefore, the evaluation of proposals should include a review of the type of contract proposed in consonance with the approach proposed..

**15.101-91 Source Selection Process Priority**

(a) In assessing the source selection process, developing the acquisition strategy and evaluation criteria at the acquisition planning stage is crucial to maintaining the integrity of the evaluation process.

(b) In order to obtain best value in negotiated acquisitions, the contracting officer should follow the following priority:

(1) The contracting officer should first consider the use of price only procedures. This procedure is best utilized when items are known and there are no performance concerns. Known items are defined as commercial off the shelf type items regularly sold in substantial quantities to the general public and/or non-commercial items that have been purchased by DLA multiple times with no technical issues. When price will be the only evaluated factor, contract requirements must be set forth clearly and unequivocally, and offerors must be aware that if they take exception to any of the terms and conditions in the solicitation, their offer may be excluded from consideration for award. The rationale for waiving evaluation of past performance must be documented in accordance with FAR 15.304(c)(3)(iii).

(2) The next procedure to be considered is the lowest price technically acceptable process. These procedures are best utilized when the requirement is clearly definable and the risk of unsuccessful contract performance is minimal.

(3) The final procedure to be considered is the use of a trade-off process, which should be limited to situations when it clearly will be in the best interest of the government to consider an award to other than the lowest priced offeror or other than the highest technically rated offeror.

## SUBPART 15.2 – SOLICITATION AND RECEIPT OF PROPOSALS AND INFORMATION

*(Revised October 20, 2015 through PROCLTR 2015-12)*

**15.209 Solicitation provisions and contract clauses.**

(e) For automated procurements only, when all or none offers for an entire item quantity is desired, use provision 52.215-9009, All or None for Automated Procurements.

(g) The provision at 52.215-9011, Requirements for Quantity Increments or Ranges, may be used to solicit prices for quantity increments (e.g., 500, 1000, 1500, 2000 units) or quantity ranges (e.g., 500-999, 1000-1499, 1500-1999 units).

## SUBPART 15.3 – SOURCE SELECTION

*(Revised March 29, 2016 through PROCLTR 2016-04)*

### 15.301 Definitions.

*"Preaward survey (PAS) evaluation factor"* is an amount of money which is added solely for evaluation purposes to the offer of an apparently successful offeror whose performance history normally dictates the conduct of a preaward survey.

*"Source inspection evaluation factor"* is a fixed amount of money added solely for evaluation purposes to the offer of an apparently successful offeror with a history of delivering nonconforming material on destination-assigned contracts/purchase orders.

### 15.303 Responsibilities.

The Director, DLA Acquisition (J7) has delegated the authority to appoint the source selection authority, if other than the contracting officer, to the chief of the contracting office (CCO). (See 2.101 for the designation of the CCO at each of the contracting activities or offices). This delegation is not further delegable. Notwithstanding this delegation, the Director, DLA Acquisition (J7) reserves the right to designate the source selection authority for acquisitions on an exception basis, including acquisitions subject to IARB review (see 1.690). FAR Part 3 provides guidance regarding improper business practices and personal conflicts of interest that must be considered in the conduct of an acquisition.

### 15.303-90 Acquisitions and the source selection authority.

(a) For acquisitions valued at $1 billion or greater, the designated Source Selection Authority (SSA) shall be at the Senior Executive Service/Flag Officer (SES/FO) level, if there is an SES/FO within the activity's chain of command. For this purpose, the activity's chain of command includes the Commander or Director of the contracting activity or contracting office not designated as a contracting activity (see definitions in 2.101), as applicable (subject to the restriction in 15.303-91 below ). If an activity does not have an assigned SES/FO in the chain of command, the SSA shall be a GS-15 (or military equivalent) assigned in the activity's chain of command. For acquisitions less than $1 billion, CCOs shall exercise their judgment to ensure that the position level of the SSA is commensurate with the overall dollar value and complexity of the acquisition and ensure appointment of SSAs are in compliance with the Department of Defense Source Selection Procedures (DoD SSP).

(b) Authorized alternates: For acquisitions valued at $1 billion or greater, every effort should be made to ensure that an SES/FO serves as the SSA (as required above). If an SES/FO is unavailable and waiting for availability would cause an unacceptable delay to the acquisition, the CCO may request a waiver to 15.303-90. The CCO shall notify DLA HQ, J71 when a waiver is requested. The waiver request shall provide justification as to why a waiver is necessary and identify the authorized alternate (who must be a GS-15 or military equivalent). Requests for waivers must be approved by the Senior Procurement Executive (SPE).

### 15.303-91 Head of the Contracting Activity role.

For all acquisitions (regardless of dollar value), if the Head of the Contracting Activity (HCA) is the approving official for the acquisition (in accordance with the thresholds at 1.690), he/she shall not also serve as the SSA on that same acquisition.

**15.304 Evaluation factors and significant subfactors.**

(b)(S-90) When applicable, the DoD SSP shall be followed, in conjunction with FAR and DFARS requirements, in establishing and evaluating evaluation factors and subfactors (see DFARS 215.300).

(c)(2) Contracting officers, in procuring an item of personal protective equipment or a critical safety item, shall use source selection criteria that are predominately based on non-cost evaluation factors that when combined are significantly more important than price to the maximum extent practicable if the level of quality or failure of the item could result in death or severe bodily harm to the user.

(c)(4) Socioeconomic (small business) evaluation factor. Under the conditions described in FAR 15.304(c)(4) and DFARS 215.304(c)(i) and subject to the exceptions in FAR 19.1202-2, the contracting officer shall establish an evaluation factor for negotiated competitive acquisitions to evaluate the extent of an offeror's proposed use of small business concerns, in order to incentivize offerors to subcontract with such concerns. This factor may be combined with another non-past performance factor. The relative importance of this factor is at the discretion of the contracting officer, but this factor may not be combined with the factor to promote use of AbilityOne entities (see (c)(S-90)).

(c)(4)(90) Solicitation provisions. The provision at 52.215-9002, Socioeconomic Proposal, or a substantially similar provision shall be included in all unrestricted solicitations; if, however, a subcontracting plan is not required, modify the clause by deleting all references to HBCUs/Mis. Proposals submitted pursuant to this clause shall be evaluated in accordance with the DoD source selection procedures.

(c)(S-90) Use of AbilityOne entities – evaluation factor. The contracting officer shall establish an evaluation factor for the extent of an offeror's proposed use of AbilityOne entities in order to incentivize offerors to subcontract with such concerns and encourage the maximum practicable use of AbilityOne entities as subcontractors (i.e., beyond statutorily mandated use of these entities by prime contractors in accordance with FAR 8.002(c)), unless omission is approved by the CCO. (See 8.702-90.) The relative importance of this factor is at the discretion of the contracting officer, but this factor may not be combined with any other factor. This factor is separate and distinct from the socioeconomic (small business) evaluation factor described in 15.304(c)(4).

(c)(S-91) Transportation evaluation preference. Consistent with DoD transportation acquisition policy and DoD readiness objectives, solicitations for integrated logistics management arrangements, such as prime vendor, virtual prime vendor, on demand manufacturing, quick response, ECAT, and Emall, that may include contractor arranged transportation outside the continental United States, shall include an evaluation factor under tradeoff procedures favoring offerors whose transportation arrangements include the use of carriers with commitments to DoD mobility agreements under civil reserve air fleet (CRAF) and the voluntary intermodal sealift agreement (VISA). Under Lowest price technically acceptable procedures, offers will be evaluated for compliance with the minimum submission requirements set forth in the solicitation on an acceptable/unacceptable basis.

(1) When contracting for commercial transportation providers, the requirement of the contractor to support DoD contingency requirements through participation in the CRAF and VISA programs, and the required use of electronic commerce/electronic data interchange (EC/EDI) and the required providing of their in-transit visibility (ITV) data to DoD shall be used as evaluation criteria. A sample evaluation factor and language describing the factor for inclusion in solicitations are shown in the following sections.

(i) This solicitation, consistent with Department of Defense (DoD) transportation acquisition policy and DoD readiness objectives, includes a transportation preference that favors contractors whose transportation arrangements outside of the continental United States (OCONUS) include the use of carriers with commitments to DoD mobility agreements under civil reserve air fleet (CRAF) and voluntary intermodal sealift agreement (VISA).

(ii) Offerors, as a part of their proposal, shall indicate the carriers that the offeror will use for air and ocean transportation, if awarded the contract. Offers received will be evaluated to determine the degree of commitment to DoD readiness programs.

(iii) Under CRAF, select civil air carriers are contractually committed to support airlift requirements in emergencies when U.S. airlift needs exceed the capability of military aircraft. DoD provides financial incentives via transportation contracts with air carriers in exchange for pledged aircraft for international, long-range, short-range, domestic and Alaskan transportation requirements ready for activation, when needed. During activation, DoD controls the mission of these aircraft. Air carriers continue to operate and maintain their committed aircraft with their own resources. Before receiving a CRAF contract, air carriers must be certified as DoD-approved.

(iv) If air transportation OCONUS is anticipated, offerors should provide the name of the transportation company and a statement as to whether the transportation company or companies has/have a commitment to CRAF. CRAF carriers are preferred.

(v) The VISA was jointly developed by the Department of Transportation Maritime Administration, the DoD, and industry to make intermodal shipping services/systems, including ships, intermodal equipment and related management services available to the Department of Defense to support the emergency deployment and sustainment of U.S. Military forces by augmenting the capacity of DoD's organic sealift capabilities.

(vi) If ocean transportation is contemplated, offerors should provide the name of the company(ies) and category(ies) shown in the following sections that best describes the transportation arrangements under the proposed contract. VISA preferences are as follows:

(A) U.S. flag vessel capacity operated by a participant and U.S. flag vessel sharing agreement (VSA) capacity of a participant.

(B) U.S. flag vessel capacity operated by a non-participant.

(C) Combined U.S. flag/foreign flag vessel capacity operated by a participant and combination U.S./foreign flag VSA capacity of a participant.

(D) Combined U.S. flag/foreign owned vessel operated by a non-participant.

(E) U.S. owned or operated foreign flag vessel capacity and VSA capacity of a non-participant.

(F) U.S. owned or operated foreign flag vessel capacity and VISA capacity of a non-participant.

(G) Foreign-owned or operated foreign flag vessel capacity of a non-participant.

(vi) For further information on the voluntary intermodal sealift agreement, see Federal Register Notice of February 13, 1997 (Volume 62, Number 30, pages 6838 – 6846).

(vii) Evaluation factor: The extent to which the offeror has, or uses other companies that have, CRAF and VISA commitments in both its DoD and commercial shipping methods.

(c)(S-92) Surge and sustainment will be evaluated in accordance with the terms and conditions of the solicitation. (See 17.9300).

(c)(S-93) Cost of source inspection evaluation factor. (See also 13.106-90(a) and 52.213-9001.) When contractors deliver nonconforming supplies or provide nonconforming services, the contracting officer normally requires inspection and acceptance at source, rather than at destination. The evaluation factor for source inspection is the expression of the Government's recognition that it incurs costs resulting from poor contractor performance or from contractor demands for additional Government performance not otherwise considered necessary from the Government's perspective. When the conditions set forth in 13.106-90(a) exist, the provision at 52.213-9001, Evaluation Factor for Source Inspection, shall be inserted in solicitations. The coverage at 13.106-90(a) applies regardless of the dollar value of the acquisition.

(A) The source inspection and preaward survey cost factors in offer evaluation can be applied to any procurement. They can be applied in conjunction with any source selection method.

(c)(S-94) Cost of preaward survey (PAS) evaluation factor. (See also 13.106-90(b)). When a contractor delivers nonconforming supplies or provides nonconforming services or is delinquent in delivery, the contracting officer normally requires a PAS to determine such offeror's responsibility for subsequent acquisitions. (See 9.106) The contracting officer also generally requests a PAS regarding a prospective contractor in accordance with the criteria listed at (A) through (F), below. The evaluation factor for conduct of a preaward survey is the expression of the Government's recognition that conducting a PAS is an additional expense to the Government. There are certain situations (based on a contractor's prior performance) for which it is appropriate to apply a factor for offer evaluation purposes to the apparently low offer of a prospective contractor when the Government must base its responsibility determination on the results of the survey of that firm or individual. When these situations exist, an amount which is the equivalent of the cost of the survey, currently $369, shall be added to the offeror's proposed price for each survey, regardless of the level of survey (formal or informal) to be performed. The cost of the PAS shall be added to the offer of a prospective contractor (manufacturer or non-manufacturer) who:

(A) Has been listed on the GSA list of parties excluded from federal procurement programs within the past three years (or other locally-determined time period); or

(B) Is undergoing or has undergone reorganization under bankruptcy laws within the past three years or other locally-determined time period; or

(C) Is known to the contracting officer to have a poor or marginal performance history; or

(D) Has, within the past year (or other locally-determined time period), received a negative PAS for an item within the same federal supply class (FSC), or for the same type of service, as the item or service being purchased; or

(E) Has failed to liquidate indebtedness to DLA (the extent of such indebtedness shall be determined locally); and

(F) The contracting officer has determined must be surveyed for the contracting officer to make a responsibility determination (see 9.104-1(90)(a) and 9.106-1).

**15.304-90 Past performance evaluation and past performance information systems**.

(a) Scope. This subsection provides policies and procedures for using past performance information systems in evaluating contractor past performance as a non-cost or price-factor in best value award decisions. DLA, DoD and Federal systems available that contain past performance information include but are not limited to, the Federal Past Performance Information Retrieval System, which consists of PPIRS-Report Card (PPIRS- RC) and PPIRS-Statistical Reporting (PPIRS-SR); the Federal Awardee Performance and Integrity Information System (FAPIIS), which is a module of PPIRS, and the Electronic Subcontract Reporting System (eSRS). Regardless of the source of past performance information, past performance will be evaluated in accordance with DoD SSP.

(b) Applicability. Past performance information may be used –

(1) In source selection decisions;

(2) When determining whether to exercise an option; and,

(3) When determining whether to request a preaward survey.~~;~~

(4) For additional discussion concerning contractor past performance information, see FAR Subpart 42.15.

(c) Policy.

(1) OUSD/AT&L mandated the use of the Past Performance Information Retrieval System-Statistical Reporting (PPIRS-SR) to report past performance information for contracts below the CPARS reporting thresholds. PPIRS-SR was phased in at DLA with deployment of EProcurement.

(2) For meeting the dollar thresholds for the specific Business Sectors stated in the Contract Performance Assessment Reporting System (CPARS) Policy Guide, acquisition specialists shall as a minimum use past performance assessment information contained in the Past Performance Information Retrieval System – Report Card (PPIRS-RC) in addition to the past performance information contained in

PPIRS-SR. For business sector definitions and thresholds, see the CPARS Policy Guide at http://www.acq.osd.mil/dpap/Docs/PPI_Guide_2003_final.pdf.

(d) Solicitation provisions.

(1) The solicitation provision regarding use of past performance must specify:

(i) The timeframe constituting recent past performance;

(ii) The definition of relevant past performance for that procurement;

(iii) Potential sources of the past performance information; and

(iv) Discrepant past performance information resolution process.

(2) Contracting officers may use provision 52.215-9003, Use of Past Performance Information Retrieval System – Statistical Reporting (PPIRS-SR) Information in Past Performance Evaluation, in solicitations using competitive FAR Parts 14 and 15 procedures when PPIRS-SR information will be used in evaluating an offeror's past performance. This provision may be used in conjunction with other past performance provisions.

(e) Confidentiality of Past Performance. Past Performance information used in source selection is confidential source selection information, and as such, is protected from release under the procurement integrity rules (see FAR 3.104-4 and 3.104-5). The information is available only to the business entity to which it applies. The past performance information used in the source selection process must carry a restrictive legend substantially the same as the following: "Source Selection Information – see FAR 2.101 and 3.104". This legend must appear on all hard-copy printouts. Release of past performance information to non-DLA Governmental entities must have the concurrence of the local counsel. Release to private entities shall be strictly limited, have the concurrence of the local counsel, and be in accordance with Freedom of Information Act (FOIA, 5 U.S.C. 552) guidelines (see FAR Subpart 24.2, Freedom of Information Act, and DFARS 224.2, Freedom of Information Act). Any FOIA decision to release performance data to other contractors will be made on a case-by-case basis.

**15.305-90 Proposal evaluation.**

(a) When soliciting for a long-term contract and an offer for a fixed quantity is received, the contracting officer shall consider whether the quantity offered meets the requirements of the solicitation. If so, the contracting officer shall consider the offer to be responsive to the solicitation. If not, the contracting officer shall reject the offer as not conforming to the solicitation and shall forward a summary of the offer to the supply planner. The supply planner shall take appropriate action in the best interest of the Government, based on the supply planner's judgment; such as initiating a separate, fixed-quantity purchase request, if warranted by the agency's supply position.

(a)(4) The chief of the contracting office is delegated authority to determine whether technical evaluators may have access to cost information.

## SUBPART 15.4 – CONTRACT PRICING

*(Revised October 20, 2015 through PROCLTR 2015-12)*

**15.401 Definitions.**

*"Cost or pricing data"* also encompasses decrement factor information.

*"Decrement factor information"* is the historical data necessary to determine the average difference between offerors' and their subcontractors' proposed prices and the actual prices negotiated by the contractor with a specific supplier, all suppliers, or suppliers for a specific contract, commodity, or commodity group.

*"Price reasonableness codes"* (PRCs) are two digit codes comprised of a "reviewer" code to identify the functional specialist(s) performing/participating in the price review; followed by a "type analysis" code to distinguish the nature of the price or cost analysis performed in support of the contracting officer's price reasonableness determination (see 15.406-3-90(a)(11)).

**15.402 Pricing policy.**
Contracting officers must adhere to the following policy.

(a)(S-90)(1) Spot buys may be used as a last resort to maintain customer support when establishing a new long term contract. At times, extended negotiations are required to complete price negotiations. The contracting officer should consider in the government objective price the increased cost to the agency, customer and the contractor to continue transactional buys for an extended time.

(2) First Destination Packaging (FDP) Program. The contracting officer will ensure that the Government is paying for the required level of packaging and achieving appropriate savings related to packaging by negotiating the price on manually awarded acquisitions of all dollar values under the FDP program when the packaging standard changes from military standard (MIL-STD) 2073-1 military packaging to the American Society for Testing and Materials (ASTM) standard D-3951 for commercial packaging. (See 11.201(c)(S-90)(1).) Negotiation efforts should be appropriate and consistent with the value of the procurement.

(i) Definitions.

(A) "ASTM D 3951" is a commercial packaging standard that contains acceptable, known, and measurable standards for packaging of material. The standard requires packaging sufficient to preserve the material for one year and, when appropriate, package smaller items together. The packaging requirement states that packaging data "shall be packaged standard commercial in accordance with ASTM D 3951".

(B) Military standard (MIL-STD) 2073 is a detailed military packaging standard that directs the type of packaging needed to preserve the material based on the type of material and is stated on or in the packaging data with information on preservation, wrapping, and cushioning.

(ii) Negotiation guidelines for the acquisition specialist or buyer:

(A) Review the packaging requirement on the current acquisition and determine whether commercial packaging is now required, versus a previous military standard.

(B) Utilize the following negotiation guidelines on manually awarded acquisitions to obtain possible savings from any change in packaging requirements from military to commercial standards.

*(1)* Negotiation efforts should always consider packaging and be appropriate and consistent with the value of the procurement.

*(2)* If the historical buy was automated, attempt to negotiate better pricing regardless of the previous packaging level.

*(3)* To realize savings from a change in packaging requirements, compare the currently offered price to the historical price, however, do not change the packaging requirements without consulting with the packaging or product specialist. (This includes changes to the quantity unit pack (QUP) which is the number of items that may be in one package.)

*(4)* Document the levels of the packaging for the current buy and the previous buy, whether there was a change in requirements from military to commercial packaging, and the negotiations to secure price reductions as a result of a change to commercial packaging. (See PGI 13.106-3(b)(S-90)(1)(i) for a sample format to document a simplified acquisition.)

(C) Receive confirmation from the contracting officer that packaging was reviewed and negotiated.

**15.402-90 Pricing policy – exclusive dealers.**

(a) DLA contracting officers are required to obtain data other than cost or pricing data, without requiring certification (see FAR 15.402(a)(2)(i) and (ii)), when the Truth in Negotiation Act (TINA) does not apply and there is no other basis for determining that the proposed prices are fair and reasonable (e.g. through market research and price analysis techniques). In these situations when TINA does not apply, the distributor/dealer must provide its cost-type data when required by the contracting officer. Additional guidance is contained in DFARS PGI Subpart 215.4. Moreover, if the contracting officer is relying on previous prices paid by the Government, the contracting officer must establish that a thorough price or cost analysis was performed on the previous buys (see DFARS PGI 215.403-3(4)).

(b) It is critical that all levels of management support the contracting officer in acquiring ~~cost-type~~ data other than cost or pricing data, necessary for determining fair and reasonable prices. If the exclusive distributor's or dealer's representative does not provide the information requested by the contracting officer, the situation should be elevated to higher levels of management within both the government and contractor organization. When TINA does not apply, any distributor or dealer who does not comply with the requirement to submit data other than cost or pricing data for a contract or subcontract is ineligible for award unless the head of contracting activity (HCA) determines that it is in the best interest of the Government to make the award to that offeror in accordance with FAR 15.403-3(a)(4). The contracting officer must ensure the following is clearly documented in support of the request to the HCA:

(1) The effort taken to obtain the data;

(2) The need for the item or service; and

(3) Increased cost or significant harm to the Government if award is not made.

(c) In the event of an exigent situation when the HCA has approved award without obtaining requested data other than cost or pricing data, the contracting activity must notify the DLA Acquisition J72, and J7 will then notify Defense Procurement, Acquisition Policy.

(1) The form "Reporting Requirement for Purchases from Exclusive Distributors and/or Dealers," which is in EProcurement for completion by the contracting officer, will include the following information:

(i) Contractor name and data universal numbering system (DUNS) number for the exclusive/distributor/dealer;

(ii) Subcontractor name and DUNS number (e.g., original equipment manufacturer (OEM) or actual manufacturer);

(iii) Contract number, modification or order number if applicable;

(iv) Date and amount of the contract action;

(v) Steps taken to attempt price analysis without requiring cost-type data;

(vi) Offeror's rationale for refusing to provide the data;

(vii) Actions taken by the contracting activity to obtain the data;

(viii) Data used to determine price reasonableness and the resulting determination; and,

(ix) Actions planned to avoid this situation in the future.

(2) DLA contracting activities will report this information on a quarterly basis by January 30 for October 1 – December 31 actions; April 30 for January 1 – March 31 actions; July 30 for April 1 – June 30 actions; and October 30 for July 1 – September 30 actions. J71 will ensure the completeness of the form and submit results through J7 to DPAP by March 15 for October 1 – December 30 actions; June 15 for January 1 – March 31 actions; September 15 for April 1 – June 30 actions and December 15 for July 1 – September 30 actions.

**15.402-92 Pricing policy – sole-source items subject to limited competition.**

(a)(1) A sole-source item can be considered subject to limited competition when an item has a single manufacturing source but can be obtained from a limited number of suppliers (usually distributors for the sole source original equipment manufacturer (OEM)). Such limited competition acquisitions can meet the "adequate price competition" definition under the Truth In Negotiations Act (TINA) (FAR 15.403-1(c)(1)(i)) if (i) there are multiple offerors; and (ii) there is a finding executed by the contracting officer, documenting a reasonable basis for concluding that all offerors are offering prices in a manner truly independent of each other and the sole-source OEM

(b) The contracting officer must decide whether additional information, such as prior prices paid, is necessary to determine the reasonableness of the otherwise successful offeror's price. This must be adequately documented in the contract file.

(c) Contracting officers shall use the following guidelines in making the determination :

(1) Assessing "Extent of Competition." In acquisitions for sole-source items that are subject to limited competition, a major factor that must be considered is whether the original equipment manufacturer (OEM) exerts control over the competitors in the procurement, especially with regard to pricing, or whether the nature of the business relationship otherwise results in the OEM's competitors' pricing being directly dependent on the OEM's pricing without significant independent pricing decisions by the competitors. If the OEM exerts control over dealers or distributors by controlling the resale prices that dealers or distributors may charge, adequate price competition does not exist. If, however, the dealers and distributors have access to adequate supplies of the OEM's product and may set their own prices (even if those prices, by virtue of economic exigencies, vary very little from one dealer or distributor to another), then adequate price competition may be found to exist for Truth in Negotiations Act (TINA) purposes and for buys where TINA would not apply.

(2) OEM strategies. There are a variety of different alternatives employed by OEMs for selling/distributing products, including:

(i) Selling directly to all customers;

(ii) Selling through their own financially-affiliated network of dealers/distributors;

(iii) Selling to multiple independent (not financially affiliated) dealers/distributors; and/or

(iv) Entering into a sole dealer/distributor relationships (often found to lack transparency not conducive to independence and is often characterized by both parties refusing to make available the OEM's cost data to substantiate atypical rapid growth in prices to the Government over time).

(3) OEM Control. The assessment should examine whether there is a financial (organizational) relationship under common ownership or control, or other business relationship not conducive to dealer/distributor independence and objectivity because the OEM exerts control over dealers or distributors. OEMs in situations involving competition with independent dealers/distributors may disclose cost details of their price.

(i) If the OEM does not provide a detailed breakdown of direct material, direct labor, overhead, along with general and administrative costs (G&A) to dealers/distributors, this could be an indication of OEM control over the dealer(s)/distributor(s). In this type of situation the contracting officer may not have enough information to determine price reasonableness of the item being purchased.

(ii) Dealers/distributors should generally:

(A) Conduct appropriate cost or price analysis on the OEM (that may be acting as a subcontractor to the dealer/distributor) to establish the reasonableness of the proposed price (DFARS PGI 15.404-3); and

(B) Include the results of this analysis in its price proposal.

(iii) In instances when the OEM is unwilling to furnish data required for this analysis to the dealer/distributor, higher tier subcontractor/contractor, or directly to the Government; or if the dealer/distributor is unable or unwilling to perform the analysis, this could be considered an indication of control by the OEM and a sign that adequate price competition does not exist.

(iv) The unwillingness to provide, or unavailability of, a written contract/agreement documenting an OEM's business relationship with a dealer/distributor may also provide further evidence indicating the absence of an arm's-length business relationship, which in turn may be indicative of a lack of a competitive market for sole-source parts offered by the dealer(s)/distributor(s).

(4) Determining price reasonableness. In situations where sole-source items are subject to limited competition, consider the low offerer's price in comparison to historical prices paid, along with the need for information on the offeror's systems, which may be useful indicators of price realism and/or reasonableness.

(i) Historical price comparison.

(A) An explanation of the basis and frequency of the OEM's price increases to dealers/distributors should be requested and considered when the contracting officer is basing a price reasonableness determination on a price comparison to previous prices.

(B) A pattern of frequent/substantial price increases since the inception of a dealer/distributor relationship may indicate the absence of an arm's-length business relationship. For example, if a dealer/distributor increases prices by 20 percent annually, but the applicable producer price index (PPI) or cost indexes for material and labor increased at a significantly lower rate, this should be investigated.

(C) Where available, price increase information for both the dealer/distributor and OEM (that may be acting as a subcontractor) should be evaluated to determine the reasonableness of proposed price increases. If the OEM is proposing price increases significantly higher than the applicable independent measure(s) of cost/price growth by the dealer/distributor, and if the OEM refuses to provide appropriate documentation to support its proposed costs to the dealer/distributor, this could be viewed as an indication of OEM control over the dealer(s)/distributor(s) and indicate that adequate price competition may not exist.

(ii) Contractor purchasing system. For acquisitions involving sole-source items subject to limited competition that exceed the truth in negotiation act (TINA) threshold, the contracting officer should consider:

(A) Obtaining current contractor purchasing system review (CPSR) status information from the cost and price office/analyst (see 15.404-1(c)(S-90)(5)), or direct from the cognizant Defense Contract Management Agency administrative contracting officer (ACO) of the most recent completed, pending, or planned review; and

(B) If the contractor does not have an approved purchasing system, or if the system has not been reviewed, consider requesting that the ACO evaluate whether the OEM's projected sales to Government during the next 12 months meet the FAR 44.302 criteria, to determine if a contractor purchasing system review should be performed.

(C) If a contractor purchasing system review should be performed, the contracting officer should request that the ACO perform this review so that the information is available to the contracting officer.

(D) Documentation related to the contractor purchasing system review status, any request for a CPSR review or eligibility assessment, and the contractor purchasing system review report shall be included in the contract file supporting the award, and a copy furnished the cognizant local pricing office that is responsible for providing support for the acquisition.

(iii) Contractor estimating system review (CESR). For acquisitions of sole-source items subject to limited competition that exceed the TINA threshold and will result in an award to a large business, the contracting officer should consider obtaining current contractor estimating system review status information of the proposed large business awardee from the cost and price office/analyst or direct from the cognizant Defense Contract Management Agency ACO (DFARS 215.407-5). This information shall be documented in the contract award file supporting the award.

**15.402-93 Pricing policy – tailored logistics support contracts.**

(a) Policies, procedures, and definitions for terms used under tailored logistics support contracts (TLSC) are contained in DLAD 17.95. The definition of TLSC is contained in DLAD 2.101

(b) Contracting officers shall coordinate new, and changes to existing, tailored logistics support contract pricing strategies with J72 Pricing early in the acquisition planning phase, prior to any acquisition review board (ARB) (See DLAD 1.690-8 for requirements to include J72 Pricing in procuring activity ARBs). This coordination can be accomplished by contacting the on-site J72 Pricing representative, if available, or by contacting the HQ J72 Pricing team directly or through the procuring activity pricing office to ensure that new strategies and changes to existing strategies meet the requirements of paragraphs (c) and (d) of this subsection early in the acquisition process.

(c) Pre-award pricing strategies shall ensure a reasonable method for evaluating offerors' prices and comparing the relative cost to the Government for each proposal.

(1) When a market basket or similar solicitation evaluation strategy is used, contracting officers shall ensure the items selected for the market basket represent the scope, magnitude, and complexity of the acquisition and include all cost drivers. Cost drivers are high dollar value, high purchase frequency, and high volume items which are expected to be purchased under the acquisition based on an analysis of historical demand data, anticipated future demand, and other relevant data. The final market basket must represent the different types of items that can be purchased under the contract. It should include enough items to allow the contracting officer to make an informed pricing decision when comparing proposals from different offerors in order to determine the expected cost to the Government.

(2) The rationale for selecting the type and number of market basket items shall be documented in the contract file.

(d)(1) Post-award pricing strategies shall ensure fair and reasonable prices are being paid for all items purchased under the program. The pricing strategy shall address how new items added to the contract and price changes to existing items under the contract will be determined fair and reasonable.

(2) If the contracting officer is relying on the contractor's purchasing system to verify that the contractor competed items or services or to assist in justifying that the prices are fair and reasonable, see DLAD 17.95 for required solicitation provisions and contract clauses.

(e) A number of TLSC pricing models have been established. Examples of established pricing models are provided below. New models or variations to these models shall follow the requirements in paragraphs (b), (c), and (d) of this subsection.

| Pricing Model | Program Example | Initial Price Reasonableness Determination | Post-Award Price Reasonableness Determination |
|---|---|---|---|
| Fixed price utilizing distribution and pricing agreement (DAPA) and Federal Supply Schedule (FSS) pricing | Medical/Surgical and Pharmaceutical | All prices are determined fair and reasonable by contracting officer before time of award. | The contracting officer makes 100% fair and reasonable determinations for new items and price changes. |
| Fixed price utilizing market basket | Subsistence CONUS and OCONUS | The market basket must represent at least 40% of the anticipated dollar value of the acquisition, with additional items judgmentally selected to represent all distribution categories to the maximum extent practicable. The market basket must contain a minimum of 75 items.<br><br>The prices of all market basket items are determined fair and reasonable by contracting officer before time of award. The price of all catalog items to be | The contracting officer makes 100% fair and reasonable determinations for new items and price changes. |

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| | | included in the first ordering catalog beyond those in the market basket must be determined fair and reasonable prior to the first ordering period. | |
| Fixed price utilizing price evaluation list | MRO Supplies | The price evaluation list must represent the scope, magnitude, and complexity of the acquisition, and include all cost drivers.<br><br>The prices of all price evaluation list items are determined fair and reasonable by contracting officer before time of award. | If the tailored logistics support purchasing review clause (DLAD 52.217-9017) is applicable (see DLAD 17.9508), the contracting officer makes fair and reasonable determinations as follows for new items and price changes:<br><br>- For line items with an extended value of less than the micro-purchase threshold, a representative statistical sampling of lines sufficient to provide a 90% confidence level, with a 10% error rate, shall be reviewed on post-award basis no later than 60 days after award.<br><br>- For line items with an extended value greater than or equal to the micro-purchase threshold and less than $10,000, 100% of the items with a percentage of determinations performed pre-order and the remainder post-order. The minimum percentage for pre-order is 30%, with the remainder done no later than 60 days after award.<br><br>- For line items with an extended value greater than or equal to $10,000, 100% of the items shall be determined fair and reasonable prior to any order being processed.<br><br>If the tailored logistics support purchasing review clause is not |

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| | | | applicable, the contracting officer makes 100% fair and reasonable determinations for new items and price changes.<br><br>The contracting officer reviews 100% of incidental services and negotiates proper scope and pricing prior to commencement of services. |
| Fixed price utilizing price evaluation list | Metals | The price evaluation list must represent the scope, magnitude, and complexity of the acquisition, and include all cost drivers.<br><br>The prices of all price evaluation list items are determined fair and reasonable by the contracting officer before time of award. | The contracting officer makes 100% fair and reasonable determinations for new items and price changes.<br><br>The contracting officer reviews 100% of incidental services and negotiates proper scope and pricing prior to commencement of services. |
| Multiple award, fixed price utilizing price evaluation list and competition of each order | Special Operations Equipment, MRO Supplies (CENTCOM), Fire Fighting and Emergency Services Equipment, Wood Products | The price evaluation list must represent the scope, magnitude, and complexity of the acquisition, and include all cost drivers.<br><br>The prices of all price evaluation list items are determined fair and reasonable by contracting officer before time of award. | Fair opportunity to compete for an order is provided to all contract holders in accordance with FAR 16.505 (b).<br><br>The contracting officer makes 100% fair and reasonable determinations for new items and catalog price changes.<br><br>The contracting officer reviews 100% of incidental services and negotiates proper scope and pricing prior to commencement of services. |

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|---|---|---|---|
| Fixed price utilizing pre-priced core list e.g. integrated prime vendor (IPV) | | Competitively awarded core list using best value.<br><br>Core list is a percentage of the total item requirements and must represent the scope, magnitude, and complexity of the acquisition, and includes all cost drivers.<br><br>Initial Core List items are determined fair and reasonable by contracting officer before time of award.<br><br>Only items on the Core List may then be ordered.<br><br>Unpriced items representing the balance of total requirements are placed on a Schedule of Unpriced Items, which are not available until priced. | The contracting officer makes 100% fair and reasonable determinations for price changes or adding an item to the core list from the schedule of unpriced items.<br><br>Over time, eventually all requirements identified are expected to be included in the Core List. Only items on the Core List may be ordered.<br><br>The contracting officer also reviews 100% of incidental services and negotiates proper scope and pricing prior to commencement of services.] |

**15.403 Obtaining cost or pricing data.**

**15.403-1 Prohibition on obtaining certified cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).**

(b) An approved TINA waiver, does not alter the requirements for performing some form of price or cost analysis to determine price reasonableness (see FAR 15.404-1(a)(1) through (a)(3)) and for documenting the results (see FAR 15.406-3(a)(11)).

(c) Standards for exceptions from certified cost or pricing data requirements.

(4) Waivers.

(A)(S-90) For an award or modification action which is subject to TINA requirements and to which none of the other statutorily-sanctioned exemptions (adequate price competition, price set by law or regulation, commercial item, or modifying a contract for commercial items per FAR 15.403-1(b)(1) through (b)(3) and (b)(5)) are applicable, the contracting officer should consider seeking an exceptional case TINA waiver. An exceptional case waiver may be granted, however, only when all three of the findings required by Section 817 of the Fiscal Year 2003 National Defense Authorization Act are met (see DFARS 215.403-1(c)(4)). A waiver shall not be granted simply because the price can be determined fair and reasonable without the submission of certified cost or pricing data. The contracting officer shall take the following actions if a TINA waiver will be pursued:

*(i)* Advise the offeror or contractor as applicable, of any requirement for cost or pricing data as identified in the relevant data requirements clause included in the solicitation or contract, request submission of the relevant data, and determine whether the offeror/contractor, as applicable, has provided TINA data in the past (DPAP memo, March 23, 2007, subject: Waivers Under the Truth in Negotiations Act (TINA) stated "TINA waivers should not be granted to contractor business segments that normally perform Government contracts subject to and in compliance with TINA.")

*(ii)* If the offeror refuses, request the refusal be put in writing, with an explanation of why the required data is being withheld or no longer being provided, if applicable.

*(iii)* Decide whether the offeror's price can be determined fair and reasonable based on a price comparison to a prior competitive buy or some other authorized means of price analysis.

*(iv)* Elevate the efforts to obtain TINA data through the offeror's business segment officials and through the DLA channels for action to the senior reviewing official; and if unsuccessful, for action by the CCO and HCA

*(v)* Prepare a Truth In Negotiations Act (TINA) waiver determination and findings, which is to:

*(1)* Include verbatim, the three statutorily-required findings (DFARS 215.403-1(c)(4)(A)(1) through (A)(3)), and

*(2)* Follow the guidance at DFARS 215.403-1(c)(4)(A) and DFARS PGI 215.403-1(c)(4)(1).

*(vi)* Notwithstanding the existence of a prior blanket waiver, (including those referenced at DFARS 215.403-1(c)(4)(C) and (D)) the contracting officer must accomplish the price analysis required by FAR 15.404-1(a) in an effort to ensure that the overall price is fair and reasonable.

*(vii)* Prior to forwarding the waiver request through channels to the HCA the contracting officer shall:

*(1)* Prepare the additional documentation supporting elevation of a supplier's refusal to provide cost or pricing data and a TINA waiver if applicable, as identified in 15.404-2(d).

*(2)* Coordinate, and furnish a copy of, the recommended draft TINA waiver D&F (with attached refusal letter from the offeror's senior manager delineating why the offeror refuses to submit and/or certify the requisite cost or pricing data) and an electronic draft spreadsheet record of the proposed TINA waiver, with the cost and price analysis office.

*(viii)* The cost and price analysis office is the focal point for reviewing and providing advice on proposed TINA waiver D&Fs, maintaining the TINA waiver tracking log, a copy of the proposed and approved TINA waiver D&Fs and for emailing the monthly report of all exceptional case TINA waivers that were in-process or executed during the month, using the J72-prescribed TINA waiver spreadsheet, to DLA Acquisition J72 Pricing not later than five business days following the end of each month.

*(ix)* Following an unsuccessful negotiation with the contractor's cognizant senior official for:

*(1)* The requisite cost or pricing data and subsequently, the certificate of cost or pricing data; and,

*(2)* The contractor's letter of refusal with rationale why the data will not be provided including, as applicable, an explanation of why the data has been provided to the Government by the business segment in the past, but will no longer be provided, and/or data other than cost or pricing data to enable the contracting officer to determine the price(s) fair and reasonable, the contracting officer should follow the guidance at 15.404-2(d) for elevating TINA refusals to the HCA.

*(x) F*ollowing the unsuccessful accomplishment of the steps at 15.404-2(d) for processing by the Commander or Director, , the Commander/ Director HCA or chief of the contracting office shall promptly notify DLA Acquisition, attention: J7, and forward recommendations to resolve the impasse. A copy of the notice elevating the matter, along with a copy of the proposed D&F and supporting documentation (including that listed at 15.404-2(d)(S-90)(1) to (14)), should be forwarded electronically to DLA Acquisition J72 by the CCO or designee, e.g., normally the chief of the cost and price analysis office.

*(xi)* Within seven working days following receipt of the complete documentation package, J7 will contact the offeror and request the certified cost or pricing data or the written refusal. If the contracting officer is unable to determine the prices fair and reasonable, J7 will exhort the contractor to provide a basis the Government can use to determine the price(s) to be fair and reasonable.

*(xii)* Once J7 has made contact and the offeror has provided the refusal and information to enable a fair and reasonable price determination, or the offeror has re-engaged in negotiations with the contracting officer leading to fair and reasonable prices, the HCA can sign the waiver. If the offeror still refuses to provide documentation of its refusal, J7 will provide written documentation of the J7 effort, and outcome, to the cognizant contracting office for its records (Including where applicable, the SPE coordination per DFARS 215.403-1(c)(4)). If the price cannot be determined fair and reasonable, spot buys may be used as a last resort to maintain customer support since the requirements for issuing the waiver cannot be met.

*(xiii)* When the award action has been completed or cancelled, the contracting officer shall promptly advise the cost and price analysis office, in writing of the action taken on the D&F; if an exceptional TINA waiver was executed by the cognizant HCA, the contracting officer shall promptly prepare and furnish to the cost and price analysis office, a copy of the completed J71 electronic spreadsheet record of the TINA waiver, along with a .PDF format copy of the completed (signed, with signature block, and dated) TINA waiver D&F, with the attached contractor TINA refusal, if available. This information will be used for DLA's quarterly report of TINA waivers to DPAP (which is the basis of the annual OSD report; see DFARS PGI 215.403-1(c)(4)(B)).

(C)(S-90) The DoD waiver of submission of certified cost or pricing data from the Canadian Commercial Corporation (CCC) (DFARS 215.403-1(c)(4)(A)) states that the integrity of the assurance of fair and reasonable prices by the Government of Canada can be assumed. However, proposal analysis is required (FAR 15.404-1). Where price analysis indicates a fair and reasonable price significantly different than that offered by CCC, the contracting officer should initiate discussions with the CCC to request confirmation of the price reasonableness determination. A brief explanation of why the confirmation is being requested, i.e., the results of the price analysis, should accompany the request.

**15.403-3 Requiring data other than cost or pricing data.**

(a) General.

(4)(S-90) The determination and findings at FAR 15.403-3(a)(4) that it is in the best interest of the Government to make the award to that offeror:

(A) is delegable by the contracting activity HCA to the chief of the contracting office (CCO), with power of redelegation without further delegation, to one level below the CCO, and

(B) has been delegated to the CCO for other DLA contracting offices (see 2.101, contracting offices not designated a contracting activity) without power of further delegation.

(b) Data Other Than Certified Cost or Pricing Data

(1) *Policy on Requiring Data Other Than Certified Cost or Pricing Data* (FAR 15.403-3). The contracting officer is responsible for obtaining data other than certified cost or pricing data to the extent necessary to determine price reasonableness or cost realism.

(i) When certified cost or pricing data are required, contractors are required to use the format in FAR 15.408, Table 15-2.

(ii) When the pricing action is not subject to TINA and the contracting officer has no other means for determining price reasonableness, data other than certified cost or pricing data may be required. The contracting officer must determine the amount and format of additional data that will be needed in order to determine price reasonableness. To the maximum extent practicable, limit the requirement to data in a form regularly maintained by the offeror in commercial operations.

(iii) Read the referenced definition of data other than certified cost or pricing data carefully. Although we want to limit requests for data to only that which is necessary to determine fair and

reasonable prices, there is virtually no limit on the type of data the contracting officer can require. The type of data that may be required include: prior sales; catalog pricing and discounts; limited cost data such as: hours by labor category and direct and indirect rates, or possibly full cost data where absolutely necessary. Because the pricing action is exempt from TINA, the contractor would not be required to sign a certificate of current cost or pricing data.

(iv) The key differences between "certified cost or pricing data" and "data other than certified cost or pricing data" is that "certified cost or pricing data" requires the contractor to also submit a Certificate of Current Cost or Pricing Data and requires the use of Table 15.2 (FAR 15.408). On the other hand, "data other than certified cost or pricing data," although it could be made up of the same data, does not require a Certificate of Current Cost or Pricing Data and does not require submission of data in the format at Table 15.2. Also, while under TINA requirements the offeror/contractor is required to disclose all facts that a prudent buyer or seller would expect to have a significant impact on price, under "data other than certified cost or pricing data" the contracting officer may only require limited cost information from the offeror/contractor.

(v) Generally, you should not require firms to submit data other than certified cost or pricing data when there is adequate price competition.

(A) If you need additional information to determine price reasonableness, to the maximum extent practicable, the contracting officer must obtain the necessary information from sources other than the offeror.

(B) However, the contracting officer may require data other than certified cost or pricing data to determine the cost realism of competing offers or to evaluate competing approaches.

(vi) Unless price reasonableness will be determined by adequate price competition or a price set by law or regulation, obtain (as a minimum) appropriate information on prices at which the same item or similar items have previously been sold that is adequate for determining price reasonableness.

(A) For commercial items:

(*1*) Limit requests for sales information to data for the same or similar items during a relevant time period. When using sales information for similar items, the contracting officer may also request cost information to help determine the impact, on price, of the differences between the item being procured and the similar item being used for comparison.

(*2*) To the maximum extent practicable, limit the requirement to information in a form regularly maintained by the offeror in commercial operations.

(S-90) The Contracting Officer shall review the GSA Federal Supply Schedules and/or GSA Advantage! For available pricing on the item.

(B) As specified in FAR 15.403-3(a)(4) (Section 808 of Public Law 105-261), an offeror who does not comply with a requirement to submit data that the contracting officer has deemed necessary to determine price reasonableness or cost realism is ineligible for award unless the Head of the Contracting Activity determines that it is in the best interest of the Government to make the award to that offeror, based on consideration of the following:

(*1*) The effort made to obtain the data.

(*2*) The need for the item or service.

(*3*) Increased cost or significant harm to the Government if award is not made.

(C) Contractor refusals to submit requested information, and all actions taken by the contracting officer and at levels above the contracting officer to address those refusals, must be fully documented.

(2) *Price Data Other Than Certified Cost or Pricing Data*. The contracting officer may require the offeror/contractor to provide price data under the requirements of "data other than certified cost or pricing data." Price data will be particularly important for commercial items purchased noncompetitively.

| **Price Data Other Than Certified Cost or Pricing Data** | | |
|---|---|---|
| **Information Element** | **Consider Requiring Offerors/Contractors To...** | **Related Analysis Questions** |
| Catalog pricing | Identify any relevant offeror commercial catalog, its date, catalog prices, and related discounts. Also require the offeror/contractor to explain any differences between the offered price, the established catalog price, and price of recent sales in quantities similar to the proposed quantities. | Does the firm have a commercial catalog price?<br><br>How do the prices for recent commercial sales compare with the catalog price?<br><br>How does the price offered compare to the catalog price and the circumstances of the commercial sales? |
| Market pricing | Describe the nature of the relevant market and how that market affects the offered price including the source and date or period of any relevant market quotation or other basis for market price, the base market price, and applicable discounts or other price adjustments. | Is there a commercial market for the item?<br><br>Is there an independent and verifiable record of the market price?<br><br>How does the price offered compare to the market price and the circumstances of the commercial sales? |
| Other evidence of prices charged | Provide evidence of prices charged other customers under similar circumstances. For example, the firm could provide copies of contracts with other customers to document the prices charged. | Can the offeror provide evidence of the prices paid by commercial customers?<br><br>Do commercial customers verify the prices paid?<br><br>How does the price offered compare with the prices paid by other customers under similar circumstances? |
| Services normally provided | Describe the services provided by the offeror/contract to the firm's buying at the prices provided as bases for price analysis. Different firms and industries provide different levels of support services for their products, including product warranties, set-up, and financing. | What services are provided other customers?<br><br>Based on services provided, should the Government price be different than the |

| | | |
|---|---|---|
| | | price charged commercial customers? |
| Normal order size | Document the normal order size for firms paying prices provided by the offeror/contractor as bases for price analysis. Prices may relate to the total size of each order, not just the price of the item involved. For example, an order could include 100 units of the item and nothing else, or the order could include 100 units of the item and thousands of units of other items. Presumably, the larger order should merit a lower price. | What was the total dollar value of orders with other customers? Based on the relative order size, should the Government price be different than the price charged other customers? |
| Annual Volume of Sales to Similar Customers | Document the sales volume to similar customers and the prices paid by those customers. For example, commercial firms often negotiate total volume discounts with major customers, over and above normal order quantity discounts. In comparing total volume of purchases, you should normally consider known acquisitions from all Government activities as a group. | Under similar circumstances, does the firm sell at lower prices to firms with larger total annual purchases?<br><br>What prices are charged other customers with total annual purchases similar to that of the Government? |
| Lowest Price Charged Other Customers | Document the lowest prices recently charged other customers for the same or similar products. The Government procurement may not this most favored customer treatment, however this information will provide useful information on the lowest prices paid by any customer under any circumstances. What is recent will vary based on the type of item and the market. Generally, it will vary from three months to a year. | What is the lowest recent price paid for the same or similar product?<br><br>How do the circumstances of the Government procurement differ from the circumstances of the lowest priced sale? |

(3) *Cost Data Other Than Certified Cost or Pricing Data* . You may require an offeror/contractor to provide cost data under the requirements of "data other than certified cost or pricing data" to support your analysis of price reasonableness or cost realism. The table below examines situations in which additional cost data under "data other than certified cost or pricing data" might be needed. Examples of the type of questions that cost data could help answer are also provided. Government technical, field pricing, and audit assistance may be required to analyze the cost information and answer related questions.

| Contracting Situation | Analysis Purpose | Analysis Questions |
|---|---|---|
| You expect a single offer at or below the certified cost or pricing data threshold, and you do not expect to be able to determine price reasonableness using price analysis alone. | Support determination of price reasonableness | Does the proposed price appear reasonable based on its relationship with estimated costs? |
| You expect a single offer greater than the cost or pricing data threshold that will be excepted from cost or pricing data requirements, but you do not expect to be able to determine price reasonableness using price analysis alone. | | |
| You expect competitive offers, but because of technical differences, you do not expect to be able to determine price reasonableness using price analysis alone. | | |
| You find that there are too few or outdated sales of commercial item to use as a basis for price analysis and cost analysis is the only reasonable method for determining price reasonableness. | | |
| You expect competitive offers for a cost-reimbursement contract. | Cost realism analysis to determine probable final cost to the Government. | Are proposed costs realistic for the work to be performed? |

| | | |
|---|---|---|
| You expect competitive offers for a fixed-price contract, but new requirements may not be understood by all offerors. | Cost realism analysis to determine an offeror understands all contract requirements. | Do proposed costs reflect a clear understanding of contract requirements? |
| You expect competitive offers for a fixed-price contract, but you have concerns about the performance quality that will result from each offeror's proposal. | Cost realism analysis to determine an offeror's ability to deliver proposed quality at the proposed price. | Are proposed costs consistent with the offeror's technical proposal? |
| You expect competitive offers for a fixed-price contract, but market analysis leads you to believe that some offerors may propose unrealistic prices that would jeopardize contract performance. | Cost realism analysis to determine an offeror's ability to meet all contract requirements at the proposed price. | Do proposed costs reflect a clear understanding of contract requirements? |

(4) *Information Requirement* (FAR 15.403-3(a) , FAR 15.408(l), FAR 15.408(m) , FAR 52.215-20, and FAR 52.215-21). The solicitation/contract must specify the data and the format required:

(i) Tailor the requirement to the data essential for your analysis (e.g., do not require cost data if price data is adequate).

(ii) Permit the firm to select the format for submitting the data unless the contracting officer determines that use of a specific format is essential.

(iii) Ensure that the data used to support price negotiations is sufficiently current to permit negotiation of a fair and reasonable price.

(iv) Limit requests for updated offeror/contractor data to data that affects the adequacy of the proposal for negotiations (e.g., changes in price lists).

(v) Never require a certificate of current cost or pricing data for any data other than certified cost or pricing data.

**15.403-4 Requiring cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).**

(a)(1)(i) Pricing a contract award:

(S-90) If the award establishes a maximum quantity of supplies or services to be acquired or establishes a ceiling price or establishes the final price to be based on future events, the final anticipated dollar value must be the highest final priced alternative to the Government for all items priced and evaluated in the award, plus the highest dollar value of all such evaluated options (see also FAR 1.108(c)).

(S-91) The requirement to obtain certified cost or pricing data applies to actions of the following types for one or more items of supply or services not priced at time of award, when their combined total amount using any maximum order quantities for such items calculated exceeds the TINA threshold cited in the FAR clauses in (ii) above) that are included in the contract (see FAR 15.403-4(a)(1)):

(A) Exercise of a priced or undefinitized option for items having prices that were not evaluated at time of contract award in accordance with 17.206(b)(90),

(B) Definitization of an undefinitized option (See FAR 16.603 and DFARS 217.74),

(C) Definitization of another undefinitized contract action (see FAR 16.603 and DFARS 217.74), and

(D) Repricing action, e.g., an actual cost type EPA, action under the Changes, Claims, Price Reopener, and Prospective Repricing clause, etc.

(S-92) The following postaward actions do not require certified cost or pricing data to be obtained:

(A) Exercise of priced options for items having prices which were evaluated at time of award,

(B) Price adjustments for items under an EPA based on established prices or on cost or price index(es), and

(C) Actions for which an exemption is applied (see FAR 15.403-1(b)(1) through (b)(3) and (b)(5)), e.g., when the price for an option is based on the price of a basic award for the same or similar item(s) for which one of the statutory exceptions apply; or when an EPA or other re-pricing action is based on a change in an established price (includes instances where cost or price indexes reflecting a change in a market is used), or a change in a price set by law or regulation.

(b)(S-90) Contracting officers shall:

(i) Identify in solicitations, any options which are subject to the requirement to obtain cost or pricing data prior to exercise of the option;

(ii) Specify in solicitations where applicable, that the offeror's certificate must specifically identify, the evaluated option having price(s) covered by the certificate;

(iii) Identify in solicitations and resulting contracts any options expected to exceed the TINA threshold included in the contract which the contracting office does not plan to include in the preaward pricing evaluation and stipulate that as a prerequisite of exercise, they are subject to the submission and certification requirements of P.L. 87-653 as implemented by the applicable clause (FAR 52.215-20 or 52.215-21, whichever will be included in the contract); and

(iv) Coordinate with the cost and price analysis office as soon as pricing assistance is needed in accordance with 15.404-1(a)(S-90)(1)(i) or (ii).

(S-91) Certified cost or pricing data for indefinite quantity and requirements contracts. FAR 16.503 and 16.504 states that estimated total quantities to be ordered under requirements and indefinite quantity contracts respectively should be as realistic as possible. This information, along with the estimated number of orders and variability in order quantities, is required for realistic contract pricing. To avoid delays when contract price data must be obtained under these types of contracts, the solicitation should provide this information and specify that–

(i) It should be used by the offeror in developing the unit price(s) proposed;

(ii) The price proposal must include an explanation of the production quantity and period used in developing the proposed unit price(s) (The planned production quantity may be greater than, equal to, or less than the maximum quantity of an indefinite quantity contract/total estimated quantity of requirements contract, exclusive of any contract options.); and

(iii) The offeror is requested to quantify any reduction in the offered unit price(s) available if the minimum order quantity was raised and/or a guaranteed minimum contract quantity established.

**15.404 Proposal analysis.**

**15.404-1 Proposal analysis techniques.**

(a) For contract actions that exceed TINA threshold but less than $10 million, after receipt of offers, but no later than upon receipt of adequate certified cost or pricing data (CCPD) the acquisition specialist (AS) will search the Contract Business Analysis Repository (CBAR) for:

(1) Any recent (within the last 18 months) historical cost or price information that can be used to evaluate the current proposal/CCPD. This information may include:

(i) Indirect and Direct rates,

(ii) Status of Business Systems and withholds,

(iii) CAS Disclosure statements,

(iv) CAS non compliances,

(v) FPRA/FPRR with historical actual costs,

(vi) IR&D and B&P information, and

(vii) Business Clearance Information.

(2) The applicable DCMA and DCAA office points of contact. The AS will contact these offices and request additional historical cost or price information that could be used to evaluate the current CCPD. In general, unless necessary, DCMA and DCAA involvement should be limited to this providing data already captured on previous audits.

(b) In collaboration with the pricing office, the contracting officer will determine the scope of the analysis required (e.g. evaluation of material costs only; evaluation of material and labor costs only; full-blown analysis or audit). The proposal/CCPD and historical data is provided to the pricing office. To the maximum extent possible, the pricing office conducts the analysis of the CCPD in house, obtaining information from internal/external sources (e.g. in-house Product and Engineering Specialists, DCMA, DCAA, suppliers) when necessary. The pricing office works with local product specialists and engineering analysts regarding Technical Support for Negotiation (TSN). The pricing office will request DCMA or DCAA support if local product and engineering specialists cannot adequately and efficiently support the analysis needs.

(2)(ii)(B)(S-90) Escalation of costs and/or prices is an accepted proposal evaluation technique to ensure the negotiation of fair and reasonable contract prices. When comparing current proposed prices to historical contract prices and/or seeking to project current prices into future option or contract periods, the Contracting Officer shall select and utilize a relevant price index for the supplies identified in the acquisition. When projecting historical prices forward for comparison to a current proposed price, the Contracting Officer should utilize an index that captures historical or actual price changes, such as those published by the U.S. Bureau of Labor Statistics (BLS). To develop an appropriate escalation factor for projecting current prices into future option or contract periods, the Contracting Officer should rely on indexes that estimate future price changes, such as those published by Global Insight. Contracting Officers should also consider the trend of the relevant selected index. Contracting Officers are reminded of the guidance in FAR 15.404-1(a)(7) to use the professional guidance and instruction in the Contract Pricing Reference Guides. The escalation techniques in Volume II, Chapter 1, Using Price Index Numbers, provide detailed instruction and assistance in escalating prices.

(c) General.

(S-90) The cost/price analysis office shall provide:

(1) A price or cost/price analysis report, as appropriate, for:

(i) All sealed bid acquisitions at the TINA threshold or more where a sole responsive bid is received, and

(ii) All negotiated acquisitions at the TINA threshold ($200,000 for FPI (see 8.602(a)(91)(iii))) or more, where adequate price competition was not received (see FAR 15.403-1(c)(1)(i), unless the contracting officer performs a price analysis (including, for rebuys, a comparison to prices paid for the same item in accordance with 15.404-1(d)) which documents that the price is fair and reasonable and is:

(A) Based on adequate price competition (FAR 15.403-1(c)(1)(ii) or (iii)),

(B) Set by law or regulation (FAR 15.403-1(c)(2)), or

(C) For a commercial item (FAR 15.403-1(c)(3)).

(2) A price analysis or cost/price analysis, as appropriate, for any other acquisition where assistance is deemed necessary by and requested by the contracting officer.

(3) Recommendations and coordination on all planned actions involving the “resolution” and “disposition” (see 15.406-3(b)(S-91)(2) and (3) respectively) of defective pricing and other “reportable” audits, and instances of suspected overpricing.

(4) All reports of reviews covering multiple line items shall include comments on the results of an assessment for unbalanced bids or offered prices (FAR 15.404-1(g)).

(5) Assessment assistance on actions involving sole-source items subject to limited competition (see 15.402-93(c)) when deemed necessary and requested by a contracting officer; and

(6) Review/approval status concerning:

(i) Contractor accounting system reviews,

(ii) Cost Accounting Standards disclosure statement adequacy reviews and compliance reviews,

(iii) Contractor estimating system reviews,

(iv) Contractor insurance/pension reviews, and/or

(v) Contractor purchasing system reviews.

(S-91) When sufficient information is not available to determine price reasonableness using the price analysis techniques in FAR 15.404-1(b)(2)(i) through (iv), (vi) and (vii), the contracting officer will consult with value engineering or other technical specialists to obtain an independent "Should Cost" estimate pursuant to FAR 15.404-1(b)(2)(v) and, as applicable, FAR 15.404-1(e). This is an engineering-based cost estimate of an item assembly or a system which includes a complete cost estimate breakdown of material, labor, testing, packaging, set-up and manufacturing charges, overhead and profit, and any other relevant cost factors. Note that this approach does not require cost data from the offeror and is not a cost realism approach conducted pursuant to FAR 15.404-1(d).

(S-92) If the contracting officer determines that a procurement is for an item that meets the commercial item definition at FAR 2.101, the contracting officer cannot determine the offered price to be fair and reasonable on that basis alone. Some form of proposal analysis is also required.

(d) Price analysis.

(S-90) Whenever cost or pricing data or data other than certified cost or pricing data is obtained, the analysis shall also address the reasonableness of the offered price in comparison to prior prices paid for the item.

(2)(ii) When a comparison or trend analysis to prior prices is used, the rationale and amount of allowance (negative, zero, or positive adjustment) for each factor cited in the FAR shall be included in documentation of the price reasonableness determination, along with a statement of how these prior prices were determined reasonable. The contracting officer must consider the nature of the Government's requirement (e.g., quantities being acquired, how the item is managed) compared with the circumstances under which prices were paid by another customer (e.g., quantities being acquired, whether an urgent requirement drove the price up). The contracting officer should take maximum advantage of the Government's potential purchasing power and should expect terms and prices at least equal to those available to commercial or other customers that have similar size and influence in the market.

(2)(iv) When a price appearing in a contractor catalog or price list is relied upon as the basis to determine price reasonableness, the contracting officer shall include in the reasonableness determination documentation of the steps taken in confirming that the price list is current and includes prices at which sales are currently being made or were last made.

(2)(v) However, the standard price, the material acquisition unit price (MAUC) (unless based on recent purchases and escalated to the intended award date), budgetary estimates, and provisioning estimates are invalid bases for comparative price analysis and price reasonableness determinations.

(S-91) Vendor stock retention model.

*(1)* Refer to DLA Instruction 2101 Acquisition Business Case Analysis for guidance on when the vendor stock retention model (VSRM) is to be used as a part of stock method decisions. VSRM can be used on lower dollar value contracts at the contracting activity's discretion. Regardless, the results from the VSRM are not used as the sole basis of acquisition sourcing decisions.

*(2)* VSRM was not designed for and should not be used to determine the reasonableness of contractor prices.

*(i)* Contracting officers should use the proposal analysis techniques for price and/or cost analysis as provided in FAR subpart 15.4 in their review and determination of the reasonableness of a contractor's proposal.

*(ii)* Contracting officers are advised that VSRM is designed to assess costs only. It does not value different stock support approaches that provide different levels of delivery service. VSRM does not inherently reflect the benefits if one approach provides improved performance over another. VSRM does not consider other non-financial differences, such as customer support between one support strategy versus another.

*(iii)* Because of these factors, model results should not be used independently; rather, model results should be considered as input to more rigorous and expansive analyses that assess all factors to arrive at the best-value decisions for the Government.

*(iv)* While the VSRM provides valuable information on various acquisition sourcing alternatives, it should not be used in the determination of individual national stock number (NSN) price reasonableness. The VSRM results should be incorporated into a broader analysis to determine whether the Government or a contractor can supply and stock materiel more efficiently.

(e) Cost analysis.

(2)(iii) The comparison may be to actual costs incurred for the same item or for a similar item (with any necessary adjustments to achieve comparability of market conditions, quantities, time periods, and terms and conditions) by the same or another supplier.

**15.404-2 Information to support proposal analysis.**

(c) Audit assistance for prime contracts and subcontracts.

(S-90) For price proposals involving significant subcontracted amounts, requests for field pricing reviews should solicit decrement factor information (see 15.401) relevant to the award. Where extreme urgency necessitates award prior to completion of a subcontract review, negotiation of an appropriate decrement would obviate the need for a reopener clause (see DFARS 215.407-5-70(g)(2)(vi) or an undefinitized contractual instrument.

(d) Deficient proposals. When the offeror refuses to submit or certify cost or pricing data, the reasons why the data are needed and why they were not provided should be discussed with the offeror and confirmed in writing prior to elevation to higher Government and offeror management levels.

(S-90) In the event the efforts of the contracting officer and higher management are unsuccessful in obtaining the data, the matter shall be elevated, after review by the local pricing and contract review elements, to the Head of the Contracting Activity (HCA) along with the information in (1) through (14) below:

(1) What steps were taken to:

(i) Secure essential cost or price data.;

(ii) Secure the contractor's cooperation,; and

(iii) Assure the contractor that the information furnished by the contractor would be adequately safeguarded.

(2) An explanation as to why an exemption cannot be based on current or recent prices for a similar item or any of the other bases for exemption (FAR 15.403-1(b)(1) through (b)(3) and (b)(5)) to the requirement for cost or pricing data.

(3) The offeror's written refusal to provide the cost or pricing data and reason for the refusal (if unavailable, documentation of a telephone contact with a senior executive explaining why the contractor refuses to provide a written refusal).

(4) An explanation from the senior company official if possible, of whether, and under what circumstances, the offeror's business segment furnished cost or pricing data for prior contracts with this or another Government contracting office.

(5) The identification and results of attempts (including, where applicable, attempts made by the auditor, the ACO, and other contracting offices) to secure cost or pricing data concerning the current and prior contract actions, including date(s), contract award(s), and the names, organizational level, job titles and phone numbers of participants in the negotiations.

(6) A complete buy history for the five item(s) expected to represent the highest Government expenditures under the proposed contract action.

(7) A copy of the cost or price analyses performed, which shall include a comparison with prior prices, and results of the price reasonableness determination.

(8) Substantiation that the item is mission essential.

(9) The current stock position, projected requirements, schedule of due-in's, schedule of unfilled orders, and projected stock recovery date.

(10) Non-technical description of the item, including dimensions, and the next higher Assembly and the end item/weapon system it's included in.

(11) Photograph (e.g., from a tech manual) or drawing of the item.

(12) The alternatives to proceeding with the acquisition.

(13) The suggested course of action considering the alternatives in (12) above.

(14) Realistic plan for avoiding, as applicable, another proposal deficiency or TINA refusal in the future.

(S-91) Negotiations with top management of the firm conducted by the CCO, HCA and, as appropriate, by the Commander/Director. When a contractor/subcontractor has refused to provide the required data for the first time, or when the Commander/Director or HCA has not personally negotiated with the contractor/subcontractor recently to obtain such data, the Commander/Director or HCA should attempt to secure the data. The Commander/Director or HCA shall execute a detailed memorandum setting forth the rationale for any decision not to personally negotiate for the data. This memorandum shall be included in the contract file, along with the above information.

(S-92) Following an unsuccessful negotiation where the extended dollar value of the award or other contract action (15.403-4) exceeds the TINA threshold (current value or value in the contract as applicable), the Commander/Director, HCA, or Chief of the Contracting Office for those contracting activities without a HCA, shall promptly notify DLA Acquisition, attention: J7, and forward recommendations to resolve the impasse, with supporting documentation ((1)-(14) above), to DLA Acquisition J72.

(S-93) See 15.403(c)(4)(A)(S-90) for this further elevation to continue efforts to secure TINA data and/or certification covering the offered price including, where required, subcontractor cost or pricing data and/or certification, or other information to determine price reasonableness of a contract action exceeding the TINA threshold, or a clear refusal to provide and/or certify the total price offered with rationale explaining the refusal.

**15.404-4 Profit.**

(c) Contracting officer responsibilities.

(2)(C)(2) Approval of an alternate structured approach required for other than awards cited in DFARS 215.404-4(c)(2)(C)(1) may be re-delegated not lower than the chief of the contracting office. Promptly upon execution, a copy of each approval shall be furnished to DLA Acquisition, J72.

(2)(e)(70) Include documentation of the rationale and derivation of the profit factors and amounts on the DD Form 1547 approved at the time of the prenegotiation briefing in the prenegotiation memorandum or attach it as a separate attachment or as part of the price/cost analysis report.

**15.405 Price negotiation.**

(a)(S-90) The offeror's refusal to provide and/or certify cost or pricing data or information other than cost or pricing data does not relieve the contracting officer from the requirement to perform a proposal analysis; nor does such refusal provide a sufficient basis for determining the price either fair and reasonable or unfair/unreasonable. In such instances, the guidance in 15.404-2(d) applies in the case of failure to provide certified cost or pricing data, and the same procedure should be followed in the case of failure to provide information other than cost or pricing data.

(d)(S-90) The referral of a contract action to higher authority for resolution of a price, profit or fee that the contracting officer deems to be unreasonable may be any level above the contracting officer. For estimated awards over the threshold cited in FAR 15.403-4(a), where an offeror refuses to provide required cost or pricing data and/or a price that cannot be determined fair and reasonable, the chief of the contracting office shall negotiate with the offeror or contractor in an attempt to secure cost or pricing data and/or delete those elements of the offer that render the price unreasonable. If unsuccessful, a detailed memorandum setting forth the results shall be forwarded with the referral to the head of the contracting activity for appropriate action (see 15.404-2(d)).

**15.406 Documentation.**

**15.406-1 Prenegotiation objectives.**

(b)(1) For acquisitions above the SAT and up to $10M, except for acquisitions involving cost analysis, the prenegotiation objectives will be documented in the Price Negotiation Memorandum (PNM). The contracting officer may include a memo or charts in the file until such time that the objectives are formally documented in the PNM.

(2) For acquisitions over $10M, and for those under $10M involving cost analysis, a Pre-Negotiation Memorandum (PNM) will be utilized.

**15.406-1-90 Pre-Award Objectives**

(a) Procedures for resolving audit disagreements.

(1) Resolution of contract audit disagreements.

(i) Concurrent with notification to their HCA, DLA Energy, DLA Troop Support, DLA Land and Maritime, and DLA Aviation contracting officers shall also notify DLA Acquisition J72 of the request for higher level review. J71 will track the frequency and disposition of audit resolution issues.

(ii) At the HCA level, a review will attempt to determine if the auditor's and the contracting officer's positions can be reconciled. The contracting officer shall document the disposition of the higher level review of the disagreement(s) in a memorandum for the contract file.

(iii) If the HCA is other than J7 and is unable to resolve the differences with DCAA, the approving authority shall notify J72 with copies of the contracting officer's documentation of the issue. In turn, J72 shall inform the Director of Acquisition Management, J7, of the unresolved audit and the possibility of discussions with the DCAA Director prior to any DCAA referral to the Director, Defense Procurement and Acquisition Policy.

**15.406-3 Documenting the negotiation.**

(a) A standard price negotiation memorandum format will be used to document competitive and non-competitive negotiations. Use the Price Negotiation Memorandum (PNM) Checklist Competitive at 53.9015(a) or the Price Negotiation Memorandum Checklist Non-Competitive at 53.9015(b), as appropriate, to ensure PNMs contain required information as listed in FAR and DFARS and the information is presented in a consistent format.

(11) The price reasonableness determination statement shall be documented in the contract file and in appropriate automated price history records, and shall:

(i) include the price reasonableness coding (PRC) (see 15.406-3-90).

(ii) It is essential to accurately record the price reasonableness codes to facilitate reliable price comparison analysis of future proposed prices for the same or similar items. The contracting officer cannot consider a price comparison from a prior contract price to current proposed prices to be valid if the prior price was determined unreasonable or the determination was not properly documented. (See FAR 15.404-1(b)(2)(ii)).

**15.406-3-90 Price reasonableness coding (PRC).**

(a)(11) The price reasonableness code (PRC), a two position code incorporated into DLA's enterprise business system (EBS), consists of a first position reviewer code and a second position type analysis code, as follows:

| First Position: | Reviewer Code: |
|---|---|
| B | Buyer Analysis only**.** |
| C | Complete Pricing Support to buyer (field cost/price analysis, audit and/or technical reports included as part of the pricing office's report). |
| F | Field Pricing Support to buyer. (One or more to include field cost/price analysis, audit and/or technical review.) |
| P | Local Contract Pricing Office Support to buyer. (Does not include field-audit, pricing or technical assistance reports.) |
| V | Local Value Engineering Office support to buyer. |
| X | Price reasonableness determination accomplished using pricing logic of the automated purchase procedure. |
| Second Position: | Type Analysis Code: |
| Instant buy price(s) determined reasonable because of**:** | |
| A | Adequate price competition from at least two independent manufacturers of the item**.** |
| B | Adequate price competition from at least one manufacturer plus at least one independent non-manufacturing source for the item or involving two or more independent non-manufacturing sources. |
| C | Catalog priced item sold in substantial quantities to the general public. |
| D | Market priced item sold in substantial quantities to the general public. |
| E | Item price set by law or regulation. |
| F | Cost analysis of offeror's/contractor's cost or pricing data, e.g. for UCA definitizations. (For exclusive distributors/dealers and other non-manufacturers, such cost analysis must include review of manufacturing costs from their source of supply.) |
| G | Price comparison to prior price(s) determined reasonable via valid price analysis. |

| | |
|---|---|
| H | Independent Government cost estimate. |
| I | Other cost analysis or price analysis technique(s) (includes reviews of limited cost data). |
| Y | Contracting officer's determination that prices are fair and reasonable in accordance with FAR 13.106.3 or when 13.202(a)(3) applies. Used only for manual awards below the simplified acquisition threshold. Not to be used for awards using the Automated Contract Evaluation System. For future acquisitions, actions coded with "Y" shall not be used for comparison in determining price reasonableness. |

Instant buy price(s) determined reasonable based on comparison to:

| | |
|---|---|
| J | Adequate price competition occurring in a recent procurement in comparable quantities, terms and conditions for the same item where quotes/offers were received from at least two independent manufacturers of the item. |
| K | Adequate price competition occurring in a recent procurement in comparable quantities, terms and conditions for the same item where quotes/offers were received from one manufacturer plus at least one independent non-manufacturing source of the item or from two or more independent nonmanufacturing sources. |
| L | Adequate price competition occurring in a recent procurement in comparable quantities, terms and conditions for substantially the same item where quotes/offers were received from at least two independent manufacturers. |
| M | Adequate price competition occurring in a recent procurement in comparable quantities, terms and conditions for substantially the same item where quotes/offers were received from either one manufacturer plus at least one independent non-manufacturing source of the item or from two or more independent non-manufacturing sources. |
| N | Catalog price for the same item sold in substantial quantities to the general public. |
| O | Catalog price for substantially the same item sold in substantial quantities to the general public. |
| P | Market price for the same item sold in substantial quantities to the general public. |
| Q | Market price for substantially the same item sold in substantial quantities to the general public. |
| R | Item price set by law or regulation. |
| S* | Analysis of cost and pricing data submitted by the offeror for a recent buy of the same item (including ACO approved Government parts catalogs and formula arrangements covering parts for which a TINA waiver was not granted). |
| T* | Analysis of cost or pricing data submitted by the offeror of a recent buy of substantially the same item (including ACO approved Government parts catalogs and formula pricing arrangements covering parts for which a TINA waiver was not granted). |

Instant buy price(s) reasonableness not required because:

| | |
|---|---|
| W | Award is an unpriced purchase order or undefinitized contract action. (Use with Reviewer Code B only. Price reasonableness determination shall be made at time of contract/order definitization. |
| X | Price not reviewed for price reasonableness by pricing logic of automated purchase procedures. Code is only applied by the automated system if a price reasonableness threshold is used/set in the initial logic. System will use with Reviewer Code X only. Not to be used for manual awards. |

* Restricted to noncompetitive negotiated contract actions not exceeding the Truth in Negotiations Act (TINA) threshold (FAR 15.403-1(b)(4)) unless cost or pricing data and certification are obtained for the new buy or the offeror identifies its previous cost or pricing data submission and certifies it is still current, accurate and complete for purposes of pricing the current contractual action.

## 15.407 Special cost or pricing areas.

### 15.407-1 Defective cost or pricing data.

(d)(S-90) If following review by the pricing office and legal, the contracting officer's planned settlement objective is less than 70 percent of the amount reported by the GAO, DoD IG, or DCAA, a

copy of the approved prenegotiation memorandum, including the audit and pricing reports and other relevant documentation shall be furnished for receipt in DLA Acquisition J72 at least 10 working days prior to initiating settlement action with the contractor.

**15.407-5 Estimating systems.**

(b)(S-91) Follow-up on contract audit reports.

(1) Responsibility of the chief of the contracting office. The contract follow-up official for DLA contracting offices, Director, DLA Acquisition (J7), has designated the chief of the contracting office as the official responsible for full and effective implementation of the requirements of DoDD 7640.2, Policy for Follow-up on Contract Audit Reports. A local contract audit focal point (the cost/price analysis office , where one exists) shall be established to assist in discharging the tracking and reporting requirements of the directive.

(2) Responsibilities of contracting officers.

(i) Promptly upon receipt of a contract audit report involving indirect cost rates, defective pricing, incurred costs, final pricing, terminations, claims, cost accounting standards, and reviews of a contractor's system the contracting officer shall furnish a copy of the report to the local contract audit follow-up focal point, and, if reportable (see DoDD 7640.2, paragraph F.3.), a detailed milestone plan for timely resolution and disposition. Updated milestone plans, reflecting the actual dates the milestones were achieved and revised target dates, shall be forwarded to the local contract audit follow-up focal point at the time any milestone is achieved or missed.

(ii) Contracting officers shall resolve any differences between their planned action and that recommended by the contract audit activity for all reportable audits. The contracting officer shall accomplish the required "resolution" promptly, and in no case later than 6 months following issuance of the audit report (reference is made to Public Law 96-527). Resolution occurs upon approval obtained, in accordance with local review procedures, of the planned negotiation and/or settlement objectives.

(iii) The contracting officer shall endeavor to accomplish disposition of all audit reports as soon as possible after resolution. Disposition should normally occur within 12 months following audit report issuance. As stated in Enclosure 1 to DoDD 7640.2, a reportable audit is closed when disposition occurs, i.e.:

(A) The contractor implements the audit recommendations of the contracting officer's decision; or

(B) The contracting officer negotiates a settlement with the contractor and a contractual document has been executed; or,

(C) The contracting officer issues a final decision pursuant to the disputes clause, and 90 days elapse without contractor appeal to the Armed Services Board of Contract Appeals (ASBCA) (should the contractor appeal to the claims court within the 12 months after final decision, the audit must be reinstated as an open report in litigation); or

(D) A decision has been rendered on an appeal made to the ASBCA or U.S. Claims Court and any corrective actions directed by the board or court have been completed and a contractual document has been executed; or

(E) Audit reports have been superseded by, or incorporated into, a subsequent report; or

(F) Any corrective actions deemed necessary by the contracting officer have been taken, so that no further actions can be reasonably anticipated.

(iv) In addition, the following actions must be performed:

(A) Upon completion of the "disposition" action, the contracting officer shall promptly furnish a memorandum of actions taken to the local contract audit follow-up focal point, the ACO, and to the auditor (refer to DoDD 7640.2, paragraph F.5.a.).

(B) When award does not result to the contractor whose offer was subject to a preaward audit report, for example, due to cancellation or award to a competitor, the contracting officer shall promptly provide written notification to the local contract audit follow-up focal point, the ACO, to the auditor (refer to DoDD 7640.2, paragraph F.5.b.).

(3) Responsibilities of contract audit follow-up focal points. The contract audit follow-up focal point is responsible for tracking and reporting the status of audit reports as specified below:

(i) Tracking every contract audit report, excluding "non-reportable audits," using milestone status information furnished by the contracting officer. The current status of each action is to be maintained in a log or similar document that includes all information required by the semiannual contract audit follow-up status report.

(ii) Preparing the semiannual report spreadsheets of "open" and "closed" audits (formats in DoDD 7640.2) in Microsoft Excel electronic format for submission by the chief of the contracting office and receipt in DLA Acquisition J72, not later than 10 April and 10 October of each year, along with a current milestone chart on each open audit (see 15.406-3(b)(S-91)). Negative reports are required. Electronically transmit a copy of the report spreadsheets.

**15.407-90 Reverse Auction**

(a) There is a weekly reporting requirement when the provision at 52.215-9023 or the clause at 52.215-9033 are used and Reverse Auctions (RA) are conducted by a DLA contracting activity. Each DLA contracting activity or office will email the reports to DLA HQ J74, Acquisition Programs and Business Operations Division, by the close of business each Friday. Direct savings will be calculated as the difference between the lowest pre-auction price and the lowest post-auction price, adjusted for quantity, escalation, and other factors necessary to achieve comparability. Definitions, calculation instructions, and reporting data elements are given in the following paragraph, (1)(i) through (v).

(1) Definitions for direct savings calculations:

(i) Lowest pre-auction price: Lowest price offered prior to the auction, within the competitive range. This price may be obtained from the initial offer, revised offer, amendment, or other discussions or negotiations.

(ii) Lowest post-auction price: Lowest price at the time the auction closes. This price may be from a different offeror than the lowest pre-auction offeror and may not be the award price.

(iii) Total direct savings: Comparison of the lowest pre-auction price within the competitive range to the lowest post-auction price.

(2) Total direct savings calculation:

(i) Lowest pre-auction price – lowest post-auction price = unit price savings

(ii) Unit price savings X quantity = total direct savings

(3) Historical savings calculation:

(i) Last price paid – final auction price = unit price savings

(ii) Unit price savings X quantity = total historical savings

(4) Long-term contracts (LTC) with estimated annual quantities savings: Report using lower case "e" when auction is performed. Report adjusted savings using plus ("+") or minus ("–") sign after lower case "r" once quantities are actualized (defined quantity is purchased) at end of base period or option year.

(5) Reporting data elements:

(i) Primary level field activity (PLFA) identifier;

(ii) Date of report;

(iii) Date of auction;

(iv) Cumulative, by fiscal year, yearly number of auctions;

(v) Item with the NSN and nomenclature;

(vi) Quantity as an annual estimated quantity or maximum quantity for LTCs;

(vii) Reporting of RA savings by base year + options or reported in the year accrued;

(viii) Type of acquisition, lowest price technically acceptable (LPTA) or best value;

(ix) Final total auction price for LPTA or final award price for best value;

(x) Dollar savings or increase;

(xi) Percentage savings or increase;

(xii) Single award, task order on LTC or other, identified; and

(xiii) Comments.

(6) Criteria for selecting reverse auction candidates.

(i) General guidance:

(A) Reverse auctioning is an Internet-based or electronic commerce acquisition tool following traditional auction principles that allows the Government to procure goods and services from offerors/suppliers in a competitive and dynamic environment where the sellers successively bid prices down until the auction completes. A contract can be awarded to the winner provided it represents the best value and the rest of the offer is technically acceptable.

(B) Reverse auctions work well for competing for a delivery order for hardware or services on DoD, General Services Administration (GSA) schedules and other multiple-award type indefinite delivery/ indefinite quantity (IDIQ) type contracts. Reverse auctions are best suited for high volume, commodity type commercial items or commodity-like services, which do not need exact or lengthy specifications, are available off the shelf, and are based on competing by the price alone.

(ii) Reverse auction appears to be the best tool in certain procurements:

(A) In bulk commodity type procurements where the requirements can be well-defined or are universally understood (e.g., IT type equipment). Well-defined requirements for many forms of complex service type procurements are difficult to develop.

(B) Where the solicitation documents can be standardized with respect to procedures for the auction such as cut-off time, duration, extensions, communication interrupt procedures.

(C) Where there is a well-established supplier base for the goods.

(D) In situations where the award evaluation criteria is not subject to much interpretation, e.g., on low price versus more than one criterion that may involve trade-offs and subjective judgments.

(iii) Approach the reverse auction determination model by asking a series of questions:

(A) Is the procurement for a commodity or commodity-like service?

(B) Does the FAR allow those types of procurements?

(C) Does a reverse auction fit into the acquisition strategy?

(D) Can the requirement be defined well in a solicitation?

(E) Do the advantages outweigh the disadvantages?

(F) Has this type of item and/or service been done in a reverse auction before?

(G) What were the results and lessons learned?

(H) What is a fair auction starting price?

(I) Is there an established offeror base or price baseline?

(J) What type of market research needs to be done?

(K) How long will the process take?

(L) Do contracting vehicles exist for conducting a reverse auction that can easily be used?

(M) Is enough known about how to structure the solicitation instructions in Sections L and M?

(N) Can a reasonable estimate be made of what the auction will cost?

(O) Can the level of cost savings be estimated?

(P) Has consideration been given to the indirect or administrative costs when deciding whether the use of a reverse auction makes sense for the procurement?

**15.408 Solicitation provisions and contract clauses.**

(l) Requirements for cost or pricing data or information other than cost or pricing data. See 12.301(f)(S-93).

(m) Requirements for cost or pricing data or information other than cost or pricing data – Modifications. See 12.301(f)(S-93).

**15.408-90 Contract clauses and solicitation provisions.**

(a) Insert DFARS 252.215-7009 in all solicitations that are sole source and exceed the TINA threshold.

(d)(1)(i) Insert the provision at 52.215-9023, Reverse Auction, in all fully competitive solicitations with an estimated value above the simplified acquisition threshold (SAT), except for procurements already being supported by long-term contracts; unless the contracting officer determines reverse auctioning is not the most appropriate acquisition strategy to maximize both customer support and cost savings and documents the rationale for not using reverse auctioning in the contract file.

(ii) The following are considerations of instances in which reverse auctions may be used as the most appropriate competition and/or pricing method:

(A) Long Term Contracts;
(B) Fully competitive items;

(C) High volume, commercial items;

(D) Products with common specifications and little complexity;

(E) Items available off the shelf and based on competing by price alone;

(F) An ample, domestic supplier base;

(G) Competition where parts and services are both used to leverage savings;

(H) Transactional auction approach that explicitly defines buyer and supplier roles in pre-established contracts;

(I) Collaborative sourcing arrangements that focus on mutually beneficial activities and processes;

(J) Supplier willingness to make distinctive investments;

(K) Increased incentives for suppliers to participate by posting larger number of items over longer periods of time;

(L) Inclusion of more fair and open competition amongst a wider field; or

(M) Goods sourced primarily on price with limited ancillary considerations.

(iii) The following are considerations/examples of when reverse auctions may not be the most appropriate method for competition and/or pricing:

(A) Small Value Transaction Buys;

(B) OCONUS suppliers;

(C) Complex items, as described by the contracting officer;

(D) Items with significant declining demands impacting the industrial base;

(E) Industries with a decreased size in supplier base;

(F) Items with tight supplier profit margins;

(G) High system factor difficulties for suppliers;

(H) Increased vendor switching;

(I) Goods with high price volatility; or

(J) Goods with high variance among supplier capabilities;

(iv) Fully competitive solicitations are those for which the procurement will be conducted pursuant to FAR Subparts 6.1, and 6.2, FAR 8.405-1(c)(1) or (d)(3)(ii), FAR 8.405-2(c)(2)(ii) or (c)(3)(iii), FAR 8.405-3(b), or DFARS 208.405-70(c). Contract officers w consider use of this provision in solicitations for all competitive procurements valued between the micro-purchase threshold and the simplified acquisition threshold (SAT). See 15.407-90 for weekly reporting requirements and additional reverse auction candidate selection criteria. All contracting offices conducting reverse auctions shall use the reverse auction pricing tool unless their PLFA commander approves a substitute approach or tool. When the current RA tool is used contracting officers shall ensure the "Lead/Not Lead" feature is turned on.

(2) Use clause 52.215-9033, Competing Individual Delivery Orders Through On-Line Reverse Auctioning, in solicitations and contracts where it has been determined that on-line reverse auctioning will be used as the pricing technique when competing some or all of the delivery orders issued against a multi-award contract with competitive ordering, including FAR Subpart 8.4 requests for quotes and blanket purchase agreements (BPAs) where the BPA ordering process for delivery orders will be governed by FAR 8.405-3(c)(2)(ii) or (iii).

(g) Insert the provision at 52.215-9035, Sales Pricing Practices – Noncommercial Items, in solicitations valued over the simplified acquisition threshold when acquiring sole source Class IX items that do not meet the definition of commercial item in FAR 2.101.

(h) Insert the provision at 52.215-9036, Sales Pricing Practices – Commercial Items, in solicitations valued over the simplified acquisition threshold when acquiring sole source Class IX items that meet the definition of commercial item in FAR 2.101.

(i) Insert the clause at 52.215-9037, Price Reductions, in solicitations and contracts valued over the simplified acquisition threshold when acquiring sole source Class IX items.

## SUBPART 15.6 – UNSOLICITED PROPOSALS

*(Revised on November 6, 2013 through PROCTLR 2014-07)*

### 15.604-90 Handling of Unsolicited Proposals (Ups).

(a) DLA organizations that receive submissions from interested parties that appear to be within the scope of the unsolicited proposal (UP) coverage in FAR Subpart 15.6 shall forward them to their unsolicited proposal coordinator, as listed in (b) below. Upon receipt of a submission, the coordinator will immediately notify the Unsolicited Proposal Program Manager in DLA Acquisition J72 that a UP has been received. For those Ups received at DLA Acquisition J7, the J72 Unsolicited Proposal Program Manager will determine the appropriate unsolicited proposal coordinator(s) for evaluation and processing.

(b) Unless otherwise directed by J72, the following are the coordinators responsible for receipt and disposition of Ups, including providing DLA's response to submitters, in accordance with (c) below.

(1) DLA Land and Maritime – Competition Advocate (primary) and Directorate of Procurement Process (alternate).

(2) DLA Troop Support – Chief, Pricing and Strategy Division.

(3) DLA Aviation – Chief, Pricing Division.

(4) DLA Energy –Associate Director, Acquisition Policy and Oversight.

(5) DLA Disposition Services – Chief, Acquisition Procedures Division.

(6) DLA Distribution – Chief, Acquisition Policy

(7) DLA Strategic Materials – Directorate of Contracting.

(8) DLA Logistics Information Service – Chief of the Contracting Office.

(9) DLA Contracting Services Office – Chief, Contract Clearance, Oversight, and Administration Office.

(10) DLA Document Services – Chief, Contracting Policy, Plans and Programs.

(c) Unsolicited proposal coordinators will:

(1) Be responsible for coordinating and processing unsolicited proposals.

(2) Protect the UP from unauthorized disclosure in accordance with FAR 15.608 and 15.609.

(3) Contact the J72 Unsolicited Proposal Program Manager if it is determined that a UP may require wider consideration within DLA.

(4) Maintain an accurate and complete record of the disposition of all Ups.

(5) Ensure all affected evaluation offices and personnel are following FAR 15.608 and 15.609.

(6) Ensure evaluators provide supporting rationale for their conclusions and recommendations. If the recommendation is to accept the submission as a UP, ensure evaluators indicate whether funds are currently available or programmed.

(7) Provide to any entity expressing interest to any DLA organization about submitting a UP the information covered by FAR 15.604(a)(1) through (6), as appropriate.

**15.606-90 Agency procedures for review and evaluation of unsolicited proposals.**

(a) The coordinator will review the submission and determine if it meets all UP requirements in FAR 15.606-1 and will notify the submitter in writing in accordance with FAR 15.606-1(b) or (c) no later than 10 business days after the coordinator's receipt of the submission.

(1) If this initial letter provides an interim response stating that more review is required, it will state that the final response is expected to be completed within 30 business days from receipt of the submission, but that a further interim response will be provided at that time if evaluation cannot be completed within the 30 days, giving the estimated time for completion.

(2) In no event should the process take longer than 90 days from receipt of the submission; if it appears it will take longer, the coordinator will notify J72 and provide a complete explanation for the delay. J72 will then determine the final date for completing the evaluation and notifying the submitter.

(b) If necessary, the coordinator will forward the submission to the appropriate technical or other personnel for evaluation in accordance with FAR 15.606-2. If the evaluators request further information, the coordinator shall inform the submitter of the needed information, and that submission of the information will be at the submitter's risk and expense, and shall create no obligation on the part of the Government. J72 will be advised that additional information from the submitter has been requested in order to complete the evaluation. After the evaluators have completed their analysis, they will advise the coordinator of their recommendation.

(c) Following the evaluation, the coordinator will inform the submitter by letter of the final determination.

(1) If the submission is not a valid unsolicited proposal or is otherwise unacceptable, the letter will state that determination and give an explanation of the rationale for the determination in accordance with FAR 15.603(c) and 15.607(a), as applicable.

(2) If the submission is determined to be a valid UP, the coordinator will inform the submitter of this but include a caution, in accordance with FAR 15.607(a), that a favorable comprehensive evaluation of an unsolicited proposal does not, in itself, justify awarding a contract without providing for full and open competition and that the unsolicited proposal will be provided to an appropriate contracting officer for a determination of whether further action is appropriate in accordance with FAR 15.607(b).

(3) A copy of the letter to the submitter indicating the disposition of the proposal will be provided to J72 and maintained by the coordinator.

(d) Upon receipt of a valid UP from the coordinator, the responsible contracting officer will determine, in accordance with FAR 15.607(b) and in coordination with the appropriate requiring activity, whether contract action is appropriate. The contracting officer will notify the submitter in writing whether he/she is commencing negotiations in accordance with FAR 15.607(b).

(e) A cover sheet is provided in FAR 15.609 and shall be used in all stages of the Government's handling of a UP.

# PART 16 – TYPES OF CONTRACTS

*(Revised June 16, 2015 through PROCLTR 2015-09)*

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## SUBPART 16.1 – SELECTING CONTRACT TYPES

*(Revised August 28, 2015 through PROCLTR 2015-11)*

### 16.190 Long-term contracting.

(a) Scope of section. This section prescribes policy and procedures applicable to contracting offices for establishing and processing long-term contracts (LTC) at all dollar values for supplies and services in support of DLA customers. Additional LTC policy is contained elsewhere in the DLAD (see parts 4, 7, 9-11, 13, 15-17, 46, and 47).

(b) The Large Acquisition Milestone Management System (LAMMS) shall be used to track large and long term acquisitions pending transition to the EProcurement milestone tracking system.

(c) Policy. Contracting officers shall establish and process long-term contracts in accordance with this section.

(1) LTCs should be used for stock replenishment consumable items that have frequent, consistent, and predictable demands, as well as non-replenishment items having at least 12 demands per year. Items currently on LTCs will be renewed provided they have had at least 4 demands in the previous year. Terminal or obsolete items are generally excluded from LTCs. Items will be excluded if they have 2 years DLA stock on-hand, unless the PLT is 18 months or greater or there is no planned buy within 2 years. DLR candidates for LTCs will be determined in conjunction with the Military Service managing those items.

(2) *Contract management plans*. The contract management plan (CMP) policy at 7.105(b)(19)(S-90) is applicable to all long-term contracts (LTCs) that contain provisions for repricing as described in 15.403-4(a)(1)(i)(S-91)(D) during the contract term.

(d) Standards and metrics.

The following milestones shall be tracked in LAMMS:

| **Milestone** | **Description** |
|---|---|
| Project Create Date | Create project, includes preliminary market research and may include, Statement of Work (SOW)/Statement of Objective (SOO), performance criteria. This is typically the customer's requirements generation time. |
| Purchase request (PR) Create Date | Acquisition Specialist reviews market research and obtains clarification on requirements. Acquisition Specialist completes all documents to include solicitation. |
| Solicitation Issue Date | |
| Solicitation Close Date | |
| Pre Negotiation Memorandum Approval Date | Competitive: Items for negotiation are identified, documented, and all clarifications, communications, and, as applicable, discussions with offerors are completed. All items have been addressed and documented and approval is granted to request final proposal revisions or award on initial proposals.<br><br>Noncompetitive: All negotiation objectives are identified, documented and approval is provided to enter into negotiations. |
| Close Negotiations (Discussions) Date | Competitive: Discussions are closed and final proposal revisions are received (FPR). IF award will be made on initial proposals it is the same date as above<br><br>Noncompetitive: Negotiations are completed |
| Price Negotiation Memorandum (PNM)/SSDD Approval Date | Competitive: Date PNM and Source Selection Decision Document (SSDD) are approved.<br><br>Noncompetitive: Date of PNM |
| Award Date | Competitive: For multiple award acquisition, the date of first award is entered.<br><br>Noncompetitive: Date of award |

(2) DLA has established an objective of making large and long term contract awards (supplies and services) in no more than an established number of days between the receipt of a PR to award based on the type and dollar value of the subject procurement. The established objectives are shown below.

.

**Sole Source**

| | $150K-$700K | $700K-$10M | $10M-$100M | $100M-$500M | >$500M |
|---|---|---|---|---|---|
| Days from PR to Award | 110 | 140 | 180 | 210 | 270 |

**Competitive**

| | $150K-$700K | $700K-$10M | $10M-$100M | $100M-$1B | >$1B |
|---|---|---|---|---|---|
| Days from PR to Award | 110 | 135 | 180 | 215 | 270 |

**16.191 Bridge Contracts.**

(a) The use of bridge contracts (see definition in 2.101) is an impediment to competition. Bridge contracts may also extend the use of acquisition or pricing strategies that are no longer appropriate for the current environment. For purposes of this coverage, the terms “contract” and “contracts” only include contract actions with a total estimated value above the simplified acquisition threshold (SAT), and include task or delivery orders and orders against GSA Schedule contracts.

(b) A bridge contract shall be used only when it is not possible to award the planned follow-on contract in sufficient time to meet the Government’s requirements. A bridge contract may be appropriate in the following circumstances:

(1) The competitive follow-on contract/solicitation has been protested;

(2) The approved acquisition strategy requires a necessary change and is endorsed by the HCA;

(3) A statutory or regulatory change necessitates a change prior to award; or

(4) Other circumstances, demonstrated to not be due to lack of advance planning or inadequate procurement execution, result in delay of a solicitation and/or award.

(c)(1) The contracting officer and the program office, when applicable, shall prepare a Justification & Approval (J&A) in accordance with FAR Part 6 or other applicable FAR Part (e.g., FAR 8.405-6 or FAR 16.505(b)(2)(ii)(B)) to support solicitation and award of a bridge contract, and a request to the Head of the Contracting Activity (HCA) for approval to solicit and award the bridge contract (see sample format at PGI 16.191). The J&A need not be prepared in conjunction with the request if FAR 6.302-2 or other provision of FAR Subpart 6.3 not requiring preparation of a written J&A is applicable.

(2) This J&A (or the request for approval, if a J&A is not required to proceed pursuant to FAR 6.302-2 or other provision of FAR Subpart 6.3 not requiring preparation of a written J&A) shall include a detailed rationale for use of a bridge contract; an explanation why the need for a bridge contract is not due to lack of advance planning or inadequate procurement execution; a justification for the length of the bridge; and a discussion of actions to be taken to avoid this bridge request and additional bridge contracts. The J&A shall be processed for approval at the required level based on the total estimated value of the contract action.

(3) The request to issue a bridge contract, with supporting J&A, shall be presented to the HCA for approval of the request (the HCA is not required to sign the J&A if the J&A approval authority is at a lower level) before a bridge contract may be solicited, negotiated, and awarded. The HCA's approval authority may be delegated to the CCO for bridge contracts valued between the SAT and $1M. The request with HCA/CCO approval shall be included in the contract file.

(4) A bridge contract issued to the incumbent on a sole source basis shall be issued as a separate contract, not as an extension/modification to the existing contract. Such contracts shall be properly coded in FPDS-NG as sole source.

(5) Numbers/status for bridge contracts on Hi Viz contracts (as identified in DLAD 1.690-4(b)) shall be reported monthly to J72 in a format prescribed by J72.

(6) Numbers/status for bridge contracts on other than Hi Viz contracts exceeding the simplified acquisition threshold (SAT) shall be reported on a quarterly basis (due Dec 31, Mar 31, June 30 and Sep 30) in a format prescribed by J72.

## SUBPART 16.2 – FIXED PRICE CONTRACTS

*(Revised June 15, 2015 through PROCLTR 2015-09)*

### 16.203 Fixed-price contracts with economic price adjustment.

**16.203-90 Definitions.** As used in this section—

*"Established catalog price"* means prices (including discounted prices) recorded in a catalog, price list, schedule, or other record that are regularly maintained by the manufacturer or vendor and are published or otherwise available for customer inspection.

*"Established market price"* means a price that is established in the course of ordinary and usual trade between buyers and sellers free to bargain and that can be substantiated by data from sources independent of the offeror.

*"Existing EPA clause"* means a clause prescribed in FAR 16.203-4 or DFARS 216.203-4-70, or this subpart that has been reviewed and approved in accordance with agency procedures in 1.301-91.

**16.203-1-90 Description.**

(a) *Adjustment based on established prices.* Established prices may reflect industry-wide and/or geographically based market price fluctuations for commodity groups, specific supplies or services, or contract end items. (Refer to DAR Tracking Number 95-D0003, FARS DEV 96-10).

(c) *Adjustments based on cost indexes of labor or material.* These price adjustments may also be based on increases or decreases in indexes for commodity groups, specific supplies or services, or contract end items. (Refer to DAR Tracking Number 95-D0003, FARS DEV 96-10.)

**16.203-2-90 Application.**

(a) Established prices and cost indexes need not reflect changes in the costs or established prices of a specific contractor. The established price or cost index may be derived from sales prices in the marketplace, quotes, or assessments as reported or made available in a consistent manner in a publication, electronic database, or other form, by an independent trade association, Government body, or other third party independent of the contractor. More than one established price or cost index may be combined in a formula for economic price adjustment purposes in the absence of an appropriate single price or cost index. (Refer to DAR tracking number 95-D0003, FARS Deviation 96-10.)

(b) Although a specific item or element of cost may require EPA coverage, the contracting officer should also determine whether an EPA clause should cover the entire end item to take advantage of competitive market forces to moderate price fluctuations. The decision should be based on risk and price analyses of the alternatives, and may be an appropriate element of tradeoff in negotiations.

(c) All EPA clauses shall contain, and the contracting officer shall ensure compliance with, the contractor's warranty that the contract prices do not include allowance for any contingency to cover increased costs also considered by the EPA clause. (When a contract option is also planned, see 17.203(d).)

(d) If it becomes apparent that an EPA clause is clearly justified in a solicitation that did not include one, a FAR, DFARS, or DLAD EPA clause may be included by amendment to the solicitation and in any resulting contracts if all EPA contingencies covered by the EPA clause are removed from any formerly offered price(s).

**16.203-4 Contract clauses.**

(a) Adjustments based on established prices–standard supplies.

(1)(S-90) The clause at 52.216-9000 (or substantially the same clause) may be used with FAR clause 52.216-2.

(S-91) Fresh fruits and vegetables under the DLA Troop Support subsistence supply chain is authorized to use a FAR Deviation for long term contracts. The deviation is provided at 52.216-9039.

(S-92) The clause at 52.216-9085 may be used in any DLA Multiple Award Schedule solicitation or contract instead of FAR 52.216-2, which is hereby determined inappropriate in accordance with FAR 16.203-4(a).

(S-90) When the contracting officer determines that no existing EPA clause (including a FAR clause used in conjunction with the corresponding FAR EPA "Implementation" DLAD clause) is appropriate, the contracting officer may develop an alternate to an existing EPA clause, or a new clause, in accordance with 16.203-1(a) or (c) or as otherwise authorized in the FAR, and will submit it for approval in accordance with 1.301-91. Established prices and cost indexes need not reflect changes in the costs or established prices of a specific contractor. The established price or cost index may be derived from sales prices in the marketplace, quotes, or assessments as reported or made available in a consistent manner in a publication, electronic database, or other form, by an independent trade association, Governmental body, or other third party independent of the contractor. More than one established price or cost index may be combined in a formula for economic price adjustment purposes in the absence of an

appropriate single price or cost index. (Refer to DAR tracking number 95-D0003, FARS Deviation 96-10.)

(S-91) Adjustments based on established market prices or indexes.

(1) The contracting officer shall determine the most appropriate international, national, regional, or local area market. The EPA clause included in the solicitation shall identify the index or established market price, the document containing such index or price, and its effective date or period.

(2) If the contracting officer is unable to identify an established market price or index that satisfactorily reflects economic fluctuations, then the EPA provision included in the solicitation may provide for offeror fill-in to recommend the most appropriate established market price or index (if none, the most appropriate established catalog price), along with the document containing the established price or index and the effective date/period of the established price or index (and, for established catalog price EPA clauses, the identification and amount of any applicable extras, discounts, or rebates used in calculating the contract price). The contracting officer shall select the most appropriate established market price or index identified (if none, the most appropriate established catalog price). The contracting officer may amend the request for proposal (RFP) to include this selection.

(3) In addition, when preparing a new, locally developed EPA clause or a revision to an existing clause involving using an established or published market price clause, include the provision, after substituting the phrase “market price” indicator for the occurrences of the word “index.”

(4) The clause at 52.216-9003 may be included in solicitations and resulting contracts for items containing specialty metals, when there is potential for unpredictable increases or decreases in the cost of the specialty metal, and the changes can be tracked by a published market price indicator (e.g. London metals exchange, Platts). Cost or price indices that are subject to recalculation after initial publication (to take into account late survey reports and corrections by respondents, e.g., PPI) shall not be used with this clause. Clause requires contractor submission of information adequate to support derivation of the dollar value of specialty metal(s) in the unit price.

(S-92) *Adjustments based on established catalog prices.* An established catalog price-type EPA clause (FAR 52.216-2 or –3, DFARS 252.216-7000 or –7001) may be included in solicitations and resulting contracts for an item previously bought without such EPA clause only after the contracting officer determines that neither an index-type or an established market priced EPA is suitable (i.e., the requirements of FAR 16.203-4(d) and DFARS 216.203-4(d) are not met or there is no suitable index or established market price describing the supplies with specificity) and documents in the acquisition plan the results of actions taken in reaching this determination.

(S-93) Approvals.

(1) Prior to issuance of a solicitation containing a new EPA clause, the contracting officer shall submit the clause for review and approval in accordance with 1.301-91.

(2) The CCO or designee (not lower than one level above the contracting officer) shall approve any adjustment ceiling exceeding ten (10) percent. Such approval may cover more than one contract and extend over a stated definite period of time not to exceed two years, at which time the adjustment ceiling will be reviewed again.

**16.203-4(a)(2)(90) EPA – Established catalog price. Two upward adjustments per year open season E-CAT solicitation.**

(i) Use 52.216-9040, Economic Price Adjustment – Established Catalog Price Two Upward Adjustments Per Year Open Season E-CAT Solicitation, in medical FAR Part 12 solicitations and contracts for the equipment ECAT/CVC Program where offered prices are based upon established catalog/list prices, the contracting officer determines an EPA is appropriate, the adjustment scenario below is suitable for the instant acquisition, and the resulting contract will be placed on the medical electronic catalog (ECAT) web based ordering system. Upward adjustments are based on increases in list prices and may be requested by the contractor twice each contract year. Downward adjustments are mandated whenever the contractor's list prices decrease and/or whenever the contractor has a Federal supply schedule (FSS) for the same item and that price is reduced to one that is lower than the current unit price on the medical contract.

(ii) For dental, optical and laboratory integrated delivery system (LIDS) buys, use clause 52.216-9047, Economic Price Adjustment – Established Catalog Price One Upward Adjustment per Option Year E-Cat Solicitation. This clause may be appropriate for other medical ECAT acquisitions. Consult with the pricing and strategy division, DLA Troop Support, prior to use.

**16.203-4(a)(2)(91) EPA, FSS prices, open season E-CAT solicitation, medical FAR Part 12 solicitations and contracts.**

(i) Use 52.216-9041, Economic Price Adjustment – Federal Supply Schedule Prices – Open Season E-CAT Solicitation, in medical FAR Part 12 solicitations and contracts for the equipment ECAT/CVC program, where adjustments will be based upon price changes in the contractor's Federal supply schedule (FSS) contract for the same items, the contracting officer determines an EPA is appropriate, the adjustment scenario below is suitable for the instant acquisition, and the resulting contract will be placed on the medical electronic catalog (ECAT) web based ordering system. Upward adjustments may be requested by the contractor whenever the FSS price for an item increases. Decreases are mandated whenever FSS prices decrease.

(ii) For dental, optical, and laboratory integrated delivery system (LIDS) buys use 52.216-9047, Economic Price Adjustment – Established Catalog Price One Upward Adjustment Per Option Year E-Cat Solicitation. This clause may be appropriate for other medical ECAT acquisitions. Consult with the pricing and strategy division, DLA Troop Support, prior to use.

**16.203-4(a)(2)(92) Economic price adjustment – Federal supply schedule prices, in medical FAR Part 12 solicitations and contracts.** Use 52.216-9043, Economic Price Adjustment – Federal Supply Schedule Prices, in medical FAR Part 12 solicitations and contracts where adjustments will be based upon price changes in the contractor's Federal Supply Schedule (FSS) contract for the same items, the contracting officer determines an EPA is appropriate, the adjustment scenario below is suitable for the instant contract, the resulting contract will not be placed on the medical electronic catalog (ECAT) web based ordering system, and the concurrence of the Pricing and Strategy Division DLA Troop Support, is received prior to using the clause. Upward adjustments may be requested by the contractor whenever the FSS price for an item increases. Decreases are mandated whenever Federal Supply Schedule (FSS) prices decrease.

**16.203-4(a)(2)(93) Medical FAR Part 12 solicitations and contracts**. Use 52.216-9044, Economic Price Adjustment – Established Catalog Price – Multiple Adjustments Authorized per Clause Terms – non-ECAT, in medical FAR Part 12 solicitations and contracts where offered prices are based upon established catalog/list prices, the contracting officer determines an EPA is appropriate, the adjustment scenario below is suitable for the instant acquisition, the resulting contract will not be placed on the medical electronic catalog (ECAT) web based ordering system, and the concurrence of the pricing and strategy division, DLA Troop Support, is received prior to using the clause. Upward adjustments may be requested by the contractor whenever the list price for an item increases. Downward adjustments are mandated whenever the contractor's list prices decrease and/or whenever the contractor has a Federal Supply Schedule (FSS) for the same item and that price is reduced to one that is lower than the current unit price on the DLA Troop Support Medical's contract.

**16.203-4(a)(2)(94) EPA, other federal agency contracts, E-CAT, medical FAR part 12 solicitations and contracts for the dental, optical, and laboratory integrated delivery system ECAT/CVC program.**

(i) Use 52.216-9045, Economic Price Adjustment – Other Federal Agency Contracts – E-CAT– One Upward Adjustment Per Option Period, in medical FAR Part 12 solicitations and contracts for the dental, optical, and laboratory integrated delivery system (LIDS) ECAT/CVC program, where adjustments will be based upon price changes occurring on the contractor's other Federal agency's (OFA) contract for the same items, the contracting officer determines an EPA is appropriate, the adjustment scenario below is suitable for the instant acquisition, and the resulting contract will be placed on the medical electronic catalog (ECAT) web-based ordering system. Other Federal agency contracts include Federal supply schedules, Department of Veterans Affairs national acquisition contracts, and GSA schedule contracts. Upward adjustments are based on OFA price increases and may be requested by the contractor once annually to cover each option year. No increases are authorized in the base year. Downward adjustments are mandated whenever OFA prices decrease. Prior to award, the contracting officer and the offeror shall reach agreement on the OFA contract to be used as the benchmark for adjusting the DLA Troop Support contract.

(ii) For equipment ECAT Program buys use 52.216-9041, Economic Price Adjustment – Federal Supply Schedule Prices – Open Season E-Cat Solicitation. This clause may be appropriate for other medical ECAT acquisitions. Consult with the pricing and strategy division, DLA Troop Support, prior to use.

**16.203-4(a)(2)(95) EPA, other federal agency contracts, E-CAT, in medical FAR Part 12 solicitations and contracts.**

(i) Use 52.216-9046, Economic Price Adjustment – Other Federal Agency Contracts – E-CAT, in Medical FAR Part 12 solicitations and contracts (including CVC type buys) where adjustments will be based upon price changes occurring on the contractor's other federal agency's (OFA) contract for the same items, the contracting officer determines an EPA is appropriate, the adjustment scenario below is suitable for the instant acquisition, the resulting contract is to be placed on the medical electronic catalog (ECAT) web based ordering system, and the concurrence of the pricing and strategy division, DLA Troop Support, is received prior to using the clause. Other Federal agency contracts include Federal supply schedules (FSS), Department of Veterans Affairs national acquisition contracts, and GSA schedule contracts. Upward adjustments may be requested by the contractor whenever the OFA price increases. Downward adjustments are mandated whenever OFA prices decrease. Prior to award, the contracting

officer and the offeror shall reach agreement on the OFA contract to be used as the benchmark for adjusting the DLA Troop Support contract.

(ii) For dental, optical, and laboratory integrated delivery system (LIDS) buys use 52.216-9046, Economic Price Adjustment – Other Federal Agency Contracts – E-CAT.

(iii) For equipment ECAT Program buys use 52.216-9041, Economic Price Adjustment – Federal Supply Schedule Prices – open season e-cat solicitation.

**16.203-4(a)(2)(96) EPA, established catalog price one upward adjustment per option year e-cat solicitation, in medical FAR Part 12 solicitations and contracts for the dental, optical, and laboratory integrated delivery system ECAT/CVC program.**

(i) Use 52.216-9047, Economic Price Adjustment – Established Catalog Price One Upward Adjustment Per Option Year E-Cat Solicitation, in medical FAR Part 12 solicitations and contracts for the dental, optical, and laboratory integrated delivery system (LIDS) ECAT/CVC program where offered prices are based upon established catalog/list prices, the contracting officer determines an EPA is appropriate, the adjustment scenario below is suitable for the instant acquisition, and the resulting contract will be placed on the medical electronic catalog (ECAT) web based ordering system. Upward adjustments are based on increases in list prices and may be requested by the contractor once annually to cover each option year. No increases are authorized for the base year. Downward adjustments are mandated whenever the contractor's list prices decrease and/or whenever the contractor has a contract with some other federal agency (OFA) for the same item and that price is reduced to one that is lower than the current unit price on Medical's contract. OFA contracts include federal supply schedules, Department of Veterans Affairs national contracts, and GSA schedule contracts.

(ii) For equipment ECAT Program buys use 52.216-9040, Economic Price Adjustment – Established Catalog Price Two Upward Adjustments Per Year Open Season E-Cat Solicitation. This clause may be appropriate for other medical E-CAT acquisitions. Consult with the pricing and strategy division, DLA Troop Support, prior to use.

**16.203-4(a)(2)(97) EPA, established catalog price, multiple adjustments authorized per clause terms – E-CAT solicitation, in medical FAR Part 12 solicitations and contracts.**

(i) Use 52.216-9048, Economic Price Adjustment –Established Catalog Price – Multiple Adjustments Authorized per Clause Terms – E-CAT Solicitation, in medical FAR Part 12 solicitations and contracts where offered prices are based upon established catalog/list prices, the contracting officer determines an EPA is appropriate, the adjustment scenario below is suitable for the instant acquisition, the resulting contract will be placed on the medical electronic catalog (E-CAT) web based ordering system, and the concurrence of the pricing and strategy division, DLA Troop Support, is received prior to using the clause. Upward adjustments may be requested by the contractor whenever the list price for an item increases. Downward adjustments are mandated whenever the contractor's list prices decrease and/or whenever the contractor has a federal supply schedule (FSS) for the same item and that price is reduced to one that is lower than the current unit price on Medical's contract.

(ii) For dental, optical and laboratory integrated delivery system (LIDS) buys use 52.216-9047, Economic Price Adjustment – Established Catalog Price One Upward Adjustment Per Option Year E-Cat Solicitation.

(iii) For equipment E-CAT program buys use 52.216-9040, Economic Price Adjustment – Established Catalog Price Two Upward Adjustments Per Year Open Season E-CAT Solicitation.
16.203-4(a)(2)(98) EPA, published market price, domestic bulk in domestic bulk fuel.

(i) For DLA Energy only: Insert the clause 52.216-9069 Economic Price Adjustment – Published Market Price – Domestic Bulk In Domestic Bulk Fuel in solicitations/contracts when a price adjustment is based on an independent published price listing.

(A) The clause requires buyer fill-in of the applicable ceiling at subparagraph (c)(5), as well as completion of the paragraph (g) with a description of the specific market prices to be used, along with any explanatory notes (notes 2 and 3).

(B) The buyer shall coordinate with the market research section before completion of fill in the blank information sections of the clause such as base market, and publication dates, to ensure the accuracy of the information and the correct selection of the market price.

**16.203-4(a)(2)(99) EPA, published market price, electricity, heat rate.**

(i) Insert the clause 52.216-9068 Economic price Adjustment – Published Market Price – Electricity – Heat Rate in DLA Energy solicitation/contracts for electricity solicitations/contracts when soliciting under the heat rate block and index method.

(A) This clause may be used in markets where natural gas represents a substantial power generation fuel source and the customer requests that DLA Energy purchase electricity using heat rate pricing. Requires buyer fill-ins at paragraph (b), subparagraphs (i) and (ii), and paragraphs (c) and (f).

(B) The index to be used must be a natural gas futures price from the New York Mercantile Exchange (NYMEX). If any other index is to be used, the buyer shall coordinate with the market research section, DLA Energy, before completion of fill in the blank information sections of the clause such as base reference price, and publication dates, to ensure the accuracy of the information and the correct selection of the market reference price.

**16.203-4(a)(2)(100) EPA, market price, posts, camps, and stations, Korea, Guam, Japan.**

(i) Insert the clause 52.216-9071 Economic Price Adjustment – Market Price – Posts, Camps, and Stations - Korea/Guam/Japan in DLA Energy solicitations/contracts for posts, camps, and stations (PC&S) for Korea, Guam or Japan.

(A) The contracting officer is required to insert a header in paragraph (c) for Korea and Guam. When using this clause for Japan, the contracting officer is required to insert a header as well as other language covering delivery and notification (see note 1 to the clause).

(B) The contracting officer shall coordinate with the market research section, DLA Energy, before completion of fill in the blank information sections of the clause such as base market, and publication dates, to ensure the accuracy of the information and the correct selection of the market price. Refer to note 3 of the clause in reference to coordination with the market research section.

**16.203-4(a)(2)(101) EPA, petroleum product price, post camp and station.**

(i) Insert the clause at 52.216-9072 Economic Price Adjustment (EPA) – Petroleum Product Price, Post Camp and Station (PC&S) in all domestic PC&S solicitations and resulting contracts.

(A) The buyer shall insert applicable date for each publication in paragraph (f). For OPIS, the Monday date of the publication shall be used. The clause requires fill-in information (see paragraphs (b), (c), and (f).

(B) The buyer shall coordinate with the market research section, DLA Energy, before completion of fill in the blank information sections of the clause such as base reference price, upward ceiling, and publication dates, to ensure the accuracy of the information.

**16.203-4(a)(2)(102) EPA, petroleum product market price, post camp and station Belgium.** Insert the clause at 52.216-9073 Economic Price Adjustment (EPA) – Petroleum Product Market Price, Post Campus and Station (PC&S) Belgium in all PC&S solicitations and resulting contracts for Belgium. Requires buyer fill-in of paragraph (c)(5). The buyer shall coordinate with the market research section, DLA Energy, before completion of fill in the blank information sections of the clause to ensure the accuracy of the information.

**16.203-4(a)(2)(103) EPA, daily market price indicators, ships' bunkers.** Insert the clause 52.216-9070 Economic Price Adjustment – Daily Market Price Indicators (Ships' Bunkers) in DLA Energy solicitations and resulting contracts when a daily economic price adjustment escalator is used. Requires buyer fill-ins at paragraphs (c) and (f). The buyer shall coordinate with the market research section, DLA Energy, before completion of fill in the blank information sections of the clause such as base reference price, and publication dates to ensure the accuracy of information and the correct selection of the market reference price.

**16.203-4(a)(2)(104) EPA, market price and actual transportation cost, natural gas.** Insert the clause 52.216-9074 Economic Price Adjustment – Market Price And Actual Transportation Cost – Natural Gas – Alaska in DLA Energy solicitations and contracts for direct supply natural gas in Alaska. Requires buyer fill-ins at paragraphs (c) and (f). The buyer shall coordinate with the market research section, DLA Energy, before completion of fill in the blank information sections of the clause such as base reference price, and publication dates to ensure the accuracy of information and the correct selection of the market reference price.

**16.203-4(a)(2)(105) EPA, market price indicators, ships' bunkers, weekly.** Insert the clause 52.216-9075 Economic Price Adjustment – Market Price Indicators – Ships' Bunkers in DLA Energy solicitations and contracts for ships' bunkers solicitations/contracts when market publications will be used for price escalation on a weekly basis. The buyer shall coordinate with the market research section, DLA Energy, before completion of fill in the blank information sections of the clause such as base market, and publication dates, to ensure the accuracy of the information and the correct selection of the market price.

**16.203-4(a)(2)(106) EPA, National Contracts – Subsistence.** The clause at 52.216-908**4** may be included in DLA Troop Support Subsistence solicitations and contracts forNational Contract items. The contracting officer shall complete the fill-ins shown in paragraphs (b), (e), and (k) of the clause. Prior to incorporating the clause into a solicitation or contract or adding additional items to a previously-approved clause, the contracting officer shall submit the clause to the Pricing & Strategy Division for review and approval.

**16.203-4(b) Adjustments based on established prices – semistandard supplies.**

(1)(S-90) The clause at 52.216-9001 or substantially the same clause may be used with FAR clause 52.216-3.

**16.203-4(c) Adjustments based on actual cost of labor or material.**

(S-93) An actual cost type EPA clause (FAR 52.216-4 or a locally-developed clause) may be included in solicitations and resulting contracts for an item previously bought without such an EPA clause only after the contracting officer determines that no other type of EPA clause is appropriate and documents in the acquisition plan the results of actions taken in reaching this determination. A provision shall also be included in the solicitation and any resulting contracts that–

(i) Identifies the specific direct cost factor and dollar amount needed to establish the baseline from which adjustments will be made, regardless of whether cost or pricing data was submitted;

(ii) Incorporates by reference, the cost principles and procedures in FAR Subpart 31.2 for use as the basis for pricing the baseline and any adjustment under the EPA clause;

(iii) Identifies any appropriate markup factors/amounts; and

(iv) Provides the methodology for price adjustment calculations.

(1)(90) The clause at 52.216-9002 or substantially the same clause may be used with FAR clause 52.216-4.

(2) The clause at 52.216-9012 may be included in solicitations and resulting contracts for unitized group rations – A (UGR-A) when the requirements of FAR 16.203-2 are met and the determination required by FAR 16.203-3 is made. The clause is based on cost of materials (total components price defined below). There is no adjustment for the distribution price (defined below) for these rations. If the contractor's applicable total components price of a ration component(s) changes (i.e. increase or decrease) after the contract date, the corresponding unit price may be increased, or shall be decreased, by the same amount, subject to upward ceiling discussed in the following paragraph. Clause requires contractor submission of supporting data adequate to support any requested price change.

(3)(S-90) When the FAR "Implementation" DLAD clause is also used with the note specified at 15.204-2(b), the contracting officer shall include the required information in such clause vice the contract schedule.

(4)(iii)(S-90) When the FAR "Implementation" DLAD clause is also used along with the note specified at 15.204-2(b), the contracting officer shall include the required information in such clause vice the contract schedule.

**16.203-4(d)(2) Clauses – consumer price index and economic price adjustment.**

(S-90) *Adjustments based on cost indexes of labor or material.* An index clause may be included in solicitations and resulting contracts only if the contracting officer documents in the acquisition plan, rationale indicating that the acquisition satisfies the requirements of FAR 16.203-4(d)

and DFARS 216.203-4(d). The contracting officer shall select the most appropriate index published by the Bureau of Labor Statistics (BLS). Another index may be used provided the contracting officer determines that no BLS index is suitable and documents in the acquisition plan the specific BLS indexes considered, why they were unsuitable, and rationale demonstrating the suitability of the index selected.

(iv) In the event any applicable index is discontinued or its method of derivation is altered substantially; or the contracting officer determines that the index consistently and substantially fails to reflect market conditions, the parties shall agree upon an appropriate substitute index for determining price adjustments hereunder. The contract shall be modified to reflect such substitute index, effective on the date the index specified in the contract is no longer published or began to consistently and substantially fail to reflect market conditions."

(v) When planning to use an index-type clause which provides for price adjustment, whenever the actual index for a period differs from the projected index for that period sufficiently to trigger a price adjustment, the contracting officer shall ensure that the projected index for each period to be included in the clause at least equals the projected indexes used in pricing the same cost element under the contract.

**16.203-4(d)(2)(90) Medical FAR Part 12 solicitations and contracts under the DoD/VA shared procurement program.** Use 52.216-9042, Economic Price Adjustment (EPA) – Department of Labor Bureau of Labor Statistics – consumer price index, in medical FAR Part 12 solicitations and contracts under the DoD/VA shared procurement program when the contracting officer determines that an EPA is appropriate, the adjustment scenario below, which is based on changes in the Consumer Price Index (CPI), is suitable for the instant acquisition and the concurrence of the C&P Medical Support Team is received prior to using the clause. Adjustments are based upon changes in the CPI for the expenditure category "prescription drugs and medical supplies" or "nonprescription drugs and medical supplies." Upward adjustments may be requested by the contractor once annually to cover each option year. Downward adjustments during the option years are mandated whenever the CPI goes down. An additional downward adjustment is mandated whenever the contractor has a federal supply schedule (FSS) for the same item and that price is reduced to one that is lower than the current unit price on Medical's contract.

**16.203-4(d)(2)(91) Medical solicitations for readiness items.** Use 52.216-9049, Economic Price Adjustment (EPA) of the annual management fee(s) and annual management cost(s) for the option years, in medical solicitations for readiness items which result in corporate exigency contracts or vendor managed inventory contracts. Adjustments are based upon changes in the producer price index for general warehousing and storage. One adjustment is authorized annually to determine the annual management fee(s) and management cost(s) for the upcoming option year. Upward adjustments may be requested by the contractor. Downward adjustments are mandated by the clause. No adjustment is authorized for the base year.

**16.203-4(d)(2)(92) Medical solicitations for readiness items.** Use 52.216-9050, Economic Price Adjustment (EPA) of the Annual Inventory Holding Fee and Annual Inventory Holding Cost for the Option Year, in medical solicitations for readiness items which result in corporate exigency contracts or vendor managed inventory contracts. Adjustments are based upon changes in the prime rate. One adjustment is authorized annually to determine the annual inventory holding fee and inventory holding cost for the upcoming option year. Upward adjustments may be requested by the contractor. Downward adjustments are mandated by the clause. No adjustment is authorized for the base year.

**16.203-4(d)(2)(93) Economic Price Adjustment when offeror does not agree to 52.216-9052.**

(i) Use 52.216-9051, Economic Price Adjustment – One Adjustment Per Year – Base Year Only Federal Ceiling Price (FCP) Percentage Adjustment when the offeror will not agree to use 52.216-9052, Economic Price Adjustment – One Adjustment Per Year – Base/Option Year Only FCP Percentage Adjustment and the concurrence of the C&P medical support team is received prior to using the clause.

(A) Upward adjustments may be requested by the contractor and are limited to one per year based upon the change in the FCP. Downward adjustments are mandated whenever the FCP decreases and whenever the contractor has a federal supply schedule (FSS) for the same item and that price is reduced to one that is lower than the current unit price on medical's contract.

(B) FCP adjustments for the base year only are based upon the percentage change in the FCP. Adjustments for the Option Years cannot exceed the Federal Ceiling Price. Accordingly, use this clause if the offeror will not agree to use 52.216-9052, Economic Price Adjustment – One Adjustment Per Year – Base/Option Year Only FCP Percentage Adjustment. FCP adjustments for the base and option years are based upon the percentage change in the FCP.

**16.203-4(d)(2)(94) Medical FAR Part 12 solicitations and contracts.**

(i) Use 52.216-9052, Economic Price Adjustment – One Adjustment Per Year – Base/Option Year Only Federal Ceiling Price (FCP) Percentage Adjustment, in Medical FAR Part 12 solicitations and contracts for yellow fever vaccine and other appropriate pharmaceutical items which have an annual FCP as required by the Veterans Healthcare Act, the contracting officer determines that an EPA is appropriate, adjustments based upon changes in the FCP, and in some instances decreases in the contractor's Federal Supply Schedule (FSS) price for the same item, are suitable for the instant acquisition, and the concurrence of the C&P medical support team is received prior to using the clause.

(A) Upward adjustments may be requested by the contractor and are limited to one per year based upon the change in the FCP. Downward adjustments are mandated whenever the FCP decreases and whenever the contractor has a FSS for the same item and that price is reduced to one that is lower than the current unit price on medical's contract.

(B) FCP adjustments for the Base and Option Years are based upon the percentage change in the FCP. If the offeror does not agree to base option year adjustments on the percentage change in the FCP, consider using clause 52.216-9051, Economic Price Adjustment – One Adjustment Per Year – Base Year Only FCP Percentage Adjustment.

**16.203-4(d)(2)(S-95) Economic Price Adjustment (EPA) – Actual Material Costs for Subsistence Delivered Price Business Model – DLA Troop Support Subsistence Prime Vendor (SPV) Contiguous United States (CONUS)**.

(i) Insert the clause at 52.216-9064, Economic Price Adjustment (EPA) – Actual Material Costs for Subsistence Delivered Price Business Model – DLA Troop Support Subsistence Prime Vendor (SPV) Contiguous United States (CONUS), in the solicitation and resultant contract for subsistence acquisitions that utilize the delivered price business model to protect the contractor and the Government against unpredictable increases and decreases in actual material costs charged by the contractor's suppliers.

(A) This EPA clause is applicable to CONUS subsistence prime vendor (SPV) procurements.

(B) The contracting officer will fill-in required information in paragraphs (c) and (d). The buyer shall coordinate with the DLA Troop Support pricing office before completion of fill-in-the-blank information sections of the clause to ensure the accuracy of the information filled in. The price/cost analyst at DLA Troop Support will also review pricing information included in the statement of work for adequacy/accuracy.

(c) Additionally, for acquisitions that require review and approval by the DLA HQ integrated acquisition review board (IARB), these fill-in paragraphs and statement of work sections will be reviewed for adequacy and accuracy by the DLA HQ price/cost analyst in coordination with General Counsel.

**16.203-4(d)(2)(S-96) EPA – actual material costs for subsistence product price business model.**

(i) Insert the clause at 52.216-9065, Economic Price Adjustment (EPA) Actual Material Costs For Subsistence Product Price Business Model, in the solicitation and resultant contract for subsistence acquisitions that utilize "the product price business model" to protect the contractor and the Government against unpredictable increases and decreases in actual material costs charged by the contractor's suppliers. This EPA clause is applicable to outside contiguous United States (OCONUS) subsistence prime vendor (SPV) procurements.

(ii) Contracting officer fill-ins are required in paragraphs (b) through (d). The contracting officer shall coordinate with the DLA Troop Support pricing office before completion of fill-in information sections of the clause to ensure the accuracy of the information. The cost/price analyst at DLA Troop Support will also review information on normal and premium distribution price that is included in the Statement of Work for adequacy/accuracy. Additionally, for acquisitions that require review and approval by the DLA Integrated Acquisition Review Board (IARB), these fill-in paragraphs and Statement of Work sections related to normal and premium pricing definitions will be reviewed for adequacy/accuracy by the DLA Acquisition Pricing & CQRs Division cost/price analyst in coordination with DLA General Counsel.

**16.203-4-90 Additional clauses – requirements of FAR 16.203-2 and DLAD 16.203.**
These clauses can be used only when the requirements of FAR 16.203-2 and DLAD 16.203 are met and the determination required by FAR 16.203-3 is made, and the contracting officer determines that none of the standard FAR EPA clauses are appropriate for use in the acquisition.

(a) Price adjustment for specialty metals. The clause at 52.216-9003 may be included in solicitations and resulting contracts for items containing specialty metals, when the circumstances in FAR 16.203-4(d)(1) exist, unpredictable increases or decreases in the cost of the specialty metal are expected, and the changes can be tracked by a published market price indicator (e.g. London Metals Exchange, Platts). Cost or price indices that are subject to recalculation after initial publication (to take into account late survey reports and corrections by respondents, e.g., the producers price index (PPI)) shall not be used with this clause. Clause requires contractor submission of information adequate to support derivation of the dollar value of specialty metal(s) in the unit price.

(b) Price adjustment for unitized group rations – A. The clause at 52.216-9012 may be included in solicitations and resulting contracts for unitized group rations – A (UGR-A). The clause is based on cost

of materials (total components price defined in the clause). There is no adjustment for the distribution price (defined in the clause) for these rations. If the contractor's applicable total components price of a ration component(s) changes (i.e. increase or decrease) after the contract date, the corresponding unit price may be increased, or shall be decreased, by the same amount (subject to upward ceiling stated in the clause). Clause requires contractor submission of supporting data adequate to support any requested price change.

(c) Price adjustment for lead, battery consignment program. The clause at 52.216-9029 Economic Price Adjustment (EPA) Lead, Battery Consignment Program, may be included in solicitations and the resulting contracts for batteries acquired under the battery consignment program, when the circumstances in FAR 16.203-4(d)(1) exist, unpredictable increases or decreases in the cost of the lead are expected, and the changes can be tracked by the London Metals Exchange standard lead pricing. When setting the "adjustment band", the contracting officer shall determine the percentage that allows the clause to be adequately responsive to fluctuations in the lead market while also minimizing the administrative burden of processing adjustments for minimal prices changes.

(d) Price adjustment for Department of Labor Index.

(1) The clause at 52.216-9030, Economic Price Adjustment – Department Of Labor Index, may be included in negotiated solicitations and resulting contracts when:

(i) Soliciting an item when unpredictable increases or decreases in the cost of producing the items are expected or pricing uncertainties exist for a component or components of the end item, and the change in cost of production or component prices can be tracked via the Producers Price Index (PPI) published by the Bureau of Labor Statistics (BLS); or soliciting an item when unpredictable increases or decreases in the cost of producing the items are expected or pricing uncertainties exist for labor, and the change in cost of production can be tracked via the Employment Cost Index (ECI) published by the BLS.

(ii) The circumstances in FAR 16.203-4(d)(1) exist;

(iii) The contracting officer considers the use of this clause appropriate; and

(iv) The requirements of FAR 16.203-3 and DLAD 16.203 are met.

(2) The contracting officer shall coordinate with the applicable procuring organization pricing office before selecting the index, and the number of price adjustments in paragraphs (b)(1) and (c)1, respectively, of 52.216-9030. For procuring organizations for which there is no pricing office, the fill-in sections shall be coordinated with J72.

(f) Economic Price Adjustment (EPA) – Established Market Price – Milk. The clause at 52.216-9032 Economic Price Adjustment (EPA) – Established Market Price Economic Price Adjustment (EPA) – Established Market Price – Milk may be included in solicitations and resulting contracts for extended shelf life (ESL) milk items when the following conditions apply:

(1) The contracting officer has made the determination specified in FAR 16.203-3 that a fixed price contract with an economic price adjustment (EPA) is appropriate,

(2) Items have an established market price,

(3) When the entire or major quantity of milk will be processed outside the state of California, and

(4) Price adjustments will not be made by contract modification.

(i) Clause 52.216-9032 Economic Price Adjustment (EPA) – Established Market Price – Milk Alternate I. Use 52.216-9032 Alternate I in solicitations and contracts for Extended Shelf Life (ESL) milk when items 1, 2 and 4 apply and the entire or major quantity of milk will be processed in the state of California.

(ii) Clause 52.216-9032 Economic Price Adjustment (EPA) – Established Market Price – Milk Alternate II. Use 52.216-9032 Alternate II in solicitations and contracts for Ultra High Temperature (UHT) milk when items 1, 2 and 3 apply and price adjustments will be made by contract modification.

(iii) Clause 52.216-9032 Economic Price Adjustment (EPA) – Established Market Price-Milk Alternate III. Use 52.216-9032 Alternate III in solicitations and contracts for Ultra High Temperature (UHT) milk items when items 1 and 2 apply, the entire or major quantity of milk will be processed in the state of California, and price adjustments will be made by contract modification.

(g) Clause 52.216-9033 Economic Price Adjustment – Established Prices. This clause may be used in acquisitions when it is known that the items being acquired are commercial items for which manufacturers or suppliers have established, published prices meeting the definition of "market price" or "catalog price" in 16.203(90). Complete paragraph (c)(1) of the clause by inserting the maximum percentage of increase authorized.

(h) Clause 52.216-9034 Economic Price Adjustment – Published Market Price – Silver. The clause at 52.216-9034 may be included in solicitations and resulting contracts for items containing silver, when unpredictable increases or decreases in the cost of silver are expected, the circumstances in FAR 16.203-4(d)(1) exist, and the changes can be tracked by the published market price indicator in the clause.

(i) Clause 52.216-9035 Economic price adjustment – published market price – lead. The clause at 52.216-9035 may be included in solicitations and resulting contracts for items containing lead, when unpredictable increases or decreases in the cost of lead are expected, the circumstances in FAR 16.203-4(d)(1) exist, and the changes can be tracked by the published market price indicator in the clause.

(j) The following evaluation clauses will be used in solicitations when an economic price adjustment clause will be used.

(i) When using negotiation procedures that include an economic price adjustment, use 52.216-9036 Evaluation of offers – Economic Price Adjustment to advise offerors how their prices will be evaluated in regard to the EPA provision.

(ii) When using sealed bidding that includes an economic price adjustment clause, use 52.216-9037 Evaluation Of Bids – Economic Price Adjustment to advise offerors how their prices will be evaluated in regard to the EPA provision.

(k) Clause 52.216-9028 Economic Price Adjustment Labor And Material. The clause at 52.216-9028 may be used when the contractor will propose a material index for use in the economic price adjustment clause.

(l)(1) Clause 52.216-9058 Economic Price Adjustment (EPA) Established Market Price – Wool Cloth. Use the clause at 52.216-9058 in solicitations and contracts for wool cloth or items containing wool cloth. Paragraphs (b)(1), (b)(2) and (d) require the Government to fill-in the specific grade of Australian wool that the EPA applies to and in paragraph (b) fill-in pounds of wool per yard. The pounds of wool per yard will be calculated by DLA Troop Support's pricing element based on prior audits and provided to the buyer as necessary. The specific grade will normally be 22 micron (U.S. grade 64'S). However, as market research or other circumstance dictates, buyer may complete with the appropriate number ranging from 54'S-70'S or micron equivalent. In all cases, the buyer will document the file with the basis for the grade chosen.

(2) The clause at 52.216-9061 may be used in solicitations and resulting contracts for table spreads. The contracting officer may add additional components based upon customer requirements within paragraph (b) of the clause. Prior to incorporation of any additional component(s) into a solicitation or contract, the contracting officer shall provide the requested new components along with supporting documentation to the cost/price office for review and approval. DLA Troop Support will keep track of any items added and/or those that should be deleted from the clause and report to DLA HQ, attention: J73 every two years for review and updating of the clause as necessary.

(3) The clause at 52.216-9062 may be included in solicitations and the resulting contracts for unitized group rations. The contracting officer may add additional components based upon customer requirements within paragraph (b) of the clause. Prior to incorporation of any additional component(s) into a solicitation or contract, the contracting officer shall provide the requested new components along with supporting documentation to the cost/price office for review and approval. DLA Troop Support will keep track of any items added and/or those that should be deleted from the clause and report to DLA HQ, attention: J73 every two years for review and updating of the clause as necessary.

(4) The clause at 52.216-9059 may be used in solicitations and resulting contracts for meal cold weather/long range patrol (MCW/LRP). The contracting officer may add additional components based upon customer requirements within paragraph (b) of the clause. Prior to incorporation of any additional component(s) into a solicitation or contract, the contracting officer shall provide the requested new components along with supporting documentation to the cost/price office for review and approval. DLA Troop Support will keep track of any items added and/or those that should be deleted from the clause and report to DLA HQ J73 every two years for review and updating of the clause as necessary.

(5) The clause at 52.216-9063 may be used in solicitations and resulting contracts for tailored operational training meal (TOTM). The contracting officer may add additional components based upon customer requirements within paragraph (b) of the clause. Prior to incorporation of any additional component(s) into a solicitation or contract, the contracting officer shall provide the requested new components along with supporting documentation to the cost/price office for review and approval. DLA Troop Support will keep track of any items added and/or those that should be deleted from the clause and report to DLA HQ J73 every two years for review and updating of the clause as necessary.

(6) The clause at 52.216-9060 may be included in solicitations and resulting contracts for meal ready to eat (MRE) assembly. The contracting officer may add additional components based upon customer requirements within paragraph (b) of the clause. Prior to incorporation of any additional

component(s) into a solicitation or contract, the contracting officer shall provide the requested new components along with supporting documentation to the cost/price office for review and approval. DLA Troop Support will keep track of any items added and/or those that should be deleted from the clause and report to DLA HQ J73 every two years for review and updating of the clause as necessary.

(7) The clause at 52.216-9066 may be included in solicitations and resulting contracts for fiberboard boxes, liners and /or other items identified therein, when: 1) unpredictable increases or decreases in the cost of the items are expected; 2) the changes can be tracked by published market prices to be used for price adjustment purposes; 3) the contracting officer considers the use of this clause appropriate; and 4) the requirements of FAR 16.203-2, -3, and -4 are met.

(8) The clause at 52.216-9067, Economic Price Adjustment – Liquid Propane Gas – DLA Distribution, shall be used in contracts for procurement of liquid propane gas (LPG) by DLA Distribution. The clause requires the buyer to fill in the appropriate base market price date in paragraph (b)(3). This date should be no later than the date of final proposal revisions. The buyer must also fill in the percentage applicable in (c)(4), as determined in accordance with 16.203-3-90 and local procedures. This clause is approved for use by DLA Distribution only.

**16.205-4-90 Solicitation provisions and contract clauses.**

(a) Contracting officers may use clause 52.216-9038, Price Redetermination- Prospective (DEVIATION - PERMANENT), in contracts, including those subject to FAR Part 12, that meet the criteria in FAR 16.205 for fixed price prospective price redetermination, are determined not suitable for economic price adjustment, and have pricing based on the date supplies are ordered rather than on date of delivery. Reference FARS DEV 13-07.

## SUBPART 16.5 – INDEFINITE-DELIVERY CONTRACTS

*(Revised June 15, 2015 through PROCLTR 2015-09)*

**16.501-2-90 General.**

(a) Indefinite delivery contracts (IDCs) that enable decentralized ordering shall contain provisions for a designated contracting officer's ordering representative, with the options of (i) placing orders to be paid using their Government-wide purchase card and (ii) ordering against their purchase card, for individual orders not to exceed the simplified acquisition threshold. See 1.603-3-90(a) for policy and procedures regarding contracting officer's ordering representatives.

(1) An exception is authorized only to the extent the prospective contractor refuses to accept the purchase card for ordering and payment which shall be reviewed, approved, and documented in accordance with DFARS 213.270 (b)(1).

(2) The designated contracting officer's ordering representatives using the Government-wide purchase card against IDCs issued by contracting offices of DLA~~s~~ are bound by DLAI 2106, Government Purchase Card.

(c) The requirements of DFARS Subpart 217.74 and DLAD 17.74 shall be met for indefinite-delivery contracts providing for issuance of undefinitized delivery orders (UDOs).

(d) Indefinite-delivery contracts may provide for any appropriate cost or pricing arrangements under Part 16, including firm fixed price, fixed price with economic price adjustment, fixed price with prospective redetermination, or price based on catalog or market prices. When prices are based on catalog or market prices, the price to be paid may be determined by establishing an adjustment factor and applying it to the price in industry-wide pricing guides or manufacturers' price catalogs. Normally, the adjustment factor will be a fixed percentage discount to be applied to the price in effect on the date of each order.

**16.503 Requirements contracts.**

(d) The determination that award of multiple contracts is not practicable shall be contained in the acquisition plan or otherwise documented in writing prior to issuance of the solicitation.

**16.504 Indefinite-quantity contracts.**

**16.504-90 Solicitations resulting in Indefinite Delivery Contracts (IDCs).**
The clause at 52.216-9027, Evaluation of Quantity Sensitive and Indefinite Delivery Contracts (IDCs), shall be used in solicitations which will result in IDCs when it is anticipated that the contractor will offer a price break for high quantity delivery orders. Coordinate with the demand planner manager for establishment of the quantity most likely to be procured for each delivery order. The highest weight should then be assigned to this quantity. The standard form (SF) 36 shall be manually typed in the buying section to show the range of order quantities and to reflect the evaluation weight which will be placed upon the specific quantity range. The buyer shall also provide the contractor with an estimate of the annual requirements.

(a) The Government's quantity limitations may be stated in different ways; for example, as a number of items or a dollar value worth of items. Stating the Government's minimum/maximum liability for the entire contract is appropriate for multiple line item contracts when, due to the unique nature of the requirement, it is difficult or impossible to predict, prior to solicitation, the number of individual items needed. The contracting officer must balance the risks inherent in providing more specific limitations with the increased risk to the contractor, and possible increased cost to the Government, of providing less specific limitations.

(b) The determination not to make multiple awards shall be contained in the acquisition plan or otherwise documented in writing in the contract file.

(1)(ii)(D)(S-90) Single award of a task or delivery order contract.

*(a)* "Awarded to a single source" means the award of any task or delivery order contract where task or delivery orders will not be competed between contract holders. "Task or delivery order contract" does not include orders against task or delivery order contracts.

*(b)* Award of task or delivery order contracts between $10 million and the threshold at FAR 16.504(c)(1)(ii)(D)(*1*) to a single source requires HCA approval (unless delegated to the CCO)), or CCO approval for those DLA organizations for which the, DLA Acquisition Deputy Director is the HCA. DLA Energy's energy program contracts, AbilityOne, and FPI contracts when it is determined to be a mandatory source in accordance with FAR 8.602(a)(3), are not subject to this requirement; however, DLA Energy non-energy task and delivery order contracts are subject to this requirement.

*(c)* Single awards over the threshold at FAR 16.504(c)(1)(ii)(D)(*1*)

*(1)* Preferably within the early stages of the acquisition process, but no less than 21 days before contract award, the contracting activity responsible for the acquisition shall submit a Determination and Findings (D&F) document to the DLA Acquisition Operations Division substantially the same as the template(s) provided in PROCLTR 2009-14, for a single award D&F – Fixed Price Orders and Single Award DF – Sole Source. Note that a D&F can specify the solicitation number, so that any single award contract over the threshold at FAR 16.504(c)(1)(ii)(D)(*1*) that results will be covered. The D&F shall include sufficient detail to fully support the application of one or more of the exceptions at FAR 16.504(c)(1)(ii)(D)(*1*) to the procurement.

*(2)* It is anticipated that many D&Fs in DLA will utilize the FAR 16.504(c)(1)(ii)(D)(*1*)(*ii*) exception for contracts providing only firm fixed price task or delivery orders. Fixed price contracts utilizing an economic price adjustment or price redetermination clause qualify for this exception if the individual delivery or task orders under the contracts are firm-fixed priced using prices established in the contracts.

*(d)* The required written D&F to make a single award of a task or delivery order contract over the threshold at FAR 16.504(c)(1)(ii)(D)(*1*) shall be signed by the Director, DLA Acquisition (J7), to whom the DLA Director has delegated Head of Agency authority.

*(e)* Copy of the determination. The DLA Acquisition Policy Division will provide a copy of determinations signed by the DLA Acquisition Director to the Defense Procurement Deputy Director (Contract Policy and International Contracting).

**16.505 Ordering.**

(a)(S-90) A delivery order must be issued for any quantity ordered, including a quantity ordered concurrent with award of a basic contract.

(a)(5) DLA Form 1224, Shipping Instruction, may be used to issue automated orders under indefinite-delivery contracts not exceeding the simplified acquisition threshold.

(b) *Orders under multiple-award contracts*–

(1) *Fair opportunity*. Solicitations shall advise offerors that (i) the competition requirements of FAR Part 6 do not apply to placement of individual task and delivery orders; (ii) individual orders shall be placed in accordance with the selection criteria specified in the solicitation/contract; and (iii) complaints about the placement of individual orders shall be reviewed by the activity competition advocate.

(2) *Exceptions to the fair opportunity process.* The determination not to provide all awardees a fair opportunity to be considered for a particular order in excess of $3,000 should be documented in the order file.

(8) *Task-order and delivery-order ombudsman*. The competition advocate at each contracting activity/office (as defined in 2.101) shall act as the activity task and delivery order contract ombudsman

pursuant to FAR 16.505(b)(8). The ombudsman shall attempt to resolve contractor complaints relative to placement of individual task and delivery orders at the local level. Complaints which cannot be so resolved shall be forwarded to the HQ through J72 for resolution by the DLA competition advocate. Each activity is responsible for developing procedures for executing the duties and responsibilities of its local ombudsman. The competition advocate at each contracting activity/office (as defined in 2.101) shall act as the activity task and delivery order contract ombudsman pursuant to FAR 16.505(b)(8).

(b)(S-90) Use 52.216-9022, Placement of Task/Delivery Orders Against Multiple Indefinite Delivery Contracts as needed to indicate delivery order procedures in multiple award indefinite delivery contracts pursuant to FAR 16.504. Indicate in the clause whether price for the task or delivery order is significantly more, less, or approximately equal in importance to all other factors combined.

**16.506 Solicitation provisions and contract clauses.**

**16.506(90) Additions or deletions.**
The clause at 52.216-9006 may be used in solicitations when a mechanism is needed for making additions or deletions to items covered by the contract, e.g. corporate contracts, long term contracts (LTCs) incorporating a manufacturer's price list, comprehensive weapon system spare parts support or a specific range of items.

(1) Competition requirements must be addressed before new items may be added to a contract.

(2) A scope of contract statement is necessary in both solicitation and contract to clearly establish the Government's intentions and rights under the contract. The contract scope statement should communicate a comprehensive objective for the acquisition, i.e. whether it is based on a specific stock class, weapon system, product line, manufacturer, or distributor. The scope statement must not include information that conflicts with Section B or other terms of the solicitation. Contract specialists have flexibility in defining contract scope but must be careful to avoid ambiguities.

**16.506(91) Contract and/or delivery order limitations.**

(a) The contracting officer may use the clause at 52.216-9007, Contract and Delivery Order Limitations, in conjunction with FAR 52.216-19 to establish contract and/or delivery order limitations.

(b) The clause at 52.216-9008, Offeror's Quantity Limitations, may be used when the contracting officer anticipates the receipt of offers containing quantity limitations.

(c)(2) The contracting officer may use the clause at 52.216-9010, Contract Quantity Limitations, in solicitations for indefinite quantity contracts using information furnished by the Item manager.

(d) The contracting officer may use the clause at 52.216-9010, Contract Quantity Limitations, in conjunction with FAR 52.216-27 to establish quantity limitations for single, split, or multiple awards of indefinite-quantity contracts.

(f) The contracting officer may use the provision at 52.216-9024, Adjustment to Ordering Period, in conjunction with FAR 52.216-18, Ordering, in solicitations for definite-quantity, indefinite quantity, or a

requirements contract, when the Government may need to adjust the ordering period at time of award. Fill in the assumed award date.

**16.506-92(a) Evaluation of Offers for Indefinite Delivery Type Solicitations.**

(1) The contracting officer may use the provision at 52.216-9013, Evaluation of Offers for Indefinite Delivery Type Solicitations, to indicate to offerors how prices for quantity increments will be evaluated in solicitations for indefinite delivery contracts. If (c)(5) is selected, use when transportation costs will be evaluated and do not use FAR 52.247-50, No Evaluation of Transportation Costs.

(2) Use alternate I when not using the specified weights, but rather assigning the greatest weight to the quantity increment most likely to be procured for each delivery order.

**16.506-93 Area requirements.**

(a) Use 52.216-9014, Area Requirements – Tentative Destinations, in solicitations permitting f.o.b. origin offers when it is desired to list one or more tentative destinations, each designating an area consisting of certain specified states or geographic areas.

(b) Use 52.216-9015, Area Requirements- Contiguous U.S., in solicitations and contracts for IDCs and IDPOs when the industry practice is to offer one price for delivery anywhere within the contiguous United States (48 contiguous states and the District of Columbia).

**16.506-94 Construction and equipment solicitations for IDCs/IQCs.**

(a) Insert the provision at 52.216-9019, Area Requirements – East and West of Mississippi, in construction and equipment solicitations for IDCs/IQCs specifying f.o.b. destination only, covering items of supply or national stock numbers (NSNs) which are divided into requirements for delivery east and west of the Mississippi River, within the continental United States, excluding Alaska, and the procurement is not partially set aside.

(b) The clause requires the use of odd numbered items (i.e., 0001, 0003, 0005, etc.) for requirements scheduled for delivery east of the Mississippi River and even numbered items (i.e., 0002, 0004, 0006, etc.) for requirements scheduled for delivery west of the Mississippi River.

**16.506-95 Medical prime vendor requirements.**
Use a clause substantially the same as 52.216-9020, Prime Vendor Requirements, in medical pharmaceutical prime vendor solicitations and contracts when an indefinite delivery modified requirements contract is contemplated. 52.216-9020 is to be used only for acquisitions in the medical supply chain.

**16.506(96) Invoices for delivery orders against federal supply schedules.**
Use 52.216-9025, Invoices for Delivery Orders, in delivery orders against federal supply schedules assigned to DLA Aviation for administration.

**16.506(96)(b) Pricing of delivery orders with quantity increments.**
Use 52.216-9026, Pricing of Delivery Orders with Quantity Increments, in solicitations and awards for long term contracts which provide for shipment to more than one location and include quantity range

pricing. Use when transportation costs will be relatively small compared to the cost of the item or when the contract price will be f.o.b. origin.

**16.506-97 Restitution.**

(a) Insert the clause at 52.216-9083, Restitution, in indefinite delivery solicitations and contracts for items where restitution applies and the vendor is in the European Union, with required text filled in by the acquisition specialist.

## SUBPART 16.6 – TIME AND MATERIALS, LABOR-HOUR, AND LETTER CONTRACTS

**16.601 Time and materials contracts.**

**16.601-90 Monitoring and reporting.**

(a) Supply chains shall annually monitor their percentage of acquisition dollars being spent on time and material (T&M)/ labor hour (LH) contracts and orders. At the earliest opportunity, particularly when a service contracting requirement becomes repetitive and more predictable in nature, contracting officers should migrate T&M/LH vehicles to other contract types, preferably a fixed price arrangement, if possible. Of particular focus should be the use of T&M/LH contracts and orders for professional, administrative, management support, information technology, and communication services.

(b) HCAs and, for activities for which the DLA Acquisition Deputy Director is the HCA, CCOs shall report to the J7 CAE at the close of the calendar year any percentages of T&M/LH contract action dollars for the preceding fiscal year exceeding 8 percent of service dollars, including a discussion of the supply chain's strategy to decrease the use of T&M/LH contract type and the risk mitigation measures being used in administering these contract types.

(c) Limitations. Not to exceed" price ceilings shall be included in each option and delivery order.

**16.603 Letter contracts.**

**16.603-3 Limitations.**

(a) See DFARS 217.74 and subpart 17.74 for additional requirements for the use of letter contracts.

(b) The determination required by FAR 16.603-3 shall be included with the DFARS 217.7404-1 authorization request.

**16.603-90 Policy.**
The policy and procedures of DFARS 217.74 and PGI 217.74 are applicable to letter contracts. See also DLAD 17.7403-90.

# PART 17 – SPECIAL CONTRACTING METHODS

*(Revised October 21, 2015 through PROCLTR 2015-12)*

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## SUBPART 17.1 – MULTIYEAR CONTRACTING

### 17.104 General.

(a) DLA contracts that have a base and/or an option period of performance greater than one year that includes more than one year's worth of requirements are not considered multi-year contracts as set forth in FAR/DFARS 17.1 or as defined in the DoD Financial Management Regulation if 1) they are funded exclusively with working capital funds, and 2) funds are fully obligated at time of award to cover the contract commitment (i.e., guaranteed minimum).

(b) The authority to approve modification of cancellation provisions pursuant to FAR 17.104(b) is delegated to heads of contracting activities (HCAs). HCAs may further delegate this authority, without power of redelegation, to the chief of the contracting office at each of the contracting activities.

(c) The authority to enter into a multiyear contract for supplies pursuant to FAR 17.105-1(b) is delegated to heads of contracting activities (HCAs). HCAs may further delegate this authority, without power of redelegation, to the chief of the contracting office at each of the contracting activities. Contracting offices not designated as contracting activities (see 2.101) shall forward requests to enter into a multiyear contract for supplies to the DLA Acquisition Deputy Director for approval.

(d) For DLA Energy, the authority to enter into a multiyear contract for services pursuant to FAR 17.105-1(c) is delegated to the HCA, with redelegation permissible to the Chief of the Contracting Office only.

**17.171 Multiyear contracts for services.**

(a)(v)(3) For DLA Energy, the responsibility for making the determination required by DFARS 217.171(a) is delegated to the DLA Energy HCA. The DLA Energy HCA may further delegate this authority, without power of redelegation. The responsibility for making the determination required by DFARS 217.171(a)(3) is delegated to the Commander, DLA Disposition Services, with power of redelegation to the Director, Directorate of Contracting, DLA Disposition Services-P, for contractual actions not exceeding $10 million in total procurement value and for which the cancellation ceiling does not exceed $500,000. The delegation is unlimited for multiyear determinations when a cancellation ceiling of $0 is included.

## SUBPART 17.2 – OPTIONS

*(Revised October 21, 2015 through PROCLTR 2015-12)*

**17.202-90 Use of options.**

(a) The requirements of DFARS subpart 217.74 and subpart 17.74 shall be met for surge, emergency, services or other options which are undefinitized at time of exercise by the Government, i.e., an undefinitized option (UO).

**17.203-90 Solicitations.**

(d) If a contract will have separately priced options, for quantities or periods, and include an economic prive adjustment that applies to the options, the contracting officer will prevent overpricing by requesting a price buildup in the schedule (see 52.214-9000). The price buildup will identify the portions of the price (basic and option) subject to EPA and firm-fixed price portion. The firm-fixed portion of the option price may exceed the comparable portion of the basic award price.

**17.204-90 Contracts.**

(e)(1) HCAs are authorized to approve use of contracts exceeding 5 years and up to 10 years (including base and options), provided no statutory restriction limits the term of the contract or specifically authorizes a longer duration. Include the HCA signed memorandum to the contract file that fully explains the unusual and special circumstances that justify a contract length beyond 5 years.

(2) Requests to DLA Acquisition Operations (J72) for approval of an ordering period in excess of 10 years or for approval of an order performance period to extend more than a year past the end of the ordering period shall be submitted with the signature of the contracting activity HCA or contracting office CCO, as applicable. Requests for a longer ordering period or performance period shall include an in-depth analysis of the unique circumstances that necessitate the longer period. The analysis shall clearly discuss what other alternatives were examined and why they are not considered viable. Ensure the extended ordering period is not due to inadequate procurement planning.

(4) At the close of each fiscal year, J72 will submit a consolidated report to the Director, Defense Procurement and Acquisition Policy and Acquisition Policy (OUSD(AT&L) DPAP) listing all DLA approvals of ordering period extensions granted during the year with a detailed justification for each.

**17.206-90 Evaluation.**

(b) The determination not to evaluate an option prior to contract award (or definitization, if an undefinitized contract) shall be in the contract file. Unevaluated options shall not be used except in unusual circumstances.

**17.207-90 Exercise of options.**

(a) In making decisions whether to exercise options on contracts, the contracting officer shall evaluate whether a firm has or has not performed in accordance with its small business concerns subcontract requirements in the contract. The Defense Contract Management Agency's small business offices shall be used to assist in assessing a contractor's compliance with these requirements.

(b) When performing an informal analysis of prices in order to determine if the option price is better than prices available in the market, the contracting officer shall perform a review of actual demands versus estimated demands and use this information in the analysis.

## SUBPART 17.5 – NON-ECONOMY ACT INTERAGENCY ACQUISITIONS

**17.502 Scope of subpart.**

(a)(1) DLA normally receives a requirement from a requesting activity and executes that requirement by one of three methods: (i) delivery from DLA stock; (ii) individual DLA procurement or ordering against a DLA contract; or (iii) ordering against a non-DLA contract. Because the DoD policy on non-Economy Act orders is largely concerned with transfers of funds to a non-DoD activity for execution of a requesting activity's requirement, normally DLA's transactions will not be directly affected by the DoD policy. There are some instances, however, when DLA activities use assisted acquisitions for internal support, and the DoD policy would be applicable in full.

**17.503 Justification for use.**

For assisted or direct acquisitions valued over the SAT, the file shall be documented that the following conditions are met:

(a) Proper funds are available.

(b) The non-Economy Act order does not conflict with another agency's designated responsibilities (e.g., real property lease agreements with GSA).

(c) The requesting agency or unit and, if different, the DLA procuring organization, determines that the order is in the best interest of the Department or Agency. Some factors in the determination include, but are not limited to:

(1) Ability to satisfy the requirements.

(2) Schedule, performance, and delivery considerations.

(3) Cost-effectiveness and cost reasonableness, taking into account discounts, fees, surcharges, and the like of the performing agency.

(4) Contract administration, including oversight.

(d) The performing activity has the ability and authority to provide the ordered goods or services.

(e) The performing activity will abide by Defense-unique terms, conditions, and reporting requirements, as identified by the requiring activity and/or the DLA contracting officer and submitted via the ordering documentation.

**17.504 Ordering procedures.**

(a) Non-Economy Act assisted acquisition orders for work and services outside the Department of Defense should ordinarily be executed by issuance to the non-DOD agency of a DD Form 448, "Military Interdepartmental Purchase Request (MIPR)." In those instances where an alternative document such as a DD 1348-1 or -6 is used, it must provide information consistent with the MIPR, to include the purchase request number and the Activity Address Code (DoDAAC). A non-Economy Act order placed by DLA for its own use or in support of a military customer shall comply with the documentation standards in Volume 11A, Chapter 1 of the DOD Financial Management Regulations (FMR).

(b) Non-Economy Act requests for support from a customer to DLA must include the following, as must assisted acquisition orders from DLA to a non-DOD agency:

(1) A firm, clear, specific, and complete description of the goods or services ordered. The use of generic descriptions is not acceptable. If the description is contained in more than one document, such as an item listing on one page and a price list on another, the documents should refer to one another, and the obligation document (e.g., MIPR or manual requisition) should be signed by a responsible official from the requesting activity.

(2) Specific delivery or performance requirements.

(3) A proper fund citation.

(4) Payment terms and conditions (e.g., direct cite or reimbursement; provisions of advanced payments).

(5) Department of Defense Activity Address Code (DoDAAC).

(6) In the case of assisted acquisition orders, the DLA order to the non-DOD agency must also include specific non-Economy Act statutory authority, such as the Acquisition Services Fund, through which purchases are authorized to be made from the General Services Administration (GSA) (see 41 U.S.C. 251 et seq. and 40 U.S.C. 501); or Franchise Fund authority (first established by P.L. 103-356, Title IV, section 403; see 31 U.S.C. 501 note), by which other Federal agencies may enlist the support of the Departments of the Treasury or Interior, among others.

(d) For non-Economy Act orders valued greater than the simplified acquisition threshold, the requesting official must provide, for both assisted and direct acquisitions:

(1) Market research and acquisition planning. The DLA contracting officer or other contracting official must either receive the market research and acquisition planning from the requiring activity, or

accomplish them him- or herself, and prepare or provide documentation thereof for inclusion in the contract file.

(2) A statement of work that is specific, definite, and certain in terms of both the work encompassed by the order and the terms of the order itself.

(3) Terms, conditions, and requirements to comply with applicable DOD-unique statutes, regulations, directives and other requirements.

**17.505 Contracting officer review.**

(a) DoD policy requires DoD-warranted contracting officer review of all non-Economy Act orders over $500,000. DLA policy requires that a DLA warranted contracting officer review the assisted acquisition from a non-DoD entity of either supplies or services valued over the simplified acquisition threshold. This review must be accomplished prior to sending the order to the funds certifier or issuing the military inter-departmental purchase request (MIPR) to the non-DoD activity. If the requesting official is different from the contracting officer, the requesting official shall also review the acquisition package to ensure compliance with FAR, and DFARS. Requirements will not be split into smaller amounts in order to avoid contracting officer review.

**17.506 Fiscal matters.**

(a) Certification of funds. Non-Economy Act orders are subject to the same fiscal limitations that are contained within the appropriation from which they are funded. Because the performing entity may not be aware of all appropriation limitations, the DLA certifying official in the Financial Management (J8) organization must certify that the funds leaving the Agency that are cited on the order—

(1) Are available;

(2) Meet a need of the requesting entity, and are currently available for obligation; and

(3) Are for the purpose designated by the appropriation, or may properly be used for the intended purpose.

(b) Prohibitions. Non-Economy Act orders may not be used to violate provisions of law, nor may they be used to circumvent conditions and limitations imposed on the use of funds, to include extending the period of availability of the cited funds.

(c) Bona fide need.

(1) Non-Economy Act orders citing an annual or multi-year appropriation must serve a bona fide (that is, legitimate) need arising, or existing, in the fiscal year or years for which the appropriation is available for new obligations.

(2) If the requiring activity is providing operations and maintenance (O&M) funds ("one-year money") or other annual appropriations that are only available for obligation for a specific period, the facts that the requirement is submitted to a revolving fund (for example, Defense Working Capital Fund (DWCF)) activity on a reimbursable basis, and that the revolving fund activity will obligate "no-year

money" for the actual acquisition, do not extend the life of the requiring activity's funds. In the following situations, the order must be placed or an agreement entered into before the requiring activity's appropriation expires (i.e., is no longer available for new obligations):

(i) The transaction between the requiring activity and the Revolving Fund activity is an Economy Act transaction (this is not applicable if the transaction is pursuant to DLA's IMM authority under DoD 4140.1-R and 4140.26-M); or

(ii) The requiring activity's funds will be cited on the order or agreement with the non-DoD activity.

(iii) When DLA accepts a MIPR (generally via return of the DD Form 448-2 to the customer) or other requisition (i.e., the DD Form 1348-1 or -6), and the customer's requirements are specified in the MIPR or requisition with sufficient detail to satisfy 31 U.S.C. 1501 (see (d), below), this creates a binding obligation between the two Defense entities, and obligates the customer's funds to DLA. In the situations in (2)(i) and (ii), above, DLA must, in turn, obligate funds to the non-DoD agency during the fiscal year for which the customer's funds are available. If these situations are not applicable (e.g., if DLA is obligating DWCF), it may be done during the fiscal year for which the customer's funds are available, or as soon thereafter as reasonably possible.

(d) Obligation. In accordance with 31 U.S.C. 1501, an amount shall be recorded as an obligation only when supported by documentary evidence of an order required by law to be placed with an agency, or upon meeting all the following criteria:

(1) There is a binding agreement between an agency and another person (including an agency).

(2) The agreement is in writing. This writing must be specific, definite, completely descriptive of the goods or services being acquired, and traceable to the ultimate transaction for fulfillment of the requirement. If more than one document is involved (as with manual requisitions), each should refer to the other(s) in order to constitute a complete requirements package. The MIPR or manual requisition must include the signature of a person authorized to certify funds (availability and usage), or otherwise demonstrate that the funds have been properly certified by a person authorized to certify funds.

(3) The agreement is for a purpose authorized by law.

(4) It serves a bona fide need arising, or existing in, the fiscal year or years for which the cited appropriation is available for obligation.

(5) In the situations described in (c)(2)(i) and (ii), above, it is executed before the end of the period of availability for new obligation of the appropriation or fund used.

(6) It provides for specific goods to be delivered or specific services to be supplied.

(e) Deobligation.

(1) Although funds deobligation, per se, is not a contracting function, the deobligation process for interagency acquisitions must be set in motion by a contracting official or program manager. The contracting officer who contributed to or reviewed the acquisition plan in accordance with 7.9001(a)(90),

7.9002(a), 7.9003(a), and 17.503, above, or post-award personnel from that contracting officer's office, shall be responsible for, or shall ensure that the program manager or other requirements generator is aware of his/her responsibility for, tracking funds' "burn rate" and usage commensurate with contractor performance. These parties (contracting officer, post-award contracting official and/or program manager) will also provide notice to the comptroller organization to proceed with funds deobligation, as applicable.

(2) Supplies. In an assisted acquisition, if goods are ordered but not delivered, and the availability of the funds provided to a non-DoD performing agency for the supplies thereafter expires, the funds shall be deobligated and returned by the performing agency, unless the request for goods was made during the period of availability of the funds and the item(s) could not be delivered within the funds' period of availability solely because of delivery, production or manufacturing lead time, or unforeseen delays that are out of the control of, and not previously contemplated by, the contracting parties at the time the contracting action was taken. Therefore, where materials cannot be obtained in the same fiscal year in which they are needed and contracted for, provisions for delivery in the subsequent fiscal year do not violate the bona fide need rule, as long as the time intervening between contracting and delivery is not excessive, and the procurement is not for standard commercial off-the-shelf (COTS) items readily available from other sources. The "reasonable period" of performance should, if possible, be limited to the first quarter of the next fiscal year. The delivery of goods may not be specified to occur in the year subsequent to funds availability.

(3) Severable services. An agreement for severable services may, according to 10 U.S.C. 2410a, begin in one fiscal year and end in the next, provided that the period of performance does not exceed one year (exclusive of options). Thus, the performance of severable services may begin during the funds' period of availability, and end one year from the beginning date (see DFARS 232.703-3(b)). Therefore, annual appropriations provided to a non-DoD performing agency in an assisted acquisition that have expired must be deobligated, unless the performance of the services requested began during the funds' period of availability, and the period of performance does not exceed one year. The annual appropriation from the earlier fiscal year may be used to fund the entire cost of the one-year period of performance; however, an annual appropriation may not be used to enter into a severable services agreement where the period of performance for services requested is entirely in the following fiscal year. In no instance may the period of performance extend beyond September 30th of the subsequent year for services funded with annual appropriations.

(4) Non-severable services. Non-severable services contracts must be funded entirely with appropriations available for new obligations at the time the contract is awarded; nevertheless, the period of performance may extend across fiscal years. Funds provided to a non-DoD performing agency that become excess (e.g., a requirement has been fully satisfied and funds remain obligated but unexpended for that requirement) shall be deobligated.

(5) Excess or expired funds.

(i) Activities shall reconcile all obligations and remaining funds available for orders. This is the responsibility of the contracting officer, post-award contracting official or of the program manager or other requirements generator, as applicable. The purpose of this reconciliation is to ensure the proper use of funds and to identify and coordinate the return of expired or excess funds. In an assisted acquisition, excess or expired funds must be returned by the non-DoD performing agency and deobligated by the requesting agency to the extent that the performing agency or unit filling the order has not—

(A) Provided the goods or services, or incurred actual expenses in providing them; or

(B) Entered into a contract with another entity to provide the requested goods or services.

(ii) Expired funds shall not be available for new obligations.

**17.507 Follow-up procedures for non-Economy Act transactions.**

(a) Oversight. The DLA contracting officer shall ensure, in both assisted and direct acquisitions that the requesting official has established a satisfactory quality surveillance plan for non-Economy Act orders in excess of $100,000 to facilitate the oversight of the goods provided or services performed by the performing agency. If DLA is making a direct or assisted acquisition on behalf of a customer activity, the DLA contracting officer must ensure that the requestor produces this plan. The plan should include:

(1) Contract administration oversight in accordance with the surveillance plan;

(2) A process for receipt and review of receiving reports and invoices from the performing agency/contractor;

(3) Reconciliation of receiving reports and invoices; and

(4) Requirements for documenting acceptance of the goods received or services performed.

(b) Fund status monitoring. The requesting official (i.e. the customer or program manager, with the assistance of the DLA contracting officer or post-award contracting official, as appropriate) must monitor fund status to:

(1) Monitor balances with the performing agency;

(2) Conduct tri-annual reviews of non-Economy Act orders in accordance with the Financial Management Regulation, Volume 3, Chapter 8, Section 0804, "Tri-Annual Review of Commitments and Obligations," in conjunction with the Financial Management/J8 organization;

(3) Confirm open balances with the performing agency;

(4) Coordinate the return of funds from the non-DOD performing agency in accordance with 17.504(d); and

(5) Coordinate with the accounting office to ensure timely deobligation of funds.

(c) Payment. In assisted acquisitions, payment shall be made promptly upon the written request or billing of the performing agency/contractor. In assisted acquisitions and under specific conditions, payment to the performing agency may be made in advance or upon delivery of the supplies or services ordered, and shall be for any part of the estimated or actual cost, as determined by the performing agency.

(1) The requesting official and supporting DLA contracting or program office must be cognizant of the performing agency's payment method. Should the performing agency elect to receive advances or conduct advance billing prior to providing goods or services, the requesting official and/or DLA

contracting or program office, as appropriate, must comply with the requirements pertaining to advances of public money outlined in Volume 4, Chapter 5 of the "DOD Financial Management Regulation," which implements the general prohibition against advance payments contained in 31 U.S.C. 3324 and 10 U.S.C. 2307. When the conditions under which the advance was made are satisfied, the specific appropriation or law authorizing the advance must be cited on the order, and any unused amounts of the advance shall be collected from the performing agency immediately and returned to the fund from which originally made.

(2) Payments made for services rendered or supplies furnished may be credited to the appropriation or fund of the agency performing the reimbursable work.

(d) Order close-out. All non-Economy Act orders shall be reviewed by the requesting official to determine if they are complete. Completed orders shall be fiscally closed out. The requesting official (or DLA contracting or program office, as appropriate) shall reconcile funds and coordinate the return of excess or expired funds held by the performing agency. This review shall include:

(1) Determination and identification, if applicable, of any outstanding invoices;

(2) Determination and identification of existence of excess or expired funds;

(3) Coordination of return of funds from the non-DOD performing agency, in accordance with 17.504(d); and

(4) Coordination with the accounting office to ensure the deobligation of funds.

## SUBPART 17.74 – UNDEFINITIZED CONTRACT ACTIONS

**17.7403-90 Policy.**

(a) All proposed undefinitized contract actions (UCAs), regardless of value, and all unpriced change orders with an estimated value exceeding $5 million must be approved as established herein before issuance by the contracting officer.

(2) Contracting officers shall ensure that contractors understand that no work is to be performed until the proposed UCA is properly approved and awarded, and that anything done and any costs incurred in anticipation of the UCA are at the contractor's own risk and will not result in Government liability or be reimbursed by the Government under the UCA.

(3) The CCO (or a local UCA monitor, where designated) shall:

(i) Monitor the activity's usage of UCAs for conformance with the DLAD and higher level regulatory requirements;

(ii) Ensure UCAs are correctly coded in the Federal Procurement Data Dystem – Next Generation (FPDS-NG); and

(iii) Prepare and forward the activity's report~~s~~, including a negative report, electronically to J72 semi-annually each fiscal year, no later than March 31 and September 30. Follow the procedures in

DFARS PGI 217.74 for reporting and submit the report to J72, who will consolidate reports for forwarding to DPAP.

**17.7404 Limitations.**

(a) The definitization schedule shall include milestone dates for receipt by the contracting officer of a qualifying price proposal that provides the required cost or pricing data (certified or uncertified as appropriate), normally within 30 calendar days following award, and for beginning negotiations.

**17.7404-4-90 Limitation on obligations.**

(a) Upon receipt of required information, the contracting officer shall assess the contractor's performance, the liquidation rate and determine whether a change in the predefinitization obligation rate pursuant to DFARS 217.7404-4 is warranted. The assessment and conclusions shall be documented in the contract file. (These requirements are not applicable to unpriced purchase orders (UPOs).)

**17.7404-5-90 Exceptions.**

(a) Director, DLA Acquisition (J7), approval is required to use any of the exceptions in DFARS 217.7404-5.

## SUBPART 17.75 – ACQUISITION OF REPLENISHMENT PARTS

**17.7501 Procurement of parts.**

(b)(3) Solicitation provision.

(i) Provision 52.217-9002 may be used in negotiated acquisitions of replacement parts, components, and assemblies which are identified in the item description only by the name of an approved source, a part number, and a brief description, including when acquisitions are conducted using FAR Part 12.

(ii) Provision 52.217-9002 shall be used verbatim, except that the acronym contract line item number (CLIN) may be substituted for the word "item" wherever it appears in the provision (if applicable). When the provision is used, the following shall be inserted in the solicitation after each item description: "Offer based on manufacturer's name :, Part number:".

(ii) Provision 52.217-9002 may also be used in acquisitions of NSNs identified as "critical safety items (CSIs)" in the item decription (see 11.302-91); however, when acquiring CSIs, offers of "exact product" are evaluated in accordance with clause 52.211-9005,

(iii) Provision 52.217-9002 may be used for simplified acquisitions as well as large purchases, provided that the full text of the provision shall be made available to offerors. (When 52.213-9004, or an alternative data collection method, is used, its inclusion of pertinent fill-in portions of 52.217-9002, and the latter's overall incorporation by reference, shall, along with directions to the offeror on electronic access to, and other availability (including hard copy) of, all applicable guidance, constitute provision in full text.)

(iv) The provision should not be used in procurements when technical personnel have specifically advised that for the current procurement, alternate products cannot be evaluated, e.g., restricted source or source controlled items or National Institute for Occupational Safety and Health (NIOSH) items for which necessary testing equipment is not reasonably available.

(v) It is the Government that determines if evidence furnished by offerors in accordance with 52.217-9002 is acceptable. At a minimum, evidence must be sufficient to establish the identity of the product and its manufacturing source. Contracting officers have broad flexibility to determine if a particular response conforms, as long as the decision is reasonable. Evidence is not necessarily limited to paper documentation. The contracting officer may request a sample item for testing.

(vi) When the product being offered is manufactured for an approved source cited in the item description, the offeror must, if requested by the contracting officer, furnish evidence sufficient to demonstrate that the approved source (A) is overseeing and involved in the manufacturer's production of items; and (B) has authorized the manufacturer to produce the item, identify it by that approved source's name and part number, and sell the item directly to the Government (see 52.217-9002(b)(1)). Such evidence could be documentation obtained directly from the approved source; or identification on a web site maintained by the approved source, confirming that the manufacturer is an acceptable source for the item identified by that approved source's name and part number. If evidence cannot be obtained directly from the approved source, this does not necessarily preclude acceptance of the offer, if the contracting officer can adequately document that the approved source has oversight of and involvement in the manufacturing process by other means.

(b)(4) Evaluation of alternate item offers for spare parts.

(i)(A) When provision 52.217-9002, is used, contracting officers shall follow the policy in 17.7501 in its entirety when considering alternate offers and when deciding whether to evaluate alternate offers prior to award. When the provision is not used, all alternate offers will be evaluated, unless the solicitation has provided information that only the item cited in the item description will be acceptable (e.g., restricted source or source controlled items, NIOSH items for which necessary testing equipment is not reasonably available, etc.)

(B) The level of technical data that the Government has available for use to evaluate the acceptability of an alternate product offered, and the corresponding level of technical data that must be furnished with an offer of alternate product, will be identified either in the item description or in paragraph (c)(2) of provision 52.217-9002. If the level of data and submission requirements are not identified in either of these locations in the solicitation, then 52.217-9002(c)(3)(a) applies. Contracting officers shall provide prompt notification to alternate offerors of interim status (when required) and final status of the alternate offer, i.e., approved, disapproved, returned without evaluation. Several other factors should be considered in making a decision to evaluate items prior to award.

(ii) (A) For any purchase, if the time before proposed award does not permit evaluation, and delay of award would adversely affect the Government, then alternate offers may be considered technically unacceptable for the current acquisition and award made to the otherwise acceptable offeror. The benefits which may accrue to the Government, if the alternate item were accepted, must be weighed against any adverse effects caused by delaying award. Consideration shall be given to requesting expedited evaluation if the benefits are significant.

(B) For automated procurements, offers of alternate product (which includes offers of previously reverse-engineered product) will not be evaluated for the instant procurement, but will be evaluated for potential use on future procurements.

(C) The clause may still be included in the solicitation for purposes of informing supplierssupplier about necessary submissions for evaluation under current or future procurements. Offers of alternate product will not be evaluated for the instant procurement when acquiring Priority 1 items, items on backorder, or not mission capable (NMC) items.

(D) Additionally, offers of alternate product shall not be evaluated for the instant procurement unless the contracting officer has coordinated with the supply planner and the product specialist and determined that delay of award is unlikely to result in backorders. This determination must be based on the Agency supply position, the lead time required for a technical evaluation at the cognizant Engineering Support Activity (ESA) or activities, and the risk of additional lead time that may potentially be required for a first article test.

(iii)(A) The contracting officer may forward alternate offers for technical evaluation that are not in line for award or offers that do not meet the savings threshold if other factors indicate that an evaluation should be performed. While savings may not be evident without further consideration, benefits should not be weighed only against the instant acquisition. Future benefits should be considered as well; for example, projected future savings on high demand items, breaking a chronic sole source situation, etc. The other factors must be cited on the request for evaluation that is forwarded to technical personnel.

(B) If a preaward evaluation cannot be performed for offers that meet these criteria, a postaward evaluation will be performed.

(C) Offers that do not meet the above factors will be returned to the offeror without evaluation.

(iv) When a potential contractor submits an alternate item for evaluation for which there is no active procurement request, the activity competition advocate, or other office if designated by local guidance, will determine if the alternate item meets the criteria for evaluation listed for alternate offers in 17.7501(b)(4)(iii) above. The same office will provide the status to parties submitting alternate items and will forward qualifying alternate items to the appropriate technical personnel with the reasons the alternate items should be evaluated. These alternate item evaluations will be tracked according to the time frames set forth in DFARS PGI 217.7506.

(v) When a postaward evaluation is performed, the alternate item offeror will be advised of the evaluation results. The competition advocate, or other office if designated by local guidance, will maintain a tracking system for postaward evaluations, in order to insure followup with contractors. Technical personnel will perform a postaward evaluation within 45 days of receiving the alternate offer, unless unusual circumstances require a longer evaluation period. After the 45 days have elapsed, follow-ups will be generated by the competition advocate, or other designated office, every 15 days. If the evaluation must be performed by an ESA, the time allowed for evaluation is 90 days with follow-ups generated every 30 days (after the first 90 days).

(vi) (A) If it is determined that award will be delayed pending an alternate item evaluation, such evaluation request will be forwarded to the appropriate functional element and an estimate made of the time required for evaluation. Upon expiration of the estimated time, inquiry shall be made regarding the status of the evaluation.

(B) If the evaluation has not been completed or it is otherwise not imminent, determinations shall be made as to how much longer the evaluation will take and how much longer the award can be delayed. A new suspense shall be established based thereon, or award shall be made immediately if it is not in the Government's interest to further delay the award. The contracting officer or activity competition advocate shall be responsible for communication with all parties involved.

(C) The decision to hold or proceed with award should not be made until such communication is established and the status of the evaluation has been assessed as accurately as possible. Under simplified acquisition procedures, awards normally should not be held for protracted periods of time unless there are substantial benefits.

(vii) To aid in prioritizing workload, the amount of potential savings or other benefits should be included on any referrals to technical personnel together with any other pertinent factors which would influence the evaluation process.

**17.7502 General.**

(b)(2)(S-90) Use 52.217-9023, in solicitations when the acquisition is restricted to material manufactured by the sources listed on the source control drawing, as indicated by AMSC code B.

**17.7505 Limitations on price increases.**

(a) Contracting officers are required to notify the responsible HCA of price variances for replenishment parts buys as follows: The thresholds for simplified acquisition price increase notification to the HCA are a minimum of 51 percent for micro-purchases and a minimum of 25 percent between the mico-purchase and simplified acquisition level, after adjustments specified in DFARS 217.7505. Notification to the HCA shall be provided via email prior to award.

**17.7506 – Spare parts breakout program.**

Part 1 – General.

1-101 Applicability.

(a)(1) All DLA except that DLA Energy and DLA Troop Support clothing and textile (C&T) and medical and subsistence will implement only those portions of the DFARS that are applicable, in the reduction of noncompetitive parts.

Part 2 – Break-out coding.

2-202 Assignment of codes.

2-202-90 Assignment of codes.

(a) A competitive acquisition method code (AMC) 1 or 2 shall be assigned to a part when a complete technical data package is available, or when there are two or more approved independent manufacturing sources, or when a non-manufacturing prime and the actual manufacturer both independently contend for contracts.

(b) When parts are received that are coded AMC 5, care shall be taken to assure the item is acquired only from the prime contractor although the engineering data identifies the CAGE and part number of a source other than the prime contractor. These parts should be considered likely candidates for breakout to direct purchase from AMC 5 to AMC 4.

(c) In the case of parts with an assigned acquisition method suffix code (AMSC) of U or V, if another source is approved, but a complete technical data package for unrestricted competition is not available, the AMC will be changed to 2 and the AMSC will be changed to AMSC C or R, or other, as appropriate. Only valid combinations of AMC/AMSCs shall be entered into the contracting technical data file.

2-203 Improving part status.

(b) Code suspense dates.

A 1-year code suspense validation date will be assigned to parts with an ASMC of A, H, or Y regardless of the AMC.

A 3-year suspense date will be assigned to parts having an AMSC of C, U, or V.

A 5-year suspense date will be assigned to parts with an AMSC of B, P, or R and parts with an AMC/AMSC of M or 4M. Parts with an assigned AMC/AMSC of 1G, 2G, 1K, 2K, 1M, 2M, 1N, 2N, 1T, or 2T and those with an AMC/AMSC of 1G, 2G, 1K, 2K, 1M, 2M, 1N, 2N, 1T, or 2T and those with an AMSC of L need not be subject to the code suspense validation.

Exceptions may be made on a case-by-case basis as necessary, and may be approved one level above the Contracting Officer.

Suspense dates should not be changed merely to update the assigned date but should be made in conjunction with a review or screen based upon an anticipated forecast or immediate buy action. Buys shall not be held up simply to review the part for application of a new suspense date, unless the contracting officer determines that the buy can be held up until the review and any breakout action is completed (see DFARS PGI 217.7506 1-105 (e)(2)).

Part 3 – Identification, selection, and screening of parts.

3-301 Identification and selection procedures.

3-301.2 Annual buy forecasts.
An annual projection of estimated buy activity prepared quarterly shall be used to initially list parts in descending buy dollar order down to $5,000 reflecting projections for the next 12 months. These projections shall be the basis for selecting items to be screened for possible breakout. Care shall be taken to assure that an item selected in this manner is not redundant with planned or ongoing breakout activity

in another program or effort, such as, but not limited to, value engineering and evaluation of alternate offers.

3-302 Screening.

(a) When results of a screening action indicate there is no expectation of breakout, consideration should be given, where applicable, to any other ongoing programs that may improve price or lead time. Examples of such other programs include, but are not limited to, value engineering and the competition advocate program. A folder shall be maintained for all screened parts to include any pertinent reports, analysis, or documents that relate to the assigned AMC/AMSC (see DFARS PGI 217.7506 3-302(i)).

3-303 Full screening procedure.

3-303.2 Data evaluation phase (steps 2 -14).

(c)(4) Step 5. Prior to expenditure of funds for acquisition of technical data to effect a breakout action, a review of data requirements shall be conducted in accordance with DLA Procedures. When there is any doubt as to acceptability by the cognizant military service of data to be acquired to effect the desired AMC/AMSC change, the data shall not be procured. Instead, all breakout activity for the part shall be summarized and forwarded to the cognizant Military Service activity with a recommendation that it pursue acquisition of the necessary data (see DFARS PGI 217.7506 3-303.2(c)(4)).

Part 5 – Reporting system.

5-502 Reporting procedures.

(c) Supply chains shall forward reports to DLA HQ, attention: DLA spare parts breakout program manager, DLA Acquisition (J7), no later than 30 days after the end of each quarter.

## SUBPART 17.76 – CONTRACTS WITH PROVISIONING REQUIREMENTS

*(Revised October 21, 2015 through PROCLTR 2015-12)*

### 17.7601 Provisioning.

### 17.7601-90 Contracting requirements for issuance of provisioned item orders (PIOs).

(a) The file shall be documented when the price or cost analysis techniques discussed at 13.106-3 are used for award of priced PIOs and definitization of undefinitized provisioned item orders (UPIOs).

(b) If the contract contains a progress payment clause without an exclusion provision for orders with a ceiling price below $1 million (or $150,000 for small business firms) and/or having a delivery schedule of less than 6 months (or 4 months for small business firms), a provision precluding such applicability shall be included in all PIOs below these thresholds.

### 17.7601-91 Negotiating and executing supplemental agreements.

The file shall be documented when the price or cost analysis techniques discussed at 13.106-3 are used for the exercise of priced PIOs and definitization of UPIOs.

**17.7601-92 Solicitation and contract clauses.**

(a) Use 52.217-9011, in solicitations and contracts when the need for provisioning is to be determined after award of contract or in negotiated solicitations and contracts when it is known, prior to issuance of the solicitation, that provisioning is required.

(1) The contracting officer shall select the correct statement in Table 1 and fill in the needed information in the first paragraph of the clause:

Table 1. Determining the need for provisioning.

| Situation > | The need for provisioning is to be determined after award | Negotiated solicitations and contracts when provisioning is required |
|---|---|---|
| Clause 52.217-9011 first paragraph | Reserves the right to require | Will require |
| | Enter date of current issue in effect on date of contract award | Enter date of current issue in effect on date of solicitations |

**17.7601-93 Contracting officer's representative – provisioning.**

(a) Only Government technical personnel at each contracting activity shall be designated as a contracting officer's representative (COR) for provisioning for the purpose of providing technical assistance to offerors or contractors with regard to requirements for equipment support and provisioning for contracting activity acquired end items and/or components. The COR nominee must meet the qualifications standard and training requirements stated in 1.602-2-90.

(b) The COR supporting technical requirements of shall register in the DoD contracting officer's representative tracking (CORT) tool, if appropriate.

(c) Delegation of post-award responsibility, which shall only be by written formal memorandum from the contracting officer, shall include authority for actions to be taken by the COR for provisioning. The delegation will not include any authority to modify or change the terms of the contract or to make any agreement which will result in an increase in the contract amount or extend the time for delivery of the end items.

(d) The COR for provisioning is responsible for:

(1) Reviewing purchase request (PR) or military interdepartmental purchase request (MIPR) provisioning requirements to ensure compliance with provisioning policy and procedures and proper presentation of provisioning requirements in solicitations and contracts,

## SUBPART 17.91 – USE OF PUBLIC MANUFACTURERS

**17.9100 Public (Organic) Manufacturing.**
For guidance and direction, refer to and comply with the Non-Procurable Purchase Requisition Job Aid at https://eworkplace.dla.mil/sites/prg/ebs/Pages/ONLINEHELP.aspx.

## SUBPART 17.92 – REOPENER CLAUSES

*(Revised October 21, 2015 through PROCLTR 2015-12)*

**17.9201 General.**

(a) A reopener clause is a special contract provision which creates a right for an equitable adjustment in the contract price at a specified time or due to the occurrence or non-occurrence of an event or contingency of the type specified in FAR 31.205-7(c)(2).

(b) A reopener clause provides a means of achieving an equitable resolution of the treatment of a significant contingent cost during both the initial pricing of a contract as well as at any time an equitable adjustment to such price is called for under the provisions of the clause. However, its use requires deliberate care to avoid a shift in risk from the contractor to the Government. Consequently, it should be used only in extraordinary circumstances involving high dollar value procurements (i.e., rarely less than $500,000) where the uncertainty associated with particular cost element(s) substantially impacts the contract price.

(c) Circumstances in which its use may be appropriate include, but are not limited to, the following:

(1) The price reasonableness of one or more subcontracts representing a substantial portion of the prime contractor's proposed price cannot be determined prior to award of the prime contract for such reasons as:

(i) The prime contractor's inability to obtain subcontractor cost or pricing data timely;

(ii) An adequate cost/price analysis was not performed by the prime contractor; or,

(iii) Adequate field report(s) were not received prior to conclusion of negotiations.

(2) A forward pricing rate agreement (FPRA) or forward pricing rate recommendation (FPRR) is not achievable because of uncertainties having a significant impact such as:

(i) Supporting contractor budgetary data was not submitted;

(ii) A substantial portion of the business base has not yet materialized; or,

(iii) A potential for purchase, merger, or sale of part of a contractor's operations exists.

(3) The price impact of a change in a contract requirement, term, or condition made during negotiations is significant but cannot be reasonably quantified and resolved prior to award.

(4) The offeror's estimating system contains significant deficiencies (DFARS 215.811-70(g)(2)(vi) and (3)).

**17.9202 Procedures.**

When the contracting officer documents that use of a reopener clause is the most appropriate means of overcoming a contingency that will significantly affect the pricing of a contract, as a minimum, the following should be accomplished:

(a) Request the field ACO provide a recommended clause for those cases in which the DCMA recommended its use. In other instances, contact the local cost/price analyst and the field ACO, as appropriate, for assistance in developing and/or modifying a reopener clause;

(b) Query the field ACO, regarding (1) the adequacy of the contractor's accounting system to provide all necessary cost data in the form required to price the adjustment (obtain a review of the adequacy of the accounting system if necessary).

(c) Obtain, as necessary, cost or pricing data applicable to the cost element(s) and markup factors, to establish the base level in the clause from which adjustment will be made, and ensure such data has been verified;

(d) Prepare a proposed schedule of calculations for each affected CLIN which identifies each specific rate, factor, element of cost, profit, etc., to be covered by the reopener clause; and explicitly describes or provides an example of the precise methodology to be used to calculate any resulting price adjustment. Consider whether it is appropriate to retroactively apply a price, as subsequently finalized, to items already delivered on time and to late deliveries.

(e) Obtain legal review for sufficiency and consistency with other contract clauses;

(f) If the clause is to provide for an upward adjustment, notify the local budget office of the necessity to commit funds over and above the contract price to the amount of the ceiling established, or obtain a confirmation from the requiring activity that funds are available and have been set aside) to cover the potential increased obligation (in the event the award is funded by a Military Inter-Departmental Purchase Request);

(g) If use of a locally developed clause or one of the clauses at 17.9205 is contemplated on a modified basis, provide an advisory copy of the draft reopener clause, after completing steps (a) through (g) above, to the local contract policy office for review.

(h) If the modifications to one of the clauses at 17.9205 exceed minor changes, i.e., would substantially alter or eliminate any of the provisions of the clause, or if a local clause is used, promptly provide a facsimile copy of the draft clause to DLA HQ, J71.

(i) Incorporate the amounts and methodology reached through preaward discussions/negotiations with the contractor, in a document executed by both parties which is made an attachment to the price negotiation memorandum (PNM). Absent such agreement, calculations supporting the contracting officer's interpretation of negotiations should be incorporated in the PNM. Because such information may be considered confidential by the contractor, the details should not be incorporated into a reopener clause or otherwise included in the contract.

(j) Indicate in any letter of delegation for contract administration that the award contains a reopener clause. Advise the field ACO of any awards retained for local administration which will be affected by a prospective forward pricing rate agreement (FPRA)/ forward pricing rate recommendation (FPRR), to assure the required information will be furnished timely.

**17.9203 Contract requirements.**

Incorporate the cost principles and procedures in FAR Subpart 31, for use as the basis for pricing any adjustment under the reopener clause, and the clauses at FAR 52.215-23, Price Reduction for Defective Cost or Pricing Data – Modifications, FAR 52.215-25, Subcontractor Cost or Pricing Data – Modifications, (if applicable), and FAR 52.215-2, Audit – Negotiation.

**17.9204 Reopener clause requirements.**
A reopener clause shall, at a minimum, incorporate the following:

(a) A title clearly designating it as a reopener clause;

(b) A clear statement of purpose;

(c) A clear identification of the items, amounts, event triggering the reopener procedure, and the responsibilities and rights of the contractor and the Government, including the requirement for certified cost or pricing data, and applicability of the Disputes clause (except for the circumstances in 17.9204(d)(iii));

(d) A clear statement of the methodology for pricing any adjustment, in the following order of preference:

(1) A pre-established pricing formula which precludes the need for further negotiations;

(2) If the nature of the contingency is such that its price impact can only be anticipated to fall within a broad range of prices vice one or several alternative price outcomes, the clause may identify the range and specify that the amount for that cost element may be revised within such range through negotiations. A pricing formula or methodology would be used to apply appropriate markup factors from the original contract price negotiation;

(3) If the nature of the contingency is such that its price impact cannot be anticipated to fall within a broad range and/or original price negotiations did not involve cost or pricing data, the clause may instead specify that the parties will enter into good faith negotiations under the clause and may include a "walk-away" option terminating performance a specified number of days following receipt of written notice by either party in the event of a failure to agree.

(e) To minimize excessive obligation of funds and the potential for substantial over or under-payment, if there is reason to believe one contingent alternative is more likely to occur than others, then the amount corresponding to the most likely contingency should normally be incorporated as the value of the interim cost element when establishing the contract price. If all alternatives are of equal likelihood, then a value based on a "best estimate" should normally be used. It may also be appropriate to provide for a price adjustment whenever information indicates, prior to the scheduled time established in the clause for an adjustment in the contract price, that there may be a significant variance from the anticipated finalized price;

(f) A provision for a downward and/or upward adjustment as appropriate (see 17.9104(e)). An exception is authorized only when necessary to achieve final agreement on price. For contracts allowing an upward adjustment above the contract price, establish a firm, not to exceed ceiling, on an aggregate basis (and per unit basis if applicable), above which no price adjustment shall be made;

(g) The method of adjusting any option quantity/period prices, if any, which may result from operation of the clause;

(h) If the contract is not subject to the Cost Accounting Standards (FAR Part 30), the treatment of accounting system changes which impact the price adjustment contemplated by the clause; and

(i) A contractor confirmation that the award price does not include any amount for the specified contingency except as provided for in the clause.

## SUBPART 17.93 – SURGE AND SUSTAINMENT (S&S)

### 17.9300 Scope.

(a) This subpart prescribes policy for obtaining S&S coverage through the acquisition planning and long-term contracting process.

(b) This subpart does not apply to DLA Energy. For DLA Energy contracting, S&S coverage will be specified in the currently approved DLA Energy annual surge capability plan (ASCP). Updates to the DLA Energy ASCP will be submitted for review to DLA Acquisition Programs(J74) and approval by J7 no later than October 31 each year or more frequently as significant changes occur.

(c) This policy defines DLA actions for requirements in DFARS 217.208-70(b) and DFARS PGI 217.202(2). Although the goals remain the same, the procedures in this policy do not apply when establishing corporate exigency, minimum sustaining rate, or industrial base maintenance contracts, suppliersupplier managed inventory, prime supplier war reserve material (WRM), and/or stock rotation as the alternate strategy to support the Services' go-to-war requirements.

### 17.9301 S&S definitions.

*"D1-D6 schedule"* represents the surge requirements expressed in exact quantities with a 6-month sustainable accelerated delivery. D1-D6 is the surge requirement, including the Services' go-to-war requirements. The D1-D6 schedule is used when the monthly wartime rate (MWR) cannot be applied, such as DLA Troop Support items that have a definitive fielding schedule for meals ready to eat (MREs). The D1-D6 schedule is determined and obtained by using the support planning integrated data enterprise readiness system (SPIDERS) or industrial base management system (IBMS ), or by consulting the industrial specialist.

*"Industrial capability issue (ICI)"* is a procurement issue created by the lack of industrial capability, capacity, and/or raw or semi-finished materials with lead-time issues that impact the ability of the supplier to deliver at the wartime rate. The mitigation of the issue would require an investment by the Government to improve capability to deliver at the wartime rate. These investments are funded through the warstopper program (refer to DLA Instruction 1212 Industrial Capabilities Program – Manage the Warstopper Program).

*"Industrial specialist"* represents the Government personnel performing certain technical functions in different organizational activities within the procuring organization. This term applies to the Government personnel within the industrial preparedness branch for DLA Aviation, the industrial support office for DLA Land and Maritime, the industrial base planning office in DLA Troop Support Clothing and Textiles

(C&T), the industrial preparedness branch in DLA Troop Support Construction and Equipment (C&E), the strategic material sourcing group (SMSG) readiness division for DLA Troop Support Medical, and the industrial base planning branch for DLA Troop Support Subsistence.

*"Long term contracts (LTCs)"* are all long-term contract instrument types to include indefinite quantity, corporate, and prime supplier contracts, where the ordering period of performance with option periods is greater than 3 years. LTCs do not include indefinite delivery purchase orders (IDPOs).

*"Monthly wartime rate (MWR)"* expressed in units per month, represents the combined recurring requirements for all services after offsets for peacetime DLA direct (DD) procuring organization surge capability and/or DLA managed war reserve material (WRM) stocks are applied. MWR is the surge requirement, including the services' go-to-war requirements. MWR is used when items have assigned national stock numbers (NSNs). MWR for an item is determined and obtained by using the industrial base management system (IBMS) or by consulting the industrial specialist.

*"Peacetime support issue"* occurs when DLA is unable to meet the customer's required delivery date for a weapon system repair part that 1) is coded not mission capable-supply (NMCS), 2) is a critical item that impacts mission capability (MICAP) or to prevent the loss of life/property, or 3) meets the FAR criteria for an unusual and compelling requirement if routine fulfillment/replenishment procedures will not satisfy the requirement.

*"Surge and sustainment (S&S)"* represents increased quantities and/or accelerated delivery rates required to meet the Services' requisitions across a broad spectrum of contingencies. The increased quantity and accelerated delivery rate are above and beyond the normal peacetime requirements, and are identified as MWR, D1-D6 schedule, or a surge quantity option.

*"Surge and sustainment coverage"* is a combination of DLA's ability to fill contingency requisitions through the MWR, D1-D6 schedule, or surge quantity option within the customer's required delivery date (RDD) and the supplier's ability to meet surge quantity and sustainable accelerated delivery.

*"S&S events"* describe the relationship between the S&S planning requirement (S&SPR), the S&S actual requirements, and S&S coverage. "S&S events" describe the relationship between the S&S planning requirement (S&SPR), the S&S actual requirements, and S&S coverage.

Details on events, numbered I through VII, and how they are used, are covered in DLA Instruction 1214, Industrial Capability Program – Surge and Sustainment (S&S), Enclosure 4. An event may have known surge planning requirements, may be covered for surge, and may be needed in surge quantities during an actual contingency.

*"Surge and sustainment planning requirements (S&SPR),"* also referred to as "go-to-war requirements", are the additive monthly wartime demand requirements obtained through collaboration with the customers, which include the Services' other war reserve material requirements , Joint Chiefs of Staff (JCS) project coded requisitions, and items with a weapon system essentiality code (WSEC) of 1, 5, 6 or 7. These requirements are the Services' go-to-war items for contingency operations, national emergencies, or other readiness needs, where speed of delivery and immediate availability of materials are the primary priority to support national security interests. DODI 3110.06, War Reserve Material Policy and Secretary of Defense strategic planning guidance require the identification of these go-to-war requirements to support the national security interests of the United States.

*"Surge quantity option"* is an increased quantity above and beyond peacetime demands expressed in percent or exact number with a sustainable accelerated delivery. This quantity is other than the MWR or D1-D6 schedule, and used for items that are market ready, commercial, or non-national stock number (NSN ) supplier part numbered items such as cataloged commercial items under a prime supplier arrangement to support increased demands during contingency operations, national emergencies, or other readiness needs. Surge quantity option is calculated using appropriate demand data through market research, or determined by consulting the industrial specialist.

*"Unsupported item issue (UII)"* are surge requirements that cannot be met through peacetime inventory, normal peacetime contracting, alternative contract strategies, or a successful resolution using investment to an industrial capability issue (ICI). DLA is required to report a UII to the services for inclusion into their war reserve planning, such as when an investment to resolve an ICI exceeds cost of a Government "buy and hold" solution, or when stocking the item is counter to DoD war reserve policy.

**17.9302 Policy.**

(a) The primary mission of DLA is to support the warfighter in peacetime and wartime, to include smaller contingencies. The ability to surge, or ramp up quickly, and to sustain replenishment of wartime consumable items at an increased pace is critical to the execution of U.S. military strategy. S&S coverage is impacted by the continuing emphasis by both DLA and suppliers to reduce inventory and by DLA's plan to rely on industrial capability. Therefore, S&S capability must be a primary consideration in all acquisition strategies and resource investments.

(b) References. The following statutes, regulation, and policy include coverage for surge and sustainment:

(1) Executive Order 12919, National Defense Industrial Readiness Preparedness, as amended by Executive Order 13603, March 16, 2012, National Defense Resources Preparedness.

(2) FAR Subpart 6.302.3 Other Than Full and Open Competition, Industrial Mobilization; Engineering, Developmental, or Research Capability; or Expert Services.

(3) Defense Production Act of 1950, as amended;
(4) Defense Priorities and Allocations System Program;

(5) DoD 4400.1-M, Department of Defense Priorities and Allocations Manual; and

(6) DoD Instruction 3110.06, War Reserve Materiel Policy.

(c) The agency's goal is to have all surge and sustainment planning requirements (S&SPR) on an LTC to ensure coverage for wartime critical materials, in accordance with the regulations and policy listed in paragraph (b) of this section. Acquisition planning efforts by the contracting activity shall ensure DLA leverages its LTC acquisitions to obtain S&S coverage that addresses all surge events.

(d) Contracting officers shall obtain coverage for items identified as go-to-war items during the acquisition process of all LTCs, except IDPOs, modifications to add items to a contract, or when exercising an option period. Contracts/orders with mandatory sources under FAR 8.002(a), including

General Services Administration Federal Supply Schedules and AbilityOne, are not exempt from compliance with this policy in solicitations and resulting contracts.

**17.9303 Procedures.**

(a) This section details procedures, to be adapted as necessary for individual procurements, for obtaining surge and sustainment (S&S) coverage through acquisition planning and long-term contracting. Refer to DLA Instruction 1214, Industrial Capabilities Surge and Sustainment, for more detailed process guidance on the industrial specialist's involvement and responsibilities.

(b) These procedures will enable contracting officers to implement S&S in the acquisition process. The supporting buyer and industrial specialist shall assist the contracting officer with implementation to ensure appropriate S&S coverage is obtained. System procedures are detailed in paragraph (c) of this section. (The term 'buyer' is used in this section and also denotes the acquisition specialist, both pre-award and post-award, and/or post-award contract administrator, as applicable.)

(1) Presolicitation phase.

(i) The contracting officer shall conduct market research, which includes the historical surge plan and performance, and collaborate with the industrial specialist to determine the appropriate strategy to obtain S&S coverage. (See Part 10.)

(A) If market research clearly shows that surge quantities and delivery schedule can be met through the long term contract (LTC) maximum and required delivery, and can satisfy both peacetime and wartime requirements, the contracting officer shall consult the industrial specialist to determine if surge-specific provisions can be excluded, in part or as a whole, from the solicitation.

(B) The contracting officer shall only exclude surge-specific provisions after receiving concurrence from the industrial specialist through the waiver process described in paragraph (5)(xii) of this section, and will clearly document the market research result, surge coverage decision, and concurrence in the acquisition plan.

(ii) The contracting officer will ensure that the LTC population is verified and validated for surge requirements using the appropriate industrial base (IB) tool or by consulting the industrial specialist to determine surge requirements. Methods for incorporating surge requirements into the LTC include the following. (Refer also to paragraph(c)(2) of this section for detailed system procedures.)

(A) Include surge requirements using MWR or D1-D6 in the solicitation/contract under a separate contract line item (CLIN); or

(B) Include the surge quantity option (see 17.9304), either as a percent increase of the base contract delivery rate or an exact quantity above the base contract delivery amount, that will result in sustainable delivery as required in the contract or order for items that are market ready, commercial, or non-national stock number (NSN) supplier part numbered, such as cataloged commercial items under a prime supplier arrangement. The exact quantity or percent for the surge quantity option can be calculated based on historical consumption data or other appropriate demand data.

(C) If the acquisition is for a long term contract, with more than 25 percent of the NSNs in the solicitation having surge items and the contract ceiling exceeds $10 million, or the procurement will require approval by a field- or HQ-level acquisition review board in accordance with 7.104-90, the contracting officer shall request revalidation of surge requirements through collaboration between the industrial specialist and the military service(s).

(iii) The contracting officer will collaborate with the industrial specialist when developing the evaluation criteria for S&S requirements for inclusion to the solicitation.

(A) For tradeoff best value source selection, the buyer, in collaboration with the industrial specialist, selects and includes appropriate S&S evaluation criteria in the solicitation as either an evaluation factor or sub-factor, depending on its significance. (See FAR 15.304).

(B) For lowest price technically acceptable (LPTA) procurements and procurements when PPIRS-SR will be used in evaluating contractor past performance as a non-cost or price factor in award decisions, the buyer, in collaboration with the industrial specialist, determines an appropriate evaluation factor or sub-factor, depending on its significance, to evaluate the CAP for technical acceptability.

(iv) The contracting officer shall obtain industrial specialist concurrence with the S&S coverage strategy, which will be documented in the acquisition plan.

(2) Solicitation phase.

(i) When surge requirements apply, the contracting officer shall include the monthly wartime rate (MWR), D1-D6, or surge quantity option CLINS, and insert appropriate provisions, clauses, and evaluation criteria in the solicitation. (See 17.9304.)

(ii) The contracting officer will ensure that the solicitation includes a requirement for a CAP from the offeror; the solicitation should state that the CAP must include an exit strategy.

(iii) The contracting officer shall notify the industrial specialist immediately upon issuing the solicitation (see paragraph (c)(2) of this section for related system procedures).
(iv) The contracting officer shall collaborate with the industrial specialist prior to making changes, such as an increase, decrease, or deletion, to surge requirements and coverage in the solicitation to assess the impact of the proposed change.

(A) The industrial specialist assesses the impact of the proposed change to surge requirements and will advise the contracting officer.

(B) The contracting officer proceeds with the amendment or change if appropriate, with adjustments as based on industrial specialist feedback.
(C) The contracting officer shall notify the industrial specialist when an amendment is issued affecting surge coverage, close dates, and/or LTC population.

(v) Solicitation closing. The supplierss are required to submit the following with their proposals:

(A) Prices for the surge quantity, either in dollars or as a percentage, as specified in the solicitation;

(B) When surge pricing exceeds non-surge contract pricing for the same item(s), the contracting officer shall require information other than cost or pricing, or, if applicable, certified cost or pricing data to determine price reasonableness or cost realism in accordance with clause 52.217-9009;

(C) A copy of the CAP. Refer to paragraph(c)(4) of this section for system procedures.

(3) Evaluation.

(i) The contracting officer shall ensure the offeror's capability assessment plan (CAP) is submitted to the industrial specialist for evaluation and a recommendation:

(A) The industrial specialist reviews the CAP and determines the application of warstopper or Government investment, then advises the contracting officer;

(B) If warstopper or Government investment applies, the buyer notifies all suppliers competing in the acquisition during negotiations or issues an amendment to include the investment;

(C) When evaluating the surge quantity, the contracting officer, buyer and industrial specialist will perform a pricing evaluation as detailed in paragraph (4) of this section.

(D) The contracting officer shall ensure that the CAP includes an exit strategy and that the proposed exit strategy is in the Government's best interest. Refer also to paragraph (5) of this section for exit strategy alternatives.

(4) Pricing evaluation.

(i) The contracting officer shall evaluate surge pricing for the surge quantity in accordance with FAR 15.404-1 to determine price reasonableness (see FAR 15.403 and DFARS 215.403 for guidance on requiring certified cost or pricing data or data other than certified cost or pricing data).

(ii) If the contracting officer cannot independently justify the surge price, the contracting officer shall ensure offerors submit information other than certified cost or pricing data or, if applicable, certified cost or pricing data, as circumstances require, that sufficiently explain causes of price difference between surge and peacetime quantities, in accordance with 52.217-9009. The information may be submitted in the offeror's own format unless the contracting officer requests a specific format in the solicitation.

(iii) The contracting officer shall consider the unique factors affecting S&S pricing when evaluating prices for the surge quantity, which may cause higher pricing than peacetime quantities since S&S involves increased production and accelerated delivery time, usually 30 days or less, during contingency operations. In addition, S&S pricing is often based on suppliers' estimates of future costs or projections since contingency operations are unpredictable and there is uncertainty when or if the Government will exercise surge. Certified cost or pricing data will not always apply to S&S. Instead, information other than certified cost or pricing data as described in FAR 15.402(a)(2) may apply. The

supplier may have other costs in addition to the normal peacetime costs to support S&S requirements, such as:

(A) premium pay for overtime and/or additional shifts to fulfill increased production to support surge;

(B) additional costs for expedited delivery of materials from sub-tier suppliers to meet the accelerated delivery requirement of surge;

(C) the cost to order minimum purchase quantity from sub-tier suppliers, in addition to peacetime ordering, to pre-position materials required to produce or supply S&S quantities, with a factor for the risk that the Government will not issue a surge order and/or buy-back any excess or unconsumed materials before contract expiration or termination;

(D) maintaining reserve production capacity that otherwise would generate revenue; and/or

(E) maintaining extra inventory, raw materials, or components specifically to support surge requirements.

(iv) Another consideration in determining price reasonableness is the risk assumed by the contractor. The Government is not obligated to exercise the surge CLINS during the contracted performance period. The suppliers are therefore assuming all the risks of incurring additional costs and holding additional inventory to support S&S coverage, until the Government executes a surge order to support contingency operations and other emergencies.

(v) In addition to allowing for extra costs, the contracting officer should consider whether to allow for additional profit over and above any amount for the peacetime requirement. When the weighted guidelines method is applied in accordance with DFARS 215.404-71, the contracting officer should review, in addition to other relevant factors.

(vi) A review of the S&S capability plan may assist in analyzing the surge price in comparison to the peacetime price, since it may indicate costs that the offeror expects to incur if the S&S requirement is invoked.

(vii) The contracting officer shall also consider guidance in DFARS 217.7505(b)(2) and the definition of S&SPR under 17.93, if applicable, when evaluating the surge prices that are higher than the non-surge contract prices, since the Services' go-to-war requirements directly support the national security interests of the United States.

(viii) Removing the surge requirement. If surge prices are deemed unreasonable or if surge negotiations will cause the delay of contract award, the contracting officer may submit a waiver request to the industrial specialist for concurrence with removing surge requirement, in part or as a whole, from the solicitation/contract. (Refer to paragraph (5)(xii) of this section for the waiver procedure.)

(ix) The buyer documents the industrial specialist's recommendation and surge price objectives in the pre-negotiation briefing memorandum (PBM). The total surge price is not added in the overall comparative price evaluation due to varying factors affecting surge pricing;

(5) Negotiations/discussions phase. (See FAR 15.306.)

(i) When the supplier's capability assessment plan (as per clause 52.217-9006 surge and sustainment requirements) does not meet the stated solicitation surge requirements, the contracting officer shall conduct discussions to obtain the required surge coverage. If unable to reach agreement through discussions, the contracting officer shall collaborate with the industrial specialist for assistance in developing an alternate surge strategy, if necessary. (Refer to paragraph (5)(xiii) of this section regarding alternate surge strategy.) Surge coverage includes the following factors and considerations:

(A) Negotiating surge prices;

(B) Using the exit strategy, for example, surge asset buy-back for high demand items, surge asset ramp down, as leverage or a negotiating tool to obtain surge coverage;

(C) Considering alternate packaging or guaranteed minimum for surge items, if appropriate and/or applicable;

(D) Engaging the industrial specialist during negotiations to determine an alternate surge strategy to obtain coverage;

(E) Collaborating with the industrial specialist to determine if Government investment can be applied to obtain surge coverage.

(F) Obtaining surge coverage and considering the supplier's proposed alternative(s) to support the Services' go-to-war items in accordance with 17.9302.

(ii) The contracting officer shall consult the industrial specialist for a warstopper or Government investment determination and recommendation when an industrial capability issue (ICI) is identified by the supplier and/or if the supplier is requesting Government investment. (Refer to paragraphs (5)(viii) and (5)(ix) of this section for warstopper or Government investment determinations.)

(iii) The contracting officer shall ensure that approved warstopper or Government investment is offered to all suppliers competing in the acquisition.

(iv) The contracting officer shall negotiate an exit strategy that is in the Government's best interest.

(v) The supplier is required to include an exit strategy in accordance with clause 52.217-9006. If the supplier's CAP doesn't adequately address an exit strategy, the contracting officer will develop an exit strategy with the supplier during negotiations or discussion.

(vi) When warstopper or Government investment does not apply, the contracting officer, in conjunction with the industrial specialist, will consider the following exit strategies.

(A) Surge asset ramp-down before contract expiration date (e.g., ramp-down 6-12 months before contract expiration);

(B) Asset buy-back for high demand or backordered items based on historical stock position, or to have inventory on-hand until follow-on contract can be established;

(C) Asset buy-back guaranteed minimum applied in percent, dollar amount, or quantity based on historical demand patterns and/or items with long lead times;

(D) Shifting of assets to other contracts if applicable.

(vii) When warstopper investment applies, the contracting officer will consider the following exit strategies or other alternate strategy that is in the Government's best interest:

(A) Transferring investment to the next contract;

(B) Placing investments into production to produce finished goods and offset price for Government furnished property, material, or equipment;

(C) Salvaging investment to be used for other Government projects; or

(D) Returning funds to the U.S. Treasury through the warstopper program manager at DLA HQ J74.

(viii) For Government investment application:

(A) The supplier may request Government investment in its proposal or during negotiation or discussion.

(B) The contracting officer consults the industrial specialist to determine if Government investment can be applied.

(C) The contracting officer will limit or conserve use of Government investment when obtaining S&S coverage. The contracting officer will only authorize or allow Government investment to overcome an S&S shortfall and/or to obtain coverage. Refer to 52.217-9006 for shortfall conditions.

(D) With the industrial specialist's concurrence, the contracting officer approves the contractor's request for Government investment only when it is in the Government's best interest to do so.

(E) The contracting officer ensures an exit strategy is included when Government investment applies. (Refer to paragraph (b)(5)(xiii) of this section for exit strategy alternatives.).

(ix) For warstopper investment application:

(A) Warstopper application is determined and approved by the DLA HQ J7 warstopper program manager.

(B) When warstopper investment applies, the contracting officer ensures that the solicitation contains a statement to that effect. Refer to 52.217-9010 Limitation on Use of S&S Government Investment.

(C) The contracting officer negotiates and includes surge coverage with warstopper investment only when approved by the DLA HQ J7 warstopper program manager.

(D) When the DLA HQ J7 warstopper program manager approves use of warstopper investment, the contracting officer consults the industrial specialist to process the investment:

*(1)* The industrial specialist processes the request and advises the contracting officer of warstopper funding approval;

*(2)* Upon receiving funding approval, the contracting officer:

*(i)* Includes the warstopper CLIN 9965 and not-to-exceed amount in the contract;

*(ii)* Incorporates an appropriate exit strategy.

*(3)* If warstopper or Government funding is approved before contract award, the contracting officer notifies all suppliers competing in the acquisition of the approved investment amount by amendment of the solicitation and includes explicit written language describing use and limitation of Government investment (to be incorporated to the resulting contract).

*(4)* If warstopper or Government funding approval occurred after contract award, the contracting officer notifies and advises the supplier of approval by issuing a bilateral contract modification with the approved dollar amount using CLIN 9965 and explicit written language describing use and limitation of Government investment, to which the contractor is required to agree as consideration for receipt of the funding.

(x) As a result of successful negotiation, the contracting officer will:

(A) Proceed with awarding surge coverage at a fair and reasonable price;

(B) Include appropriate surge CLINS, the monthly wartime rate (MWR) or D1-D6 prices, exit strategy, and warstopper investment, if applicable, in the contract;

(C) Document the price negotiation memorandum (PNM) with the surge negotiation /discussion results to include basis for determining surge prices fair and reasonable, delivery terms, ramp-up time if applicable, and exit strategy.

(xi) When negotiation is unsuccessful,

(A) After making every attempt to obtain surge coverage and the supplier refuses to support surge, and/or negotiation becomes extended, and/or surge prices are unreasonable, the buyer elevates the issue to the contracting officer for a waiver request decision and describes attempts made to obtain surge coverage;

(B) The contracting officer consults the industrial specialist for alternate solutions or recommends excluding surge requirement, in part or as whole, via a waiver request; and/or

(C) The industrial specialist recommends an alternate solution if any or concurs with the waiver request.

(xii) Surge waiver process.

(A) When surge coverage is unobtainable and/or negotiations or discussions are unsuccessful, or, when the contracting officer, in collaboration with the industrial specialist, determines that it is in the Government's best interest to exclude surge in part or as a whole, the contracting officer shall submit a written waiver request to the industrial specialist for concurrence prior to excluding the surge item(s) and/or requirements from the solicitation. The contracting officer's waiver request will include the following information:

*(1)* Description of attempts made to obtain surge coverage;

*(2)* Discussion of whether the contract maximum in quantity or dollar value can sustain potential increase in demands in the event of future contingency or emergency;

*(3)* Recommendation to exclude surge, in part or as a whole; and

*(4)* Relevant information concerning surge coverage or item(s) being excluded from the LTC.

(B) The industrial specialist may recommend other alternatives, if any, or concurs with the waiver request in writing and forwards a copy to DLA HQ J74.

(C) The contracting officer shall only exclude surge-specific provisions, in part or as a whole, from the solicitation and contract upon receiving concurrence from industrial specialist and shall document the waiver concurrence in the contract file.

(D) Upon receiving the industrial specialist's concurrence to remove surge-specific provisions in part or as whole, the contracting officer shall factor surge quantities into the contract maximum calculation, that is, ensures the contract maximum (quantity or dollar value) can cover potential surge in demands in the event of future contingencies to prevent untimely contract expiration, and obtains an accelerated delivery schedule that will satisfy both peacetime and wartime requirements.

(E) The industrial specialist will notify the strategic material sourcing group (SMSG) or integrated supplier team (IST) lead in writing of the surge provision exclusion for a determination of an alternate support strategy for the Services' go-to-war items or notification that a potential unsupported item issue (UII) exists.

(F) The buyer excludes surge coverage or item(s) as a requirement after receiving concurrence from the industrial specialist and documents the price negotiation memorandum (PNM), also including the waiver in the contract file.

(G) Surge policy provides for waivers to surge clauses, however, the contracting officer will include a requirement in the solicitation and resulting contract for an informational eCAP to provide the industrial specialist an opportunity to determine the total production capacity of the mandatory source during wartime.

(xiii) Determination of an alternate surge support strategy.

(A) The industrial specialist coordinates with the strategic material sourcing group (SMSG) or industrial specialist team (IST) lead for alternate surge support strategy for the excluded surge coverage or item(s) with consideration for the following alternatives:

*(1)* Corporate exigency contracts (CECs);

*(2)* Minimum sustaining rate (MSR) contracts (this type of contract may generate protected inventory that can be used to meet contingency demands as free issue);

*(3)* Industrial base maintenance contracts (IBMCs);

*(4)* Supplier managed inventory (VMI); and/or

*(5)* Agreements common in some industries (for example, subsistence), to include a memorandum of understanding, memorandum of agreement or blanket purchase agreement.

(B) If using alternate support strategies listed above in paragraph (A), subpart 17.93 Surge and Sustainment does not apply. Terms, conditions, and provisions for these alternatives will be developed and established by the contracting officer and the industrial specialist based upon the specific contingency support needs of the customer(s).

(C) When the alternative methods to obtain S&S coverage also fail, the industrial specialist notifies DLA HQ J74 and the Services that an unsupported item issue (UII) exists. The industrial specialist relays the information to the SMSG/IST lead for future acquisition planning and strategy.

(D) The contracting officer documents the UII and unsuccessful attempts to obtain surge coverage in the contract file.

(6) Award phase.

(i) The contracting officer shall incorporate the approved CAP, exit strategy, and, if applicable, CLIN 9965 for the approved Government investment amount, and explicit written language in the contract regarding limited use of investment.

(ii) The contracting officer notifies the industrial specialist when the contract, with surge items, is awarded. (Refer to paragraph (c)(6) of this section for system procedures.)

(7) Post-award phase.

(i) The contracting officer will coordinate with the industrial specialist before making any changes to the surge coverage after contract award, shall modify the contract as appropriate, and shall document the contract file with any changes.

(ii) Exercising option periods.

(A) The contracting officer shall consult the industrial specialist for changes in industry capability. Refer to paragraph (c)(7)(v) of this section when exercising the contract's option period with surge. (Also refer to 17.207.)

(B) The contracting officer notifies the industrial specialist before making any changes to the surge coverage i.e., add/delete items or increase/decrease) and then follows the procedures under paragraph (b)(7)(iii) of this section, when adding, deleting, increasing, or decreasing surge coverage.

(iii) Additions or deletions. Increasing or decreasing monthly wartime rate (MWR) and/or surge coverage. Refer to paragraph (c)(7) of this section for system procedures.

(A) If the contracting officer intends to decrease or increase the surge coverage, notify the industrial specialist before making any changes;

(B) The industrial specialist reviews and determines the impact to the customer, surge support, and warstopper investment (if applicable);

(C) The industrial specialist collaborates with the Services if necessary and advises the contracting officer in writing;

(D) The contracting officer proceeds with decreasing or increasing surge coverage after receiving the industrial specialist's recommendation.

*(i)* Additions. Adding items (phased pricing).

*(a)* The contracting officer will conduct surge check when pricing additions to LTC items in accordance with the Add/Delete Clause, then request and obtain surge pricing for MWR or D1-D6 and an updated CAP from the supplier.

*(b)* The contracting officer evaluates the surge pricing and the industrial specialist reviews the CAP and advises the contracting officer. Refer to paragraphs (b)(3) and (b)(4) of this section for procedures on CAP and surge price evaluation.

*(c)* The contracting officer negotiates if necessary to obtain surge coverage for the added items. Refer to paragraph (b)(5) of this section for negotiation procedures. If increasing the monthly wartime rate (MWR) or D1-D6, the contracting officer will negotiate with the supplier if necessary to lower surge prices and update the CAP;

*(d)* The contracting officer incorporates surge coverage via a modification and documents the contract file. Follow system procedures under paragraph(c)(7) of this section when adding surge coverage or item(s).

*(ii)* Deletions. Deleting surge items such as obsolete items or item no longer needed, in accordance with the Add/Delete Clause.

*(a)* The contracting officer notifies the industrial specialist in writing before deleting surge coverage or item(s) from the LTC;

*(b)* The contracting officer follows the surge waiver process under paragraph (b)(5)(xii) of this section when excluding or deleting surge coverage or item(s) from the LTC;

*(c)* The industrial specialist assesses and determines impact to surge support and warstopper investment (if applicable), and advises the contracting officer;

*(d)* The contracting officer proceeds with deleting surge coverage or item(s) from the LTC via a modification after receiving concurrence from the industrial specialist. The modification will include disposition and instructions for warstopper or Government investment, if applicable);

*(e*) The contracting officer ensures the contract file is documented by including the waiver request, industrial specialist concurrence and a copy of the modification.

*(2)* The contracting officer issues the modification reflecting the change and includes instruction for Warstopper investment adjustment (if applicable);

(D) The contracting officer ensures that the outline agreement is updated and the contract file documented when changes are made to surge coverage.

(8) Surge execution.

(i) The contracting officer shall invoke and execute a surge order when supporting project coded requisitions for the following events. (Refer to paragraph (c)(8) of this section for related system procedures.)

(A) Wartime or contingency operations;

(B) Reconstitution of contingency resources following wartime operations or a major exercise;

(C) Not mission capable-supply (NMCS), mission capability (MICAP), or unusual and compelling requirements;

(D) Senior leadership determines executing and invoking surge are appropriate to prepare the agency for anticipated increases in demand due to a national emergency via a memorandum or other written authorization;

(E) Recognizing a peacetime support issue where inventories and peacetime delivery rates alone cannot or will not support total demand. A peacetime support issue may exist prior to the establishment of a JCS project code. Under such circumstance, DLA HQ J7, in coordination with J3, provides the contracting office with authorization to execute and invoke surge to support a peacetime issue; or

(F) Testing, validating, or maintaining the operability of the S&S capability. Under these circumstances, DLA HQ J74 authorization is required prior to invoking and executing surge.

(ii) The contracting officer shall only exercise and execute surge with warstopper investment when one or more of the conditions below apply. The contracting officer shall consult the industrial specialist before executing surge when there is warstopper-funded property, equipment, or materials involved. Free issue of consumable items involving warstopper investments requires DLA HQ J74 concurrence.

(A) Deploying or deployed troops shall be in an actual or anticipated contingency (including a declared contingency with or without a project code);

(B) A buildup of troops is in process in preparation for a contingency;

(C) Call up of reserves for deployment is in process; or,

(D) Any other preparation events intended to place DoD resources in a contingency, or at a higher than normal operations tempo.

(iii) The contracting officer shall invoke and execute surge for peacetime support issue on a case-by-case basis and only when authorized by DLA HQ J7.

(iv) The contracting officer shall only invoke and execute surge when it is in the Government's best interest (see (v)(C) below) and shall consider the following:

(A) Any premium costs associated with exercising S&S compared with other options such as expedited delivery, spot buys, diversion, redistribution orders, reclamation;

(B) Whether the supplier is contractually obligated to provide S&S coverage and consider surge ramp-up and/or recovery time after S&S activations;

(C) Availability of funds and priorities.

(v) Prior to executing surge, the contracting officer shall make a written determination that addresses the following:

(A) It is in the Government's best interest to execute surge in lieu of other support that may be more cost effective, for example, expedited delivery, spot buys, diversion, or redistribution orders, and with consideration for delivery, customer readiness, and supplier performance record.

(B) The requirement is determined to meet one or more of the criteria in the preceding paragraphs (i) through (iii); and

(C) The buyer has validated surge coverage in Records Management and verifies the monthly wartime rate (MWR), D1-D6, or the surge quantity option, and ramp-up time requirement (see paragraph (c)(8) in this section for system procedures).

(vi) The contracting officer notifies the supplier and industrial specialist immediately by emailing a copy of the order with subject title "surge order – read immediately"; the order will include the PIIN, order number, and other information deemed necessary to bring immediate attention to the order for processing.

(vii) The contracting officer will report surge execution to the industrial specialist within 30 days for tracking and reporting purposes. Refer to paragraph (c)(8) of this section for detailed system surge execution procedures.

(9) Supplier's change in S&S capability.

(i) The contracting officer immediately notifies and consults the industrial specialist for assessment and recommended courses of action when the supplier(s) requests a change to surge capability or can no longer meet surge coverage obligation in the contract due to unexpected contracting office interruption, such as extreme market conditions, a natural disaster, or labor dispute.

(A) The industrial specialist reviews and assesses the impact to the customer and warstopper investment (if applicable), and advises the contracting officer.

(B) The contracting officer takes action based upon the industrial specialist's recommendation, negotiates as necessary to keep the surge coverage if possible, documents the contract file, and updates the surge coverage in the outline agreement.

(C) If surge coverage includes warstopper or Government investments, the contracting officer shall make adjustments to the investment as necessary when changes are made to the CAP.

(D) If the supplier can no longer support surge coverage, for example, due to bankruptcy, and/or the contract is being terminated, the contracting officer shall exercise the exit strategy.

(E) With assistance from the industrial specialist, the contracting officer will recoup warstopper or Government investment, specifically, funds, raw material, or finished goods, to the maximum extent possible. The contracting officer will issue a modification with instructions on investment disposition, and document the surge coverage change and the results of exit strategy in the contract file.

(F) Refer to paragraph (b)(7)(iii) of this section if making changes to surge coverage, specifically, decreasing, increasing, and/or deleting.

(G) The industrial specialist works with the SMSG or IST lead to determine an alternate or follow-on surge support strategy.

(10) Contract expiration or termination.

(i) The contracting officer shall exercise the exit strategy specified in the contract prior to termination or expiration to recoup warstopper or Government investment or to ramp-down the supplier's surge inventory, if applicable.

(A) If the contract includes warstopper investment,

*(1)* The contracting officer consults the industrial specialist for assistance if needed when exercising the exit strategy involving warstopper investment;

*(2)* The contracting officer ensures all investments (i.e., funds, raw materials, or finished good) are recouped and recovered to the maximum extent possible; and

*(3)* The contracting officer exercises the S&S exit strategy as stated in the contract and recovers all Government investment. If Government investment cannot be recouped or recovered due to unforeseen circumstance such as bankruptcy, and the existing exit strategy cannot be applied, the

contracting officer can exercise an alternate exit strategy that is in the best interest of the Government. The contracting officer also then consults the industrial specialist for assistance and elevates the issue to DLA HQ J74 if necessary for alternatives.

(B) If the contract does not include Government investment,

*(1)* The contracting officer exercises the exit strategy in accordance with the contract and documents the result of the exit strategy in the contract file for future use as lessons learned.

*(2)* In collaboration with the industrial specialist, the contracting officer considers the Government's stock position and the lead time for establishing a follow-on contract when exercising the exit strategy. Consideration is also given to backorder, stock-out, customer support gap, and the acquisition timeline when determining the disposition of surge coverage.

*(3)* If terminating the contract, the contracting officer notifies the industrial specialist immediately to determine an alternate surge support strategy.

(11) Program control measures. The effectiveness in obtaining surge coverage will be assessed, measured, and tracked by DLA HQ J74 in accordance with DLA Instruction 1214, Industrial Capability Program – Surge and Sustainment.

(c) System procedures for S&S throughout the acquisition process.

(1) Detailed system tasks to be performed by the contracting officer, buyer, offeror or contractor, industrial specialist, and/or supply planner, are provided in the following table. (The term buyer also refers to the acquisition specialist.)

(2) Systems and/or applications utilized for S&S procedures include:

(i) Surge and sustainment database (S&S DB) found within the industrial base management system (IBMS) at https://headquarters.dla.mil/APPS/IBMS.

(ii) Support Planning Integrated Data Enterprise Readiness System (SPIDERS) website at https://spiders.dla.mil/.

(iii) Readiness management application (RMA) available through DLA Troop Support Medical's website at https://www.medical.dla.mil/Portal/.

**17.9304 Solicitation provisions and contract clauses.**
The contracting officer shall insert the following provisions/clauses in solicitations when MWR, D1-D6, or the surge quantity option is required. The contracting officer, in coordination with the procuring organization's industrial specialist, shall obtain the approval of J7 prior to authorizing any exceptions to the provisions/clauses. Exceptions from and/or alteration to the clauses listed below are not subject to the review and approval requirements set forth at 1.301-91. Exceptions or alterations must be submitted in writing to DLA HQ J74 for approval by J7.

(a) Use clause 52.217-9006, only when including MWR or D1-D6 in the solicitation and resulting contract. Insert 52.217-9006 Alternate I only when including a surge quantity option in the solicitation and resulting contract.

(b) Use clause 52.217-9007, , only when including MWR or D1-D6 in the solicitation and resulting contract. Insert 52.217-9007 Alternate I only when including a surge quantity option in the solicitation and resulting contract.

(c) Use clause 52.217-9008, , only when including MWR or D1-D6 in the solicitation and resulting contract. Insert 52.217-9008 Alternate I only when including a surge quantity option in the solicitation and resulting contract.

(d) Use clause 52.217-9009, when including MWR or D1-D6 in the solicitation and resulting contract.

(e) Use clause 52.217-9010, when including MWR, D1-D6, or surge quantity option in the solicitation and resulting contract.

**17.9305 Warstopper Program Material Buffer Availability.**
Insert clause 52.217-9012, , in solicitations and long-term supply contracts to notify suppliers of the potential availability of key raw materials that may be candidates to support industrial mobilization and /or material disruptions.

## SUBPART 17.95 – TAILORED LOGISTICS SUPPORT CONTRACTING

**17.9500 Scope of subpart.**
This subpart prescribes policies and procedures for soliciting offers, awarding contracts, placing orders, and post award administration under DLA's tailored logistics support contracting initiatives. Included in this category are prime vendor (PV), similar existing support arrangements known as modified prime vendor initiatives (MPV), and future initiatives that have characteristics of PV arrangements, but are not considered traditional PV. This subpart also discusses the management attention required throughout the life of a tailored logistics support contract. It includes a clause to be used when the Government is relying on the contractor's purchasing system to verify that the contractor competed the items or services or to justify fair and reasonable pricing. Any deviation from this subpart must be requested in writing and be approved by the Senior Procurement Executive. Deviations may be requested on a program rather than an individual acquisition basis.

**17.9501 Definitions.**

*"Distribution and handling fee"* is one component of the total item price listed in the catalog. It is the portion paid for stocking, handling, and delivering the item, as awarded under the contract. It does not include the cost of the actual item that the tailored logistics provider may have manufactured itself or procured from another supplier. It is expressed in fixed dollar amounts only, not in percentages, except for those prime vendoracquisitions that uses negative distribution fees to obtain discounts of off prices established under other contract vehicles (e.g. the Pharmaceutical PV program).

*"Distribution and pricing agreement (DAPA)"* is an agreement with a manufacturer or supplier that establishes both the selling price of a product and an affirmation from the DAPA-holder to allow tailored

logistics support contractors to distribute its products. A DAPA allows for the delivery of selected products at specified prices.

*"Market basket"* is an evaluation tool that uses a representative sample of items which may be bought under the program and on which offerors submit prices for evaluation under a proposed contract action. Items in the market basket are determined fair and reasonable prior to inclusion in any resulting contract. Price reasonableness determinations are made in accordance with FAR Subpart 15.4 and may consist of comparisons with historical pricing data, catalogs, market prices, various price indexes, and similar standard pricing standards. May also be referred to under other names such as "Price Evaluation List.

*"National allowance pricing agreement (NAPA)"* is an agreement with a manufacturer or supplier that provides discounts on a national basis. Tailored logistics support contractors pass on these savings to the end customer.

**17.9502 General.**

(a) Acquisition personnel involved in tailored logistics support arrangements, such as PV, MPV, and other similar support arrangements, both existing and future, are subject to the policies and procedures contained in this subpart.

(b) Contracting officers shall consider using tailored logistics support (TLS) contracts whenever a viable commercial supply chain exists for the items and associated services being acquired.

(c) Training of acquisition workforce. Government individuals assigned to work on or provide significant support for PV contracts shall take part in a tailored logistics support program of instruction, tailored by the procuring organization to its programs, within one month of assuming their duties on a PV.These individuals shall be required to obtain annual certification of training in tailored logistics support requirements and pricing from their procuring organization.

(d) Tailored logistics support contracting program of instruction. The following courses are suggested as part of a core curriculum. Contracting offices should tailor the suggested curriculum with training pertinent to the acquisition at hand, such as units of instruction reflective of the commodities or industries involved, standard operating procedures to be followed within a program, and specific examples of fraud schemes encountered within the contracting office.

Core curriculum suggestions:

- Price reasonableness and negotiation skills practicum
- Commercial item determination –on-line course (CLC 020)
- Commercial item pricing (CLC 131)
- Procurement fraud indicators (CLM 049)
- Contract pricing refresher
- Pricing catalogs for prime supplier programs
- Contract administration (including closeout, CORs and COTRs)
- Domestic content update and refresher (see also the DAU Course "Berry Amendment" (CLC 125)
- Wide area work flow
- CQMPs and the acquisition review board process
- Contract documentation requirements

**17.9504 Pricing.**

(a) A PV contract or other tailored logistics support contract must be able to comply fully with one of the established PV pricing models found in 15.4

(c) Catalog pricing. The initial catalog of DLA approved items available for ordering under the TLSC is created at time of contract award, generally based on the market basket of items used during pre-award price reasonableness determinations, as specified in the established pricing models found in 15.4 Post award, the catalog can be supplemented with new items and with price changes to existing items, as long as a price reasonableness determination is made for each new item and for each price change on existing items. This 100 percent price reasonableness determination also applies to any incidental services for supply contracts.

**17.9507 Post award actions and management oversight**

(a) Management oversight. Tailored logistics support contracts are subject to continuous and rigorous oversight as follows:

(1) The program manager or IST chief (i.e. one level above the contracting officer) for each tailored logistic support program (i.e. the team administering the program, for example, metals, MRO supplies, or special operations) shall perform quarterly pricing reviews. Reviews will include a representative sample based on the total number of orders for that period. Upon completion of these reviews, the tailored logistics support program manager/IST chief shall forward the a report of the results, including any findings and corrective action plan, to the Director of Supplier Operations or designee for review and approval. A copy of the review report shall be kept as part of the contract file.

(2) The contract administration and compliance division or the contract review division shall perform contract audits for vendors' compliance with non-pricing contract terms on at least a semi-annual basis, A copy of the report shall be provided to the contracting officer for review and action as necessary, and inclusion in the contract file.

(3) The J72 pricing section may perform assessments of selected vendors each fiscal year. These assessments shall examine the vendor's adherence to the contract pricing methodology. Vendors shall be chosen for review based on a risk assessment using factors such as contract dollar value, previous annual audits, extent of competition, opportunities for refunds, reliance on the vendor's purchasing system, and outside agency reports. J72 shall furnish a copy of the annual audits to J7 upon completion. J7 shall furnish a copy of the final report to the PLFA HCA or designee.

**17.9508 Solicitation provisions and contract clauses.**

(a) When a tailored logistics support acquisition relies on the contractor's purchasing system to verify that the contractor competed the items or services or to justify that prices are fair and reasonable, the provision/clause at 52.217-9017 Tailored Logistics Support Purchasing Reviews shall be inserted in all solicitations and contracts meeting the definition of tailored logistics support.

## SUBPART 17.97 – CORPORATE CONTRACTS

**17.9700 Contract clauses.**

(a) For solicitations/contracts for corporate contracts, 52.217-9020, Corporate Contracts – Fill Rate and Unfilled Orders may be used.

# PART 19 – SMALL BUSINESS PROGRAMS

*(Revised October 21, 2015 through PROCLTR 2015-12)*

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## SUBPART 19.2 – POLICIES

*(Revised November 7, 2013 through PROCLTR 2014-11)*

**19.201 General policy.**

(b)(90) DLA small business specialists are guided by DLAI 2307, Small Business Programs. Contracting personnel should recognize the assigned responsibilities of these individuals and work cooperatively with them to achieve the objectives of the DLA Small Business Program and to avoid duplication of effort.

(c)(10((B)(S-90) In accordance with FARS DEV 16-02, the following requirements apply regarding completion and coordination of the DD Form 2579:

(*1*) For manual buys, contracting personnel shall manually complete and distribute the August 2015 version of the DD Form 2579.

(*2*) For automated buys, continued use of the current system-generated DD Form 2579 is authorized.

(d)(10)(A) When procurement is valued over $3,000 and less than the Simplified Acquisition Threshold and is not totally set aside, document the reason for not setting aside the procurement on DD Form 2579 and submit it to the small business specialist for review.

(d)(10)(90)(a) Periodic reviews of automated awards to which either the legacy or the SAP deviation pertains shall be conducted to determine whether certain buys may be set aside in the future for HUBZone or service-disabled veteran-owned small business concerns (in the case of legacy system buys only) or 8(a) program participants. The contracting officer and small business specialist shall jointly consider backing out individual or groups of transactions, based on a national stock number or federal supply class, with suppliers identified in the System for Award Management (SAM) as HUBZone or service-disabled veteran-owned small business concerns or 8(a) (for legacy and SAP applications), from these automated systems.

(b) For review of an action that could result in a recommendation for a service-disabled veteran-owned small business (SDVOSB) set-aside, use the following procedures for individual or blanket DD 2579s until the form is revised: identify the contractor as an SDVOSB in the Acquisition History; indicate a set-aside recommendation in the “Remarks” block (line 14).

(d)(10)(91)(i) There are times when a contract action’s estimated value will be less than $3,000, thus precluding the need for a DD 2579 review, but the resulting contract’s actual value exceeds the review threshold. So long as the estimate was originally made in good faith, there is no need to conduct an after-the-fact review in accordance with DFARS 219.201(d)(10).

(ii) If changes to include quantity increases are made to the scope of the acquisition subsequent to establishment of the original good-faith estimate, and if these changes cause the potential value of the contract to exceed $3,000, do not proceed with the acquisition until a DD Form 2579 review is conducted.

(d)(11) See subsections 7.170-2 and 7.170-3 for a complete discussion of consolidation of contract requirements.

**19.202-1 Encouraging small business participation in acquisitions.**

(e)(90) Contract bundling. See section 7.107 for a complete discussion of this topic.

## SUBPART 19.3 – DETERMINATION OF STATUS AS A SMALL BUSINESS, HUBZONE SMALL BUSINESS, OR SMALL DISADVANTAGED BUSINESS CONCERN

*(Revised November 7, 2013 through PROCLTR 2014-11)*

### 19.307 Solicitation provisions.

(90) When the provision at FAR 52.219-1, Small Business Program Representations, is used in solicitations issued via Enterprise Business System (EBS) Non-EProcurement (EP) electronic means for purchases above the SAT, use 52.219-9004, Small Business Program Representations.

## SUBPART 19.5 – SET-ASIDES FOR SMALL BUSINESS

*(Revised October 21, 2015 through PROCLTR 2015-12)*

### 19.502-2 – Total small business set-asides.

(a)(S-90) For all procurements valued over the simplified acquisition threshold (SAT), if the contracting officer does not proceed with a small business set-aside and purchases on an unrestricted or other non-set-aside basis, the decision to do so must be approved at least one level above the contracting officer.

(b)(S-90) The contracting officer shall document the DD 2579, Small Business Coordination Record, and attach a memorandum for record (MFR) explaining the reasons supporting the decision not to set-aside the procurement. The DD 2579 and the attached MFR shall be filed in the official contract file or electronic contract folder.

### 19.505 Rejecting Small Business Administration recommendations.

(b) If the chief of the contracting office approves the action of the contracting officer, the next level of appeal shall be the HCA. If the HCA approves the action of the contracting officer, the procurement center representative shall be so advised and may proceed with the appeal actions prescribed in FAR 19.505(c).

### 19.508 Solicitation provisions and contract clauses.

(90) Set-aside clauses designed for use in Enterprise Business Systems (EBS) applications. For the acquisition of items included on the Federal Prison Industries (FPI) schedule, FPI is permitted to submit an offer, and to have its offer be fairly considered, for any solicitation containing any of the following clauses. For these FPI schedule items, such solicitations will only be established following a comparability determination that results in the use of competitive procedures (including set-asides). See 8.602(a)(2)(S-90) and 19.502-1(b)(90), as well as FAR 19.504, 19.508(c), and 52.219-6, Alternate II for FPI guidance.

(a) Insert the clause at 52.219-9008, Combined HUBZone/Small Business Set-Aside Instructions – Type 1, in automated solicitations and contracts in EBS applications when values will exceed the micro-purchase threshold, but will be less than or equal to the simplified acquisition threshold; either the non-manufacturer rule applies or an exception to the rule is to be employed; and a set-aside to a HUBZone small business concern or a small business concern is anticipated.

(b ) Insert the clause at 52.219-9009, Combined HUBZone/Small Business Set-Aside Instructions – Type 2, in automated solicitations and contracts in EBS applications when values will exceed the micro-purchase threshold, but will be less than or equal to the simplified acquisition threshold; the non-manufacturer rule is waived and no exception to the rule applies; and a set-aside to a HUBZone small business concern or a small business concern is anticipated.

(c) Insert the clause at 52.219-9013, Combined Set-Aside Instructions – Type 1, in automated solicitations and contracts in EBS applications when values will exceed the micro-purchase threshold, but will be less than or equal to the simplified acquisition threshold; either the non-manufacturer rule applies or an exception to the rule is to be employed; and a set-aside to a service-disabled veteran-owned small business concern, HUBZone small business concern, or a small business concern is anticipated.

(d) Insert the clause at 52.219-9014, Combined Set-Aside Instructions – Type 2, in automated solicitations and contracts in EBS applications when values will exceed the micro-purchase threshold, but will be less than or equal to the simplified acquisition threshold; the non-manufacturer rule is waived and no exception to the rule applies; and a set-aside to a service-disabled veteran-owned small business concern, HUBZone small business concern, or small business concern is anticipated.

(e) Insert the clause at 52.219-9015, Combined Service-Disabled Veteran-Owned Small Business/Small Business Set-Aside Instructions – Type 1, in automated solicitations and contracts in EBS applications when values will exceed the micro-purchase threshold, but will be less than or equal to the simplified acquisition threshold; either the non-manufacturer rule applies or an exception to the rule is to be employed; and a set-aside to a service-disabled veteran-owned small business concern or a small business concern is anticipated.

(f) Insert the clause at 52.219-9016, Combined Service-Disabled Veteran-Owned Small Business/Small Business Set-Aside Instructions – Type 2, in automated solicitations and contracts in EBS applications when values will exceed the micro-purchase threshold, but will be less than or equal to the simplified acquisition threshold; the non-manufacturer rule is waived and no exception to the rule applies; and a set-aside to a service-disabled veteran-owned small business concern or a small business concern is anticipated.

(91) Each of the clauses at (a) through (f), above, refers to and applies multiple FAR set-aside clauses. However, only the FAR clause matching the awardee's small business program and type representation applies to the award. See 19.590, below.

**19.590 Cascading/combined set-aside logic clauses for Enterprise Business Systems applications.**

(a) The systems logic used in EBS automated procurements is able to consider the applicability of more than one kind of set-aside in a combined or "cascading" fashion, according to an order of precedence. It simultaneously accommodates service-disabled veteran-owned small business (SDVOSB) set-asides, HUBZone small business set-asides, and total small business set-asides, including exceptions and waivers to the non-manufacturers rule, where applicable. If, at the time of solicitation, there is a reasonable expectation of receiving offers from two or more SDVOSBs or HUBZone small business concerns, the EBS software will use a combined set-aside for the automated solicitation. All small businesses should be encouraged to submit quotes; however, offerors will be informed, by means of the provision language itself, and possibly by a message on the face of the solicitation, about the order of precedence in which the set-asides will be applied.

(b) If the acquisition is valued between $3,000 and $150,000 and there is a reasonable expectation of receiving competitive offers from two or more service-disabled veteran-owned small business (SDVOSB) concerns or HUBZone small business concerns, the request for quote (RFQ) produced automatically in EBS will contain a combined set-aside that follows this order of precedence:

(1) SDVOSB concerns; then, if no qualified quote is received from a SDVOSB concern;

(2) HUBZone small business concerns; then, if no qualified quote is received from a HUBZone concern;

(3) Small business concerns.

(c) If the acquisition is valued between $3,000 and $150,000 and there is a reasonable expectation of receiving competitive offers from two or more service-disabled veteran-owned small business (SDVOSB) concerns, but not from two or more HUBZone concerns, the RFQ produced automatically in EBS will contain a combined set-aside that follows this order of precedence:

(1) SDVOSB concerns; then, if no qualified quote is received from a SDVOSB concern –

(2) Small business concerns.

(d) If the acquisition is valued between $3,000 and $150,000 and there is a reasonable expectation of receiving competitive offers from two or more HUBZone small business concerns, but not from two or more service-disabled veteran-owned small business (SDVOSB) concerns, the RFQ produced automatically in EBS will contain a combined set-aside that follows this order of precedence:

(1) HUBZone small business concerns; then, if no qualified quote is received from a HUBZone concern.

(2) Small business concerns.

(e) If the acquisition is valued between $3,000 and $150,000 and there is a reasonable expectation of receiving competitive offers from two or more small businesses, but not from service-disabled veteran-owned small business (SDVOSB) concerns or HUBZone small business concerns, the RFQ produced automatically in EBS will become a total small business set-aside.

(f) If, after combining and “cascading” these set-asides, no qualified quote is received from a small business at a fair market price, the set-aside will be withdrawn and the buy re-solicited on an unrestricted basis.

## SUBPART 19.6 – CERTIFICATES OF COMPETENCY

*(Revised November 7, 2013 through PROCTLR 2014-11)*

### 19.602 Procedures.

### 19.602-1 Referral.

(S-90) All contracting activities are encouraged to utilize a standardized and simplified form letter for CoC referrals. DLA Form 1756, Referral of Small Business for Certificate of Competency (CoC) Consideration, is available for this purpose.

**19.602-3 Resolving differences between the Agency and the Small Business Administration (SBA).**

(c)(S-90)(1) Within 3 workdays of receiving the SBA headquarters notification of its intention to uphold the SBA region's decision to issue a CoC, the contracting officer shall fax a report to J71 summarizing the pertinent facts of the case. (Voluminous reports should be express mailed.) The pertinent facts shall include the name of the prospective contractor, item, quantity, dollar value, the specific elements for which the prospective contractor was determined to be nonresponsible, a copy of the pertinent portions of the preaward survey, SBA's rationale for issuing the CoC, and the proposed alternative means of satisfying the requirements.

(2) A copy of this report shall also be forwarded to the SBS at the activity. The Director, DLA Acquisition (J7), shall review the information provided and advise the contracting officer within 5 workdays of the decision to support the appeal, or to recommend acceptance of the CoC.

(3) The Director, DLA Acquisition (J7) shall provide a copy of that decision to the Director, Small Business Programs. If the Director, DLA Acquisition (J7) elects to support the formal appeal, the contracting officer will be advised to expeditiously prepare the formal appeal and forward it through the activity SBS to DDAS in accordance with DFARS 219.602-3(c).

(4) The formal appeal shall include at a minimum, the particulars of the contract, (i.e., item, quantity, etc.), the pre-award survey; the contracting officer's determination of nonresponsibility, any appropriate update on the contractor's progress toward becoming responsible, and a discussion of the attempts made to reconcile differences with the SBA.

(5) The Director, DLA Acquisition (J7) shall be provided a simultaneous copy of the appeal. Formal appeals shall be forwarded for receipt at DLA within 5 workdays of notice that the Director, DLA Acquisition (J7) supports the contracting officer's intent to appeal. Formal appeals should be indexed and tabbed.

(S-91) Once the contracting office requests the SBA headquarters to review the intention of the area office to issue a CoC, DLA contracting personnel are not authorized to waive the right to appeal, or to forfeit an appeal, without the concurrence of the Director, DLA Acquisition (J7). Requests for such concurrence shall include substantially the same type of information submitted in the report notifying the Director, DLA Acquisition (J7) of the contracting officer's intention to appeal.

(S-92) All reports submitted by the contracting officer to the Director, DLA Acquisition (J7) concerning CoC appeals shall be forwarded through the chief of the contracting office (see 2.101) for all other activities.

(S-93) The requirements of subparagraphs 19.602-3(c)(90) and (91) do not apply to simplified acquisitions. Contracting offices are authorized to develop local procedures to process appeals on simplified acquisitions.

**19.602-4 Awarding the contract.**

(c)(S-90) If the activity has not heard from the cognizant SBA field office within 5 working days after referral, the activity will contact the SBA office to which the matter was referred to determine whether a CoC is being processed. The contract file shall be documented to reflect that this action was taken.

(S-91) In awarding a simplified acquisition:

(1) The contracting officer shall not agree to a longer period of time than 15 business days for the SBA reply before proceeding to award to another offeror unless the extension is approved by the chief of the contracting office.

(2) The contracting officer may proceed in accordance with FAR 19.602-4(c) when 15 calendar days have elapsed since the date of referral of the matter to SBA.

## SUBPART 19.7 – THE SMALL BUSINESS SUBCONTRACTING PROGRAM

*(Revised October 21, 2015 through PROCLTR 2015-12)*

### 19.705 Responsibilities of the contracting officer under the subcontracting assistance program.

### 19.705-4 Reviewing the subcontracting plan.

(d)(7) The services of the activity and CAO small business specialist (SBS) are available to assist in review of subcontracting plans. Requests for review of a subcontracting plan by the cognizant CAO shall be forwarded through the SBS at the contracting office to the SBS at the CAO. The buyer should provide a reasonable length of time (generally, at least 7 working days) for the CAO review. The results of a CAO review, and any recommendations which arise therefrom, shall be evaluated by the contracting officer prior to approval of the subcontracting plan. The contract file shall be documented to reflect the review and the contracting officer's final decision on the goal accepted.

## SUBPART 19.8 – CONTRACTING WITH THE SMALL BUSINESS ADMINISTRATION (THE 8(a) PROGRAM)

### 19.803 Selecting acquisitions for the 8(a) program.

(a)(4)(S-90) The contracting office shall assure that follow-on section 8(a) contract support will be provided for that period of time reflected in the SBA approved business plan. In furtherance of this, close coordination between the contracting officer and SBS is essential.

(c)(S-90) In addition to responding to SBA requests for potential requirements to support an approved business plan of a small disadvantaged firm, it is the policy of DLA to identify other requirements which are considered suitable for placement with SBA under the section 8(a) program. Contracting officers will consider the section 8(a) program as a possible method of satisfying all new requirements being processed for contract action. Special attention will be given to those commodities and services which are anticipated to be recurring requirements and for which there are a limited number of prospective small business sources.

### 19.804-90 Withdrawal of requirements.

(a) When circumstances arise indicating a need to withdraw requirements previously committed for Section 8(a) contracting, the contracting officer shall seek SBA agreement for such withdrawal through the SBS. If the SBA does not agree with such withdrawal, complete data supporting such proposed withdrawal shall be provided through the small business specialist to the Small Business Office for review and concurrence or nonconcurrence.

(b) When a requirement previously committed for Section 8(a) contracting is withdrawn and subsequently acquired by normal acquisition methods, the contracting officer shall, within 15 days after award, provide a summary of the facts to the small business specialist on each item stating the DLA estimated fair market price (FMP), the SBA final offered price, and the final contract price.

**19.807-90 Estimating fair market price.**

(a) A fair market price (FMP) is one which the Government can be expected to pay in a competitive environment, in the current open market place. It is not necessarily the lowest price resulting from a competition under ideal conditions.

(b) In determining the FMP for an acquisition other than those covered in paragraph (c) (90) of this section, the contracting officer, whether using previous buys, a market survey, pricing data, and/or cost or pricing data, would exclude any identifiable abnormally priced offers.

(1) This includes prices which, although reasonable, were found to have been abnormally low or high due to special or non-recurring circumstances, such as a one-time price reduction, premium charge, distress sale, etc. The FMP should normally be derived based on adjusting the lowest, except for repeat purchases. No other price differential or adjustment factor shall be used (e.g., for independent Government estimate inaccuracies, for differences between fully competitive awards and reservations, for differences between awards to manufacturers and to dealers, etc.).

(2) The practice of soliciting quotes from non-8(a) sources for the sole purpose of determining the FMP should be used only after the contracting officer/buyer has exhausted the use of cost or price analysis and considered commercial prices for similar products and services, available in- house cost estimates, data (including cost or pricing data) submitted by the SBA or the 8(a) contractor, and data obtained from any other Government agency. Soliciting market quotes is an acceptable means of conducting a market survey. However, market quotes provided by contractors for this purpose could be misleading, since there is no corresponding performance risk for the contractor.

(c) Establishing an FMP does not mean that the section 8(a) subcontractor will always be able to meet the most recent, lowest, and /or comparable price obtained through full and open competition or sealed bidding.

(1) When there have been recent awards for comparable quantities of the item being purchased, which resulted from “normal competitive conditions,” the most recent award shall be the basis upon which FMP is determined. A comparable quantity is not necessarily a similar quantity but must be one to which a logical price comparison can be made with the current quantity. Recent award prices of incomplete contracts or orders may be considered if they were determined reasonable under normal competitive conditions and there is no evidence of poor performance. All recent award prices are to be considered in determining if the most recent comparable price is representative of “normal competitive conditions.” If the most recent award price is not representative of “normal competitive conditions,” the

file shall be so documented and the next most recent comparable award price shall be considered as the basis for the FMP determination. The contracting officer must ensure that the differences in acquisition strategies are fully considered when developing the FMP. Factors to consider when developing the FMP include but are not limited to direct vendor delivery, required delivery schedule, minimum order quantities, maximum order quantities, surge requirements, potential ship to locations, estimated annual quantities, contract period including options, free on board point, quality/inspection requirements , and packaging.

(2) Award of a section 8(a) contract shall not be delayed pending award of a recently issued solicitation which resulted in competitively priced offers, unless there is no reasonable basis for determining FMP other than the pending competitive award price.

(3) When a solicitation for a particular item would generally result in different unit prices for different line items, it may be desirable to develop a separate FMP for each line item. However, it is not permissible to establish a range of FMPs for any single item or group of items.

(4) Averaging of previous bid or award prices is prohibited.

(5) Previous section 8(a) award prices may be used to determine the current FMP only when a suitable previous competitive price is not available; and when the previous FMP was established in accordance with FAR and DLAD guidelines.

(6) A format similar to that in paragraph (d) of this section shall be used to document consideration of all relevant factors affecting price used to adjust the previous award price or base FMP, or the reason the factors were not adjusted.

(7) Once the FMP is established, considering previous award prices and all relevant factors affecting price, it will be the highest price that DLA will pay, except when a revised FMP, established within the FAR and DLAD guidelines, is fully supported and documented by the contracting officer.

(8) Although use of previous competitive award prices is the required method of determining FMP, whenever applicable, nothing in this directive shall preclude consideration of the unique factors of an individual acquisition or the application of another method of determining FMP, provided that the file clearly documents the reasonableness of the chosen approach.

(d) Documentation of FMP.

(1) For repeat purchases, the contract file shall be documented as to how the FMP was established in the format prescribed in paragraph (e) of this ection. The prescribed format provides for identification of the current requirement and identification of previous award prices. Unless unusual circumstances exist, the most recent award price under normal competitive conditions will be the base unit price. Other previous award prices are listed for purposes of comparison. A statement documenting that the base unit price being used is reflective of normal competitive conditions shall be included. If other than the most recent competitive award price is used the file shall be documented as to why the most recent award price was not used and as to the reasonableness of the selected base unit price.

(2) The base unit price established in accordance with paragraph (c) of this section shall be adjusted for the factors of the prescribed format and any other relevant factors. Adjustments can be increases or

decreases to the base unit price. Calculation and rationale for the use of adjustment factors shall be documented. Factors not considered shall be annotated "not applicable." The adjustment factors shall be added to or subtracted from the base unit price to arrive at the FMP for the current requirement.

(3) Provide additional justification, as necessary, to determine that the established FMP is a price that DLA would expect to pay under normal competitive conditions.

(4) The buyer/contracting officer may request the assistance of the activity cost and price analyst. The price analyst shall either prepare or review and coordinate on the FMP determination. If the price analyst does not concur with the buyer's FMP determination the file shall be documented with the reasons for nonconcurrence. The FMP shall be approved by the contracting officer. If there is a disagreement between the SBA or 8(a) contractor and the contracting officer concerning the FMP determination, the SBS shall be given an opportunity to review the FMP determination and to provide comments. The disposition of any pricing or SBS comments shall be documented in the contract file.

(e) Prescribed FMP format.

Determination for repetitive procurements

1. IFB/RFP_____NSN_____ITEM_____

2. Base of FMP Quanity fob Unit Price Award date

Current requirement:
Previous procurement(s): 1)
2)
3)
Base unit price $_____

3. Adjustments (Show all calculations) + or - $

a. Quantity _____
b. EPA index (List index source, #, dates, title and values) _____
c. Transportation (List rate and source) _____
d. Delivery schedule _____
e. Packing and packaging (list rate and source) _____
f. Other (specify differing specs, terms, conditions, etc.) _____
Net adjustment (a through f above) _____

FMP for current requirement (base unit price + or – net adjustment) _____

4. Discussions _____

5. Coordination/approval:

Buyer's signature/date _____

Price analyst signature/date _____

Prepared _____ Reviewed _____

Concur _____ Nonconcur _____

Approved: Contracting Officer_____Date_____

**19.809 Preaward considerations.**
A contracting officer intending to award a contract to an 8(a) program participant shall independently determine the responsibility of the firm in accordance with the guidance contained in FAR, DFARS, and DLAD Subpart 9.1 whenever there is any question of the concern's ability to perform the contract. This may include conduct of a preaward survey, as appropriate. Negative or inconclusive responsibility determination results for an 8(a) program participant shall be referred to the SBA for certificate of competency consideration; see FAR, DFARS and DLAD Subpart 19.6. Notwithstanding this determination, the SBA remains the prime contractor on all 8(a) contracts, and continues to determine eligibility of such concerns for contract award. See DFARS 219.800.

**19.812-90 Contract administration.**

(a) The contracting officer or authorized representative shall notify the SBS prior to initiation of any adverse action against an SBA subcontractor. In cases involving initiation of default procedures, at the request of the SBS, the contracting officer shall provide the facts required for notification to DDAS.

(1) Early notification to the SBA of deficiencies in contract performance by a section 8(a) firm is particularly important in the administration of 8(a) contracts.

(2) Whenever it becomes known that the 8(a) subcontractor has encountered problems which could jeopardize contract performance, the SBS shall be notified. The contracting officer or authorized representative shall provide all reasonable assistance to the subcontractor to correct deficiencies.

(b) Requests for technical and/or management assistance which are in excess of DSC or DCMA capability and resources shall be referred through the SBS to DDAS. Through agreement between DLA HQ and SBA, technical and management assistance teams can, under certain circumstances, be made available to augment assistance provided by the contracting officer.

(c) As described in FAR 42.5, postaward orientation conferences with contractors are conducted to assure a clear understanding of the scope of the contract, the technical requirements, and the rights and obligations of the parties. The contracting officer or technical representative should initiate a request for such a conference on all first time 8(a) contractors and when the 8(a) firm has experienced problems. Assure that all matters requiring clarification or resolution are considered and contractual requirements are explained.

## SUBPART 19.14 – SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS PROCUREMENT PROGRAM

*(Revised November 7, 2013 through PROCTLR 2014-11)*

**19.1405-90 Service-disabled veteran-owned small business (SDVOSB) set-aside procedures.**

(a) See 19.508 and 19.590 for further guidance on the use of the SDVOSB set-aside in EBS Non-EP environments having the capability to apply "cascading logic."

(b) When market research indicates that only one SDVOSB exists for a given acquisition, the primary criterion for an SDVOSB set-aside (i.e., reasonable expectation of receipt of offers from two or more eligible firms) cannot be fulfilled. In this situation, application of cascading logic could actually prevent

award to the SDVOSB, because award will likely be made under the successive set-asides. If diligently performed market research fails to identify two or more SDVOSBs for an item or class of items, it may be appropriate for the contracting officer to remove those buys from automated processing (at the solicitation, as well as the evaluation phase), thus permitting application of SDVOSB sole-source authority.

(c) FAR 19.1405(c) requires that an SDVOSB set-aside shall be withdrawn if no acceptable offers are received from SDVOSB concerns and that, if the requirement remains valid, the procurement will be set aside for small business concerns as appropriate. Approval for the determination that no offers are acceptable, that the requirement remains valid, and whether the requirement will be set aside for small business concerns shall be obtained at one level above the contracting officer, and include written concurrence from the contracting activity's or office's small business office on the DD 2579 form.

**19.1406-90 Sole source awards to service-disabled veteran-owned small business (SDVOSB) concerns.**

(a) Proper reporting of the use of the SDVOSB sole-source authority in either a manual or an automated environment shall be accomplished through EBS or EProcurement. See pertinent line-by-line reporting instructions at 53.204-70(c) and (d).

# PART 22 – APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

*(Revised June 16, 2015 through PROCLTR 2015-09)*

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**22.001 Definition.**

*"DLA's Agency labor advisor,"* defined at FAR 22.1001, is DLA's Acquisition Policy and Systems Division, J71. See DOL website (www.wdol.gov) for a list of all Agency labor advisors. DLA Acquisition (J7) is responsible for all agency labor advisor matters except those involving contracts administered by DCMA;

## SUBPART 22.1 – BASIC LABOR POLICIES

*(Revised June 15, 2015 through PROCLTR 2015-09)*

**22.103-4 Approvals.**

(a) The approving official for contractor's requests for overtime is the chief of the contracting office.

## SUBPART 22.15 – PROHIBITION OF ACQUISITION OF PRODUCTS PRODUCED BY FORCED OR INDENTURED CHILD LABOR

*(Revised April 18, 2015 through PROCLTR 2014-66)*

**22.1503 Procedures for acquiring end products on the list of products requiring contractor certification as to forced or indentured child labor.**

(e) Whenever a contracting officer has reason to believe that forced or indentured child labor was used to mine, produce, or manufacture an end product or component furnished pursuant to a contract, the contracting officer shall refer the matter to the servicing DLA legal office for discussion with fraud counsel and subsequent referral to the Defense Criminal Investigative Service, if appropriate.

# PART 23 – ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

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## SUBPART 23.3 – HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA SHEETS

*(Revised October 20, 2015 through PROCLTR 2015-12)*

### 23.303 Contract clauses.

### 23.303-91 Marking dangerous goods or hazardous materials.

Use 52.223-9003, Marking Dangerous Goods or Hazardous Materials, in solicitations and contracts (including purchase orders) when dangerous goods or hazardous materials are to be shipped to a port for overseas shipment. When this clause is used, use FAR clause 52.247-52, Clearance and Documentation Requirements – Shipments to DoD Air or Water Terminal Transshipment Points.

### 23.303-92 Pesticides used in production of supplies or used in the performance of services.

Use 52.223-9004, Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), in solicitations and contracts requiring pesticide(s) that are to be delivered, used in the production of supplies, or used in the performance of services and the contractor has the option to select whatever pesticide would meet the specification use.

### 23.303-93 Permission for mercury (DLA Maritime).

Insert the clause in full text at 52.223-9007, Permission for Mercury, in DLA Maritime-Norfolk firm-fixed-price awards that require delivery of supplies containing mercury or mercury compounds.

# PART 25 – FOREIGN ACQUISITION

*(Revised October 21, 2015 through PROCLTR 2015-12)*

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## SUBPART 25.1 – BUY AMERICAN ACT – SUPPLIES

**25.103 Exceptions.**

(b)(1)(i) Prepare nonavailability determinations in a determination and findings (D&F) form.

(b)(1)(i)(C) For contracting offices where the DLA Acquisition Deputy Director is the HCA, submit waiver requests to J72.

(b)(ii) For purposes of determining the approval level, do not add option totals to basic award amounts; however, a new determination of nonavailability for the option total only must be made prior to exercising the option.

**25.104 Nonavailable articles.**

(b)(S-90) If it is determined that an article contained on the list at FAR 25.104(a) is available domestically in sufficient and reasonably available quantities of a satisfactory quality, steps should be taken to propose a revision to the FAR to remove the article from the list. (See FAR 25.104(b)). Document the file with the results of the market research and include a definitive statement concerning the item's domestic availability. (See 1.201-91 for procedures on amending the FAR or the DFARS.)

## SUBPART 25.8 – OTHER INTERNATIONAL AGREEMENTS AND COORDINATION

**25.802-71-90 End Use Certificates.**

(a) The DoD policy for End Use Certificates (EUCs) is found in DoD Directive, 2040.3, End Use Certificates. (The policy can be found at http://www.dtic.mil/whs/directives/corres/pdf/204003p.pdf.)

(b) For Military Service managed items at Depot Level Repairable (DLR) and Supply Storage and Distribution (SS&D) detachments, the EUC is processed, approved and signed by the appropriate Secretary of Military Department in accordance with DoD Directive 2040.3. Oversight and management responsibilities for the resulting EUC remain with the granting Military Service.

(c) For EUC requests from any European country, concurrently contact the DLA-E Office of Counsel, through local counsel, while preparing the EUC request. DLA-E may be able to coordinate with the U.S. Army Europe (USAREUR) on the approach for addressing the contractor's EUC request. These offices are familiar with export license issues and may be able to assist in gaining an export license for the supplier without the need for a EUC. Concurrently, proceed with the guidance provided in 25.802-71-90(d)-(g).

(d) *Category I EUCs.* The Director, DLA may authorize and sign a Category I EUC or authorize the Category I EUC and then delegate signature to the Component Acquisition Executive to sign the individual EUC. Contracting officers should provide the request to J7 for a signed Category I EUC no less than 30 days before it is needed.

(e) *Category II EUCs.* Category II EUCs are any EUCs that are not either Category I or III.

(1) The Director, DLA must determine that, notwithstanding any use of transfer limitations, the purchase of the item is in the U.S. national interest. The Director, DLA may approve the use of a Category II EUC, after the procedures in DODD 2040.3 paragraph 6.1.2 have been followed, and may authorize the Component Acquisition Executive to sign the individual EUC. Provide the package requesting approval of a Category II EUC to J7 no less than 60 days before it is needed.

(2) Category II EUCs require a minimum of 21 days advance notification to the Office of the Under Secretary of Defense (OUSD)(AT&L), which may coordinate with the U.S. Department of State. OUSD(AT&L) will notify DLA Acquisition J72 of any further action required before final authorization of the EUC. Otherwise, concurrence can be assumed after expiration of the 21-day period. After the 21-day period or receipt of concurrence by OUSD(AT&L), whichever comes first, the Director, DLA may authorize and sign the "Declaration of End Use" or authorize execution of the individual EUC and then delegate signature to the Component Acquisition Executive.

(f) *Category III EUCs.*

(1) It is mandatory that contracting offices discuss how these restrictions on possible transfer will be met in the memorandum to DLA Acquisition J72 requesting the waiver and in the Executive Summary.

(i) If required and necessary, the contracting office may prescribe mandatory labeling, training of customers, and/or certifications from requiring activities that would make a prior approval requirement highly visible to the customer.

(ii) If DLA cannot ensure that there is a process in place, OUSD may not approve the waiver and/or the Director, DLA may not authorize the EUC.

(iii) Once the waiver is approved, DLA Acquisition J72 will prepare the Category III EUC for approval by the Director, DLA, who may sign or direct the Component Acquisition Executive to sign the individual EUC.

(2) The Military Service Secretaries and the Directors of Defense Agencies are prohibited from approving EUCs in this category. Only OUSD may grant a waiver to this prohibition, authorizing the Director, DLA to issue the Category III EUC.

(3) The approved waiver from OUSD(AT&L) authorizes the agency to execute an EUC with the requesting government for the specific acquisition. The Director, DLA can approve and sign a Category III EUC for a specific acquisition or can authorize the Component Acquisition Executive to sign the individual EUC.

(4) The waiver is not a class waiver for the item. However, task and delivery orders for that specific acquisition (including multi-year or multiple year contracts) under the resulting EUC would not necessitate a further EUC. DLA contracting offices should specify whether the procurement involves a multi-year contract or task/delivery orders in the package for OSD consideration.

(g) Requests to DLA Acquisition (J7) for EUCs shall show coordination through appropriate contracting office command levels to include supply/demand planning, Office of Counsel, HCA or equivalent, and shall be signed by the Commander or Director.

(1) Requests for Category I or Category II EUC authorization or for a waiver for Category III will include:

(i) Memorandum to J7 requesting authorization of the Category I or Category II EUC or a memorandum requesting a Category III waiver from the OUSD;

(ii) Executive summary;

(iii) Draft request for Category I or II EUC authorization for Director, DLA to approve; or

(iv) Draft request for Category III waiver for Director, DLA to approve.

(2) J72 will process EUC requests or waivers and coordinate within DLA, to include J3, DG, and J71. J71 will provide copies of signed EUCs in any of the categories to the appropriate office within OUSD.

## SUBPART 25.9 – CUSTOMS AND DUTIES

**25.902 Procedures.** Use clause 52.225-9003, Customs Clearance Procedures for U.S. Subsistence in the European Union, in solicitations and contracts when procuring subsistence items originating in the U.S. being delivered to countries within the European Union.

**25.903 Exempted supplies.** The Director, DLA Energy, or designee, is authorized to execute duty-free entry certificates for the fuels-related supplies in DFARS PGI 225.903(b)(i)(A)(2).

## SUBPART 25.70 – AUTHORIZATION ACTS, APPROPRIATIONS ACTS, AND OTHER STATUTORY RESTRICTIONS ON FOREIGN PURCHASES

**25.70(90) Restriction on certain components for naval vessels.**

(a) Restriction. In accordance with 10 U.S.C. 2534(a), do not purchase the following components of naval vessels, to the extent that they are unique to marine applications, unless manufactured in the United States or Canada:

(1) Gyrocompasses;

(2) Electronic navigation chart systems;

(3) Steering controls;

(4) Pumps;

(5) Propulsion and machinery control systems; and

(6) Totally-enclosed lifeboats.

(b) Exceptions. This restriction does not apply to –

(1) Contracts or subcontracts that do not exceed the simplified acquisition threshold; or

(2) Acquisition of spare or repair parts needed to support components for naval vessels produced or manufactured outside the United States.

(c) Implementation.

(1) 10 U.S.C. 2534(h) prohibits the use of a contract clause or certification to implement this restriction.

(2) Implementation of this restriction shall be accomplished through management and oversight techniques that achieve the objective of this restriction without imposing a significant management burden on the Government or contractor.

(d) Waiver. In accordance with the provisions of DFARS 225.7008(b), the Under Secretary of Defense (Acquisition, Technology, and Logistics) has executed an annual waiver of the restrictions of 10 U.S.C 2534 for certain items manufactured in the United Kingdom, including the items listed in paragraph (a) above. This waiver applies to –

(1) Procurements under solicitations issued on or after August 4, 1998; and

(2) Subcontracts and options under contracts entered into prior to August, 4, 1998, under the conditions described in DFARS 225.7008(a)(1)(iv).

(e) Proposed waivers of this restriction will be processed using the format, content, and procedures prescribed for domestic nonavailability determinations under the Berry Amendment, modified to reflect that the waiver relates to the restriction in 10 U.S.C. 2534(d). DLA Acquisition (J7) will process waiver requests to the Under Secretary of Defense for Acquisition, Technology and Logistics for approval. (Note: The delegations or waiver authority in DFARS 225.7008 only apply to items specifically covered in DFARS 225.70, and are therefore not applicable to the items included in 25.70(90)(a) above).

**25.7002 Restriction on food, clothing, fabrics, and hand or measuring tools.**

**25.7002-2 Exceptions.**

(c) DFARS 225.7002-2(c) contains an exception to the Berry Amendment domestic source restriction for those articles listed at FAR 25.104(a). Before soliciting offers for items covered by the restriction at DFARS 225.7002 that fall under the exception, the contracting office shall verify, through market research, that the article should remain on the list and thus, still be exempt from the Berry Amendment restriction for that procurement. The contract file is to be documented accordingly. (See Part 10 and 25.104(b)(S-90)).

**25.7002-2-90 Domestic nonavailability validation.**

(a) All domestic non-availability determination requests made pursuant to 10 U.S.C. 2533a, also known as the Berry Amendment, shall be forwarded to the DLA SPE for submission to the Director, DLA, for approval.

(b) Procedural guidance.

(1) The Director, DLA is authorized to make a domestic nonavilability determination (DNAD) that will allow purchase of a covered. Specialty metals are subject to a separate domestic sourcing restriction contained in 10 U.S.C. 2533b, and nonavailability determinations for specialty metals require USD(AT&L) approval.

(2) When a contracting office has a requirement for an item covered by the Berry Amendment for which no exception exists, it cannot be bought unless a DNAD is approved. Formal DNAD requests must be submitted to DLA Acquisition J72. Contracting offices must first route DNADs through local coordination and review channels. J7 will review the DNAD request, obtain appropriate coordination, and, if appropriate, forward it to the Director, DLA for approval. The contracting office should submit the entire DNAD package, including the completed Service certifications (see DFARS 225.7002-2(b)(2)(ii)), at least two months before it is needed. Also, if the domestic non-availability is anticipated to be permanent and no alternatives are possible, the contracting office should separately prepare a corresponding FAR case for a permanent waiver request to add the item to FAR 25.104, Nonavailable Articles, and include reference to that case in the determination and finding document, and the report and recommendation of the contracting office. As described in more detail below, a DNAD package consists of the following documents: report and recommendation of the contracting office Commander or Director; letters to the requiring activities with alternatives; executive summary; determination and findings;; written, certified responses from the requiring activities; written, certified responses from the requiring activities; and warstopper analysis.

(3) *Report and recommendation of the contracting office Commander or Director*. This document should be signed by the Commander or Director of the contracting office (or individual acting in that capacity). The report and recommendation will be prefaced by an executive summary of the facts and recommendation. The report shall (in reasonable detail):

(i) Identify the articles or items (or class of items, if applicable) being procured and their domestic availability status.

(ii) Explain whether any Berry Amendment exceptions are applicable and, if they are, explain why they are not adequate to support the requirement.

(iii) Identify the total quantity (including readiness quantities) to be procured and length of time the waiver is needed (e.g., period of contract performance).

(iv) Specify if the DNAD is to be retroactive and, if it is, provide the factual basis and the timeframe for retroactive application.

(v) Address the DEPSECDEF requirement in DFARS 225.7002-2(b)(2) that the contracting office analyze alternatives not requiring a Berry Amendment waiver, and the customers' certified written responses that domestic alternatives are not a satisfactory substitute for the requirement.

(vi) Clearly specify any limiting criteria for use of the requested DNAD, such as restricted to a particular contracting program, weapon system, time period, or other condition. DNAD determinations should generally not be limited to a particular garment or item so as to preclude use in a similar garment or item, if the market research and nature of the requirement demonstrate that the nonavailable item or material can reasonably be determined nonavailable for similar garments or items.

(vii) Describe the supply and procurement situation; the contractor's commercial practices; any special or unusual circumstances; results of market research conducted and constraints, if any; the reasonable conclusions drawn; and exchanges between Engineering Support Activities (ESAs) and customers concerning the possible existence of alternative items that do not require a Berry Amendment waiver. Attach copies of market research related documents and any other records, and letters from contractors that explain why they are unable to either obtain the product domestically or identify the source of their product or components (more relevant for prime vendor procurements), as appropriate.

(viii) Discuss potential political ramifications, Congressional involvement, morale issues, small business concerns, mission failure, troop support issues, etc., as appropriate. The discussion must include a procurement impact statement that describes the outcome if the DNAD is not approved.

(ix) Include a finding that the analysis of alternatives and customer's certification that no alternatives are satisfactory is reasonable and acceptable based on the contracting office's knowledge of the item and market research.

(x) The contracting office's letter to the requiring activity (and all other branches of the Military Services that use the item) that (1) advises that the required item requires a waiver to the Berry Amendment; and (2) describes alternatives that do not require a waiver under the Berry Amendment.

(xi) The requiring activity's written response (and written responses from other branches of the Military Services that use that item, as applicable), certifying that the proposed alternatives and any other known alternatives not requiring a Berry Amendment waiver are unacceptable and explaining why they are unacceptable. The responses must be signed by an individual with the authority to approve use of an alternate item for the Military Service(s).

(4) *Warstopper analysis*. Prior to submitting the DNAD request, ensure an analysis was conducted on the item to determine if the item is a candidate for a Warstopper investment that would result in obtaining domestic availability. Include with the package, even if it did not receive further approval from Acquisition J74 to proceed as a Warstopper project, a clear statement that the item has or does not have wartime demand or Military Service identified war reserve material requirements and a statement by the Chief of the Industrial Base group that the item has or does not have a reasonable opportunity to implement an industrial base measure that meets the requirements found in the Industrial Capability Program – Warstopper Program Management issuance, program description and approval document. The requestor of the DNAD shall also conduct follow-on discussions with J74 concerning the feasibility of a warstopper project that could serve to limit the duration of the DNAD's use.

(5) The contracting office will include coordination by the HCA or equivalent and Chief Counsel with the package. Upon receipt of the Commander's report and recommendation, DLA Acquisition J72 will assemble the DNAD package for DLA Senior Procurement Executive's (SPE) submission to the Director, DLA. DLA Acquisition J72 will staff the DNAD package for coordination with DLA Acquisition Policy Division (J71), Acquisition Programs and Industrial Capabilities Division (J74), DLA Office of Small Business Programs (DB), and DLA Office of General Counsel (DLA-DG), and process for SPE signature to transmit it to the Director, DLA.

(6) Once the SPE signs the DNAD package, it will be forwarded to the Director, DLA. The Director, DLA will approve or disapprove the DNAD request and advise the DLA SPE of the decision.

The SPE will then advise the contracting office of the decision. J71 will provide a copy of each approved DNAD to USD(AT&L) within 10 days of receiving the determination.

(7) Each contracting office that has been granted a domestic non-availability determination (DNAD) is required to annually report to DLA Acquisition J72 no later than December 31 of each year: (1) results of market research to find domestic sources that would preclude the continuing need for the DNAD; (2) results of requirement reviews with requiring activities in order to find acceptable substitute items or materials that would not require a DNAD; and (3) results of any additional requirements specified in the DNAD approval.

(c) Minimizing Berry Amendment or specialty metals violations.

(1) DLA contractors are becoming aware of the increased attention and visibility that the Berry Amendment domestic source restrictions are receiving, and of the restrictions imposed by this statute, and the DFARS implementing guidance. This heightened awareness has resulted in a number of contractors notifying DLA of their violation of this statute and requesting DLA grant a "waiver."

(2) Identification of potential violations after contract award.

(i) Once aware of a violation, DLA is presented with the challenge of not accepting the non-conforming end item(s) pending waiver consideration in order to ensure no Anti-Deficiency Act (ADA) violation occurs. This not only can result in delayed delivery to the customer, it also may place the contractor in an untenable financial position.

(ii) To minimize the impact, the affected contracting office must quickly analyze the market to verify that no domestic source is available and prepare a DNAD. In this situation, contracting officers must ensure that any DNAD requested is for the minimum time frame needed (but not exceeding the maximum reasonable time period needed) for a contractor or industry to become compliant, if it found that the contractor was unaware of the requirement, but once made aware, can comply with a domestic source within a suitable start-up period.

(3) The following preaward steps should serve to minimize potential Berry Amendment or specialty metals violations after contract award. While the potential use of the suggestions below may depend on the size and complexity of the procurement, the suggestions provide a guide for use.

(i) *Pre-proposal conference.* If a Berry Amendment or specialty metal covered item is to be procured and a pre-proposal conference held, the domestic source restrictions should be highlighted to the attendees. This highlights the importance to the attendees, and allows for the correction of misunderstandings (e.g., different from the Buy American Act).

(ii) *Full text clause inclusion.* The Berry Amendment is implemented by DFARS clause 252.225-7012 (252.225-7008/7009/7010 for specialty metals are separate restrictions from Berry) and 252.225-7015 for hand or measuring tools. Many contracting offices incorporate these clauses by reference which requires the contractor to actively research the content of the clause. While it is the responsibility of the contractor to adequately understand all solicitation requirements, including the contents of 252.225-7008/7009/7010/7012/7015, the statutory background of the clause, the heightened attention compliance with the clause is receiving, and the significant difficulties non-compliance presents makes the clause an ideal candidate for full text inclusion in the solicitation.

(iii) *Plain language.* The development and inclusion in solicitations of "plain language" that spells out the Berry Amendment and other domestic source restrictions is a consideration. However, such language must be used with caution and must have DLA Acquisition J7approval. Subtle changes in the wording of the domestic source restrictions could be legally and contractually misinterpreted by the contractor, causing conflict with the exact requirements of the clauses at DFARS 252.225-7012/7014/7015. Any such "plain language" wording would need to have significant legal review to confirm that nothing in the developed wording modifies the requirements of the clauses. Additionally, the "plain language" should only address the part of the Berry Amendment or domestic sourcing restriction that applies to the commodity being solicited.

(iv) *Mandatory discussion Item.* When negotiated procurements are conducted for Berry Amendment covered items, domestic source restrictions as identified in DFARS 252.225-7012/7014/7015 should be a mandatory discussion item with the contractor. Contractors should be asked to confirm their understanding of the requirement in the documentation submitted with their final proposal revisions or other submitted documentation.

(v) *Preaward surveys.* If a preaward survey is required in accordance with FAR 9.106, the contracting office should consider requesting the survey to also confirm the prospective contractor's ability to trace the origin of materials incorporated into the end product being acquired.

(vi) *Evaluation factor.* The contracting office can consider whether use of an evaluation factor that determines the contractor's ability to verify the source of materials is appropriate. Additionally, such a factor should be used judiciously, considering the complexity of the manufacturing process and size of the procurement so as not to unduly burden less "at risk" procurements.

(vii) *Additional considerations.* The development or use of a formal contractor certification verifying compliance with the requirements of the Berry Amendment is not authorized (see FAR 1.107). If, however, there is any reason to doubt an offeror's compliance with Berry Amendment requirements during the source selection process, the contracting officer must take steps to verify the offeror's ability and willingness to comply, including making inquiry to the offeror and following up to ensure that offeror responses are adequate to support compliance.

(d) Post award actions relative to the domestic source restrictions of the Berry Amendment or specialty metals restriction fall into two general categories: (1) actions that may be taken to ensure continued contractor compliance during contract performance; and (2) action that should be taken once a potential violation is detected. Although it is clearly the performing contractor's responsibility to ensure full compliance with all contract requirements, including the domestic sourcing restrictions specified in DFARS 252.225-7012/7014/7015, DLA can take reasonable steps, where appropriate, to validate the contractor's continuing compliance. Such actions may reduce the potential for violations during performance. Violations detected during performance could result in Government non-acceptance of materials, delaying support to the warfighter, and non-payment to the contractor for the non-conforming items.

(e) Potential actions to ensure continued contractor compliance include:

(1) Domestic sourcing restrictions, especially Berry Amendment and specialty metal compliance should be a discussion item at post award conferences.

(2) The Defense Contract Management Agency (DMCA) is delegated responsibility to review, approve or disapprove, and maintain surveillance of the contractor's purchasing system per FAR 42.302(a)(50). The contracting offices should consider requesting additional on-going DCMA emphasis of the contractor purchasing system's ability to implement domestic source restrictions, and continuing verification of such through random records audits, etc.

(3) Prime vendor (PV) contracts present a unique challenge due to the multitude of parts and supplies that are frequently involved. The opportunity for domestic sourcing violations, particularly Berry Amendment violations, is even greater because of the commerciality of the products provided under these contracts. Contracting offices should consider developing contract provisions that require the PV contractor to periodically assess their suppliers' compliance with Berry Amendment and other applicable domestic source restrictions. The nature and extent of the provisions would depend upon the particulars (i.e., number of items under contract, length of period of performance, extent that supplies to be provided are subject to Berry Amendment restrictions, etc.). Potential alternatives include periodic (e.g., quarterly) review of a certain percentage of total items under contract. The review could be as straightforward as the PV contractor sending the suppliers a standardized sheet explaining the restrictions of the Berry Amendment and other domestic sourcing restrictions and requiring the supplier to notify the prime contractor of any potential violation. The supplier could also be required to acknowledge receipt of the document by signing and returning it to the prime.

(f) Actions taken after contractor notification of a potential Berry Amendment or specialty metals violation:

(1) *Verification.* Ensure the item in question is subject to the restrictions of the Berry Amendment or other domestic sourcing restriction. Direct the contractor to positively determine the origin of the item in question.

(2) *Suspend Government acceptance.* The Government, in accordance with FAR 46.407, should not accept items that have non-domestic content in violation of the Berry Amendment or specialty metals restriction. Continued Government acceptance without the required DNAD could create an ADA violation under the Berry Amendment. The contracting office should consider the issuance of a stop work order pending resolution of the violation. Allowing the contractor to continue performance after notification of the violation could subject the Government to additional claimed contract costs and further exacerbate the violation.

(3) *Suspend payment.* The contracting office should ensure the Defense Finance and Accounting Service (DFAS) does not issue payment for non-conforming products nor make any new unauthorized progress payments pending resolution.

(4) *Market research.* Determine whether the item in question has a domestic source available.

(5) *Substitute Product.* For those items where it is subsequently determined a domestic source is not available, contracting offices should coordinate the potential use of an alternate item with the technical specification office of primary responsibility.

## SUBPART 25.73 – ACQUISITIONS FOR FOREIGN MILITARY SALES

*(Revised October 21, 2015 through PROCLTR 2015-12)*

**25.7301 General.**

(S-90) Definitions.

"*Implementing Agency"* means the U.S. Military Service that is managing the FMS case. It is identified by the letter used in the first position of the requisition document number. An FMS document number will look something like these: BATA54-3028-A001 or DCNA5V-3065-0002 or PTWB54-3014-0099. The implementing agencies are B-Army: the U.S. Army Security Assistance Center (USASAC) at New Cumberland, PA; D-Air Force: Air Force Security Assistance Center Directorate (AFSACD) at Wright Patterson AFB, OH; P-Navy/K-Marine Corps: NAVSUP Weapon Systems Support (WSS) at Philadelphia, PA.

*"Purchaser"* means the FMS customer.

(c)(iv)(A) Shipping terms for any contract of foreign military sales (FMS) material shall be as free on board (f.o.b.) origin. (Refer to DFARS PGI 225.7301(c)(iv).) These shipping terms ensure that cargo is recognized as U.S. Government property when shipped. With appropriate consideration obtained, existing contracts that contain f.o.b. destination terms for FMS shipments may be modified to f.o.b. origin as needed to facilitate an FMS shipment.

(B) An exception granted to DLA by the Defense Security Cooperation Agency (DSCA) allows medical equipment and medical systems that the contracting officer has determined require manufacturer installation to be shipped as f.o.b. destination. The Principal Director, Strategy, Defense Security Cooperation Agency, granted an exception to DLA for these items by memorandum, Subject: Response to Request for Standard Deviation from the Free on Board (f.o.b.) Requirement, dated April 13, 2010. J7 has granted a class deviation, FARS DEV 2013-08, to implement the DSCA exception. This exception is the only current exception in DLA to the f.o.b. origin policy for FMS shipments.

(c)(vi) All FMS contracts must include the MILSTRIP document number, supplemental address, and national stock number (NSN) for each contract line item number (CLIN).

(c)(vii)(A) In order to reduce misdirected shipments of FMS materiel, the contracting officer shall ensure that shipping addresses are not in FMS contracts. Instead, place a notice in the contract requiring the contractor to contact the applicable administering agency for shipping instructions, either by contacting the Supply Chain Transportation Office Helpdesk at DLA Distribution for DLA-administered contracts or DCMA Transportation for DCMA-administered contracts. Contracts will not contain both DLA and DCMA as a Point of Contact for shipping instructions.

(B) Additional contract provisions may be appropriate to satisfy unique requirements for requisitions that contain a "Z" or "Y" and/or verification from the product specialist. However, do not list the freight forwarder or embassy addresses in the contract. Unique shipment requirements will be contained in the Transportation Plan as outlined in the Department of Defense (DOD) Manual 5100.38-M, Security Assistance Management Manual, Chapter C7.13.

(C) DLA Acquisition personnel are advised that under the terms of the Letter of Offer and Acceptance (LOA) negotiated with foreign governments, title transfers to the foreign government at the contractor's loading dock, except for the exception in (c)(iv)(B).

(D) Inspection and acceptance procedures for FMS.

(*1*) DLA Acquisition personnel are advised that since all FMS orders will be shipped f.o.b. origin, except for those in (c)(iv)(B), acceptance and inspection shall also be performed at origin. Inspection and acceptance is at destination for (c)(iv)(B). The contracting officer may authorize a Certificate of Conformance (CoC) from the supplier for FMS orders as being in the best interest of the Government. (See 46.390 and 46.392 regarding certificates of conformance.) Certificates of Conformance, when authorized by the contracting officer, shall be required of suppliers for each FMS line item being shipped. The CoC is included with the inspection receiving report and accompanies the shipment.

*(2)* See also 46.601-91 and the prescribed clause, 52.246-9020, Distribution of Material Inspection and Receiving Report, to be included as applicable in the contract.

*(i)* The clause requires the contractor to include hard copies of the Department of Defense (DD) Form 250, Wide Area Work Flow Receipt and Acceptance (WAWF-RA) Receiving Report in the exterior and interior shipping documentation for each package being shipped.

*(ii)* Alert suppliers of this requirement, as FMS orders without the hard copy shipping documentation are frequently delayed or detained.

*(iii)* For suppliers who qualify for DCMA's Alternate Release Procedures (ARP) or other risk-based surveillance procedures, acceptance will be accomplished by the electronic signature of the DCMA quality assurance representative on the electronic DD 250 form found in Wide Area Work Flow.

*(iv)* For suppliers who do not qualify for ARP or other risk-based surveillance procedures, DCMA will perform inspection/acceptance manually, if needed.

(E) Acquisitions procured offshore (procurements awarded to outside contiguous United States (OCONUS) suppliers).

(*1*) DLA acquisition personnel, in accordance with the Security Assistance Management Manual, C.3.3.4.3 and C.7.19, must notify the implementing agency of any material procured offshore within three weeks after source identification. The implementing agency (see definition), which can be identified by the letter used in the first position of the requisition document number, is the U.S. Military Service that is managing the FMS case. The FMS cell in any of the contracting offices can provide contact information for the implementing agencies. Points of contact can also be found in the Defense Transportation Regulation, Part II, Cargo Movement, Appendix E, Table E-1: http://www.transcom.mil/dtr/part-ii/dtr_part_ii_app_e.pdf. If the LOA permits, the purchaser may, for logistics reasons, request that the procurement be made from a contiguous United States (CONUS) source; the implementing agency will notify DLA of the purchaser's decision.

(*2*) Notice of Availability (NOA). If the procurement is made from an offshore vendor, the contract administrator must send a Notice of Availability, DD 1348-5, to the appropriate notice of availability address listed in the Military Assistance Program Address Directory (MAPAD). (See https://www.transactionservices.dla.mil/daashome/mapad.asp.) Based on the Notice of Availability, the purchaser or its freight forwarder may direct movement of the materiel to an offshore facility in the

same region as the materiel's origin or to the freight forwarder's facility in the CONUS. The purchaser is responsible for the cost of the movement to the CONUS freight forwarder, all export and/or import licenses, and customs clearance requirements imposed by the materiel's country of origin and the United States Government.

## SUBPART 25.74 – DEFENSE CONTRACTORS OUTSIDE THE UNITED STATES

### 25.7401 Contracts requiring performance or delivery in a foreign country.

### 25.7401-90 Policy.

(a) When contracting for requirements for delivery to or performance in an area outside the United States, contracting officers shall comply with all current requirements in DFARS and DFARS PGI Subpart 225.74.

(b) A TBC request should be prepared for modifications, including option exercises. Significant administrative or no cost modifications also require a TBC request, for actions including, but not limited to, adding or reducing people, allowing or changing the number of armed personnel, changing delivery dates, and adding or changing products or services in theater.

### 25.7402 Contractor personnel authorized to accompany U.S. armed forces deployed outside the United States.

### 25.7402-3 Government support.

(e) See DFARS 225.7402-3 and DFARS PGI 225.7402-3(e) and 225.7402-5 for current requirements for the Synchronized Predeployment and Operational Tracker (SPOT).

## SUBPART 25.75 – BALANCE OF PAYMENTS PROGRAM

### 25.7501 Policy.

(c) The public interest determination shall be made by the Director, DLA Acquisition (J7). Requesting contracting offices shall submit their request in the form of a proposed D&F to DLA Acquisition J72. Include the rationale for the determination as well as all relevant facts.

## SUBPART 25.77 – ACQUISITIONS IN SUPPORT OF OPERATIONS IN IRAQ OR AFGHANISTAN

### 25.7702-90 Procurement from Expanded Northern Distribution Network Countries.

(a) General. This section provides DLA policy concerning procurement of supplies and services from certain Northern Distribution Network (NDN) countries ("expanded NDN countries") that are not included in the special acquisition authorities authorized by Section 841 of the National Defense Authorization Act, 2013 (P.L. 112-239). These expanded NDN countries include Estonia, Latvia, and Lithuania, as well as other non-section 841 countries that may be added to the NDN.

(b) Procurement policies. Contracting officers responsible for requirements supporting operations in Afghanistan, including requirements indirectly supporting operations, such as transportation, fuel, and

other items or services for use in the CENTCOM AOR outside of Afghanistan, shall:

(1) Include an evaluation factor relating to use of expanded NDN country sources in solicitations for such requirements; the contracting officer may waive use of the evaluation factor when market research substantiates that the requirement being solicited is not available from expanded NDN country sources; and

(2) When practicable, request existing contractors to use expanded NDN country sources in providing supplies or services and, if appropriate, require existing contractors to use expanded NDN country sources in providing supplies or services. It is appropriate to require use of expanded NDN country sources if the limitations and guidance in are satisfied and the contractor will agree to use these sources without change to the contract price, or the negotiated change to the contract price can be determined fair and reasonable.

(c) Limitations and guidance.

(1) Afghan, Central Asian States, Pakistan, and South Caucasus sources subject to Section 841, as implemented in DFARS Subpart 225.77 and OSD Deviation 2013-O0007, have priority over expanded NDN country sources.

(2) Prices of expanded NDN country products and services must be determined fair and reasonable, including when procured through existing DLA contractors. Contracting officers are authorized to consider the benefits accruing to the U.S. Government from using expanded NDN country sources, including goodwill and potentially lower transportation costs in these countries, in making the fair and reasonable price determination. Contracting officers are also authorized to consider the overall cost to the Government associated with procuring the supplies and services from other sources, such as transportation costs, whether or not included in the contract price. Contracting officers are authorized to waive contract requirements for competitive subcontract-level sourcing if necessary to allow the prime contractor to source from expanded NDN country sources.

(3) Estonia, Latvia, and Lithuania are designated countries for purposes of Trade Agreements Act compliance. If additional countries are subsequently added to the expanded NDN countries, contracting officers will need to determine their Trade Agreements Act status when the Trade Agreements Act is applicable to the requirement.

**25.7703 Enhanced authority to acquire products or services from Afghanistan.**

**25.7703-2** Determination requirements.

(b)(2)(ii)(A) Requests for CAE approval shall be submitted to the DLA Acquisition Operations Division at least 10 working days prior to the projected date for issuing the solicitation. The DLA Competition Advocate shall also review the determination. The submission shall contain:

*(1)* Memorandum or staff summary sheet from the HCA (or CCO for contracting offices for contracting offices for which the DLA Acquisition Deputy Director is the HCA) requesting approval and reflecting local coordination, including by the Office of Counsel and competition advocate.

*(2)* Draft determination and finding, following prescribed format in mandatory DFARS PGI 225.7703-2(c)iii). See PGI 225.7703-4, Reporting requirement.

## SUBPART 25.78 – ACQUISITIONS IN SUPPORT OF GEOGRAPHIC COMBATANT COMMAND'S THEATER SECURITY COOPERATION EFFORTS

### 25.7801-90 Procurement and contracting support of theater security cooperation efforts.

(a) General. This section provides internal DLA mandatory policy and guidance to all DLA contracting officers who may award a contract, purchase order, or blanket purchase agreement with performance requirements in the Central Command (CENTCOM) theater of operations to a non-U.S. company. The purpose is to ensure that DLA contracts to be performed in the CENTCOM Theater of Operations comply with CENTCOM and other DoD policy

(b) Applicability. All DLA contracting officers who award contracts, purchase orders, or blanket purchase agreements with performance requirements in the CENTCOM Theater of Operations to a non-U.S. company, or to a contractor that may use a non-U.S. company as a subcontractor, shall be subject to the requirements and procedures of this section.

(c) Vendor registration and vetting. Reference is made to the most recent version of the CENTCOM Joint Theater Support Contracting Command (C-JTSCC) acquisition instruction (AI) on Vendor Vetting (Iraq and Afghanistan) (unclassified).

(1) The contracting officer shall ensure that all solicitations and resulting contracts with performance requirements in the CENTCOM Theater of Operations shall include written notice that all non-U.S. offerors, and all proposed non-U.S. subcontractors, must be registered online at the Joint Contingency Contracting System (JCCS) website in order to be eligible for award.

(i) Contracting officers issuing a solicitation for contracts with performance requirements in the CENTCOM theater of operations must register for an account in JCCS and must complete system training requirements prior to release of the solicitation. Instructions for account registration and training can be found online at http://www.jccs.gov.

(ii) Prior to the award of any contract with a performance requirement in the CENTCOM theater of operations to a non-U.S .company, the contracting officer shall use the information obtained from JCCS to assist in conducting a responsibility determination of the company in accordance with FAR Part 9.

(A) In accordance with FAR 9.104-4, the contracting officer may directly determine a prospective subcontractor's responsibility. DLA contracting officers shall use the information obtained from JCCS to assist in conducting a responsibility determination for all non-U.S. subcontractors being proposed by prime contractors in responses to solicitations with performance requirements in the CENTCOM theater of operations.

(B) Information from JCCS shall be used to assist the contracting officer in determining whether a contractor meets the general standards outlined for responsibility found in FAR 9.104-1, and shall not be used to establish undisclosed evaluation award criteria.

(2) The contracting officer should proceed to award the contract when he/she is able to make a determination that a prospective contractor is presently responsible and information received from JCCS supports such a determination (i.e., C2X approved). Information received from JCCS to support the award determination shall be included in the official contract file with the contracting officer's determination of responsibility.

(3) The contracting officer shall withhold award of a contract to a prospective contractor and coordinate with DLA Acquisition J72 when information from JCCS does not support a finding that a prospective contractor is presently responsible or when a prospective contractor, or its subcontractor, has not registered in JCCS (i.e., not sent to C2X, C2X rejected, or sent to C2X). When communicating on this matter, extreme care shall be taken not to discuss specific details over non-secure means.

(4) If the contracting officer determines the need to pursue additional vetting, then the following steps will be taken:

(i) Request for expedited vetting:

(A) After ensuring all required vendor data has been entered into JCCS, the contracting officer will immediately alert their assigned DLA Acquisition J72 analyst and DLA DI (NiPR email: diacounterintelligence@dla.mil) before forwarding requests for expedited vetting. The assigned DLA Acquisition J72 analyst, after consulting with DLA HQ DI, will instruct the contracting officer on how to submit the request (specific email addresses) and recommend an appropriate security classification in accordance with Department of Defense Instruction (DODI) 5200.01.

(B) The request includes either initially urgent requests or normal requests that become urgent. A request is considered urgent when the customer informs the contracting officer in writing that a delay will cause severe operational impacts outweighing the risk of awarding to a potential rejected contractor.

(C) Once the request is received, the DLA Acquisition J72 analyst and DLA DI representative will consult with the Senior Contracting Office – Afghanistan (SCO-A) vetting representative to ascertain the criticality of the requirement.

(*1*) If all concur, the DLA Acquisition J72 analyst will forward the request to the Director, DLA Acquisition (J7) for coordination before officially submitting to the SCO-A vetting representative.

(*2*) If not, then the DLA Acquisition J72 analyst and DLA DI representative will contact the contracting officer to discuss and determine whether additional information is needed and/or the request cannot be forwarded to SCO-A at the present time.

(D) Request for re-vetting or re-assessment:

*(1)* In the event the apparently successful offeror or contracting officers become aware of any contractors or subcontractors on existing contracts that have been vetted and are given "rejected" eligibility, the contracting officer will immediately contact their assigned DLA Acquisition J72 analyst. Being careful not to disclose sensitive or classified information, the contracting officer will convey the facts he/she would like to discuss (e.g., "a C2X rejected vendor associated with [provide solicitation

number or name of acquisition]"). The DLA Acquisition J72 analyst will set-up and schedule a secure means to communicate with the contracting officer and gather additional information.

*(2)* The assigned DLA Acquisition J72 analyst will contact DLA DI and the SCO-A vetting representative to confirm the apparently successful offeror is rejected. If time permits, the DLA Acquisition J72 analyst or DI may request U.S. CENTCOM re-assess the rejected vendor. Re-assessments normally take at least 90 days to complete.

*(3)* Once the rejection is confirmed, the assigned DLA Acquisition J72 analyst will coordinate with the contracting officer, DLA DI, General Counsel, and other concerned offices as required, to schedule a secure conference to discuss the matter.

*(4)* The contracting officer will file the request(s) in the official contract file.

*(5)* The contracting officer will have the following information ready to discuss as a minimum:

*(i)* Executive overview of the program and acquisition;

*(ii)* Brief history of the competition; and

*(iii)* The desired outcome, for example, either pursuing an exception to policy or awarding to the next apparently successful offeror with a C2X approved rating, along with justification supporting the position.

*(6)* The contracting officer will carry out the action decided at the meeting with the assistance, as needed, of DLA Acquisition J72 analysts and DLA DI, and document the file accordingly, to include documentation of requests.

(5) Applicable clauses.

(i) The following clauses are to be incorporated into solicitations and contracts with an estimated value of more than $100,000 that are being, or will be, performed in the U.S. Central Command Theater of Operations. This requirement applies to all such contracts that will be awarded on or before December 31, 2014.

(A) DFARS 252.225-7993, Prohibition on Contracting with the Enemy in the United States Central Command Theater of Operations (DEVIATION 2012-O0005) (JAN 2012).

(B) DFARS 252.225-7994, Additional Access to Contractor and Subcontractor Records in the United States Central Command Theater of Operations (DEVIATION 2012-O0005) (JAN 2012).

(6) Reporting requirements.

(i) Sections 841(e) and 842(b) of the fiscal year (FY) 2012 National Defense Authorization Act (NDAA) require the Secretary of Defense to submit a report of the use of these authorities each year, no later than March 1, in calendar years 2013, 2014, and 2015. Department of Defense (DoD) components shall submit their information to Defense Procurement and Acquisition Policy (DPAP) for a departmental report.

(A) DLA Acquisition J71 will consolidate the reporting information for submission by J7 to DPAP.

(B) Each contracting office shall submit the following information to DLA Acquisition J71 by January 15, in calendar years 2013, 2014, and 2015. Once all responses are received, J7 will submit a consolidated enterprise response not later than February 1 in calendar years 2013, 2014, and 2015.

(ii) Reporting period and due dates: Reports are to be submitted to DPAP covering each of the periods:

(A) January 1, 2012 – December 31, 2012 – due to DPAP not later than January 31, 2013.

(B) January 1, 2013 – December 31, 2013 – due to DPAP not later than January 31, 2014.

(C) January 1, 2014 – December 31, 2014 – due to DPAP not later than January 31, 2015.

(iii) The reports will contain the following information:

(A) Section 841: The number of instances in which this authority was exercised to restrict, terminate, or void contracts, grants and cooperative agreements, and the basis for the actions taken for each instance.

(B) Section 842: The number of instances in which this authority was exercised to examine records. The basis for the action taken for each instance and a summary of the results of any examination of records so undertaken.

(iv) Reporting format: Reports are to be submitted to DLA Acquisition J71 as a Microsoft Word document and contain the following:

(A) The reporting period.

(B) Instances in which the authority was exercised during reporting period with the following information:

*(1)* Contract number and value of each instance;

*(2)* Description of action taken for each instance; and

*(3)* Results of action taken for each instance.

(v) DLA Acquisition J71 will consolidate the information into a single report and add the official cover letter to be signed by the Director, DLA Acquisition.

# PART 27 – PATENTS, DATA, AND COPYRIGHTS

*(Revised October 21, 2015 through PROCLTR 2015-12)*

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**SUBPART 27.6 – FOREIGN LICENSE AND TECHNICAL ASSISTANCE AGREEMENTS**
27.675-91 Review of agreements.

**27.000 Scope of part.**

**27.000-90 Authority.** DLA General Counsel is authorized to act for the Director, DLA, on all patent, copyright, rights in data, and trademark matters arising in the DLA. Any question on such matters shall be referred to the DLA General Counsel.

**27.000-91 Supply of patented components as Government-furnished property (GFP).** When patented or proprietary components are required in end items purchased by DLA activities, particularly military type items, consideration may be given to furnishing such components as GFP.

## SUBPART 27.2 – PATENTS

**27.201 Patent and copyright infringement liability.**

**27.201-2 Contract Clauses.**
(e) Specific patents may be excluded in accordance with FAR 27.201-2(e) only with the prior approval of DLA General Counsel.

**27.202 Royalties.**

**27.202-3 Adjustment of royalties.** The office having cognizance of patent matters is the contracting office's Office of Counsel in conjunction with the DLA General Counsel.

## SUBPART 27.3 – PATENT RIGHTS UNDER GOVERNMENT CONTRACTS

**27.302 Policy.**

**27.302-90 Processing of infringement claims.** Any direct or indirect charge or threat of patent, trademark, or copyright infringement received by any contracting office, shall be referred to counsel for the activity who will notify and coordinate all actions on such cases with DLA General Counsel.

## SUBPART 27.4 – RIGHTS IN DATA AND COPYRIGHTS

**27.402-90 Policy.**

(a) Specific manufacturers have allowed the Government to use their technical data for the competitive procurement of replenishment spare parts. The Government and manufacturers have entered into agreements which allow contracting activities to provide proprietary technical data to potential bidders/offerors after having received a guarantee from the bidders/offerors that such data will be returned or destroyed, as required by the individual license agreements.

(b) Insert the clause 52.227-9008, Restriction on Use of FN Herstal Technical Data, in all solicitations and awards when FN Herstal technical data will be used. Use with DFARS 252.227-7025.

(c) Insert the clause 52.227-9005, Restrictions on Use of Boeing Rights Guard Technical Data, in all solicitations and awards when Boeing technical data will be used. This clause shall not be used for acquisitions conducted using FAR Part 12. Use with DFARS 252.227-7013 (Rights in Technical Data) and DFARS 252.227-7025.

(d) Insert the clause 52.227-9007, Restrictions on Use of OTO Melara-Limited Rights Technical Data, in all solicitations and awards when OTO Melara technical data will be used. Use with DFARS 252.227-7025.

(e) Insert the clause 52.227-9006, Use of Colt Industries Restricted Technical Data, in all solicitations and awards when Colt Industries technical data will be used. Use with DFARS 252.227-7025.

**27.409-92 Solicitation provisions and contract clauses – military equipment or munitions list items.** Insert the clause 52.227-9004, Demilitarization – Small Arm Weapons and Parts and Accessories (Category I – Munitions List Items), in solicitations, negotiated contracts, and purchase orders pertaining to significant military equipment or munitions list items.

## SUBPART 27.6 – FOREIGN LICENSE AND TECHNICAL ASSISTANCE AGREEMENTS

**27.675-91 Review of agreements.** Proposed foreign license and technical assistance agreements between domestic concerns and foreign governments or concerns forwarded to the DLA under the provisions of DFARS 227.675-2 shall be referred to the General Counsel, DLA HQ for action in accordance with DFARS 227.675-1.

# PART 28 – BONDS AND INSURANCE

*(Revised March 29, 2016 through PROCLTR 2016-06)*

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## SUBPART 28.1 – BONDS AND OTHER FINANCIAL PROTECTIONS

**28.106 Administration.**

**28.106-90 Review of bonds and consent of surety.**
Contracting officers shall obtain legal sufficiency from Office of Counsel on all bonds and all consents of surety.

## SUBPART 28.3 – INSURANCE

**28.305 Overseas workers' compensation and war-hazard insurance.**

(d) Instructions for waiver of Defense Base Act requirements can be accessed at http://www.acq.osd.mil/dpap/cpic/cp/waivers_for_defense_base_act_insurance.html. Requests for waiver must be made in writing[using] Form BEC 565, which may be accessed at http://www.dol.gov/owcp/dlhwc/lsdba/htm under "Insurance Information," "Request for Waiver – Defense Base Act, Form BEC 565," or by direct link at http://www.dol.gov/owcp/dlhwc/DBARRequestforWaiver.pdf.] Prepare requests in accordance with DFARS PGI 228.305(d) in coordination with Office of Counsel. Submit request for waiver to the DLA Acquisition Policy Division for signature by the [Director, DLA Acquisition. The DLA Acquisition Policy Division will submit the request to the Department of Labor.

**28.307 Insurance under cost-reimbursement contracts.**

**28.307-1-90 Group insurance plans.**

(a) Submit insurance policies under the Defense Department Group Term Insurance Plan to the cognizant Defense Contract Management Agency (DCMA) office for approval.

# PART 30 – COST ACCOUNTING STANDARDS ADMINISTRATION

*(Revised March 29, 2016, through PROCLTR 2016-06)*

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## SUBPART 30.2 – CAS PROGRAM REQUIREMENTS

### 30.201-5 Waiver.

(a) Waiver requests for individual procurements shall be submitted to the DLA Acquisition Contract and Pricing Compliance Division for coordination with the DLA Acquisition Director prior to submission to DPAP for approval.

(b) The DLA Acquisition Contract and Pricing Compliance Division prepares the annual report on CAS waivers for approval by the Senior Procurement Executive and submits the report to DPAP.

# PART 32 – CONTRACT FINANCING

*(Revised March 29, 2016 through PROCLTR 16-06)*

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**32.006 Reduction or suspension of contract payments upon finding of fraud.**

**32.006-3 Responsibilities.**

(b) Instances of suspected fraud shall be promptly forwarded to Office of Counsel.

**32.006-4 Procedures.**

(a) The DLA Remedy Coordination Official is the lead Associate General Counsel for Business Integrity.

**32.006-5 Reporting.**
The DLA Remedy Coordination Official prepares the annual report that is submitted by the DLA Director to the Under Secretary of Defense (Acquisition and Technology) through the Director of Defense Procurement and Acquisition Policy (DPAP).

## SUBPART 32.1 – NON-COMMERCIAL ITEM PURCHASE FINANCING

**32.114 Unusual contract financing.**

The contracting officer shall submit the proposed alternate financing arrangement to the DLA Acquisition Contract and Pricing Compliance Division for DLA Acquisition Director approval and submission to DPAP.

## SUBPART 32.4 – ADVANCE PAYMENTS FOR NON-COMMERCIAL ITEMS

### 32.402 General.

(e)(1) The approval authority is the DLA Acquisition Director.

(2) The DLA Acquisition Director shall coordinate with the DLA Comptroller before advance payment authorization.

### 32.409 Contracting officer action.

Contracting officers shall transmit their recommendation for approval or disapproval to the DLA Acquisition Contract and Pricing Compliance Division for submission to the approval authority.

## SUBPART 32.5 – PROGRESS PAYMENTS BASED ON COSTS

### 32.501 General.

### 32.501-2 Unusual progress payments.

(a) All unusual progress payments provisions along with supporting information, shall be **submitted** to **the DLA Acquisition Contract and Pricing Compliance Division to obtain DLA Acquisition Director and DLA Finance** coordination **prior to submission to DPAP for** approval**.**

## SUBPART 32.9 – PROMPT PAYMENT

### 32.905 Payment documentation and process.

(a) General.

(S-90)(1) Transporter proof of delivery (TPD).

(i) TPD is a commercial document generated by the contractor and/or the transporter of supplies and signed by the Government customer at time of delivery. TPD, in combination with adequate contractor documentation cross-referencing the TPD to the specific supplies provided, demonstrates customer receipt. Coupled with acceptance, this documentation allows the Government to initiate the payment process. The TPD process enables contractors to take advantage of existing wide area work flow (WAWF) functionality to execute the submission of proof of delivery documentation.

(ii) TPD is not a substitute for any other requested receipt and acceptance documentation, such as the material receipt acknowledgement (MRA) or the WAWF receiving report (RR), but is a supplement to such documentation.

(b) Content of invoices.

(S-90)(1) Transporter proof of delivery (TPD).

(i) DLA may accept supplies based on submission by the contractor of satisfactory documentation to demonstrate customer receipt of supplies under a specific contract or order in accordance with 32.905(a)(S-90)(1).

(ii) If the customer has submitted a supply discrepancy report (SDR) or MRA discrepancy indicator, payment shall not be made until the discrepancy is resolved.

(c) Authorization to pay.

(S-90)(1) Transporter proof of delivery (TPD).

(i) Application. Contracting officers at DLA Aviation, DLA Land and Maritime, and DLA Troop Support shall insert the clause at 52.232-9006, Transporter Proof of Delivery (TPD), in solicitations and awards for supplies when all of the following conditions apply:

(A) Contract deliveries will be made directly to DLA customers;

(B) Award will be made on a fixed-price basis;

(C) Inspection or acceptance at source is not required;

(D) Use of fast payment procedures is not authorized;

(E) Shipments to overseas destinations or to containerization consolidation points are not required; and

(F) Acquisition is not being conducted under the subsistence total order and receipt electronic system (STORES), Defense Medical Logistics Standard Support (DMLSS), Industrial Prime Vendor (IPV), or Integrated Logistics Partner (ILP) programs.

(ii) Transporter proof of delivery procedural guidance.

(A) Contract terms are as follows:

*(1)* Designate “inspection” and “acceptance” as “other;” and

*(2)* Designate the “Acceptor at Other” Department of Defense activity address code (DoDAAC) as follows:

*(i)* If “issue by” DoDAAC is SPM1 or SPE1, use SP1001.
*(ii)* If “issue by” DoDAAC is SPM2 or SPE2, use SP2001.

*(iii)* If “issue by” DoDAAC is SPM3 or SPE3, use SP3001.

*(iv)* If “issue by” DoDAAC is SPM4A1 or SPE4A1, use SP4001.

*(v)* If “issue by” DoDAAC is SPM5 or SPE5, use SP5001.

*(vi)* If "issue by" DoDAAC is SPM7L1 or SPE7L1, use SP7001.

*(vii)* If "issue by" DoDAAC is SPM7M1 or SPE7M1, use SP7001.

*(viii)* If "issue by" DoDAAC is SPM8 or SPE8, use SP8001.

(B) Financial customer liaison (FCL) and supply chain responsibilities are as follows:

*(1)* The FCL will initiate a request to the contractor for proof of delivery as appropriate in accordance with procure to pay (P2P) process cycle memorandum (PCM) 11, blocked invoice. When a contractor resubmits the wide area work flow (WAWF) receiving report (RR) with TPD documentation attached, the FCL will review the documentation to determine if sufficient information is provided to adequately demonstrate customer receipt. If not, the FCL will respond to the contractor and identify the additional information that must be submitted. If the documentation is satisfactory, and no discrepancy notification has been submitted by the customer, the FCL will accept the supplies in WAWF. This will generate a transaction resulting in the posting of a goods receipt in the enterprise business system (EBS), which will allow the payment process to begin.

*(2)* The customer is still required to submit the material receipt acknowledgement (MRA), and supply chains shall continue to ensure that follow up action is taken by appropriate personnel to obtain the MRA from the customer when it is not provided.

**32.908 Contract clauses.**

**32.908-94 Transporter proof of delivery (TPD).** Insert the clause at 52.232-9006, Transporter Proof of Delivery, when applicable in accordance with 32.905(c)(S-90)(1)(i) and when either the clause at 52.232-25, Prompt Payment, or the clause at 52.212-4, Contract Terms and Conditions – Commercial Items, is used.

# PART 33 – PROTESTS, DISPUTES, AND APPEALS

(Revised November 19, 2013 through PROCLTR 2014-31)

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## SUBPART 33.1 – PROTESTS

### 33.103 Protests to the agency.

(d)(4)(S-90)(i) Protesters may submit a protest to the contracting officer or, under the authority of Executive Order (EO) Number 12979, Agency Procurement Protests, as implemented by FAR 33.103(d), may request an independent review of their protest at a higher level than the contracting officer. The decision authority for an agency level protest under EO 12979 shall be the chief of the contracting office (CCO). This authority may not be redelegated. In those instances where the CCO has had previous personal involvement with the procurement, the decision-maker shall be the HCA at contracting activities and the Deputy Director, DLA Acquisition (J7) for contracting offices for which the Director, DLA Acquisition is the HCA. Solicitations must indicate that this independent review is available as an alternative to consideration by the contracting officer, rather than as an appellate procedure.

(ii) Legal review is required on all protest decisions, whether the protest was submitted to the contracting officer or was submitted under EO 12979.

(iii) DLA activities have flexibility in designing specific procedures for resolving agency level protests under EO 12979. However, procedures used shall ensure the protest decision authority reviews input from both the protester and the contracting officer in order to reach an independent decision. As with all protests, activities shall consider using Alternative Dispute Resolution (ADR) techniques in resolving agency level protests.

(iv) Each activity shall collect information concerning agency level protests filed each fiscal year under EO 12979. This information shall include the number of protests filed and their disposition, whether or not there was a stay of the procurement or contract award, and the number of any subsequent protests to the U.S. Government Accountability Office (GAO).

### 33.104 Protests to GAO.

(a) General procedures.

(2) The contracting activity's or office's Counsel is responsible for ensuring that the notice of protest filed at GAO is provided to all interested parties. The notice can be provided by either the contracting activity or office or by Counsel.

(3)(90) After receiving a protest, the chief counsel for the contracting activity or office (see 33.104(a)(7)(S-90)) must ensure that the protest is reviewed for possible corrective action or disposition using alternative dispute resolution (ADR). For protests not resolved through ADR, the chief counsel shall ensure his or her respective legal office provides appropriate representation, including submission of the report and documents required by FAR 33.104(a)(3). Letters transmitting agency reports to GAO must be signed by the chief counsel responsible for the contracting activity or office.

(4)(i) The attorney assigned to handle the protest is responsible for ensuring that DLA Chief Trial Attorney receives an electronic copy of the agency report by the day the report is due to GAO and receives copies of any comments received from the protester or interested parties. For DLA Disposition Services Counsel and DLA Distribution Counsel, a draft agency report must be provided to DLA Chief Trial Attorney 5 days before the report due date. A full copy with attachments may be forwarded immediately by mail.

(7)(S-90) DLA Chief Trial Attorney has provided GAO the name, title, and telephone number of a DLA General Counsel procurement attorney as the designated DLA contact for protests.

(i) The DLA Chief Trial Attorney is the administrative focal point for all DLA protests filed with GAO. Immediately after receiving written notice from GAO of a protest, the DLA Chief Trial Attorney will notify the contracting activity's or office's Office of Counsel that a protest has been filed with GAO. The contracting activity's or office's Office of Counsel shall promptly assign an attorney to the protest and shall notify the DLA Chief Trial Attorney and GAO of the name and phone number of the assigned attorney. The assigned counsel should consult DLA's Bid Protest Procedures Manual for specific procedures regarding protests before GAO.

(ii) The chief counsel of the following offices have been delegated the authority and responsibility to represent DLA in bid protests filed with GAO for their respective contracting activities and offices: DLA Land and Maritime, DLA Energy, DLA Aviation, DLA Troop Support, DLA Disposition Services, and DLA Distribution.

(iii) For offices of counsel that have not been delegated the authority and responsibility to represent DLA in bid protests filed with GAO, the DLA Chief Trial Attorney will notify GAO of which DLA attorney is assigned to the protest action.

(iv) Offices of counsel that have not been delegated the authority and responsibility to represent DLA in bid protests filed with GAO shall forward the complete report, including all relevant documents, to the DLA Chief Trial Attorney within 20 days after the protest was filed with GAO, unless the circumstances in FAR 33.104(a)(3)(i)(A) or (B) apply. If GAO has invoked the express option, the Office of Counsel handling the protest shall contact the DLA Chief Trial Attorney to establish a report due date. That office shall also furnish the names and addresses of any interested parties. The DLA Chief Trial Attorney shall be responsible for submitting the report required by FAR 33.104(a)(3) to GAO, and copies of the report to the protester and other interested parties.

(b) Protests before award.

(1) If the contracting activity or office determines it is necessary to award a contract after receipt of a notice from GAO that a protest has been filed, the head of the contracting activity (HCA), with coordination by the chief counsel, shall make the written finding required by FAR 33.104(b)(1). Counsel must send a copy of the finding to the DLA Chief Trial Attorney.

(90) Contracting offices not designated as contracting activities (see 2.101) shall submit the proposed finding through their chief counsel to the DLA Chief Trial Attorney for coordination. The DLA Chief Trial Attorney will provide the proposed finding to the DLA Acquisition Deputy Director with a recommendation for approval or disapproval. If the DLA Acquisition Deputy Director approves and signs the finding, DLA Acquisition shall immediately notify the DLA Chief Trial Attorney and shall provide the DLA Chief Trial Attorney a copy of the signed determination.

(2) Before the contracting activity or office awards the contract, the attorney handling the protest shall notify GAO of the finding made under FAR 33.104(b)(1) in accordance with FAR 33.104(b)(2). For contracting offices where the DLA Acquisition Deputy Director is the HCA, DLA Chief Trial Attorney will notify GAO of the finding.

(c) Protests after award.

(1) For purchase orders, award is considered to be made on the date the purchase order is issued. If a protest is received within 10 days of the date a purchase order is issued, the contracting activity or office shall suspend performance of the order. This determination shall be coordinated with Counsel handling the protest.

(2) If the contracting activity or office decides to continue contract performance pursuant to a written finding by the HCA under FAR 33.104(c)(2), that finding must be made with coordination by the Chief Counsel for the contracting activity or office involved. If the DLA Acquisition Deputy Director is the HCA, coordination by the DLA Chief Trial Attorney is required. After the HCA has signed the authorization to continue performance, the Chief Counsel shall notify the DLA Chief Trial Attorney of the HCA's finding and immediately provide it a copy.

(90) Contracting offices for which the DLA Acquisition Deputy Director is the HCA (see 2.101) shall submit the proposed finding through their chief counsel to DLA Chief Trial Attorney for concurrence. The DLA Chief Trial Attorney will provide the proposed finding to the Director, DLA Acquisition, with a recommendation for approval or disapproval. If the DLA Acquisition Deputy Director approves and signs the finding, DLA Acquisition shall immediately notify the DLA Chief Trial Attorney and shall provide the DLA Chief Trial Attorney a copy of the signed determination.

(3) Before the contracting activity or office lifts the stop work order or performance is otherwise continued, the attorney handling the protest shall notify GAO of the finding made under FAR 33.104(c)(2). For contracting offices where the DLA Acquisition Deputy Director is the HCA, the DLA Chief Trial Attorney will notify GAO of the finding made under FAR 33.104(c)(2).

(g) Notice to GAO.

(90) When a protest has been sustained, the chief counsel of the contracting activity or office involved shall notify the DLA Chief Trial Attorney if the contracting activity or office recommends the agency not follow the GAO recommendation. A final decision not to follow the GAO recommendation shall be made by the DLA Acquisition Deputy Director, through coordination with the DLA Chief Trial Attorney. If the DLA Acquisition Deputy Director determines, after coordinating with the DLA Chief Trial Attorney, not to follow the GAO recommendation, the DLA Chief Trial Attorney shall notify the chief counsel in writing of the determination. The chief counsel shall then submit a report under FAR 33.104(g) detailing why the agency has not fully implemented the GAO recommendation. In accordance with FAR 33.104(g), the report must be signed by the HCA.

(h) Award of costs.

(90) The authority and responsibility for resolving claims for protest costs has been delegated to the chief counsels of the following offices: DLA Energy, DLA Land and Maritime, DLA Aviation, DLA Troop Support, DLA Disposition Services, and DLA Distribution. This authority may not be redelegated. All decisions resolving claims for protest costs require concurrence of the contracting officer.

(91) The authority to resolve protest claims applies not only when the GAO issues a decision recommending protest costs be paid, but also when the agency takes corrective action after determining the solicitation, proposed award, or award does not comply with applicable laws and/or regulations. The amount paid, however, is limited by 31 U.S.C. § 3554(c)(2).

(92) Offices of counsel that have not been delegated the authority to settle claims for protest costs shall forward requests for protest costs, attorneys' fees, and/or bid or proposal preparation costs to the DLA Chief Trial Attorney. The DLA Chief Trial Attorney, in consultation with the applicable office of counsel, is responsible for disposition of these claims. The applicable Office of Counsel is responsible for ensuring contracting offices pay protesters in accordance with the settlements reached.

**33.106 Solicitation provision.**

(90) The contracting officer shall insert a provision substantially the same as the provision at 52.233-9000 in all solicitations, including solicitations for acquisitions of commercial items.

## SUBPART 33.2 – DISPUTES AND APPEALS

**33.209 Suspected fraudulent claims.** Suspected fraudulent claims will be referred to the contracting activity or office Office of Counsel for appropriate action and/or investigation, which may include reporting the matter to DLA General Counsel, consistent with FAR 9.406-2 and 9.406-3, DFARS 209.406-3 and DFARS PGI 209.406-3, and DLAD 9.406-3.

**33.211 Contracting officer's decision.**

(a)(4)(v) Contracting officers shall include ADR language in final decisions, unless the proper official has determined in writing that ADR is inappropriate. (See 5 U.S.C. § 572(b) and Defense Logistics Agency Directive 5025.30, Defense Logistics Agency Issuance Alternative Dispute Resolution Policy. The contracting officer shall add a statement substantially as follows to the end of the paragraph regarding the contractor's appeal rights: "Subject to the appeal time frames specified above, you may request that this dispute be resolved using alternative dispute resolution procedures."

**33.212 Contracting officer's duties upon appeal.**

(90) Notice of appeal to the Armed Services Board of Contract Appeals (ASBCA): Notices of appeal that are submitted directly to the contracting officer shall be forwarded immediately to the applicable office of counsel for further re-transmission to the ASBCA. Direct communication by the applicable office of counsel with the ASBCA is authorized. The charter and rules of the ASBCA are set forth in the DFARS, Appendix A. All official correspondence to the ASBCA will be addressed to the Recorder, Armed Services Board of Contract Appeals, Skyline 6, 5109 Leesburg Pike, Suite 700, Falls Church, Virginia 22041-3208.

**33.213 Obligation to continue performance.**

(a) When the Alternate I of the clause at FAR 52.233-1, Disputes, is proposed to be used in contracts when permitted by the circumstances described in DFARS 233.215, the determination shall be approved by the contracting activity's HCAs. For those DLA activities not designated as a contracting activity, the determination to use the Alternate I, as provided in DFARS 233.215, shall be forwarded to DLA Acquisition J72 by cover letter signed by the Commander/Director for approval by the Director, DLA Acquisition (J7). Examples of the types of unusual circumstances when continued performance may be determined to be vital to the national security or public health and welfare include the acquisition of weapons support systems, and related components other than those listed in DFARS 233.215, or other essential supplies or services whose timely reprocurement from other sources would be impracticable.

**33.214 Alternative dispute resolution (ADR).**
The contracting officer shall insert the clause at 52.233-9001 in all solicitations and awards when the clause at FAR 52.233-1 is used, including acquisitions conducted using FAR Part 12, unless the conditions described in FAR 33.203(b) apply, or unless a different ADR clause is used that is specifically tailored to the acquisition.

# PART 37 – SERVICE CONTRACTING

(Revised December 20, 2013 through PROCLTR 2014-49)

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## SUBPART 37.1 – SERVICE CONTRACTS – GENERAL

### 37.102 Policy.

(S-91)(a) Acquisition of services.

The Deputy Director, DLA J7, is the Senior Services Manager (SSM) for DLA. The office of the SSM is responsible for governance in planning, execution, strategic sourcing, and management of acquisitions of services.

(b) Joint Requirements for the Acquisition of Services.

(1) Each activity shall document how it obtains and combines (if appropriate) joint requirements for the acquisition of services. This information shall be reported annually to the SSM via the designated services program manager by September 1st. Once the methodology is initially reported, negative reports are required by the deadline if the methodology remains unchanged.

(2) The SSM has appointed three portfolio group managers that are responsible for managing acquisitions of services in the following portfolios:

(i) Electronics/Communications Services (ECS), J6

(ii) F acilities Related Services (FRS), Office of Installation Management

(iii) Knowledge Based Services (KBS), J3

These services comprise the vast majority of all DLA acquisitions of services. The office of the SSM shall serve as the portfolio manager for any acquisition of services that does not fall under any of the above portfolios.

The taxonomy of services that classifies each service code into a broad portfolio group can be found in DFARS PGI 237.102-74.

### 37.103-90 Contracting Officer Responsibility.

(e) To comply with Undersecretary of Defense, Acquisition, Technology, and Logistics memorandum dated November 28, 2012, Subject: Enterprise-wide Contractor Manpower Reporting Application, contracting officers shall include the following language in all contracts that require the performance of services, including contracts for goods with defined requirements for services. This standard language shall be included in new statements of work, performance work statements, and statements of objective, and in modifications to existing contracts. Exceptions are detailed in paragraph (3) of this section.

(1) Contractor manpower reporting language for contract statements of work, performance work statements, and statements of objective:

(i) The contractor shall report all contractor labor hours (including subcontractor labor hours) required for performance of services provided under this contract for the Defense Logistics Agency via a secure data collection site. The contractor is required to completely fill in all required data fields using the following web address: http://www.ecmra.mil/.

(ii) Reporting input will be for the labor executed during the period of performance during each Government fiscal year (FY), which runs October 1 through September 30. While inputs may be reported any time during the FY, all data shall be reported no later than October 31 of each calendar year, beginning with 2014. Contractors may direct questions to the help desk at: http://www.ecmra.mil/.

(2) The reporting requirement applies to all contracted services, provided the organization receiving or benefiting from the contracted services is a Department of Defense (DoD) organization. This includes reimbursable appropriated funding sources from non-DoD executive agencies where the Defense component requiring activity is executive agent for the function performed.

(3) The reporting requirement does not apply to the following types of procurements by product service code:

(i) S111 Utilities: Gas services;

(ii) S112 Utilities: Electricity services;

(iii) S113 Utilities: Telephone and/or communications services;

(iv) S114 Utilities: Water services

(v) S119 Other utilities; and,

(vi) Construction of structures and facilities.

(4) Use and safeguarding of information from the secure web site. Data provided by contractors is considered to be proprietary in nature when the contract number and contractor identified are associated with the direct labor hours and direct labor dollars. At no time will any data be released to the public with the contractor's name and contract number associated with the data.

**37.110-90 Solicitation Provisions and Contract Clauses.**

(a) Use provision 52.237-9003, Site Visit Coordinator, in solicitations when a contractor will be performing services on a DLA installation and a site visit is recommended. The contract specialist shall fill-in required information and use the clause in conjunction with FAR 52.237-1, Site Visit.

(c)(2) Use provision 52.237-9002, Key Personnel – Fixed Price Service Contracts, in solicitations and contracts for negotiated fixed-price services when the services to be provided will require professional employees and when evaluation of proposed key managerial personnel is necessary to assess the probability of successful performance.

## SUBPART 37.5 – MANAGEMENT OVERSIGHT OF SERVICE CONTRACTS

**37.590-3 Policy.**

(a)(1) Acquisition plans for service requirements shall include strategy demonstrating that services are acquired by business arrangements that are in the best interests of the DoD and DLA. This includes maximization of potential acquisition opportunities for small businesses. This strategy shall also reflect a strategic approach, in terms of overall spending on services, and guarantee both enterprise-wide approaches to procurement and development of new ways of doing business. Acquisition plans shall be approved at the appropriate level (see 7.102-90). Actions requiring DPAP and/or DLA peer reviews are identified in 1.170-2-90. Further guidance on acquisition strategy for information technology acquisitions may be found in FAR Part 39 and DFARS Part 239.

# PART 39 – ACQUISITION OF INFORMATION TECHNOLOGY (IT)

*(Revised December 20, 2013 through PROCLTR 2014-54)*

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## SUBPART 39.2 – ELECTRONIC AND INFORMATION TECHNOLOGY (E & IT)

**39.201 Scope.**

(a) General Service Administration (GSA) requires all contracts and purchase requests for E&IT, regardless of cost, to include Section 508 requirements as well as the 508 technical standards for each category of E&IT products and services being obtained. However, note that the GSA IT-70 solicitation contains Section 508 requirements.

(b) Further information on Section 508 is available via the internet and on the intranet in eWorkplace under J6.

**39.204 Exceptions.** Consult with the procuring organization's office of counsel when seeking an exception to having the acquisition of E&IT supplies and/or services meet the applicable accessibility standards at 36 CFR Part 1194, E&IT Accessibility Standards.

## SUBPART 39.74 – TELECOMMUNICATIONS SERVICES

**39.7402 Policy**

(b)(4) Process recommendations to provide property pursuant to DFARS 239.7402 (b)(4) through J72, who will coordinate with the Director, DLA Acquisition (J7) for the necessary authorization.

## SUBPART 39.90 – PROCEDURES, APPROVALS AND TOOLS

**39.9001 Procedures for IT procurement.**

(a) All mid-tier requirements must be coordinated with J6 and other business offices as needed, e.g., J8, prior to submission to the contracting office. Mid-tier refers to equipment that is in the range between individual work stations and mainframe computers. Mid-tier uses include client servers, network controllers, process controllers, and dedicated single application processors.

(b) DLA Document Services is the single office with authority to procure office document devices and their associated maintenance support and consumables (and is an optional source for paper). These devices include network and stand-alone copiers, printers, multi-functional devices, scanners, fax machines, and related support services. Upon request to the DLA Document Services Chief of the Contracting Office, waivers to this mandate will be reviewed for approval by DLA Document Services.

(c) The DLA Contracting Services Office (DCSO) is responsible for acquiring IT services, supplies, equipment (other than office document devices procured by DLA Document Services), training, and/or subscriptions for DLA. Non-DCSO procuring organizations may award contracts or orders for IT if the total value of the contract or order (including options) does not exceed $500,000.

(d) Requirements with a value exceeding the threshold of $500,000 shall be procured by DCSO, unless approval of the DCSO Chief of the Contracting Office (CCO) is obtained. Non-DCSO procuring organizations shall request this procurement authority in writing to the DCSO CCO who will determine whether the procurement action will be performed by the non-DCSO procuring organization or DCSO based on the facts presented.

(e) Proposed use of the Defense Information Systems Agency defense enterprise integration services contracts shall be submitted to the DLA CIO, through the DCSO, unless otherwise authorized in writing by the DLA CIO.

(f) All requirements to be acquired using the GSA federal systems integration and management program shall be staffed through the DCSO to the DLA CIO for informational purposes and investment accountability by the DLA CIO.

(g) Refer to section 4.1302 when acquiring personal identity verification products and services.

(h) Prior to acquiring commercial software or software maintenance the contracting officer shall review DFARS Subparts 208.74 and 227.72, the DLA Issuance, Smartbuy and Enterprise Software Initiative (ESI) Enterprise Service Agreements (ESA), which is accessible through eWorkplace, and the DLA Information Technology Solutions Document. Requests for waiver in accordance with DFARS PGI 208.7403 and DFARS 227.72 shall be submitted to J6 (see DLA Issuance, Smartbuy and Enterprise Software Initiative (ESI) Enterprise Service Agreements (ESA), 4.6.3.2). .

(i) Any requirements that require the contractor to develop, store, process, display or transmit information that is used in any DLA business process must be coordinated with J-6 in the acquisition planning stage.

(j) Consult the DLA Information Technology Solutions Document in DLA eworkplace under J6 to ensure that there are no existing IT solutions that can meet the acquisition requirement.

(1) Though this document provides Agency IT solutions, the contracting officer must ensure that all necessary procurement requirements are followed when using sources listed therein. Some areas to consider include the competitive process (see FAR 6.1), sole source and limited source justifications (see FAR Subpart 6.3 and FAR 8.405-6), including brand name situations, economies of scale and scope of the listed source(s).

(2) Contact J-6 to request the addition of a new solution to the document.

(k) For telecommunications equipment and services:

(1) The contracting officer shall ensure that, for capital investment requirements $250,000 or greater, capital investment funding shall be used.

(2) Communication Services Authorities or other communications services orders or agreements shall be signed by the contracting officer.

(l) Internal Use Software (IUS).

(1) As defined in Statement of Federal Financial Accounting Standards (SFFAS) Number 10, Accounting for IUS, "IUS" is software used to operate a federal entity's programs (e.g., financial, administrative and project management software), and to produce the entity's goods and services.

(2) Requiring activity program managers are responsible for: classifying a software procurement as IUS, structuring software requirement deliverables in accordance with the IUS CLIN classification guidelines stated in paragraph (m)(4) below, and preparing the IUS classification and acknowledgement certification form identified in paragraph (m)(4) below

(3) Contracting officers are responsible for validating that the CLINs have been properly assigned in accordance with paragraph (m)(4) (i)below, signing the certification in paragraph (m)(4)(ii) below ( Internal Use Software Acknowledgment Certification) ensuring contractors submit invoices in accordance with the CLIN structure, and ensuring contracting officer representatives (COR) accept contractor deliverables and invoices consistently with the invoiced CLINs. A copy of the signed certification shall be placed in the contract file. Validating the CLINs can be delegated to CORs but must be certified by the contracting officer.

(4) Contract Line Item Number Capitalization Table and Software Acknowledgement Certification.

(i) CLIN Capitalization Table for Internal Use Software (IUS).

Table 1

Contract Line Item Number (CLIN) Capitalization Table for Internal Use Software (IUS)

| CLIN | Title | Description | Work Products, Deliverables, and Major Reviews | Example Costs | Capitalized or Expensed? |
|---|---|---|---|---|---|
| CLIN 0001 | Acquisition/ Design | This phase includes all actions leading to source selection of a commercial off the shelf (COTS) or other commercial source. For internally developed software, this phase includes all actions prior to system requirements specification (SRS). | •Determination of existence of needed technology<br>•Conceptual formulation of alternatives<br>•Evaluation and testing of alternatives<br>•Final selection of alternatives | •Labor<br>•Travel | Expensed |
| CLIN 0002 | Program Management | Program management activities include developing budgets, monitoring cost and schedule, forming the project team, and monitoring technical performance | •Business Case Analysis (BCA)<br>•Governance Charter<br>•Performance Measurement Plan (PMP) | •Labor<br>•Travel | Program manage-ment office (PMO) indirect costs shall be |

| CLIN | Title | Description | Work Products, Deliverables, and Major Reviews | Example Costs | Capitalized or Expensed? |
|---|---|---|---|---|---|
| | | of the project. Additional critical functions include risk and issue management, schedule management, earned value management (EVM) metrics and documentation, performance management, and configuration management. It includes identifying all necessary activities required for production readiness and assisting in the development and deployment of the plan. Project management activities are performed across the entire project life-cycle. | •Scope Document<br>•Formulation Authorization Document (FAD)<br>•System Concept Document<br>•Memorandums of Understanding (MOUs)<br>•Project Schedule (resource loaded)<br>•Acquisition Plan and Documents<br>•Risk Management Plan<br>•Framework Agreement Document<br>•PMC Formulation Request<br>•Budget Documentation<br>•Risk Reviews<br>•Business Impact Assessment<br>•Workforce Analysis<br>• Transition Management Plan<br>•Service Level Agreement<br>• Operations Level Agreement | | expensed or capitalized, depending on: 1) their materiality to overall cost of individual software develop-ment projects and 2) in which phase the costs were incurred. |
| CLIN 0003 | Software Development | Perform preliminary and detailed design. (This is specific to an implementation). Conduct unit testing. Develop supplemental materials such as end user procedures and job aids. | •Design Documents<br>•Software configuration and interfaces<br>•Software Coding<br>•Technical system documentation<br>•Unit testing plans and results<br>•Software functionality<br>•Development of end user procedures, user manuals and/or job aids<br>•Process flows<br>•Training development | •Labor<br>•Travel | Capitalized |
| CLIN 0004 | Data Conversion | Data conversion plans developed identifying conversion source systems and the data conversion strategy. The data conversion plan will document the source data layout, business rules requirements, mapping requirements, security requirements, and reporting requirements for each conversion. Mock data conversion tests are conducted and data conversion system requirements specifications developed. | •Data Conversion Plan<br>•Data conversion mapping documentation<br>•Mock data conversions<br>•Migrated data | •Labor<br>•Travel | Expensed |
| CLIN 0005 | Technical Architecture | Technical architecture focuses on the system concept documentation as well as the | •Operations Plan<br>•Performance Test Plan | •Labor<br>•Travel | Capitalized |

| CLIN | Title | Description | Work Products, Deliverables, and Major Reviews | Example Costs | Capitalized or Expensed? |
|---|---|---|---|---|---|
| | | development of the system environments for design and modeling. Technical architecture develops all system environments for the development and production of the system including: development environment, systems integration testing environments, performance testing environment, training environment, and production environment. | •Systems Architecture Test Plan<br>• System Integration Test (SIT) -1 Environment<br>•SIT-2 Environment<br>•SIT-3 Environment<br>•Performance Test Environment<br>•Training Environment<br>•Production Environment | | |
| CLIN 0006 | Security | Focuses on security requirements for the life-cycle of the project. Initial tasks include the identification of the project security categorization, assessment of security risks, and the documentation of contingency plans. A security business impact assessment is conducted along with security planning, risk mitigation planning, and privacy impact assessments for personal identifiable information (PII) and sensitive data (SD). | •Preventative Controls<br>•Recovery Strategy<br>•Privacy Impact Assessment (PIA)<br>•Sensitive Data Review (SDR)<br>•Security Risk Assessment<br>•Security Risk Mitigation Plan<br>•Security Functional Requirements Analysis Report<br>•Security Assurance Requirements Analysis Report<br>•Cost Considerations and Reporting<br>•Security Controls<br>•Security Test and Evaluation Process<br>•Functional Validation Report<br>•System Integration Rpt<br>•Security Certification and Accreditation Rpt<br>•IT Contingency Plan<br>• Contingency Testing, Training and Exercise Plan<br>•PII / SD Report<br>•Configuration Management and Control Plan | •Labor<br>•Travel | Capitalized |
| CLIN 0007 | Testing | Testing tracks and documents participation in systems integration testing iterations. The test plans and test scripts will be developed and documented to verify and validate the system design. | •SIT plan<br>•System Integration Test Scripts<br>•Regression Testing<br>•Parallel processing | •Labor<br>•Travel | Capitalized |
| CLIN 0008 | Deployment | Deployment comprises all tasks completed to prepare the module for production, Go-Live, and stabilization activities. Procedures are developed in support of system transition as well as post “go-live” procedures for the end users and support | •Operational Readiness Review (ORR)<br>•Project Completion Review (PCR) | •Labor<br>•Travel | Expensed |

| CLIN | Title | Description | Work Products, Deliverables, and Major Reviews | Example Costs | Capitalized or Expensed? |
|---|---|---|---|---|---|
| | | staff. Interface programs are executed and validated, and volume and stress tests are performed. Also, the project works closely with the users to develop clear performance, service, and business measurements for the system, as well as expectations for metric data collection, evaluation, and reporting. Readiness reviews and operational readiness review (ORR) are conducted and documented within this deployment. Go-live includes the formal handover of the module from a preproduction environment to the support staff operating the production environment. Project team members help execute the transition plan and document lessons learned. The module is put into production. System and business performance metrics may be collected and evaluated. | | | |
| CLIN 0009 | User Implementa-tion | User implementation focuses on the work and costs associated with the rollout of the software solution to the individual users. This includes activities conducted to aid in identifying user requirements, interfaces, or data migration efforts. It also includes activities associated with actual implementation at specific locations, communication, process redesign, &data cleanup. | •Project Plan<br>•Risk Management Plan<br>•Transition (Cutover) Plan<br>• Operations Plan<br>• Operational Readiness Review (CORR) | •Labor<br>•Travel | Expensed |
| CLIN0 010 | Post-Implementa-tion/Opera-tional Phase | Post-implementation includes all operational testing and evaluation, as well as other functional testing conducted after technical acceptance and includes costs incurred to make customer ease of use changes. | •Application maintenance<br>•Implementation assistance (trouble- shooting, systems analysis, producing/ printing user manuals and similar support to project customers) | •Labor<br>•Travel | Expensed |

(ii) IUS Software Acknowledgment Certification.

IUS Software Acknowedgement Certification is required to ensure all costs associated with IUS[*] activities received the proper accounting treatment. The Project Manager must include the attached CLIN structure in all IUS requests for proposals (RFP), statement of objectives (SOO), and/or performance work statements (PWS) along with the instructions for invoicing.

Table 2

Internal Use Software Acknowledgment Certification

Certification:
I certify the following information was included in the:

| Document: | CLIN structure included: | If not, state reason: |
|---|---|---|
| RFP | | |
| SOO | | |
| and/or | | |
| PWS | | |

| | |
|---|---|
| Project Name: | |
| Project Manager: | |
| Phone: | |
| E-mail: | |

| | |
|---|---|
| Contracting Officer: | |
| Phone: | |
| E-mail: | |

Project Manager Signature _____Date_____

Contracting Officer Signature_____Date_____

All originals must be filed, scanned, and available upon request.

Copies should be provided to the appropriate contracting officer, contracting officer's representative, program manager, APO, and FSA.

*Software includes the application and operating system programs, procedures, rules, and any associated documentation pertaining to the operation of a computer system or program. "Internal use software" means software that is purchased from commercial vendors "off-the-shelf," internally developed, or contractor-developed solely to meet the entity's internal or operational needs. Normally software is an integral part of an overall system(s) having interrelationships between software, hardware, personnel, procedures, controls, and data.

Reference: Federal Accounting Standards Advisory Board, Accounting for Internal Use Software, Number 10, June 1998; Definitions 8, 9; Page 3.

### 39.9002 Documentation requirements for IT procurement.

(a) The requiring activity shall provide the following documentation to the contracting office to be included in the contract file:

(1) A statement clearly describing why the IT is needed and the program/project/Automated Information System being supported by the IT procurement;

(2) A description of what is being acquired. Identify the product (including its intended purpose, if that is not clear from the name of the product), manufacturer and model number, version number, quantity, unit cost and any other attributes such as essential physical characteristics. For support services include a Statement of Work;

(3) Include the exact location and point of contact with commercial and DSN telephone numbers.

(4) A copy of the market survey for each recommended source (see FAR Part 10);

(5) A copy of the funding documentation;

(6) For sole source (e.g., only one source, specific make or model, or compatibility-limited) provide the contracting office documentation that can be used to support a justification for other than full and open competition or limited source justification (see FAR 6.3 and 8.405-6), and brand name situations (see FAR 11.105).

(7) Attach a copy of any miscellaneous information and/or supportive documentation necessary.

(b) Additional documentation and/or Business Case Analysis (BCA) shall also be prepared as part of the contract file for an acquisition as needed.

(1) Acquisitions valued below $50,000 shall be submitted in accordance with local procedures, or as appropriate for the complexity of the requirement.

(2) For acquisitions greater than or equal to $50,000 and less than $250,000 outline and compare the status quo method of business with three alternatives.

(3) For acquisitions greater than or equal to $250,000 and less than $1,000,000, in addition to the requirements of (b)(2) above, provide a detailed comparison of the expected costs, benefits, impacts and risks that would result from implementing alternative IT investments.

(4) For acquisitions greater than or equal to $1,000,000 and/or having a significant impact on DoD logistics operations, in addition to the requirements of (b)(2) and (b)(3) above, the analysis must be more in-depth. The analysis requires a study of the impact on DLA as a whole, as well as the quantitative and qualitative ramifications of the alternatives described within the investment. It considers the broad implications of the implementation of each alternative, including local and global implications, as well as immediate and future costs and savings.

(5) Refer to the DLA Issuance, Acquisition Business Case Analysis Process, for guidance on acquisition BCAs. Note explanation of exemptions provided at paragraph 3.a.

# PART 42 – CONTRACT ADMINISTRATION

*(Revised October 21, 2015 through PROCLTR 2015-12)*

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## SUBPART 42.3 – CONTRACT ADMINISTRATION OFFICE FUNCTIONS

*(Revised October 10 through PROCLTR 2014-77)*

**42.302** Contract administration functions. Contract Management Plans (CMPs) (see 7.105(b)(19)(S-90) are required for all Tailored Logistics Support Contracts (17.95) and long-term contracts (LTCs) that contain provisions for repricing during the contract term (16.190). Administration of these contracts must be in accordance with the CMP.

(a)(13)(B)(*2*) Contracting officers shall designate the payment office as DoD Activity Address Code (DoDAAC) SL4701 for Enterprise Business System (EBS) contracts, with the following exceptions:

(*i*) Use DoDAAC HQ0337 when DCMA will perform contract administration in Canada in accordance with DFARS PGI 225.870 (See the Federal Directory of Contract Administration Services (Fed DCAS) at https://pubapp.dcma.mil/CASD/browse_CasdPaymentOfficeReport.do?jboEvent=Search).

(*ii*) Use the payment code for the cognizant Defense Finance and Accounting System (DFAS) payment office as specified in the Federal Directory of Contract Administration Services Components (https://pubapp.dcma.mil/CASD/main.jsp) for all contracts with contract financing (e.g., progress payments, performance based payments, etc.).

(*iii*) Use DODAAC HQ0104 for contracts with multiple Lines of Accounting (a mix of DLA and from the military services or other non-DLA activities, such as the Army, Navy, Air Force, Marines, Air National Guard, FEMA, NASA, and DHS.

## SUBPART 42.5 – POSTAWARD ORIENTATION

**42.501(e)(S-90) Post award orientation agendas.** Post award orientation agendas should include discussion of dispute avoidance, early dispute resolution, and alternative dispute resolution.

## SUBPART 42.11 – PRODUCTION SURVEILLANCE AND REPORTING

*(Revised November 7, 2013 through PROCLTR 2014-20)*

**42.1103-90 Policy.** For all contracts, the post-award acquisition specialist is responsible for the actions shown below:

(a) Performing analysis and resolving post-award requests from the supply planner or customer account specialist (CAS), to ensure correct products are delivered and to achieve current timeline, accuracy, customer satisfaction and administrative and production lead time (ALT/PLT) targets;

(b) Negotiating settlements for contractual changes that are beneficial to the Government in terms of costs and conditions within current timeline targets;

(c) Monitoring vendor performance to ensure compliance with terms and taking action for non-compliance; and

(d) Applying DLA business practices, in coordination with the supply planner or customer account specialist, in contract termination decisions for convenience or default if requirements change or vendors fail to perform.

**42.1107 Contract clauses.** Use 52.242-9005 in solicitations and contracts for perishable medical items being shipped by commercial carrier except those to air and water terminals for movement via the Defense Transportation System.

**42.1190 Contract acceleration/status requests.** When it is determined that a customer's need date may require a shorter delivery, the supply planner or the customer account specialist will follow the policies and processes for expediting delivery in Cross-Process Policy Memorandum CP-12-001, Sales Order Expedite and Customer Inquiry Policy, dated December 11, 2012 (available on eWorkplace, Logistics Operations (J3), Shared Documents, J3 Policies and Procedures, Cross Process).

# PART 45 – GOVERNMENT PROPERTY

*(Revised October 21, 2015 through PROCLTR 2015-12)*

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**45.000 Scope of part.**
This part is also applicable to those items for which the rotational/storage stock concept is used to maintain a sufficient quantity of items with short shelf life needed for wartime requirements. Rotational stocks should be considered Government property and the appropriate Government property clauses prescribed in this part should be incorporated to ensure that the stocks are properly maintained and accounted for by the contractor. Specific or unique requirements over and above those contained the Government property clauses, such as a provision for acceptable replenishment rates, should be spelled out in the statement of work for the contract.

## SUBPART 45.1 – GENERAL

*(Revised October 21, 2015 through PROCLTR 2015-12)*

**45.102-90 Policy.** Government property associated with the production of end items being assigned to DLA for management under the consumable item transfer (CIT) should be identified, located, moved to DLA-controlled storage, and entered into an accountable property record to assure availability for production when needed.

**45.103 Responsibility and liability for Government property.**

(S-90) Management of property associated with CIT.

(a) Each contracting activity or office that has Government property will establish a property focal point who will:

(i) Verify the location, quantity, type, and condition of property being transferred to DLA. DCMA personnel can be used to assist in this process.

(ii) Work with supply management and technical and logistics services to develop the identifying number (NSN, local stock number, orpart number) that will be used in the official system to account for Government property.

(b) Supply management personnel are responsible for storage and accountability of Government property.

(S-91) Vendor stock retention model.

(1) Refer to DLA Instruction 4000.3, Accountability and Management of DLA-Owned Contract Property, for procedures to establish and maintain records accountability in solicitations and contracts for Government contract property of any value furnished to contractors, or acquired by contractors and third parties, as Government-furnished property (GFP).

**45.106 Government property clauses.**

**45.106(111) Government-furnished property (GFP) mechanical gauges (loaned).**
Use 52.245-9027 when the POT requires use of Government-furnished mechanical gauges (including FSCs 5995 and 6150), managed by U.S. Army TMDE Support Center, Tobyhanna, Pennsylvania.

## SUBPART 45.3 – PROVIDING GOVERNMENT PROPERTY TO CONTRACTORS

*(Revised October 21, 2015 through PROCLTR 2015-12)*

**45.302 Providing facilities.**

**45.302-1 Policy.**

(a) Maximum reliance shall be placed on the use of contractor-owned facilities to support current production requirements for DLA-managed items. If the Government authorizes the contractor to acquire facilities for the account of the Government, no fee or profit will be allowed, regardless of the type of contract used to reimburse the contractor for the cost of the facilities. This policy does not apply to the acquisition of general purpose components of special tooling or special test equipment.

(4) Requests for new facilities will be forwarded to DLA Acquisition J74 for approval by the Director, DLA. Sufficient documentation shall be provided with the request to show that the need for supplies or services cannot be met by any other practical means or that the furnishing of facilities will be in the public interest. A copy of the contractor's written statement, expressing its unwillingness or financial inability to acquire the necessary facilities with its resources, shall be included as a part of

requests for new facilities. In addition to a contractor's statement, the following certification must be made by a contracting official at least one level above the contracting officer:

(S-90) That private financing of individual facilities was sought but was not available or that private financing was determined not to be advantageous to the Government.

(S-91) That the defense contract cannot be accomplished without Government- owned industrial facilities being provided. This requirement for certification applies to new facilities or existing facilities and to extending the authorized period of use. The original of the certification shall be included in the contract file and copies retained in a central office for oversight review. The certification will be included in the request for approval to acquire facilities or to provide existing facilities.

(c) When determination is made that solicitations should include an offer to furnish existing Government facilities because adequate price competition cannot be otherwise obtained, the case will be fully documented to indicate the basis for such determination.

**45.306(90) Special tooling – criteria for acquisition**.
When the contracting officer receives notice of the contractor's intent to acquire or fabricate special tooling, the contracting officer will, before agreeing to the classification and approval for payment of the property as special tooling, obtain a written determination from a Defense Contract Management Agency (DCMA) representative that the property is needed and properly classified. The written determination by the DCMA technical evaluator will be included in the contract file.

**45.307-2 Acquiring special test equipment.**

(b) Notice and approval. When the contracting officer receives notice of the contractor's intent to acquire or fabricate special test equipment, the contracting officer will, before permitting contractor acquisition or fabrication of the equipment as special test equipment, obtain a written determination from a DCMA representative that the property is needed and properly classified. The written determination by the DCMA technical evaluator will be included in the contract file.

## SUBPART 45.4 – CONTRACTOR USE AND RENTAL OF GOVERNMENT PROPERTY

**45.407 Non-Government use of plant equipment.**

(a)(i) Authority to approve non-Government use of metalworking machinery exceeding 25 percent is delegated to the heads of the contracting activities (HCAs) without power of redelegation. All other contracting offices for which the DLA Acquisition Deputy Director serves as HCA, shall forward requests for approval to DLA Acquisition J74.

## SUBPART 45.6 – REPORTING, REDISTRIBUTION, AND DISPOSAL OF CONTRACTOR INVENTORY

**45.608 Screening of contractor inventory.**

**45.608-1 General.**

(a) Approval to transfer Government property to a DLA contract must have appropriate justification. The justification will specify the consideration the Government will receive for transfer of the property. If there is no known use for the property under an existing contract, but there is adequate justification and approval for retention of the property, the property shall be transferred to a facilities contract or directly funded storage agreement. Approvals for transfer and the justification upon which it is based shall be placed in the file of the gaining contract/agreement. The approval must be at a level above the contracting officer. Property which does not meet this criteria for transfer to another contract will continue to be screened through the plant clearance process. For each item transferred, the contracting officer will include the following descriptive data in the contract to which the items are transferred:

Category of property (facilities, special tooling, special test equipment, material, and agency-peculiar property);
National stock number (NSN) and part number (P/N), or P/N if an NSN is not assigned;
Noun ;
Acquisition cost ;
Condition code ; and
Age, if known.

**45.612 Removal and storage.**

**45.612-3 Special storage at the Government's expense.**

(b) Storage of Government property for which there is not a known contract requirement will be separately priced and directly funded by the DLA contracting activity or office benefiting from the storage. Storage will not be charged to indirect costs to be paid by the Government. Retention plans will be prepared for storage of inactive property. Retention plans will provide a detailed description of the property requiring storage, storage cost, location, planned period of storage, and source of funds for storage. Retention plans will be submitted to DLA Acquisition J74.

(S-90) The use of no cost or no direct cost storage agreements is prohibited. Individual contracting activities or offices justifying retention of the property are responsible for funding storage agreements. Consideration of storage costs should be included in retention and/or disposition decisions.

# PART 46 – QUALITY ASSURANCE

*(Revised October 21, 2015 through PROCLTR 2015-12)*

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## SUBPART 46.1 – GENERAL

*(Revised October 21, 2015 through PROCLTR 2015-12)*

**46.101-90 Definitions.**

*"Deviation."* A written authorization, granted after contract award and prior to manufacture of an item, to depart from a particular performance or design requirement of a contract, specification, or referenced document, for a specific number of units or specific period of time.

*"Nonconformance."* A departure from the requirements specified in the contract, specification, drawing, or other approved product description.

*"Nonconforming material."* Any item, part, or product with one or more characteristics which depart from the requirements in the contract, specification, drawing, or other approved product description.

*"Nonvoluntary recoupment."* A recoupment which the contractor is legally and contractually obligated to provide; recompense that the Government can demand from the contractor.

*"Request for deviation."* The formal document submitted by the contractor to the Government for the purpose of requesting departure from a specific performance or design requirement of a contract, specification, or referenced document.

*"Request for waiver."* The formal document submitted by the contractor to the Government for the purpose of requesting acceptance of designated nonconforming supplies or services.

*"Voluntary recoupment."* Recompense provided voluntarily by the contractor for defects deemed to be contractor-caused. (The Government cannot demand reimbursement for patent defects discovered after acceptance, because acceptance is conclusive except for latent defects, fraud, gross mistake, warranted items, and the like.)

*"Waiver."* A written authorization granted after contract award to accept a configuration item or other designated item which, during production or after having been submitted for inspection, is found to depart from specified requirements, but nevertheless is considered suitable for use "as is" or after repair by an approved method

**46.101-91** Depot Level Repairable (DLA) Item Compliance.
Quality requirements, item acceptance, item inspection, quality deficiency reporting, and warranty requirements (or other requirements as defined by the Services) supporting DLR items shall be included in any contractual action and tracked as required by the specific Service requirements. Requirements, including item quality requirements, inspection, item deficiency reporting and tracking, item acceptance, and any associated contract clauses shall be in accordance with the Service DLR specifications. If appropriate, DLAD requirements may also be specified as applicable to DLR items.

**46.102-90** Policy.

(a) Consideration of quality in contractual decision-making. The Government shall consider the use of:

(1) Contractual means for encouraging excellence in the conduct of contractor-responsible quality efforts;

(2) Incentive fee arrangements for achieving quality goals;

(3) Reduced Government surveillance when contractor's quality performance so indicates; and

(4) Other noncontractual motivation techniques.

**46.103-90 Procuring organization responsibilities.**

(b) Contracting personnel shall incorporate quality assurance requirements communicated to them by the local quality assurance personnel in solicitations and contracts. In the event a change to any of these requirements is determined to be in the best interest of the Government, contracting personnel will coordinate with the quality element before changing the requirements. Justification for such a change shall be documented in the official contract file or be clearly prescribed in coordinated local procedures. A local procedure may specify that the contracting element can unilaterally change the place of inspection from destination to source, whereas source inspection cannot be changed to destination inspection without referring the matter to the quality element for coordination.

(c) With few exceptions, the activity responsible for technical requirements (e.g., specifications, drawings, and standards) is the applicable military component. The quality/technical element at the DLA buying activity, or the functional expert within the commodity business unit (CBU) (or similar structure), is responsible for receiving these requirements from the services and transmitting or preparing applicable inspection instructions to the contracting officer for inclusion in contracts.

**46.103-91 Contract data package recommendation/deficiency report (DD Form 1716).**

(a) Chiefs of the contracting office will designate a single control point with the responsibility to receive, analyze, maintain control, and assure timely resolution of recommended changes to contract data packages (CDPs).

(b) Recommended improvements/reported deficiencies in contract data packages are usually submitted on DD Form 1716, Contract Data Package Recommendation/Deficiency Report, but may be received via messages or letter, which are to be processed as though they were submitted on a DD Form 1716.

(c)(1) DD Forms 1716 will be logged in by the control point. The log will contain, as a minimum, the following information:

(i) Date logged in;

(ii) Control number assigned by submitting activity;

(iii) Contracting officer assigned;

(iv) Submitting activity;
(v) Originator's required suspense;

(vi) Category of CDP problem;

(vii) Date required actions completed; and

(viii) Date logged out.

(2) The control point will establish a suspense date based on the priority noted in box 5, DD Form 1716.

(3) The DD Form 1716 will be forwarded for evaluation to the contracting officer having cognizance over the affected contract.

(4)(i) The contracting officer will refer the DD Form 1716 to other technical areas if additional expertise is required. The contracting officer is also responsible for coordination with the technical operations element if contact is required with Service users, engineering support activities (ESAs), or specification preparing activities.

(ii) If it is determined that the recommended improvement/reported deficiency is significant, and delivery and payment have not been completed, action will be taken to modify the current contract. If the recommended improvement/ reported deficiency is insignificant, action will be taken only on future contracts.

(iii) When requested by the submitter of the DD Form 1716, the contracting officer will furnish a reply which states the action to be taken or the rationale for no action. When actions cannot be completed by the suspense date established in accordance with subparagraph (c)(2) above, the contracting officer will use a DLA Form 65-R (Notification Form), or equivalent, to notify both the submitter and the control point of the revised completion date.

(iv) When all appropriate actions have been completed, the contracting officer will return the completed DD Form 1716 and any necessary documentation to the control point.

(5) The control point will review the completed DD Form 1716 package to determine if all required actions have been completed and if the corrective action developed, or justification for continuing existing requirements, is appropriate. If the response is determined to be appropriate, the log will be so annotated; if additional actions are required, the package, with rationale for additional required actions, will be returned to the contracting officer.

(6) As a means of identifying trends in recommended improvements/reported deficiencies, the control point will review the log on a quarterly basis. Trend data will be forwarded to the procuring organization's policy, plans, and/or programs element in order to assist management in focusing on those areas where procedures have not been followed, contract deficiencies have been noted, or repetitive situations have occurred which necessitate further investigation.

## SUBPART 46.2 – CONTRACT QUALITY REQUIREMENTS

*(Revised October 21, 2015 through PROCLTR 2015-12)*

**46.202-3-90 Standard inspection requirements – provisions and clauses.**

(b) Use 52.246-9023, General Inspection Requirements, in subsistence solicitations and awards; excluding fresh fruits and vegetables, brand name resale, warehouse services and non-food items of operational rations.

(c) Use 52.246-9024, Alternative Inspection Requirements for Selected Items, in solicitations and awards for carlot and less-than-carlot loads of ground beef, bacon, sausage, and selected semi-perishable subsistence items as indicated by DLA Troop Support FTRE.

**46.202-4 Higher-level contract quality requirements.**

(b) When the product specialist determines that use of higher-level contract quality requirements is warranted—

(S-90) The product specialist shall—

(1) Insert the following STO in the PID: "Higher-level contract quality requirement applies. See FAR 52.246-11."

(2) When a quality standard other than ISO 9001:2000 is required:

(i) Remove the NSN from the automated system; and

(ii) Identify the applicable quality standard in the material master.

(91) The contracting officer shall ---

(i) When soliciting NSNs with a higher-level contract quality requirement:
(A) Insert the clauses as required at 46.311; and

(B)*(1)* When ISO 9001:2008 is required, check the block next to the International Organization for Standardization (ISO) 9001:2008 in the clause at FAR 52.246-11; or

*(2)* When a quality standard other than ISO 9001:2008 is required, complete the clause at FAR 52.246-11 as follows:

*(i)* Do not check the block next to ISO 9001:2008;

*(ii)* Check the next block down; and

*(iii)* Enter the quality standard the product specialist has indicated as being required.

(ii) When evaluating offers for a national stock number (NSN) with a higher-level contract quality requirement and the offeror in line for award has proposed an alternative quality standard:

(A) Determine whether to delay award to evaluate the alternative quality standard:

*(1)* Obtain confirmation from the supply planner and product specialist that delay of award is unlikely to result in backorders. This determination shall be based on the Agency supply position and the anticipated lead time required for evaluation.

*(2)* For any purchase, if the time before proposed award does not permit evaluation of an alternative quality standard, and delay of award would adversely affect the Government, then such offers may be considered technically unacceptable for the current acquisition, and award may be made to the otherwise acceptable offeror. The benefits which may accrue to the Government if the alternative quality standard were accepted must be weighed against any adverse effects caused by delaying award. Consideration shall be given to requesting expedited evaluation of the alternative quality standard if the benefits are significant.

*(3)* Alternative quality standards shall not be evaluated for the instant procurement when acquiring priority 1 items (IPG 1-3), items on backorder, or not mission capable (NMC) items.

(B) When it is determined to delay award to evaluate an alternative quality standard, refer the offer to the product specialist for review.

(iii) When making award for an NSN with a higher-level contract quality requirement and the product specialist has approved an alternative quality standard for the awardee, complete the clause at FAR 52.246-11 as follows:

(A) Do not check the block next to ISO 9001:2008;

(B) Check the next block down; and

(C) Enter the alternative quality standard approved for the award.

**46.202-4-91 Inspection standards wood products.**
Insert the clause at 52.246-9093, Inspection Standards Wood Products, in all DLA Troop Support awards, negotiated contracts and purchase orders for wood products.

## SUBPART 46.3 – CONTRACT CLAUSES

*(Revised October 21, 2015 through PROCLTR 2015-12)*

**46.311 Higher-level contract quality requirement – non-manufacturers.**
When the clause at FAR 52.246-11 is used, the contracting officer shall insert the clauses at 52.246-9043, Higher-Level Contract Quality Requirement (Non-Manufacturers), and FAR 52.246-2, Inspection of Supplies-Fixed Price, in solicitations and awards, including when acquisitions are conducted using FAR Part 12.

**46.311-90 Sanitary conditions, subsistence.**
Use 52.246-9044, Sanitary Conditions, in subsistence solicitations and contracts.

**46.311-91 Subsistence solicitations and contracts except fresh fruits and vegetables.**

Use 52.246-9045, Federal Food, Drug and Cosmetic Act-Wholesale Meat Act, in subsistence solicitations and contracts except fresh fruits and vegetables.

**46.311-92 Phytosanitary certificates for export shipments of produce.**
Use 52.246-9046, Phytosanitary Certificates for Export Shipments of Produce, in blanket purchase agreements (BPA) for fresh fruits and vegetables.

**46.311-93 Entry into plant by Government employees.**
Use 52.246-9047, Entry into Plant by Government Employees for Meal, Ready-to-Eat (MRE) and Tray Pack Items, in acquisitions for MRE and tray pack semi-perishable items.

**46.311-94 Storage of semi-perishable components.**
Use 52.246-9049, Storage of Semi-perishable Components for Meal, Ready-to-Eat (MRE) and Tray Pack, in acquisitions for MRE and tray pack semi- perishable items.

**46.312 Construction contracts.**

**46.390 Certificate of quality compliance (COQC).**

(a) The contracting officer shall insert the clause at 52.246-9000, Certificate of Quality Compliance, in all solicitations and awards for safety-critical items; except when acquiring items identified as "critical safety items (CSIs)" (see 11.302-91). Solicitations and awards for CSIs must include the clauses prescribed at 11.304-90(a)-(c); the clause at 52.246-9000 must be considered for use when acquiring CSIs if award is made to a source other than an approved source cited in the acquisition identification description (AID). The contracting officer shall also include the clause in other solicitations and contracts for supplies which meet both of the following conditions:

(1) The material being solicited is required to be produced in accordance with a product specification, drawing, or standard which is designated in the procurement item description (PID).

(2) The engineering support activity, specification preparing activity, and/or center quality/technical activity have recommended to the contracting officer that objective quality evidence in the form of a specific COQC is needed to ensure that the material offered by the supplier meets all contract and specification requirements. (This recommendation may be accomplished in an automated manner via the contract technical data file (CTDF) field, "COQC"; or the center quality element may otherwise inform the contracting officer that a COQC is required for the particular item.)

(b) The clause may be used regardless of the location (source or destination) at which Government contract quality assurance actions are to be performed. In the case of destination-inspected material, the certificate (or a copy) must accompany the shipment. For source-inspected material, the original certificate must be available for inspection by the Government at the contractor's facility at the time the material is presented for acceptance. A copy may accompany the shipment.

**46.391 Measuring and test equipment.**
The contracting officer shall insert the clause at 52.246-9003, Measuring and Test Equipment, in solicitations and contracts which contain the COQC and which call for inspection at source. This clause may also be used independently of the COQC clause.

**46.392 Solicitation provisions and contract clauses for product verification testing and production lot testing.**

(a) Product verification testing.

(1) Policy.

(i) The clause 52.246-9004, Product Verification Testing, does not apply to DLA Energy's fuel solicitations and contracts, when DLA Energy incorporates requirements on contractor inspection responsibilities.

(ii) The product specialist will determine whether production verification testing will be required and immediately inform the contracting officer and cognizant acquisition specialist in writing.

(b) Product verification testing provisions and clauses.

(1) The contracting officer shall insert the clause at 52.246-9004, Product Verification Testing, in solicitations and awards when Government inspection and acceptance will be conducted at source, unless the prospective awardee takes exception to inclusion of the clause and the contracting officer has received confirmation from the product specialist that product verification testing will not be invoked for that award.

(i) Use the clause with its Alternate I for heat and die number requirements.

(ii) Use the clause with its Alternate II for instrument bearings.

(iii) The clause may be used in combination with the clause at 52.246-9000, Certificate of Quality Compliance (COQC).

(c) Production lot testing.

(1) Policy.

(i) The product specialist will determine whether production lot testing will be required and immediately inform the contracting officer and cognizant acquisition specialist in writing.

(ii) The acquisition specialist shall refer any contractor requests for waivers or deviations from production lot testing requirements to the product specialist, who will evaluate the request and furnish recommendations to the acquisition specialist for the contracting officer's approval.

(iii) Production lot testing conducted by contractor.

(A) The contractor is responsible for producing production lot testing samples and for conducting the testing. Production lot testing costs are only payable for the report and any additional testing not normally required for production, such as destructive testing, environmental testing, or testing that the contractor has to outsource. The contractor has the option of either not pricing the production lot testing contract line item number (CLIN), in which case there will be no separate charge to the Government for conducting production lot testing, or separately pricing production lot testing under the production lot testing CLIN.

(B) If production lot testing is offered as a separate price under the production lot testing CLIN, the acquisition specialist shall insert the offered price for conducting production lot testing into the production lot testing CLIN at time of award, if the contracting officer determines the contractor's offered price for production lot testing is reasonable. If in doubt about the reasonableness of the offered price, the acquisition specialist shall consult with the product specialist.

(C) The product specialist will evaluate the production lot testing report and furnish the acquisition specialist with a recommendation of approval or disapproval. The acquisition specialist shall notify the contractor in writing whether its production lot testing report is approved or disapproved. Samples approved as a result of contractor-conducted production lot testing may be included with the shipment of the production quantity of the same lot, unless the samples are damaged or destroyed during production lot testing.

(iv) Production lot testing conducted by Government.

(A) The acquisition specialist shall advise the contractor that the contractor will not separately price additive CLINs for Government production lot testing, because there should be no costs incurred by the contractor; any costs that may be incurred by the contractor are not the responsibility of the Government. The product specialist will ensure that material is to be returned to the contractor upon completion of testing for delivery with the production quantity of the same lot. The production lot testing CLIN will only be used to pay for approved samples that are consumed, destroyed, or otherwise rendered unusable during Government production lot testing.

(B) Prior to invoking production lot testing on a Part 12 contract, compliance with FAR 12.302(c) is required to verify whether market research has established that production lot testing is or is not consistent with customary commercial practice, and whether a waiver is required. See Part 10 Market Research.

(C) Upon receipt of the testing results and the recommendation of approval or disapproval from the testing facility, the product specialist will evaluate the testing results and the testing facility's recommendation and furnish the acquisition specialist with a recommendation of approval or disapproval, along with a copy of the testing facility's results and recommendation. The acquisition specialist shall notify the contractor in writing whether its production lot testing samples are approved or disapproved.

(2) Production lot testing provisions and clauses.

(i) Insert the clause at 52.246-9085, Production Lot Testing – Government, in solicitations and awards requiring Government testing of a production lot quantity, including when the acquisition is conducted using FAR Part 12 Acquisition of Commercial Items.

(A) When the purchase request includes the statement, "Production Lot Testing Required – Government Testing," complete the fill-in information in clause 52.246-9085 with information as shown in the purchase request or with information found in the material master record.

(ii) Insert the clause at 52.246-9086, Production Lot Testing – Contractor, in solicitations and awards requiring contractor testing of a production lot quantity, including when the acquisition is conducted using FAR Part 12.

(A) When the purchase request includes the statement, "Production Lot Testing Required – Contractor Testing," complete the fill-ins in 52.246-9086 with information as shown in the purchase request or with information found in the material master record.

(B) Use the clause at 52.246-9086 with its Alternate I when the authority to approve or disapprove the production lot testing report is delegated to the Defense Contract Management Agency (DCMA) by the product specialist.

**46.395 Clothing and textile (C&T) and medical solicitations and contracts.**

(a) Use 52.246-9030, Shade Evaluation of Contractor Furnished Components, in C&T and medical (clothing) solicitations and contracts when requested by technical personnel. Do not use in purchase orders when inspection and acceptance are at destination.

(b) Use 52.246-9031, Shade Evaluation, in solicitations and contracts for woolen and worsted piece goods; raincoat fabrics; cloth, cotton polyester, AF shade 1505; cotton and synthetic piece goods, and as requested by technical personnel.

**46.396 Solicitation provisions and contract clauses for metal items.**
The contracting officer may insert the clause at 52.246-9002, Product Certification and Test Reports (Metals), in solicitations and contracts for items in FSG 95 and 96 that contain metals and require certification and test reports with each shipment.

## SUBPART 46.4 – GOVERNMENT CONTRACT QUALITY ASSURANCE

*(Revised October 21, 2015 through PROCLTR 2015-12)*

**46.401 General.**

**46.401-90 Quality assurance solicitation provisions and contract clauses.**

(c) Insert the clause at 52.246-9065, Protection From Degradation due to Electrostatic/ Electromagnetic Forces, in all solicitations and awards when the item description states the items being acquired are sensitive electronic devices; including when the acquisition is conducted using FAR Part 12.

(f) Include the clause at 52.246-9095, Quality Assurance Provision for Approved Government Surplus Material, in solicitations and awards when clause 52.211-9000, Government Surplus Material is included.

(S-90) The contracting officer shall apply inspection/acceptance (I/A) requirements as designated by the technical/quality specialist or product specialist. The contracting officer shall not change source I/A to destination I/A without obtaining prior approval from the technical/quality specialist or product specialist. If the prospective awardee is currently identified (e.g., on a contractor alert list) as requiring source I/A, the contracting officer shall not apply destination I/A. The contracting officer may contact the technical/quality specialist or product specialist for confirmation of, or revision to, an I/A requirement whenever it appears inappropriate to the item or the circumstances of the acquisition.

(1) When a solicitation is issued on the basis of source I/A, and the item is acquired from a sole source that will not permit quality assurance at source, the matter should be negotiated on a case-by-case

basis to provide adequate consideration to the Government for the added cost of performance of the necessary technical quality assurance.

(2) When a solicitation is issued on the basis of source I/A, and the item is acquired from a non-manufacturer/non-producer (i.e., dealer/distributor), the contracting officer shall award on the basis of source I/A and delegate contract administration to DCMA. This is interim policy until a permanent solution can be developed (e.g., inclusion of a field to capture data in the vendor master advising whether a non-manufacturer/non-producer has test/inspection equipment on site).

(S-91) The contracting officer may change destination I/A requirements to source I/A at time of award when the following conditions apply:

(1) Destinations are unknown (see 47.305-5, 47.304-1(f), and 47.302(c)(1)).

(2) Direct vendor delivery (DVD), including foreign military sales, and stock CLINs are combined on the same award.

(3) When the prospective awardee is currently identified (e.g., on a contractor alert list) as requiring source I/A.

(4) When otherwise mutually agreed by the buying activity/contracting officer and DCMA.

**46.402 Government contract quality assurance at source.**

(S-90) The default point for Inspection and Acceptance shall be destination. Circumstances that may preclude this are Critical Safety Items (CSIs), complex assemblies, items requiring First Article Testing (FAT), Hazardous Material (HAZMAT), items acquired for Foreign Military Sales (FMS), bulk fuel deliveries, or when vendors have significant quality issues (e.g., Product Quality Deficiency Reports (PQDRs). In addition, inspection may be performed by a designated contractor when no qualified Government representative is on site to perform inspection.

**46.402-91 Acquisitions for fresh fruits and vegetables.**
Use 52.246-9012, Preparation for Delivery and Inspection of Fresh Fruits and Vegetables, in acquisitions for fresh fruits and vegetables.

**46.402-92 Subsistence solicitations and awards except brand name, warehouse services or fresh fruits and vegetables acquisitions**.
Use 52.246-9013, Contractor and Government Samples at Origin, in subsistence solicitations and awards except brand name, warehouse services or fresh fruits and vegetables acquisitions.

**46.403-90 Government contract quality assurance at destination.**

(a) Prior to designating that Government contract quality assurance actions will be performed at destination, the contracting officer shall determine that the--

(1) Depot or receiving activity has the technical ability to perform quality assurance;

(2) Necessary technical data, specifications, blueprints, etc., are available at the receiving point or will be furnished the receiving activity prior to receipt of the supplies; and

(3) Equipment required to perform quality assurance is available at the receiving point.

(b) Acquisition of items for direct shipment overseas may be assigned for contract quality assurance at destination using the fast payment procedure in FAR Subpart 13.4 (DFARS Subpart 213.4) if there are no requirements for technical inspection.

(1) Other purchases for direct shipment overseas shall be assigned for quality assurance at source, unless the contracting officer determines that the provisions of FAR 46.403(b) are met.

(2) When items acquired for direct shipment overseas are shipped through freight consolidation points with contract quality assurance at destination, the ultimate overseas consignee shall be the place of performance of contract quality assurance. The solicitation and the contract shall clearly designate the overseas consignee as the destination and shall provide supplementary guidance as to transshipment point and "mark for" information.

(3) Requests for DD Form 250, Material Inspection and Receiving Report, or other evidence of receipt of material shall be addressed to the ultimate overseas consignee, and not to the freight consolidation point.

**46.407 Nonconforming supplies or services.**

(c)(1) The offer of nonconforming material to the Government should be the exception, and contractors should be discouraged from submitting requests for waivers or deviations (hereinafter sometimes referred to as waivers) in all cases where the contractor is at fault in producing the nonconforming supplies.

(i) Contracting officers should emphasize to the contractor that the latter is responsible for the control of product quality and for offering to the Government for acceptance only that material which conforms to contractual requirements.

(ii) When evaluation of technical requirements indicates a specification change is required or would be beneficial to the Government, contracting officers shall take action through appropriate channels with the activity responsible for technical requirements to change the requirements in question, rather than waive them. Caution and good judgment must be exercised by the total Government team involved in the waiver evaluation process to ensure that technical requirements are not degraded during any attempt to assist the contractor in solving its problems with schedule compliance or with fulfilling the valid technical requirements contained in the contract. See subparagraph (f)(S-90), below, in this section.

(S-90) See definitions at FAR 46.101 and DLAD 46.101. The contracting element shall control all contractor requests for waivers and deviations by maintaining a register and recording the following information: type of waiver or deviation (critical, major, or minor); brief description of the requested waiver/deviation; contract number; contractor's name; item identification (NSN and noun nomenclature); specification/technical data; date the request was received; center/service element(s) in the evaluation loop; date resolved; action taken; consideration obtained; specification change made; and any pertinent or commodity-oriented data desired. The data shall be used to report in accordance with the management information system glossary (RCS DLA(M)26(C)MIN). Unless the specification clearly defines major

and minor characteristics, all test characteristic nonconformances submitted as waiver requests shall be classified as major nonconformances and processed as such. When several minor nonconformances are submitted for a single item, a determination will be made as to whether the cumulative effect is a major nonconformance.

(S-91) The contracting officer must have the ACO's comments and recommendations, in order to evaluate properly a request for waiver. Conversely, the ACO must be fully apprised of the request for waiver to ensure that the contractor has taken action to correct and prevent recurrence of the conditions causing the nonconformance. Therefore, requests for waiver submitted directly to the contracting officer shall be returned to the contractor for resubmission through the ACO, except in those situations where time is an essential element. In such cases, the ACO's recommendations will be obtained by the most expeditious means available. The contracting officer shall refer the request for waiver to the quality and supply elements of the center, or the CBU, for evaluation and recommendations. In addition to those criteria listed at FAR 46.407(c)(1), the following factors shall be considered in making a decision to accept or reject he waiver request:

(A) Suitability of the item for use "as is," or the practicability and cost of rework or repair. For a major nonconformance, this determination must be made by the activity responsible for technical requirements and obtained in writing.

(B) Previous request(s) for waiver(s) from the same contractor.

(C) Previous request(s) of the same nonconforming characteristics from the same contractor and/or other contractors.

(D) The supply status of the item and the effect that disapproval of the request for waiver/deviation will have on the delivery schedule.

(S-92) The contracting officer shall submit each accept decision on critical and major nonconformances for approval by the chief of the contracting office. The contractor will not be notified until the chief of the contracting office has made the decision to approve or disapprove the waiver request.

(d) Contracting officers shall make a conscious decision on each DLA contract whether CAO authority to accept minor nonconformances will be withheld. Contracts to new contractors, contracts for new or significantly-changed items or sensitive items (i.e., those with very high visibility), or those cases where previous experience with a contractor warrants that all minor nonconformances be submitted to the procuring organization shall receive high consideration. If CAO authority is withheld, the letter of delegation sent to the CAO will clearly indicate such. All contractor requests for waiver of minor nonconformances forwarded to the procuring organization shall require approval by the chief of the contracting office.

(d)(S-90) Contracting officers need to recognize that situations may occur where contractors have a single line producing items which may be supplied as spare parts procured under DLA contracts or further processed by the manufacturer and incorporated into major systems or subsystems procured by the military services. In many of these instances, material review board (MRB) activity is authorized for use in the military service contracts. If CAO authority for approval of minor nonconformances is withheld on DLA contracts in these situations, the centers and CAOs should work together to resolve any issues

concerning how to handle material which may have been subjected to previous MRB activity in the in-process area.

(e) All nonconformance information for decisions on waiver requests made by the center and any waiver or MRB intelligence provided by the CAO, when authority has not been withheld by the procuring organization, shall be included in the contractor's performance record.

(f)(S-90) No waivers or deviations from design requirements are to be permitted without a commitment to verify the validity of the technical data for the item (e.g., the military or federal specification, engineering drawings, etc.) with the appropriate engineering support activity, and to change any such requirement found to be erroneous, outdated, or unduly restrictive, prior to any future procurements of the item. The only exception authorized is to satisfy requisitions under "readiness" situations and then for direct shipment only (i.e., direct vendor delivery), not for stock. The lead standardization activity (LSA) will be furnished copies of all approved waivers and deviations from military or federal specifications. The LSA will assure that the specification is revised to reflect the product changes allowed by the waiver/deviation. Minor waivers/deviations resulting from errors in manufacturing or from a contractor's inability to meet valid technical requirements are to be granted only under exceptional circumstances, when such waivers are in the best interests of the Government (e.g., when backorders warrant urgent delivery), and never on a repetitive basis. Major/critical nonconformance waiver requests for the sole benefit of the contractor shall not be granted. (This waiver paragraph does not apply to off-specification fuel that can be blended at the depot to be made acceptable.)

(f)(S-91) (1) The hardware centers and DLA Troop Support 's medical and clothing and textile commodities are strongly encouraged to use the calculation provided below in this section as a baseline, or starting point, in determining the adequacy of the contractor's offer of consideration for those rare instances in which waivers or deviations are granted and memorialized via contract modification.

(2) See https://www.jllis.mil/apps/?do=cops.view&copid=909 for the most current version of the consideration calculations.

(f)(S-92) Subparagraphs (f)(S-92) through (f)(S-95) do not apply to contracts containing express warranty provisions. After the formal notification, the contractor must respond to the request. This response (to which the contracting officer must agree as being in the best interest of the Government) may take the form of an offer of monetary restitution (including offset against other contracts), in lieu of repair or replacement in kind.

**46.407(97) Removal of Government identification from non-accepted supplies.**
Use 52.246-9039, Removal of Government Identification from Non-Accepted Supplies, in all solicitations and contracts.

**46.407-97 Reinspection of nonconforming supplies for subsistence solicitations and contracts.**
Use 52.246-9025, Reinspection of Nonconforming Supplies, in subsistence solicitations and contracts except warehouse services and brand name commissary resale.

**46.407-97 Repackaging of hazardous material in DLA direct solicitations and awards.**
Use 52.246-9051, Repackaging of Hazardous Material, in DLA direct solicitations and awards only for NSNs in FSCs 6140, 6810, 6820, 6830, 6840, 6850, 9110, or 9150 and which have a Department of Transportation (DOT) classification of flammable liquid, flammable gas, corrosive material, organic

peroxide, oxidizer, or poison B specified in the item description, except do not use this clause for items purchased against a federal supply schedule. Applicable items shall be solicited inspection at origin, acceptance at destination and f.o.b. destination unless items meeting the above criteria are commercial off-the-shelf and/or part numbered items and the PR cites inspection/acceptance at destination. Do not use clause 52.246-15, Certificate of Conformance or fast pay procedures.

**46.407-98 Inspection and acceptance and certificate of conformance is authorized**.
Use 52.246-9062, Repackaging to Correct Packaging Deficiencies, in DLA direct solicitations and awards when inspection and acceptance is at destination, inspection/acceptance is at origin and certificate of conformance has been authorized, or when inspection and acceptance points are mixed and certificate of conformance is authorized.

**46.470-1-90 Planning.**

(a) The planning necessary to determine a tailored approach to Government contract quality assurance actions shall include, but not be limited to, consideration of the following:

(1) Possible effect of failure on health or safety of personnel, or on associated or related equipment;

(2) Tactical, strategic, or technical importance;

(3) Complexity, and the need for required reliability;

(4) Pertinence, completeness, and reliability of the contractor's quality records;

(5) Previous quality history of the contractor; and

(6) Unit cost.

**46.471 Authorizing shipment of supplies.**

(a) The DLA contracting officer shall provide written notification to the Defense Contract Management Agency (DCMA) administrative contracting officer (ACO) through a quality assurance letter of instruction (QALI) regarding any first time production items or suppliers, and any adverse supplier or item quality history.

(1) In the case of first time production items or first time suppliers, or when there is evidence of poor quality, the ACO shall not invoke alternate release procedures (ARP) until positive performance history is established.

(2) If the ACO implements ARP procedures when positive performance history is established, the ACO shall notify the DLA contracting officer in writing when the letter which invokes ARP is issued to the contractor. If negative quality becomes evident during contract performance, the DLA contracting officer shall notify the ACO through a QALI.

(3) The ACO will revoke ARP until satisfactory performance is achieved, and shall notify the DLA contracting officer in writing when the letter which reinstates ARP is issued to the contractor.

**46.490 Oversight of DoD supply chain integrity.**

(a) Procedures for processing quality notifications (QNs).

(1) DLA procuring organizations shall ensure that—

(i) On-going reviews are being conducted to oversee compliance with cross-functional policies and procedures for processing/prioritizing quality notifications (QNs) (e.g., product quality deficiency reports (PQDRs), supply discrepancy reports (SDRs) or Government industry data exchange program (GIDEP) alerts/safe alerts.)

(ii) All activity personnel are being adequately trained to apply QN policies and procedures.

(2)(i) Acquisition specialist interfaces. The product specialist will contact the acquisition specialist as required in accordance with mandatory procedures for processing quality notifications (see technical-quality policy deskbook in eWorkplace and TQ job aids). The product specialist:

(A) May require the acquisition specialist to suspend open procurement actions (i.e., open PR, outline agreement (LTC), purchase orders (contracts)) pending investigation of a PQDR; and/or

(B) Will assign the QN to the correct acquisition specialist when the product specialist has investigated a SDR and determined the material should be returned to the contractor for repair or replacement.

(ii) Acquisition specialists who receive a workflow item in the workflow inbox related to a supply discrepancy report (SDR) shall review and process the notification. Acquisition specialists shall then notify the QN Test Coordinator who assigned the task that it is complete within the workflow. However, SDRs associated with counterfeit material/unauthorized product substitution (CM/UPS) cases must not be inadvertently completed prior to resolution of the case. Therefore, acquisition specialists shall carefully review all documentation or lists regarding reduction of aged SDRs and coordinate with the product specialist as necessary, to determine whether they are CM/UPS related. Any SDRs assigned to the CM/UPS program office shall not be altered, transferred, completed, or removed from workflows. CM/UPS SDRs shall only be maintained by the product specialists of record.

(b) Review procedures for high-risk items.

(1) DLA procuring organizations shall ensure that—

(i) On-going reviews are being conducted to identify FSGs/FSCs/NSNs that warrant additional risk mitigation;

(ii) FSGs/FSCs/NSNs are being identified based on appropriate considerations (e.g., those identified at 46.470-1);

(2) Training and oversight. DLA procuring organizations shall ensure that

(i) Internal controls are in place, and periodic reviews/audits are being conducted to ensure compliance with the policies in this section; and

(ii) Information relevant to risk mitigation trends and best practices, as generated from in-process contract reviews, internal and external procurement management reviews, and other sources, is being routinely disseminated to all activity personnel.

(c) Contract clause.

The clause at 52.246-9066, Documentation of Traceability, shall be used in solicitations and awards, including when acquisitions are conducted using FAR Part 12, Acquisition of Commercial Items, when the buying activity has identified the FSGs/FSCs/NSNs being acquired as requiring additional risk mitigation and determined that any offeror not identified as an approved source in the item description shall be required to submit documentation prior to award to establish the identity of the item being offered and its manufacturing source. At the discretion of the buying activity, the language in the clause may be incorporated into a standard text object (STO), which will be displayed in the item description in the solicitation and award. The clause at 52.246-9066 is intended for general application to any item or group of items. However, if an STO is used, the buying activity may elect to include additional references or requirements specific to the items or groups of items being acquired, such as applicable military specifications, additional clauses, or a certification of conformance.

## SUBPART 46.5 – ACCEPTANCE

*(Revised October 21, 2015 through PROCLTR 2015-12)*

### 46.501-90 General.

(a) Inspection and acceptance of internal use software.

(1) The contracting officer representative (COR) shall ensure the contractor invoices for all IUS performance and deliverables are in accordance with the Internal Use Software (IUS) CLIN schedule. The contracting officer shall verify the COR successfully performs this task.

(2) Add the following to the statement of work (SOW)/performance work statement (PWS) of internal use software contracts.

(i) This contract/order is for (IUS) as defined in Statement of Federal Financial Accounting Standards (SFFAS) Number 10, Accounting for Internal Use Software.

(ii) Individual IUS-related items of performance or deliverables under this contract are included in specific contract line item numbers (CLINs); invoicing for and inspection and acceptance of contract performance and deliverables will be based on each applicable IUS CLIN as a separate item.

### 46.504-90 Certificate of conformance.

(a) Solicitation provisions and contract clauses.

(1) Subsistence solicitations and awards except perishable and pork items.

Use clause 52.246-9014, Certificate of Conformance, in subsistence solicitations and awards (except for perishable subsistence and other than pork items) of indefinite delivery type contracts (IDTC) for brand name resale, fresh fruits and vegetables (FF&V), warehouse services and non-food components of operational rations.

(4) Level I material certification (DLA Maritime-Norfolk).
Insert the clause in full text at 52.246-9094, Level I Material Certification, in all DLA Maritime-Norfolk solicitations and awards for level I items.

## SUBPART 46.7 – WARRANTIES

*(Revised June 16, 2015 through PROCLTR 2015-09)*

### 46.710-90 Solicitation Provision and Contract Clauses.

(d) Use 52.246-9061, Warranty of Industrial Plant Equipment (IPE) – Federal Supply Group (FSG) 34, in solicitations and contracts for FSG 34 industrial plant equipment which are new procurements, repair or rebuild/remanufacture/retrofit.

(e) Use 52.246-9063, Warranty of Supplies, Extended (66 Months), in solicitations and contracts for national stock numbers (NSNs) 6110-01-246-7177 and 6110-01-246-7178 electric power monitors for only.

### 46.790 Record of warranty actions.

When warranty actions have been initiated under contracts containing warranty clauses in accordance with FAR Subpart 46.7 (DFARS Subpart 246.7), it is essential all Defense supply centers maintain a record of these warranty actions. This record is necessary to help determine the usefulness of the warranty clause versus the cost of administering the warranty actions. The record will be maintained in a central location on a fiscal-year basis. No more than two prior fiscal years' records will be retained. The record shall contain as a minimum the following information:

(a) Date and reason warranty was exercised;

(b) Contract number;

(c) Contractor;

(d) Dollar value of material covered by warranty;

(e) Disposition of material or other consideration obtained; and

(f) Date warranty action completed.

**DEFENSE LOGISTICS ACQUISITION DIRECTIVE**

**PART 47 – TRANSPORTATION**

# PART 47 – TRANSPORTATION

*(Revised October 21, 2015 through PROCLTR 2015-12)*

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## SUBPART 47.3 – TRANSPORTATION IN SUPPLY CONTRACTS

*(Revised October 21, 2015 through PROCLTR 2015-12)*

**47.303-91** DLR Item Compliance

Transportation requirements supporting DLR items shall be included in any solicitation and contractual action as required by the specific Service requirements. Requirements including (but not limited to) packaging, packing, marking, shipment/delivery locations, F.O.B. requirements, shipment / delivery variations, payment for shipment, and any associated contract clauses shall be in accordance with the Service DLR specification. If appropriate, DLAD requirements may also be specified as applicable to DLR items.

**47.303-90 Standard delivery terms and contract clauses.**

(a) Solicitations and contracts for supplies or services.

Insert clause 52.247-9012 in all solicitations and contracts for supplies, including acquisitions conducted using FAR Part 12.

(1) Compliance with International Plant Protection Convention (IPPC) Guidelines involving wood packaging material (WPM). This policy implements DoD policy developed in response to international implementation of the United Nations Food and Agriculture Organization protocol on International Standards for Phytosanitary Measures (ISPM) 15, "Guidelines for Regulating Wood Packaging Materials in International Trade." ISPM 15 is designed to block movement of pests that can destroy forests from one nation to another.

(2) DoD shipments inside and outside of the United States must meet ISPM 15 whenever wood packaging material (WPM), as defined in 52.247-9012, is used to ship DoD cargo or cargo being delivered to a DoD recipient. If the DoD policy is not followed, improperly marked shipments are likely to become frustrated cargo, be destroyed at the port, or require repacking at the port of debarkation, causing increased cost and time delays to DoD.

(i) Wood products requiring export shipment.

Use provision 52.247-9054 in solicitations over the SAT that include FAR 52.247-51 for wood products which require export shipment.

**47.305 Solicitation provisions, contract clauses, and transportation factors.**

**47.305-3 F.o.b. origin solicitations.**

(b)(4)(ii) DEVIATION. DLA Energy is authorized to use provisions 5452.247-9F12 and 5452.247-9F13 in lieu of FAR provision 52.247-46 when purchasing crude oil for the strategic petroleum reserve (SPR) program.

(91) Solicitation provision for port handling and ocean costs in bid evaluation. Port handling and ocean charges available at time of issuance of solicitation shall be published in solicitations for the acquisition of supplies for overseas shipment. The provision set forth at 52.247-9001, advising that these charges are tentative and not necessarily those that will be used in the evaluation, shall also be included in the solicitation, just below any charges published. This provision will preclude the need for extension of opening dates or cancellation of solicitations and will still permit award to that offeror who is, in fact, low at time of bid opening as a result of any change in charges after issuance of the solicitation.

(93) The contracting officer may use provision 52.247-9027 in solicitations for indefinite delivery contracts when separate prices are solicited for different quantity increments. F.o.b. origin offers will be evaluated based on the estimated shipping weight and cube if 52.247-9027 (c)(1)(i)(d) is checked. Weighted values reflect the Government's estimate of relative frequency of future orders within each quantity increment.

**47.305-3-97 First Destination Transportation (FDT) Program – Shipments Originating From Outside the Contiguous United States (OCONUS).**
Insert clause 52.247-9058 in solicitations and awards for supplies when the item description in the solicitation states that the FDT Program applies (see 11.201(c)(S-90)(2)).

**47.305-3-98 F.o.b. Origin, Government-Arranged Transportation**
Use 52.247-9059 in solicitations and awards that contain First Destination Transportation (FDT) requirements. This clause defines the contractor's responsibilities and requirements for Government-arranged transportation as specificed within the FDT Program.

**47.305-7(b)(90) Quantity analysis, direct delivery, and reduction of crosshauling and ackhauling.**
15.304(c)(S-92) contains a requirement to include a transportation evaluation factor in integrated logistics management arrangements where proposals are likely to include contractor arranged transportation outside the continental United States.

**47.305-8-90 Vendor shipment module.**

(a) General Information.

(1) The Defense Logistics Agency's (DLA's) vendor shipment module (VSM), formerly known as the distribution planning and management system, is a distribution and transportation system that enhances DLA's ability to plan and manage distribution. It is an information technology (IT) system that provides in-transit visibility (ITV), current shipping addresses, and may reduce transportation costs. For shipments of materiel that DLA buys from suppliers, VSM provides ITV to consignees, consolidation and containerization points (CCPs), air and water ports, and various Government supply and transportation information systems.

(2) VSM has the capability to organically arrange vendor shipments with Government managed carriers under integrated IT functionality. Use of VSM by vendors reduces frustrated freight at the CCPs,

and air and water ports; and minimizes delays in vendors obtaining shipping instructions. VSM automatically prepares shipping labels in accordance with military standard (MIL-STD) 129P, Bills of Lading, Packing Lists and other shipping documentation that the supplier can download and print.

(b) Policy.

(1) VSM is of primary benefit in the following situations:

(i) DLA administered contracts where the ultimate destination is a location outside of the United States, e.g., OCONUS Customer Direct (CD) or Defense depots located overseas. For these shipments, the vendors can obtain shipping instructions and shipping labels through VSM without having to contact the DLA transportation office.

(ii) CONUS CD shipments: Although the vendor may not need shipping instructions, the vendor can obtain the required shipping labels via VSM.

(iii) Long term contracts which include CD support: Because of the benefits of VSM for CD shipments, especially OCONUS, contract specialists can consider either requiring or encouring VSM use by the vendor.

(iv) For f.o.b. origin contracts administered by DLA, VSM will make the transportation arrangements using Government rates and carriers. In these circumstances do not use clauses which require the vendors to pre pay and add transportation charges (e.g., FAR 52.247-65). Do not populate the "Transportation Allowed" field in the "Financial Data" Tray at the header level with code "T." Otherwise, invoices for transportation changes will be paid by DFAS.

(v) For contracts administered by DCMA, vendors must still contact the DCMA transportation office in lieu of using VSM. On a case-by-case basis, there may be circumstances where DCMA will permit use of VSM on DCMA administered contracts. Obtain agreement from DCMA prior to award when allowing a vendor to use VSM on a DCMA administered contract. Although the VSM shipping label is not mandated for DLA direct shipments, a shipping label is still required. Vendors now have the option of using VSM to generate the military shipping label.

(c) Prescription for clause 52.247-9011 Vendor Shipment Module (VSM).

(1) The purpose of the clause is to encourage use of VSM by vendors as described in paragraphs (a) and (b) of this section; the clause does not make VSM mandatory except when FDT is specified in the solicitation or award. VSM shall be used for all FDT solicitations and awards. The clause shall be inserted in solicitations and contracts as a normal practice, unless the contracting officer knows in advance that VSM is not suitable for a particular acquisition.

(2) In addition, the clause should not be used in the following circumstances:

(i) DCMA administered (except as authorized on a case-by-case basis);

(ii) Pharmaceuticals;

(iii) Medical – Customer pick-up only;

(iv) Arms, ammunition & explosives (AA&E);

(v) Controlled substances and syringes;

(vi) Tailored vendor relationships (TVR);

(vii) Contracts for service, except shipments of Government furnished equipment (GFE)/ Government furnished material (GFM); and

(viii) First Destination Transportation (FDT) program buys.

(3) Transportation office notification/requirement. Contracts that are administered under the above-mentioned exceptions at (c)(2)(i) thru (viii) may contain the statement: "Contact the transportation office at the administration office specified in block 7."

(i) For non-FDT DLA administered contracts, vendors must contact the supply chain transportation office helpdesk at (800) 456-5507.

(ii) For non-FDT contracts administered by DCMA, vendors must contact the DCMA transportation office listed on the award document in lieu of using VSM.

(iii) For all FDT contracts, vendors must register in VSM for transportation information.

**47.305-10-90 Packing, marking, and consignment instructions – solicitation provisions and contract clauses.**

(d) Shipping instructions - export.

(1) Except for acquisitions conducted under the First Destination Transportation (FDT) Program (see 47.303-90(d)(2)), use 52.247-9036 in shipments to overseas customers including shipments direct to APO/FPO addresses, shipments to Alaska, Hawaii, and Puerto Rico, and shipments routed through the Container Consolidation Points (CCPs) at San Joaquin, California (W62N2A) and New Cumberland, Pennsylvania (W25N14).

(2) For acquisitions conducted under the First Destination Transportation (FDT) Program, as prescribed at 47.305-3(97), use 52.247-9058 instead of 52.247-9036.

(e) Trans-shipment of material through DLA containerization and consolidation points. Use 52.247-9037 when supplies are to be shipped via surface freight, CCP appears in the shipping address, or any time the requisition or TCN begins with "A," "C," or "W" for Army, "N," "Q," or "R" for Navy, "E" or "F" for Air Force and the customer is outside the continental United States (OCONUS which is outside the 48 contiguous states). The clause shall be used in all long term contracts supporting OCONUS customers. Use FAR 52.247-52 (Sec F) with this clause.

# PART 50 – EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

*(Revised November 7, 2013 through PROCLTR 2014-25)*

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## SUBPART 50.1 – EXTRAORDINARY CONTRACTUAL ACTIONS

**50.101-3 Records.**

(1)(iii)(a) Records required by DFARS 250.101-3 shall be forwarded to the DLA General Counsel, which shall maintain them as required by DFARS 250.101-3(1)(iii).

**50.102-3 Limitations on Exercise of Authority,**

(90(b)) Authority to approve requests to obligate the Government up to the amount authorized for delegation below the secretarial level in FAR PART 50, including actions under FAR 50.104, and authority to disapprove proposed actions in any amount under the Act and the Executive Order, has been delegated to the General Counsel and Deputy General Counsel, DLA.

(1)(ii) The following authority has been delegated to HCAs. This authority may be redelegated except as restricted by DFARS 250.102-1(b) only to a staff official reporting directly to the HCA. Two copies of any redelegation shall be furnished to the General Counsel, DLA, one copy of which will be transmitted to the Under Secretary of Defense (Acquisition and Technology) (USD(A&T)).

(A) Authority to deny any request for contractual adjustment under the Act and Executive Order.

(B) Subject to the limitations in FAR 50.102-1(b), authority to approve, authorize, and direct an appropriate action, and to make all determinations and findings which are necessary or appropriate, in the examples of mistakes and informal commitment described in FAR 50.103-2 including, when necessary thereto, authority to modify, release, rescind, or cancel obligations of any sort and to extend delivery and performance dates.

**50.103-5 Processing Cases.**

(90) The contracting office responsible for processing a contractor's request for contractual adjustment shall be responsible for establishing liaison and joint action with other Military Departments and other

departments and agencies of the Government, except that the General Counsel or Deputy General Counsel, DLA, shall have such responsibility after any case is forwarded for further processing.

**50.103-6 Disposition.** The DLA General Counsel will maintain records of disposition in accordance with DFARS PGI 250.103-6. When a contracting office denies a request, a copy of the letter of explanation to the contractor shall also be submitted for the file.

## SUBPART 50.2 -- SUPPORT ANTI-TERRORISM BY FOSTERING EFFECTIVE TECHNOLOGIES ACT OF 2002

**50.204 Policy.**

(90) Contracting officers, with the approval of their CCOs, shall forward pre-qualification designation notices (see FAR 50.205-2) and documentation supporting presumptions of Safety Act designations or certifications after contract award (see FAR 50.205-3), to J3 and J7. In turn, J3 will review the request and coordinate with J7, whom, as the liaison between the contracting officer and the DHS, is responsible for forwarding the request to DHS. They are also responsible for keeping the contracting officer apprised of status.

# PART 51 – USE OF GOVERNMENT SOURCES BY CONTRACTORS

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*(Revised November 7, 2013 through PROCLTR 2014-21)*

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## SUBPART 51.1 – CONTRACTOR USE OF GOVERNMENT SUPPLY SOURCES

**51.100 Scope of subpart.** For DLA, Government sources of supply include items in DLA inventories and on existing DLA contracts. For DLA-managed items, this includes items coded with Acquisition Advice Codes D (centrally-managed, stocked, and issued); H (customer direct delivery, non-stocked items); and Z (numeric stockage objective (NSO) items).

**51.101 Policy.**

(a)(4) FARS DEV 2014-01 is a class deviation that permits DLA contracting officers to authorize DLA contractors access to DLA-managed items under other-than cost-reimbursement contracts. The deviation will remain in effect until January 23, 2016. This deviation shall not apply to commodities where contractor access to discounted or favorable pricing is prohibited by law, such as pharmaceuticals.

**51.102 Authorization to use Government supply sources.**

(e)(4) Contractor access to DLA sources of supply is limited to DLA-managed national stock numbered (NSN) or part numbered (P/N) items provided to DoD customers that are specifically authorized under the DLA contract that will use a DLA supply source. Supplies accessed under this authority may only be used in the performance of the contract that authorizes the access. The contract should specify any ceiling quantities that may apply to an item. Authorization must be limited to stocked items or items available under existing DLA contracts or inventories. The rationale supporting the decision to authorize use of a DLA source of supply will be coordinated with the managing contracting activity, documented in writing for each NSN or P/N, signed by the contracting officer authorizing use of the DLA supply source, approved by the CCO, and included in the contract file.

(f)(1)(a)(i) The authorizing contracting activity or office shall ensure contractors order only DLA-managed items as authorized in the contract, including, as a minimum, that supplies sold are used only in the performance of authorized contracts and, any benefit from this use is passed on to the Government.

(f)(1)(a)(ii) To demonstrate the benefits of permitting contractor access to Government sources of supply, the price of each item obtained from a Government source of supply should be the Government price charged to the contractor plus a handling fee determined fair and reasonable by the contracting officer. Items contractors order must be reconciled against items authorized in their contracts. Periodic reconciliation of the quantities DLA sold to the contractor with the quantities of those same items the contractor supplied to DoD customers, or holds under surge responsibilities, under the authorizing

contract will provide the visibility needed to monitor contractor's usage and trigger appropriate action for improper use. The contract shall include language requiring the contractor to verify that, as the contract nears completion, no purchases are made that would result in Government supply source items remaining with the contactor after contract completion. Special provisions must be made for surge items.

**51.103 Ordering from Government supply sources.**

(d) When contractor use of a DLA-managed supply source is determined to be the best value, considering price, delivery and other factors, contract language should hold the contractor responsible to meet the delivery requirements whether or not Government supply sources are used. Failure to meet the contract delivery requirements is a contractor-caused delay.

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## SUBPART 52.1 – INSTRUCTIONS FOR USING PROVISIONS AND CLAUSES

### 52.101 Using Part 52.

(b) Numbering.

(2) Provisions or clauses that supplement Federal Acquisition Regulations (FAR) and Defense Federal Acquisition Regulation Supplement (DFARS).

(ii) Only those provisions and clauses in this directive that are codified are preceded by an assigned CFR chapter number.

(B) See 1.301-91(c).

## SUBPART 52.2 – TEXTS OF PROVISIONS AND CLAUSES

*(Revised March 29, 2016 through PROCLTR 2016-06)*

### 52.200 Scope of subpart.

This subpart sets forth the texts of all Defense Logistics Acquisition Directive (DLAD) provisions and clauses, and for each provision and clause, gives a cross-reference to the location in the DLAD that prescribes its use.

**52.204-9000 Contractor Personnel Security Requirements.**
As prescribed in 4.1303-90, insert the following clause:

CONTRACTOR PERSONNEL SECURITY REQUIREMENTS (JUL 2015)

(a) Work to be performed under this contract or task order may, in full or in part, be performed at the Defense Logistics Agency (DLA) Headquarters (HQ), DLA field activity office(s), or other Federally-controlled facilities. Prior to beginning work on a contract, DLA requires all Contractor personnel working on the Federally-controlled facility to have, at a minimum, an initiated National Agency Check with Written Inquiries (NACI) or NACI equivalent and favorable completion of a Federal Bureau of Investigation (FBI) fingerprint check.

(b) Additionally, in accordance with Department of Defense (DoD) Regulation 5200.2-R, Personnel Security Programs, and DLA Issuance 4314, Personnel Security Program, all DoD Contractor personnel who have access to Federally-controlled information systems must be assigned to positions which are designated at one of three information technology (IT) levels, each requiring a certain level of investigation and clearance, as follows:

(1) IT-I for an IT position requiring a single scope background investigation (SSBI) or SSBI equivalent;

(2) IT-II for an IT position requiring a National Agency check with Law and Credit (NACLC) or NACLC equivalent; and

(3) IT-III for an IT position requiring a NACI or equivalent.

Note: IT levels will be designated according to the criteria in DoD 5200.2-R.

(c) Previously completed security investigations may be accepted by the Government in lieu of new investigations if determined by the DLA Intelligence Personnel Security Office to be essentially equivalent in scope to the contract requirements. The length of time elapsed since the previous investigation will also be considered in determining whether a new investigation is warranted. To assist the Government in making this determination, the Contractor must provide the following information to the respective DLA Intelligence Personnel Security Office immediately upon receipt of the contract. This information must be provided for each Contractor employee who will perform work on a Federally-controlled facility and/or will require access to Federally-controlled information systems:

(1) Full name, with middle name, as applicable, with social security number;

(2) Citizenship status with date and place of birth;

(3) Proof of the individual's favorably adjudicated background investigation or NACI, consisting of identification of the type of investigation performed, date of the favorable adjudication, name of the agency that made the favorable adjudication, and name of the agency that performed the investigation;

(4) Company name, address, phone and fax numbers with email address;

(5) Location of on-site workstation or phone number if off-site (if known by the time of award); and

(6) Delivery order or contract number and expiration date; and name of the Contracting Officer.

(d) The Contracting Officer will ensure that the Contractor is notified as soon as a determination is made by the assigned or cognizant DLA Intelligence Personnel Security Office regarding acceptance of the previous investigation and clearance level.

(1) If a new investigation is deemed necessary, the Contractor and Contracting Officer will be notified by the respective DLA Personnel Security Office after appropriate checks in DoD databases have been made.

(2) If the Contractor employee requires access to classified information and currently does not have the appropriate clearance level and/or an active security clearance, the DLA Intelligence Personnel Security Office will relay this information to the Contractor and Contracting Officer for further action. Investigations for Contractor employees requiring access to classified information must be initiated by the Contractor Facility Security Officer (FSO).

(3) The Contracting Officer will ensure that the respective DLA Intelligence Personnel Security Office initiates investigations for Contractor employees not requiring access to classified information (i.e., IT or unescorted entry).

(4) It is the Contractor's responsibility to ensure that adequate information is provided and that each Contractor employee completes the appropriate paperwork, as required either by the Contracting Officer or the DLA Intelligence Personnel Security Office, in order to begin the investigation process for the required clearance level.

(e) The Contractor is responsible for ensuring that each Contractor employee assigned to the position has the appropriate security clearance level.

(f) The Contractor shall submit each request for IT access and investigation through the Contracting Officer to the assigned or cognizant DLA Intelligence Personnel Security Office. Requests shall include the following information and/or documentation:

(1) Standard Form (SF) 85, Questionnaire for Non-Sensitive Positions, or the SF 86, Questionnaire for National Security Positions (see note below);

(2) Proof of citizenship (i.e., an original or a certified copy of a birth certificate, passport, or naturalization certificate); and

(3) Form FD-258, Fingerprint Card (however, fingerprinting can be performed by the cognizant DLA Intelligence Personnel Security Office).

(Note to (f)(1) above: An investigation request is facilitated through use of the SF 85 or

the SF 86. These forms with instructions as well as the Optional Form (OF) 306, Declaration for Federal Employment, which is required with submission of the SF85 or SF 86, are available at the Office of Personnel Management's (OPM) system called Electronic –Questionnaires for Investigations Processing (e-QIP). Hard copies of the SF85 and SF86 are available at OPM's web-site, www.opm.gov, but hard copies of the forms are not accepted.)

(g) Required documentation, listed above in paragraphs (f) (1) through (3), must be provided by the Contractor as directed by the Contracting Officer to the cognizant DLA Intelligence Personnel Security Office at the time of fingerprinting or prior to the DLA Intelligence Personnel Security Office releasing the investigation to OPM.

(h) Upon completion of the NACI, NACLC, SSBI, or other sufficient, appropriate investigation, the results of the investigation will be forwarded by OPM to the appropriate adjudication facility for eligibility determination or the DLA Intelligence Personnel Security Office for review and determination regarding the applicant's suitability to occupy an unescorted entry position in performance of the DLA contract. Contractor personnel shall not commence work on this effort until the investigation has been favorably adjudicated or the Contractor employee has been waived into the position pending completion of adjudication. The DLA Intelligence Personnel Security Office will ensure that results of investigations will be sent by OPM t to the Department of Defense, Consolidated Adjudications Facility (DoD CAF) or DLA Intelligence Personnel Security Office.

(i) A waiver for IT level positions to allow assignment of an individual Contractor employee to commence work prior to completion of the investigation may be granted in emergency situations when it is determined that a delay would be harmful to national security. A request for waiver will be considered only after the Government is in receipt of the individual Contractor employee's completed forms, the background investigation has been initiated and favorable FBI fingerprint check has been conducted. The request for a waiver must be approved by the Commander/Director or Deputy Commander/Director of the site. The cognizant DLA Intelligence Personnel Security Office reserves the right to determine whether a waiver request will be forwarded for processing. The individual Contractor employee for which the waiver is being requested may not be assigned to a position, that is, physically work at the Federally-controlled facility and/or be granted access to Federally-controlled information systems, until the waiver has been approved.

(j) The requirements of this clause apply to the prime Contractor and any subcontractors the prime Contractor may employ during the course of this contract, as well as any temporary employees that may be hired by the Contractor. The Government retains the right to request removal of Contractor personnel, regardless of prior clearance or adjudication status whose actions, while assigned to this contract, who are determined by the Contracting Officer to conflict with the interests of the Government. If such removal occurs, the Contractor shall assign qualified personnel, with the required investigation, to any vacancy.

(k) All Contractor personnel who are granted access to Government and/or Federally-controlled information systems shall observe all local automated information system (AIS) security policies and procedures. Violations of local AIS security policy, such as password sharing, performing personal work, file access violations, or browsing files outside the scope of the contract, will result in removal of the Contractor employee from Government property and referral to the Contractor for appropriate disciplinary action. Actions taken by the Contractor in response to a violation will be evaluated and will be reflected in the Contractor's performance assessment for use in making future source selection

decisions. In addition, based on the nature and extent of any violations of AIS security policy, the Government will consider whether it needs to pursue any other actions under the contract such as a possible termination.

(l) The Contractor may also be required to obtain a Common Access Card (CAC) or Installation Access Badge for each Contractor employee in accordance with procedures established by DLA. When a CAC is required, the Contracting Officer will ensure that the Contractor follows the requirements of Homeland Security Presidential Directive 12 and any other CAC-related requirements in the contract. The Contractor shall provide, on a monthly basis, a listing of all personnel working under the contract that have CACs.

(m) Contractor personnel must additionally receive operations security (OPSEC) and information security (INFOSEC) awareness training. The DLA annual OPSEC refresher training and DLA annual INFOSEC training will satisfy these requirements and are available through the DLA Intelligence Office.

(n) When a Contractor employee who has been granted a clearance is removed from the contract, the Contractor shall provide an appropriately trained substitute who has met or will meet the investigative requirements of this clause. The substitute may not begin work on the contract without written documentation, signed by the Contracting Officer, stating that the new Contractor employee has met one of the criteria set forth in paragraphs (c), (d), or (i) of this clause, (i.e., acceptance of a previously completed security investigation, satisfactory completion of a new investigation, or a waiver allowing work to begin pending completion of an investigation). Contractor individual employees removed from this contract as a result of a violation of local AIS security policy are removed for the duration of the contract.

(o) The following shall be completed for every employee of the Government Contractor working on this contract upon contract expiration. Additionally, the Contractor shall notify the contracting officer immediately in writing whenever a Contractor employee working on this contract resigns, is reassigned, is terminated or no longer requires admittance to the Federally-controlled facility or access to Federally-controlled information systems. When the Contractor employee departs, the Contractor will relay departure information to the cognizant DLA Intelligence Personnel Security Office and the Trusted Agent (TA) that entered the individual into the Trusted Associated Sponsorship System (TASS), so appropriate databases can be updated. The Contractor will ensure each departed employee has completed the DLA J6 Out-Processing Checklist, when applicable, for the necessary security briefing, has returned any Government-furnished equipment, returned the DoD CAC and DLA (or equivalent Installation) badge, returned any DoD or DLA vehicle decal, and requested deletion of local area network account with a prepared Department of Defense (DD) Form 2875. The Contractor will be responsible for any costs involved for failure to complete the out-processing, including recovery of Government property and investigation involved.

(p) These Contractor security requirements do not excuse the Contractor from meeting the delivery schedule/performance requirements set forth in the contract, or waive the delivery schedule/performance requirements in any way. The Contractor shall meet the required delivery schedule/performance requirements unless the contracting officer grants a waiver or extension.

(q) The Contractor shall not bill for personnel, who are not working on the contract while that Contractor employee’s clearance investigation is pending.

(End of Clause)

**52.204-9001 Electronic Order Transmission.**
As prescribed in 4.502-90, insert the following provision:

ELECTRONIC ORDER TRANSMISSION (NOV 2011)

(a) Supplies procured through the Defense Logistics Agency (DLA) may be ordered via electronic ordering. Offerors must check one of the following alternatives for paperless order transmission:

( ) Electronic data interchange (EDI) transmissions in accordance with American National Standards Institute (ANSI) X12 Standards through a DLA transaction services approved value added network (VAN).

( ) Electronic mail (email) award notifications containing web links to electronic copies of the Department of Defense (DD) Form 1155, Order for Supplies or Services.

(b) Offerors choosing email notification for order transmission shall register their email address on the DLA internet bid board system **(**DIBBS**)** home page at https://www.dibbs.bsm.dla.mil/ as part of the vendor registration.

(c) Offerors choosing EDI for order transmission will receive transaction sets at time of award. The Contractor shall acknowledge receipt of each order by transmitting a functional acknowledgement or order receipt message within 24 hours, except for weekends and holidays where acknowledgement shall be the next working day. Failure to establish system(s) connectivity for successfully receiving and processing EDI orders within 30 days after date of award may be grounds for termination of the contract by the Government.

(d) Issuance of an EDI transmission or email notification constitutes a binding order. Successful offerors are authorized and expected to commence performance upon receipt.

(e) Note: Information regarding EDI, ANSI X12 transactions and DLA transaction services approved VANs can be obtained from the DAAS web site by going to https://www.transactionservices.dla.mil/daashome/edi-vanlist-dla.asp.

(f) Questions concerning electronic ordering should be directed to the appropriate supply center contact below:

DLA Land and Maritime
Post Office (P. O.) Box 3990
Columbus, Ohio 43218-3990

DLA Troop Support
Attention: J6P
Information Operations
700 Robbins Avenue
Philadelphia, Pennsylvania 19111-5092
Phone: 215-737-2130

or -

DLA Aviation
Procurement Process Support Directorate
Systems and Procedures Division
Attention: BPSC
8000 Jefferson Davis Highway
Richmond, Virginia 23297-5516

(End of Clause)

**52.208-9001 Acquisition of Federal Prison Industries, Incorporated (FPI) items.**
As prescribed in 8.604(c)(90)(i), insert the following provision:

ACQUISITION OF FEDERAL PRISON INDUSTRIES INCORPORATED (FPI) ITEMS (NOV 2011)

(a) For items listed on the FPI schedule of products made in federal penal and correctional institutions, issuance of this solicitation will constitute market research. Price, quality, and delivery will be evaluated both as part of the Contracting Officer's award decision and as the comparability determination required by Defense Federal Acquisition Regulation Supplement (DFARS) 208.602.

(b) The award evaluation and comparability determination will be conducted using the award criteria contained in this solicitation. FPI will receive an order to fulfill this requirement if its offer is comparable to those from private-sector sources. By signing an award resulting from this solicitation, the Contracting Officer signifies that a comparability determination has been made.

(End of Provision)

**52.209-9000 Qualified Products List (QPL) Connector Assemblies and QPL Electrical Contacts.**
As prescribed in 9.203-90(a)(2), insert the following clause:

QUALIFIED PRODUCTS LIST (QPL) CONNECTOR ASSEMBLIES AND QPL ELECTRICAL CONTACTS (NOV 2011)

(a) The offeror is not restricted to utilizing connector bodies and electrical contacts and/or backshells produced by the same manufacturer in the production of the connector assembly, but may utilize connector bodies from one manufacturer and electrical contacts and/or backshells from a second manufacturer in the production of a technically acceptable assembly; provided, the connector shell manufacturer and the electrical contact manufacturer are both currently qualified to their respective QPLs.

(b) In the event that an offeror elects to utilize connector shells and electrical contacts manufactured by different qualified sources, the offeror agrees to provide:

(1) Name of shell manufacturer(s):

(2) Manufacturer(s)' part number (P/N):

(3) Name of contact manufacturer(s):

(4) Manufacturer(s)' P/N:

(5) To the Contracting Officer, prior to delivery, suitable documentation and/or a representation signed by an authorized Contractor representative responsible for quality assurance, demonstrating that the connector shells and electrical contacts in question were manufactured by/obtained from a current QPL source(s).

(End of Clause)

**52.209-9001 Source Approval – Aircraft Launch and Recovery Equipment (ALRE).**
As prescribed in 9.207-90(a), insert the following provision:

SOURCE APPROVAL – AIRCRAFT LAUNCH AND RECOVERY EQUIPMENT (ALRE)
(NOV 2011)

(a) To be eligible for award under this solicitation, an offeror must be an approved source or provide the product of an approved source as determined by the Engineering Support Activity, Naval Air Warfare Center (NAWC) Aircraft Division Lakehurst. The criteria and procedures for source approval is contained in Part I of the Naval Inventory Control Point (NAVICP) Philadelphia brochure entitled "Source Approval Information Brochure for Spares". The latest version of this brochure may be obtained by accessing NAVICP's website:

https://www.navsup.navy.mil, Our Team, NAVICP, Business Opportunities, Commodities, Source Approval Request (SAR) Brochure - Spares

(b) To assist in the determination of source approval, the offeror may be required to submit to a survey prior to award in which NAWC Lakehurst may participate.

(c) In addition, the offeror must provide the following information, which may be considered in determining whether the offeror is an approved source:

(1) A source approval letter from NAVICP's Engineering and Product Support Directorate;

(2) Successful completion of a prior United States (U.S.) Government contract for the same item(s) being procured under this procurement, or;

(3) Other evidence indicating that the offeror meets the source approval criteria.

(End of Provision)

**52.209-9002 Qualified Testing Suppliers List (QTSL) – Federal Supply Classes (FSCs) 5961 Semiconductors and Hardware Devices and 5962 Electronic Microcircuits.**
As prescribed at 9.203-90(a)(2), insert the following clause:

QUALIFIED TESTING SUPPLIERS LIST (QTSL) – FEDERAL SUPPLY CLASSES (FSCS) 5961 SEMICONDUCTORS AND HARDWARE DEVICES AND 5962 ELECTRONIC MICROCIRCUITS (FEB 2014)

(a) Only offerors who are listed, or qualified for listing (as determined by the contracting officer), on the DLA Land and Maritime Qualified Testing Suppliers List (QTSL) - FSCs 5961 Semiconductors and Hardware Devices and 5962 Electronic Microcircuits, at the time of award, shall be eligible for award based upon QTSL compliance.

(b) Offers from the following sources shall take precedence over offers submitted based upon QTSL compliance:

(1) Offers from approved sources listed in the item description (such as original component manufacturers (OCMs) and original equipment manufacturers (OEMs); or

(2) Offers from sources listed, or are qualified for listing (as determined by the contracting officer), on the applicable qualified products list (QPL) or qualified manufacturers list (QML), if any; or

(3) Offers from authorized distributors of approved or QPL or QML qualified sources (as determined by the contracting officer) (see (1) and (2) above) with adequate traceability (as determined by the contracting officer) to the approved or qualified source; or

(4) Offers from distributors listed, or are qualified for listing (as determined by the contracting officer), on the DLA Land and Maritime Qualified Suppliers List of Distributors (QSLD) for FSCs 5961 and 5962 at the time of award.

(c) QTSL contractors shall offer and supply the product of an approved and qualified source as identified in the item description.

(d) The Government may terminate the contractor's QTSL status at any time for failure of the contractor to maintain compliance with the DLA Land and Maritime document entitled, “Criteria and Provisions for Qualified Testing Suppliers List.” (See paragraph (g) below of this clause to obtain the document.) Maintaining QTSL status is a contractual requirement; therefore, the Contracting Officer may terminate the contract for default for the contractor’s failure to maintain such status.

(e) Upon request, the Contractor shall supply to the contracting officer the results of the mandatory testing, as referenced in the document “Criteria and Provisions for Qualified Testing Suppliers List” and listed in Joint Electron Device Engineering Council (JEDEC) Standard JESD 31. If requested before award, successful results of mandatory testing are a requirement to be eligible for award.

(f) The Government reserves the right to perform additional testing at its discretion. If the solicitation requires inspection and acceptance at destination, the Government reserves the right to award with inspection and acceptance at origin, in which case DLAD clause 52.246-9004, Product Verification Testing, will be incorporated into the contract as awarded.

(g) The provisions governing qualification for the QTSL, and the applicable qualification criteria, may be obtained—

(1) From the QTSL general information web page, found at http://www.landandmaritime.dla.mil/offices/sourcing_and_qualification/offices.aspx?Section=QTS;

(2) By sending an email to: landandmaritime.qtsl@dla.mil; or

(3)(i) By writing to the following address when using the United States Postal Service (USPS):

Defense Logistics Agency (DLA) Land and Maritime
Attention: VQE Chief
Post Office (P.O.) Box 3990
Columbus, Ohio 43218-3990

or

(ii) By writing to the following address when using private carriers, to include United Parcel Service (UPS) or Federal Express (FEDEX):

DLA Land and Maritime
Attention: VQE Chief
3990 East Broad Street
Columbus, Ohio 43213

(End of Clause)

**52.209-9012 Qualified Suppliers List for Manufacturers(QSLM)/Qualified Suppliers List for Distributors (QSLD).**
As prescribed in 9.203-90(a)(3), insert the following clause:

QUALIFIED SUPPLIERS LIST FOR MANUFACTURERS (QSLM)/QUALIFIED SUPPLIERS LIST FOR DISTRIBUTORS (QSLD) (NOV 2011)

The following is applicable only when qualified suppliers list (QSL)/QSM is specified in the purchase order text (POT).

(a) Only manufacturers on the Qualified Suppliers List for Manufacturers (QSLM) and distributors on the Qualified Suppliers List for Distributors (QSLD) which appear on the DLA Troop Support Qualified Suppliers List (QSL) for the item(s) listed on the POT are eligible for award.

(b) The provisions governing qualification, and the applicable qualification criteria, may be obtained by either going to the DLA Troop Support QSLM/QSLD general information website or by writing to:

Commander
DLA Troop Support
Building 3B
700 Robbins Avenue
Philadelphia, Pennsylvania 19111

(c) The requirement of this clause for status as a QSLM/QSLD concern at the time of award is in addition to, and does not abrogate, any requirement for an Offeror to provide a qualified products list (QPL) item when such requirement is specified. In addition, a concern with QSLD status must furnish the product of a concern with QSLM status whether the item is governed by a QPL or not.

(d) The Contracting Officer may recommend termination of the Contractor's QSLM/QSLD status at any time for failure by the Contractor to maintain qualification. Further, Government officials who have responsibility for establishing and maintaining the QSL may terminate the qualified status of a QSLM and/or QSLD concern if they determine that the concern has failed to maintain the qualifications required for such status. Maintenance of QSL status is a contractual requirement. Therefore, the Contracting Officer may terminate the contract for default for failure to maintain such status.

(End of Clause)

**52.209-9013 Component Qualified Products List(QPL)/Qualified Manufacturers List (QML) Items.**
As prescribed in 9.203-90(a)(4), insert the following clause:

COMPONENT QUALIFIED PRODUCTS LIST (QPL)/ QUALIFIED MANUFACTURERS LIST (QML) (NOV 2011)

If indicated elsewhere within the body of this solicitation/award that the item(s) being procured contain "one or more components which must meet QPL/QML specifications", the Contractor represents by submission of its quote/offer that it will supply such component item(s) only from sources currently qualified on the applicable QPL(s)/QML(s).

(End of Clause)

**52.209-9016 Evaluation of Offers – First Article Testing.**
As prescribed in 9.306(f)(2), insert the following provision:

EVALUATION OF OFFERS – FIRST ARTICLE TESTING (MAR 2009)

The cost to the Government for first article testing shall be a factor in evaluating offers. The Government's testing cost will be added to the offered price of the applicable item. Unless cited elsewhere in this solicitation, the testing cost is shown below:

| Item | Government testing cost |
|---|---|
| | $ |
| | $ |

(End of Provision)

**52.209-9017 First article – Contractor Testing – Additional Requirements.**
As prescribed in 9.308-1(90)(ii)(A), insert the following clause:

FIRST ARTICLE – CONTRACTOR TESTING – ADDITIONAL REQUIREMENTS (AUG 2014)

(a) For the lots/items identified in this contract as requiring "Contractor First Article Test (FAT) (including test report)" in accordance with the clause at Federal Acquisition Regulation (FAR) 52.209-3, the Contractor shall –

(1) Conform with technical requirements stated and/or referenced in the solicitation; including number of units to be tested, data required, performance or other characteristics that the first articles shall meet, sequence of processes, tests to which the first articles shall be subjected, and conformance criteria for each requirement specified; and

(2) Provide all facilities, equipment and personnel required to perform the examination and evaluation of the first article when first article testing will be conducted at the Contractor's plant. The Government reserves the right to charge the Contractor for any additional costs of examination and evaluation caused by failure of the Contractor to make available the first article or the required facilities, equipment or personnel, at the time the Contractor advised the testing would take place (see paragraph (a) of the clause at FAR 52.209-3).

(3) Prepare and disseminate the FAT report as follows:

(i) Prepare the test report in accordance with data item description DI-NDTI-80809B, entitled, "Test/Inspection Report;"

(ii) Mark the test report, "First article test report – Contract number: [Contractor insert Contract number] and lot/item number: [Contractor insert lot/item number];"

(iii) Present the test report to the inspecting activity quality assurance representative (QAR) for review. The QAR will –

(A) Prepare recommendations;

(B) Countersign the first article report;

(C) Forward two copies to the Contracting Officer at the buying activity; and

(D) Provide notification by e-mail, including award number, National Stock Number (NSN), and additive contract Line-item (CLIN) number, and provide copy of award, if not available in Electronic Document Access (EDA), to the Contracting Officer and to:

*(1)* For awards issued by DLA Land and Maritime

See FAR Clause 52.209-3

*(2)* For awards issued by DLA Troop Support:

*(i)* DLA Troop Support

Attention: First Article Testing Monitor
Building 3
700 Robbins Avenue

Philadelphia, Pennsylvania 19111; or

*(ii)* For acquisitions of Clothing and Textile (C&T) items, Medical and Subsistence items, and Meal, Ready-To-Eat (MRE) and Tray Pack Items, the Contracting Officer, who acts as FAT/Testing Monitor;

*(3)* For awards issued by DLA Aviation:

DLA Aviation
ATTN: VGA, Product Assurance Office
8000 Jefferson Davis Highway
Richmond, Virginia 23297-5516

*(4)* For awards issued by Naval Surface Warfare Center, Carderock Division:

Commanding Officer
Naval Surface Warfare Center
Code 954, Building 77L,
Philadelphia Business Center, Carderock Division
Philadelphia, Pennsylvania 19112-5083
Telephone: (215) 897-1146

*(5)* For awards issued by Naval Sea Systems Command, Washington Navy Yard:

Commander
Naval Sea Systems Command, Sea 05M3
1333 ISAAC Hull Avenue, SE Stop 5160
Washington Navy Yard, District of Columbia (DC) 20376-5160
Telephone: (202) 781-3729

(iv) Submit the First Article Test Report to the Government activity specified in the contract within the number of calendar days from date of contract (or date of first delivery order, for indefinite delivery contracts) specified in the contract; accompanied by –

(A) Department of Defense (DD) Form 250, Material Inspection and Receiving Report, signed by the QAR and indicating Contract Quality Assurance was accomplished prior to signing the DD Form 250; and

(B) Contractor's certification that the same processes and facilities used to manufacture the first article units will be used to manufacture the production units; and

(4) Pay all costs incurred for transportation of first article samples and test reports under this contract; and, if applicable, any costs of manufacturing and re-testing additional first articles, and administrative costs to the Government for re-procurement.

(b) The Contractor shall enter an offered price in the CLIN for "Contractor First Article Test (FAT) (including test report)" that includes all costs associated with the production and testing of the first

articles and the preparation of the First Article Test Report. Offers that do not cite a separate price for the "Contractor First Article Test (FAT) (including test report)" CLIN, or do not specify there is a separate charge for the "Contractor First Article Test (FAT) (including test report)" shall be evaluated under the presumption that there is no separate charge for the production and testing of the first articles and the preparation of the First Article Test Report.

(End of Clause)

ALT II (NOV 2011) As prescribed in 9.308-1(90)(3)(ii)(A)(*2*), insert the following paragraphs (a)(2)(i)-(iii) in lieu of paragraph (a)(2) in the basic clause. The Contracting Officer shall complete the fill-ins in paragraph (a)(2)(ii) with information in the Material Master, Product Assurance tab.

(a)(2)(i) Provide written notice to the Contracting Officer and the inspecting activity quality assurance representative (QAR) of the date, time, and location when the first articles will be manufactured and tested.

The Contractor shall provide this notice in accordance with the time frame specified in the contract (see paragraph (a) of the clause at Federal Acquisition Regulation (FAR) 52.209-3). The QAR shall witness the production and testing of the first articles.

The Government reserves the right to charge the Contractor for any additional costs of examination and evaluation caused by failure of the Contractor to make available the first article units, or required facilities, equipment or personnel, at the time the Contractor specified in its notice to the Government. The same criteria for the acceptance of a Certificate of Compliance for the components of the entire contract quantity shall apply to the acceptance of the first article components, unless specifically stated otherwise. Materials used in fabrication of first articles shall be in strict conformity with the applicable specification of the contract, unless the Contracting Officer authorizes otherwise.
In the event of a conflict between the applicable specification and the first article, the specification shall prevail.

Prior to the approval of the first article, the Contractor shall not initiate any cutting or otherwise use any Government-furnished property beyond that required for the first article quantities.

(a)(2)(ii) The first article will be approved [the Contracting Officer shall indicate appropriate provision below]:

[____] After inspection indicates that it meets the contractual requirements. The inspection shall be conducted on a sample drawn in accordance with contractual requirements.

[____] If the examination indicates one of the following, whichever is applicable:

(1) No dimensional defect is found nor are more than 10% of the units examined found to contain major or minor "A" defects; or

(2) No dimensional defect is found nor are more than 10% of units examined found to contain 3 or 2 point defects; or

(3) When the classification of defects contains only major or minor defects or only one class of defects, and no dimensional defect is found nor more than 10% of the units examined found to contain a defect.

[____] Other:

(a)(2)(iii) In the event the Government determines that, as a basis for granting conditional first article approval, a corrective action plan is needed to confirm that first article deficiencies are readily correctable in production, the Contracting Officer will notify the Contractor, in writing, of the requirement to submit such plan to the Contracting Officer within ten (10) working days after receipt of the Government notification. The corrective action plan must clearly detail how the Contractor intends to correct cited deficiencies.

Should there be insufficient time to obtain a corrective action plan and comply with the timeframe allotted for notification of the Contractor of first article acceptability by the Government, the Contracting Officer shall request from the Contractor an extension to the time period for first article approval. In the event the Contractor (1) does not submit the corrective action plan within the ten (10) working day timeframe, (2) refuses to extend the stated time period for first article approval, or (3) submits an otherwise unacceptable plan, and the deficiencies are such that the Government cannot determine them to be readily correctable without further proof from the Contractor, then the Government shall take action to disapprove the first article.

ALT III (SEP 2008) As prescribed in 9.308-1(90)(ii)(A)(*3*), add the following paragraph (a)(3)(v) to the basic clause:

(a)(3)(v) Comply with the following terms for disposition of first articles [Contracting Officer shall complete appropriate fill-in]:

[____] The Contractor shall hold at least one approved first article unit at the production facility until all production quantities have been produced and accepted. (In the case of indefinite delivery contracts, the Contractor shall hold the first article unit until final production run has been approved and accepted on the first delivery order.) This first article unit shall be considered a production guide or manufacturing standard if defects are reported on delivered material or problems are encountered production.

[____] The Contractor shall retain all first article units as production standards. The Contractor shall not submit the first article units for acceptance as part of the order quantity.

[____] Other: _____

ALT IV (SEP 2008) As prescribed in 9.308-1(90)(ii)(A)(*4*), insert the following paragraph (a)(1) in lieu of paragraph (a)(1) in the basic clause:

(a)(1) Conform with technical requirements stated and/or referenced in the solicitation; including number of units to be tested, data required, performance or other characteristics that the first articles shall meet, sequence of processes, tests to which the first articles shall be subjected, and conformance criteria for each requirement specified. Until notification of first article test is received, the aggregate amount of progress payments applicable to manufacturers of the first article test sample shall be limited to [Contracting Officer shall complete appropriate fill-in]:

[____] $_____
[____] ____% of the total contract price.

ALT V (NOV 2011) As prescribed in 9.308-1(91)(ii)(A)(*5*), insert the following paragraph (a)(2) in lieu of paragraph (a)(2) in the basic clause.

(a)(2) Provide advance written notice at least fourteen (14) calendar days (or as otherwise specified in the contract) to the Contracting Officer and the Inspecting Activity Quality Assurance Representative (QAR) of the date, time, and location when the first articles will be manufactured and tested; so that the QAR may witness the tests. The Government reserves the right to charge the Contractor for any additional costs of examination and evaluation caused by failure of the Contractor to make available the first article units, or required facilities, equipment or personnel, at the time the Contractor specified in its notice to the Government (see paragraph (a) of the clause at Federal Acquisition Regulation (FAR) 52.209-3).

**52.209-9018 First Article - Government Test – Additional Requirements.**
As prescribed in 9.308-2(91)(ii)(A), insert the following clause:

FIRST ARTICLE – GOVERNMENT TEST – ADDITIONAL REQUIREMENTS (AUG 2014)

(a) For the lots/items identified in this contract as requiring Government first article test (FAT) in accordance with the clause at Federal Acquisition Regulation (FAR) 52.209-4, the Contractor shall—

(1) Conform with technical requirements stated and/or referenced in the solicitation; including number of units to be produced, data required, performance or other characteristics that the first articles shall meet, sequence of processes, tests to which the first articles shall be subjected, and conformance criteria for each requirement specified.

(2) Provide all facilities, equipment and personnel required to perform the examination and evaluation of the first article units when first article testing will be conducted at the Contractor's plant. The Government reserves the right to charge the Contractor for any additional costs of examination and evaluation caused by failure of the Contractor to make available the first article units or the required facilities, equipment or personnel, at the times specified in the above mentioned notice to the Contracting Officer.

(3)(i) At least fourteen (14) calendar days, or as otherwise specified in the contract, prior to the date when the Contractor will present the first articles to the quality assurance representative (QAR) for inspection to determine compliance with specification requirements, provide written notice to:

(A) The Contracting Officer;

(B) The QAR; and

(C) The following:

(1) For awards issued by DLA Land and Maritime:

DLA Land and Maritime - VP

Test Coordinator Office
Post Office (P. O.) Box 3990
Columbus, Ohio 43218-3990;

(2) For awards issued by DLA Troop Support:

(i) DLA Troop Support
Attention: First Article Testing Monitor
Building 3
700 Robbins Avenue
Philadelphia, Pennsylvania 19111; or

(ii) For acquisitions of Clothing and Textile (C&T) items; Medical and Subsistence items; and Meal, Ready-To-Eat (MRE) and Tray Pack Items, the Contracting Officer, who acts as FAT/Testing Monitor;

(3) For awards issued by DLA Aviation:

DLA Aviation
ATTN: VGA, Product Assurance Office
8000 Jefferson Davis Highway
Richmond, Virginia 23297-5516

(4) For awards issued by Naval Surface Warfare Center, Carderock Division:

Commanding Officer
Naval Surface Warfare Center
Code 954, Building 77L
Philadelphia Business Center, Carderock Division
Philadelphia, Pennsylvania 19112-5083
Telephone: (215) 897-1146

(5) For awards issued by Naval Sea Systems Command, Washington Navy Yard:

Commander
Naval Sea Systems Command
Sea 05M3, 1333 ISAAC Hull Avenue, SE Stop 5160
Washington Navy Yard, District of Columbia (DC) 20376-5160
Telephone: (202) 781-3729

(ii) When first article units are presented to the QAR, provide the Contractor's certification that the same processes and facilities used to manufacture the first article units shall be used to manufacture the production units.

(iii) Prior to shipping the first article units to the Government testing facility specified in paragraph (a) of the clause FAR 52.209-4 (or resubmitting any first article units after conditional approval or disapproval by the Government testing facility), obtain a statement from the QAR that the first article units have been inspected and determined to comply with the specification requirements.

(4) Prepare shipping containers for first article units in accordance with the following:

(i) Exterior marking and shipping documentation.

(A) Mark packages containing first article units in bold letters, below and to the left of the address, as follows: "First Article Exhibits: Contract Number [Contractor insert] and Lot/Item Number [Contractor insert];" and

(B) Use a hard copy of the Department of Defense (DD) Form 250 as a packing list on the exterior of the shipping container, in accordance with military standard (MIL-STD) 129, paragraph 5.3, Exterior Container Documentation.

(ii) Interior documentation requirements. Include the following with all shipments of first article units:

(A) Hard copies of the Statement of Inspection and DD Form 250, signed by the QAR;

(B) Copy of the contract, or those portions of the contract that pertain to the Government First Article Test (FAT) requirements;

(C) Copies of test reports, showing actual results;

(D) Material certifications;

(E) Process operations sheets;

(F) Copies of drawings used to manufacture the first article units. (Contractor may mark documents, as appropriate, to restrict from public disclosure and/or from Government use other than for evaluation);

(G) Contractor's certification that the same processes and facilities used to manufacture the first article units shall be used to manufacture the production units;

(H) Documents required under a contract deliverables requirements list, if applicable; and

(I) Any other documentation required by the contract;

(5)(i) Send all first article units by traceable means (e.g., certified or registered mail, United Parcel Service, Federal Express, etc.).

(ii) At the time first article units are shipped, provide copies of the signed DD Form 250, the QAR Statement of Inspection, and transportation tracking information to the—

(A) Contracting Officer; and

(B) Points of contact identified at paragraph (a)(3)(i)(C) of this clause.

(6) Submit first articles to the Government testing facility identified in paragraph (a) of the clause at FAR 52.209-4, within the number of calendar days from date of contract as specified in paragraph (a) of the clause at FAR 52.209-4; and

(7) Pay all costs incurred for transportation of first article units under this contract; and, if applicable -

(i) Costs of manufacturing and re-testing additional first articles; and

(ii) Administrative costs for re-procurement by the Government.

(b) The Contractor shall enter an offered price in the contract line-item (CLIN) for "Government First Article Test (FAT)" that includes all costs associated with the production and testing of the first articles. Offers that do not cite a separate price for the "Government First Article Test (FAT)" CLIN, or do not specify there is a separate charge for the "Government First Article Test (FAT)", shall be evaluated under the presumption that there is no separate charge for producing and testing the first article units.

(c) Upon completion of the first article testing, the Government test facility will submit its report of testing in duplicate) to the Contracting Officer and to the points of contact identified at paragraph (a)(3)(i)(C) of this clause.

(d) If first article units are conditionally approved or disapproved, the Government shall take action in accordance with the clause at FAR 52.209-4.

(1) Final disposition of conditionally approved or disapproved first article units is determined at the discretion of the Government.

(2)(A) Disapproved first article units may be returned to the Contractor at the Government's discretion, if the Contractor submitted the following information to the Contracting Officer and to the points of contact identified at paragraph (a)(3)(i)(C) of this clause within fifteen (15) calendar days after receiving notification of disapproval of the first article unit:

(*1*) Contractor's complete "Ship To" address;

(*2*) Name of Contractor's point of contact (POC)/addressee;

(*3*) Phone number of Contractor's POC; and

(*4*) Transportation cost codes (e.g., Contractor's FED-EX, DHL, UPS shipping account numbers, etc.).

(B) In the event the Contractor fails to provide the information required above, the Agency may, at its discretion, dispose of the material.

(End of Clause)

ALT I (SEP 2008) As prescribed in 9.308-2(91)(ii)(A)(*1*), insert the following paragraph (a)(2) in lieu of paragraph (a)(2) in the basic clause:

(a)(2) Provide written notice to the Contracting Officer and the cognizant quality assurance representative (QAR) at least fourteen (14) calendar days, or as otherwise specified in the contract, prior to manufacture of the first articles, to accommodate an in-process verification of the first article manufacture by the QAR. Provide all facilities, equipment and personnel required to perform the examination and evaluation of the first article units when first article testing will be conducted at the Contractor's plant. The Government reserves the right to charge the Contractor for any additional costs of examination and evaluation caused by failure of the Contractor to make available the first article units or the required facilities, equipment or personnel, at the times specified in the above mentioned notice to the Contracting Officer.

ALT II (SEP 2008) As prescribed in 9.308-2(91)(ii)(A)(*2*), insert the following paragraphs (a)(2)(i)-(iii) in lieu of paragraph (a)(2) in the basic clause. The Contracting Officer shall complete the fill-ins in paragraph (a)(2)(ii) with information in the material master, product assurance tab.

(a)(2)(i) At least fourteen (14) calendar days (or as otherwise provided in the contract) prior to the manufacture and testing of the first article units, provide written notice to the Contracting Officer and the Inspecting Activity Quality Assurance Representative (QAR). The QAR shall witness the production and testing of the first articles. The same criteria for the acceptance of a Certificate of Compliance for the components of the entire contract quantity shall apply to the acceptance of the first article components unless specifically stated otherwise. Materials used in fabrication of first articles shall be in strict conformity with the applicable specification of the contract unless the Contracting Officer authorizes otherwise. In the event of a conflict between the applicable specification and the first article, the specification shall prevail. Prior to the approval of the first article, the Contractor shall not initiate any cutting or otherwise use any Government-furnished property beyond that required for the first article quantities.

(a)(2)(ii) The first article will be approved [Contracting Officer shall complete appropriate fill-in below]:

[____] After inspection indicates that it meets the contractual requirements. The inspection shall be conducted on a sample drawn in accordance with contractual requirements.

[____] If the examination indicates one of the following, whichever is applicable:

(1) No dimensional defect is found nor are more than 10% of units examined found to contain major or minor "A" defects; or

(2) No dimensional defect is found nor are more than 10% of units examined found to contain 3 or 2 point defects; or

(3) When the classification of defects contains only major or minor defects or only one class of defects, and no dimensional defect is found nor are more than 10% of the units examined found to contain a defect.

[____] Other: _____

(a)(2)(iii) In the event the Government determines that, as a basis for granting conditional first article approval, a corrective action plan is needed to confirm that first article deficiencies are readily correctable in production, the Contracting Officer will notify the Contractor, in writing, of the requirement to submit such plan to the Contracting Officer within ten (10) working days after receipt of the Government notification. The corrective action plan must clearly detail how the Contractor intends to correct cited deficiencies. Should there be insufficient time to obtain a corrective action plan and comply with the timeframe allotted for notification of the Contractor of first article acceptability by the Government, the Contracting Officer shall request from the Contractor an extension to the time period for first article approval. In the event the Contractor (1) does not submit the corrective action plan within the ten (10) working day timeframe, (2) refuses to extend the stated time period for first article approval or (3) submits an otherwise unacceptable plan and the deficiencies are such that the Government cannot determine them to be readily correctable without further proof from the Contractor, then the Government shall take action to disapprove the first article.

ALT VI (SEP 2008) As prescribed in 9.308-2(91)(ii)(A)(*6*), insert the following paragraphs (a)(1)(i)-(ii) in lieu of paragraph (a)(1) in the basic clause:

(a)(1)(i) Conform with technical requirements stated and/or referenced in the solicitation; including number of units to be tested, data required, performance or other characteristics that the first articles shall meet, sequence of processes, tests to which the first articles shall be subjected, and conformance criteria for each requirement specified; and

(a)(1)(ii) The following terms apply regarding disposition of first article units [Contracting Officer shall complete appropriate fill-in]:

[____] The Contractor shall hold at least one approved first article unit at the production facility until all production quantities have been produced and accepted. (In the case of indefinite delivery contracts, the Contractor shall hold the first article unit until final production run has been approved and accepted on the first delivery order.) This first article unit shall be considered a production guide or manufacturing standard if defects are reported on delivered material or problems are encountered during production.

[____] The Contractor shall retain all first article units as production standards. The Contractor shall not submit the first article units for acceptance as part of the order quantity.

[___] The Government shall retain all first article units.

[___] The Government shall retain all the first article units; except that at least one approved first article unit shall be returned by the Government and retained by the Contractor at the production facility until all production quantities have been produced and accepted. This first article unit shall be considered a production guide or manufacturing standard if defects are reported on delivered material or problems are encountered during production.

[___] The Government shall not return the first articles to the Contractor, because the items shall be subjected to destructive testing.

[____] Other: _____

**52.209-9019 Requests for Waiver of First Article Testing Requirements.**

As prescribed in 9.306(c)(1), insert the following clause:

REQUESTS FOR WAIVER OF FIRST ARTICLE TESTING REQUIREMENTS (SEP 2008)

(a) The Government reserves the right to waive the first article testing requirement when all the following criteria are met [Offeror shall insert information in space provided below, attach documentation to offer, or provide under separate cover to Contracting Officer.]

(1)(i) Source has manufactured the product within the last five (5) years; or

(ii) Identical or similar supplies were previously furnished by the Offeror within the past three (3) years and approved by the Government:

(A) Contract Number(s):
Date(s):
Issuing Government Agency or Agencies:

(B) Item previously furnished, identified by part number, type, model number, etc.):

(C) Engineering control document/change number of item previously furnished:

(2) There have been no changes to manufacturing processes, tooling, or locations;

(3) There have been no changes to manufacturing data (e.g., drawing revisions that change materials, dimensions, processes, inspection or testing requirements; or subcontractors used to manufacture the items successfully in the past);

(4) There has been no adverse quality history for the material manufactured in the last three (3) years; and

(5) Item supplied will be of same design and manufactured by same method at same facilities as item previously approved.

(b) Alternative prices. Offerors who ask to be considered for a waiver of the first article testing requirement may provide alternative offered prices. [Offeror shall insert information in space provided below, attach documentation to offer, or provide under separate cover to Contracting Officer.] An alternative offered price will not be a factor in evaluation for award, unless the Government determines to waive the first article testing requirement for the prospective Contractor involved. If no alternative prices are offered, evaluation shall be based on pricing as shown elsewhere in the offer.

Alternative Prices Offered If First Article Testing Requirement Is Waived:

Item Number:
Price:

(End of Clause)

Alternate I (JUL 2008) As prescribed in 9.306(c)(1)(i), use the following paragraph (b) instead of paragraph (b) in the basic clause at 52.209-9019, and renumber paragraphs (b)-(d) in the basic clause as (c)-(e), respectively:

(b) When the clause at 52.209-9021, Drawing Approval Prior to Production, applies, the requirement for first article approval test shall not be waived prior to award; unless a waiver is granted for submission of drawings (see 52.209-9021(h)). If a waiver is granted, see 52.209-9021(i) for reduction(s) in delivery schedule(s) that shall apply, in addition to whatever reduction(s) in delivery schedule(s) that may apply pursuant to 52.211-9019, Reduced Delivery Schedule Applies When First Article Testing Requirements Are Waived.

Alternate II (FEB 2010) As prescribed in 9.306(c)(1)(ii), insert the following paragraphs (a)-(b) in lieu of the basic clause:

(a) For items from suppliers which are identical or similar to items previously furnished to the Government, which were acceptable in all respects, the requirements for first article(s) may be waived by the Government.

(b) Offerors having evidence which they believe to substantiate a Government waiver of the First Article requirements should furnish the following information with the offer:

| Contract Number | Part Number/ Date Or Revision | Date First Article Approved |
|---|---|---|
| | | |

**52.209-9028 Qualified Suppliers List of Distributors (QSLD) – Federal Supply Classes (FSCs) 5961 Semiconductors and Hardware Devices and 5962 Electronic Microcircuits.**
As prescribed at 9.203-90(a)(5), insert the following clause:

QUALIFIED SUPPLIERS LIST OF DISTRIBUTORS (QSLD) – FEDERAL SUPPLY CLASSES (FSCs) 5961 SEMICONDUCTORS AND HARDWARE DEVICES AND 5962 ELECTRONIC MICROCIRCUITS (FEB 2014)

(a) Only the following shall be eligible for award (except as provided in paragraph (e) of this clause):

(1) Offers from approved sources listed in the Item Description (such as Original Component Manufacturers (OCMs) and Original Equipment Manufacturers (OEMs); or

(2) Offers from sources listed or qualified for listing (as determined by the contracting officer) on the applicable Qualified Products List (QPL) or Qualified Manufacturers List (QML) at the time of award; or

(3) Offers from authorized distributors of approved or QPL or QML qualified sources (as determined by the contracting officer) (see (1) and (2) above) with adequate traceability (as determined by the contracting officer) to the approved or qualified source; or

(4) Offers from distributors listed or qualified for listing (as determined by the contracting officer) on the DLA Land and Maritime Qualified Suppliers List of Distributors (QSLD) for FSCs 5961 and 5962 at the time of award.

(b) QSLD contractors must supply the product of a currently approved/qualified source as specified in the solicitation/contract. An offeror's listing on the QSLD does not abrogate any requirement to provide a QPL or a QML item from a currently approved/qualified source when a QPL or QML requirement is specified.

(c) The Government may terminate the Contractor's QSLD status at any time for failure of the Contractor to maintain compliance with the provisions and qualification criteria governing qualification for the QSLD, and Government officials who have responsibility for establishing and maintaining the QSLD may terminate the qualified status of a contractor on the QSLD for such failure. Maintaining QSLD status is a contractual requirement; therefore, the Contracting Officer may terminate the contract for default for the Contractor's failure to maintain such status.

(d) Upon request, the Contractor shall provide to the Contracting Officer traceability as outlined in clause 52.211-9014, Contractor Retention of Traceability Documentation. If requested before award, acceptable traceability documentation is a requirement to be eligible for award.

(e) In the event no offers are received from any of the sources listed in Section (a) of this clause, the Government reserves the right to make an award based on offers received from sources listed or qualified for listing (as determined by the Contracting Officer) on the Qualified Testing Suppliers List (52.209-9002).

(f) The provisions governing qualification for the QSLD, and the applicable qualification criteria, may be obtained—

(1) From the QSLD general information web page, found at http://www.landandmaritime.dla.mil/offices/sourcing_and_qualification/offices.aspx?Section=QSL ;

(2) By sending an email to landandmaritime.qsld@dla.mil; or

(3)(i) By writing to the following address when using the United States Postal Service (USPS):

DLA Land and Maritime
Attention: VQE Chief
Post Office (P.O.) Box 3990
Columbus, Ohio 43218-3990

or

(ii) by writing to the following address when using private carriers, to include United Parcel Service (UPS) or Federal Express (FEDEX):

DLA Land and Maritime
Attention: VQE Chief
3990 East Broad Street

Columbus, Ohio 43213

(End of Clause)

**52.211-9000 Government Surplus Material.**
As prescribed in 11.304-91(a), insert the following clause:

GOVERNMENT SURPLUS MATERIAL (AUG 2014)

(a) Definition.

"Surplus material," as used in this clause, means new, unused material that was purchased and accepted by the U.S. Government and subsequently sold by the DLA Disposition Services, by Contractors authorized by DLA Disposition Services, or through another Federal Government surplus program. The terms "surplus" and "Government surplus" are used interchangeably in this clause.

(b) The Offeror agrees to complete this clause and provide supporting documentation sufficient to demonstrate that the surplus material being offered was previously owned by the Government and meets solicitation requirements. The Offeror must provide this information and any supporting documentation on or before the date that quotes/offers are due. The Contracting Officer may require additional documentation after submission of the quote/offer, and the Offeror must provide the documentation within 24 hours after notification from the Contracting Officer, if the Contracting Officer does not state a different response period. The Contracting Officer may require a shorter submission timeframe under conditions that warrant an expedited response, such as to support disaster relief or other urgent requirements. Upon request from the Offeror for an extension to respond, the Contracting Officer has sole discretion to extend the timeframe when in the best interest of the Government. Failure to provide the required information and supporting documentation within the required timeframe may result in rejection of the offer. Unless the solicitation states otherwise, Offerors of surplus material are authorized to open packages, inspect material, and reseal packages. Each time this is done, the Offeror's authorized representative or inspector must sign the packages where they were resealed and annotate the date of inspection.

(c) With respect to the surplus material being offered, the Offeror represents that:

(1) The material is new, unused, and not of such age or so deteriorated as to impair its usefulness or safety. Yes __ No __

The material conforms to the technical requirements cited in the solicitation (e.g., commercial and Government entity (CAGE) code and part number, specification, etc.). Yes __ No __

The material conforms to the revision letter/number, if any is cited. Yes __ No __Unknown __

If no, the revision offered does not affect form, fit, function, or interface. Yes __ No __ Unknown __

The material was manufactured by:
(Name): _____
(Address): _____

(2) The Offeror currently possesses the material. Yes __ No __

If no, the Offeror must attach or forward to the Contracting Officer an explanation as to how the offered quantities will be secured. The Contracting Officer has the sole discretion to determine whether or not the Offeror's explanation as to how the offered quantities will be secured is adequate.

If yes, the Offeror purchased the material from a Government selling agency or other source. Yes __ No __

If yes, provide the information below:

Government Selling Agency: _____
Contract Number: _____
Contract Date: (Month, Year):_____
Other Source: _____
Address:_____
Date Acquired: (Month/Year) _____

(3) The material has been altered or modified. Yes __ No __

If yes, the Offeror must attach or forward to the Contracting Officer a complete description of the alterations or modifications.

(4) The material has been reconditioned. Yes __ No __

a) If yes, (i) the price offered includes the cost of reconditioning /refurbishment. Yes __ No __; and

(ii) The Offeror must attach or forward to the Contracting Officer a complete description of any work done or to be done, including the components to be replaced and the applicable rebuild standard.

The material contains cure-dated components. Yes __ No __

If yes, the price includes replacement of cure-dated components. Yes __ No __

(5) The material has data plates attached. Yes __ No __

a) If yes, the Offeror must state below all information contained thereon, or forward a copy or facsimile of the data plate to the Contracting Officer.

_____

(6) The offered material is in its original package. Yes __ No __

(If yes, the Offeror has stated below all original markings and data cited on the package; or has attached or forwarded to the Contracting Officer a copy or facsimile of original package markings.)

Contract Number _____
National Stock Number (NSN)_____

Commercial and Government Entity (CAGE) Code_____
Part number_____
Other markings/data_____

(7) The Offeror has supplied this same material (National Stock Number) to the Government before. Yes __ No __

If yes, (i) the material being offered is from the same original Government contract number as that provided previously. Yes __ No __; and

(ii) State below the Government Agency and contract number under which the material was previously provided:

Agency _____
Contract Number_____

(8) The material is manufactured in accordance with a specification or drawing. Yes __ No __

If yes, (i) the specification/drawing is in the possession of the Offeror. Yes __ No __; and

(ii) The Offeror has stated the applicable information below, or forwarded a copy or facsimile to the Contracting Officer. Yes __ No __

Specification/Drawing Number _____
Revision (if any) _____
Date_____

(9) The material has been inspected for correct part number and for absence of corrosion or any obvious defects. Yes __ No __

If yes, (i) Material has been re-preserved. Yes __ No __;

(ii) Material has been repackaged. Yes __ No __;

(iii) Percentage of material that has been inspected is _____% and/or number of items inspected is _____; and

(iv) A written report was prepared. Yes __ No __

If yes, the Offeror has attached it or forwarded it to the Contracting Officer. Yes__ No__

(d) The Offeror agrees that in the event of award and notwithstanding the provisions of the solicitation, inspection and acceptance of the surplus material will be performed at source or destination subject to all applicable provisions for source or destination inspection.

(e) The Offeror has attached or forwarded to the Contracting Officer one of the following, to demonstrate that the material being offered was previously owned by the Government (Offeror check which one applies):

___ For national or local sales, conducted by sealed bid, spot bid or auction methods, a solicitation/Invitation For Bid and corresponding DLA Disposition Services Form 1427, Notice of Award, Statement and Release Document.

___ For DLA Disposition Services Commercial Venture (CV) Sales, the shipment receipt/delivery pass document and invoices/receipts used by the original purchaser to resell the material.

___ For DLA Disposition Services Recycling Control Point (RCP) term sales, the statement of account or billing document.

___ For property sold under the exchange or sale regulation, conducted by sealed bid, auction or retail methods, a solicitation/invitation for bid and corresponding DLA Disposition Services form 1427.

___ When the above documents are not available, or if they do not identify the specific NSN being acquired, a copy or facsimile of all original package markings and data, including NSN, commercial and Government entity (CAGE) code and part number, and original contract number. (This information has already been provided in paragraph (c)(6) of this clause. Yes __ No __.)

___ When none of the above are available, other information to demonstrate that the offered material was previously owned by the Government. Describe and/or attach.
_____

(f) This clause only applies to offers of Government surplus material. Offers of commercial surplus, manufacturer's overruns, residual inventory resulting from terminated Government contracts, and any other material that meets the technical requirements in the solicitation but was not previously owned by the Government will be evaluated in accordance with the provision at 52.217-9002.

(g) Offers of critical safety items must comply with the additional requirements in 52.211-9005.

(h) If requested by the Contracting Officer, the Offeror shall furnish sample units, in the number specified, to the Contracting Officer or to another location specified by the Contracting Officer, within 10 days after the Contracting Officer's request. The samples will be furnished at no cost to the Government. All such samples not destroyed in evaluation will be returned at the Offeror's expense. The samples will be evaluated for form, fit, and function with subassembly, assembly, or equipment with which the items are to be used. End items furnished under any contract award to the Offeror furnishing the samples can include the returned samples, and all acceptable end items will have a configuration identical to the samples. If specific tests of the samples' performance are made by the Government, the Offeror will be furnished the results of such tests prior to a contract being entered into. In addition to any other inspection examinations and tests required by the contract, the performance of the end items will be required to be as good as that of the samples submitted insofar as specific performance tests have been made by the Government and the results thereof furnished to the Offeror.

(i) In the event of award, the Contractor will be responsible for providing material that is in full compliance with all requirements in the contract or order, whether or not the Contractor has possession of

applicable drawings or specifications, and despite the fact that the Government is unable to conduct in-process inspection. The Contractor's responsibility to perform is not diminished by compliance with the requirement to demonstrate that the offered material was previously owned by the Government. The material to be furnished must meet the requirements of the current contract or order, whether or not the material met Government requirements in existence at the time the material was initially manufactured or sold to the Government. The Government has the right to cancel any resulting purchase order or terminate any resulting contract for default if unacceptable material is tendered.

(j) If higher level quality requirements apply to the material being acquired, those requirements do not apply to surplus material furnished under this contract.

ALT I (AUG 2008) GOVERNMENT SURPLUS MATERIAL

As prescribed in 11.304-91(a)(3), delete paragraphs (a)-(j) of the basic clause, and insert the following:

The item being solicited is a life support item. Due to the item's critical nature, offers of surplus material will only be evaluated to accommodate unique contingencies, such as when the aircraft / system is obsolete; the original equipment manufacturer is out of business; or the sole source end or does not respond. If the Government determines to evaluate an offer of surplus material, the offeror shall provide all information required and conform to all terms and conditions in the clause at 52.211-9000, Government Surplus Material.

(End of Clause)

**52.211-9003 Conditions for Evaluation of Offers of Government Surplus Material.**
As prescribed in 11.304-91(a), insert the following provision:

CONDITIONS FOR EVALUATION OF OFFERS OF GOVERNMENT SURPLUS MATERIAL
(AUG 2014)

(a) Definition.

"Surplus material," as used in this provision, has the same meaning as in the clause at 52.211-9000, Government Surplus Material.

(b) The Agency will evaluate an offer of surplus material when the Contracting Officer determines the Offeror is otherwise in line for award, after adding the cost of evaluation ($500 for internal evaluation and, if applicable, an additional $600 for each Engineering Support Activity (ESA) evaluation, plus any additional fees required for special testing and/or inspection).

(c) When an offer is for a quantity less than the solicited quantity, the Contracting Officer will consider the $500 cost of issuing and administering more than one award. The Contracting Officer will also consider the anticipated impact on the unit price of the remaining quantity, to determine the total cost to the Government.

(d) When an offer of surplus material is received in response to a solicitation for a long-term contract, the Contracting Officer shall consider whether the quantity of surplus material meets the requirements of the solicitation. If so, the Contracting Officer shall consider the offer of surplus material to be responsive

to the solicitation. If not, the Contracting Officer shall reject the offer as not conforming to the solicitation and shall forward a summary of the offer to the Supply Planner. The Supply Planner shall take appropriate action in the best interest of the Government, based on the Supply Planner's judgment; such as initiating a separate, fixed-quantity purchase request, if warranted by the agency's supply position.

(End of Provision)

**52.211-9005 Conditions for Evaluation and Acceptance of Offers for Critical Safety Items.**
As prescribed in 11.304-90(a), insert the following clause:

CONDITIONS FOR EVALUATION AND ACCEPTANCE OF OFFERS FOR CRITICAL SAFETY ITEMS (APR 2014)

(a) Definitions.

"Actual manufacturer" means an individual, activity, or organization that performs the physical fabrication processes that produce the deliverable part or other items of supply for the Government. The actual manufacturer must produce the part in-house. The actual manufacturer may or may not be the design control activity.

"Approved source" means a prime Contractor or the actual manufacturer(s) cited in the Purchase Order Text (POT) formerly know as the Acquisition Identification Description (AID). It does not include design control activities with no manufacturing capability.

"Critical safety item" (CSI) means a part, assembly, installation, or production system with one or more critical characteristics that, if not conforming to the design data or quality requirements, would result in an unsafe condition that could cause loss of, or serious damage to, the end item or major components, loss of control, or serious injury or death to personnel.

"Design control activity" means a Contractor or Government activity having responsibility for the design of a given part, and for the preparation and currency of engineering drawings and other technical data for that part. The design control activity may or may not be the actual manufacturer.

"Exact product" and "alternate product" are defined in the provision at Defense Logistics Acquisition Directive (DLAD) clause 52.217-9002, Conditions for Evaluation and Acceptance of Offers for Part Numbered Items.

"Prime Contractor" means a Contractor having responsibility for design control and/or delivery of a system/equipment such as aircraft, engines, ships, tanks, vehicles, guns and missiles, ground communications and electronics systems, and test equipment.

"Rebranding" means remarking, re-labeling, repackaging, or otherwise obscuring the marking of the approved source cited in the POT (i.e., the prime Contractor or actual manufacturer).

(b) The item being acquired is a critical safety item (CSI). Given their vital importance and the catastrophic consequences that can result if they fail, procurement of these items requires the highest standards of oversight and verification.

(c) This clause applies only to offers of "exact product." Offers of "alternate product" will be evaluated in accordance with the clause at DLAD 52.217-9002. Offerors of Government surplus material must comply with the requirements in the clause at DLAD 52.211-9000 in addition to this clause, and surplus offers will be evaluated in accordance with the provision at DLAD 52.211-9003.

(d) If the Offeror is the prospective awardee and is not currently an approved source cited in the POT on the schedule page of this solicitation, the Offeror will be requested by the Contracting Officer to provide documented evidence prior to award sufficient to establish that the item being offered is (or will be) the exact item cited in the POT and is (or will be) manufactured by an approved source cited in the POT, modified (if necessary) to conform to any additional requirements set forth in the POT, and is (or will be) manufactured by or under the direction of an approved source cited in the POT. Additionally, if the Offeror manufactures the offered item for an approved source cited in the POT, evidence of approval and acceptance by the approved source will be required. Evidence must include the following at a minimum, plus whatever additional evidence the Contracting Officer determines necessary to sufficiently establish the identity of the item and its manufacturing source:

(1) If offered item(s) are "not in stock" or "not yet manufactured" --

(i) A copy of Offeror's Request for Quotation to approved source cited in POT; and

(ii) An original, hard copy of quotation received by Offeror from approved source cited in POT; or other verifiable documentation of quotation. (If Offeror is unable to provide this documentation to the Contracting Officer prior to award, it must be provided to the Quality Assurance Representative (QAR) for examination at time of source inspection.)

(iii) For offers of surplus material, a completed 52.211-9000 with supporting documentation.

(2) If offered item(s) are "shipped" or "in stock" --

(i) A copy of invoice on approved source's letterhead. (Invoice must identify exact item cited in POT and a quantity sufficient to satisfy the solicitation requirement.); or

(ii) A copy of packing slip which accompanied shipment from approved source to Offeror. (Packing slip must identify exact item cited in POT and a quantity sufficient to satisfy the solicitation requirement; or

(iii) For offers of surplus material, a completed 52.211-9000 with supporting documentation; and

(iv) Inventory control records to establish that items Offeror proposes to furnish under current order are still in Offeror's stock. (This documentation is mandatory and must be provided to Quality Assurance Representative (QAR) for examination at time of source inspection. Documentation may be provided to Contracting Officer prior to award, at Offeror's discretion.)

(3) If the offeror is an authorized dealer/distributor, or manufactures the item for an approved source --

(i) An authorized dealer/distributorship agreement, licensee agreement, or other type of agreement. (The agreement must specifically identify the exact item, or otherwise ensure that the Offeror is authorized by the approved source to manufacture or distribute the exact item being acquired. If the agreement covers a general product line or is otherwise not product-specific, the Offeror must also furnish additional documentation to address the exact item being acquired (see above).); or

(ii) Letter from an approved source cited in the POT, specifically identifying Offeror as authorized to distribute or manufacture the exact item cited in the POT for that approved source; or

(iii) Other verifiable information (e.g., listing of authorized dealers on official Web page of an approved source) to establish the Offeror's authority to manufacturer or distribute the exact item cited in the POT for an approved source cited in the POT.

(4) When the POT specifies a revision number --

(i) Documentation establishing that the offered item was (or will be) made in accordance with the revision cited in the POT. (This requirement is considered to have been met when documentation provided by Offeror to satisfy other portions of this clause or solicitation already establishes that offered item was (or will be) made to the revision cited in the POT); or

(ii) Documentation identifying the revision offered and the differences between the revision offered and the revision cited in the POT.

(e) By the submission of this offer, the Offeror represents that --

(1) The item(s) to be provided to the Government --

(i) Is (or will be) in full compliance with all requirements specified in the solicitation; and

(ii) Is not (or will not be) --

(A) A factory second;

(B) Changed, mutilated, or rebranded;

(C) A manufacturer's overrun;

(D) A rejected item; or

(E) Government surplus material (unless Offeror has complied with clause at DLAD 52.211-9000, Government Surplus Material).

(2) In the event of item failure, Offeror will have access to, and will provide to the Government upon request, all information necessary to trace the item back through the manufacturing process.

(3) Any documentation provided by Offeror will correspond to the exact item(s) that will be furnished to the Government; or Offeror will obtain updated documentation and provide it to the

Government (if, for example, Offeror sells item(s) to another Buyer before award or before tender for acceptance).

(f) Failure to provide adequate documentation within the timeframe requested by the Contracting Officer may result in rejection of the offer.

(End of Clause)

**52.211-9006 Changes in Contractor Status, Item Acquired, and/or Manufacturing Process/Facility – Critical Safety Items.**
As prescribed in 11.304-90(b), insert the following clause:

CHANGES IN CONTRACTOR STATUS, ITEM ACQUIRED, AND/OR MANUFACTURING PROCESS/FACILITY -- CRITICAL SAFETY ITEMS (APR 2014)

(a) If any changes occur in the Contractor's business status or relationship with the approved source(s) after award of this contract (such as, for example, inability to obtain manufacturing process information; or changes in status as authorized dealer/distributor, or in terms of licensing arrangement), the Contractor shall immediately provide notification and documentation of the changes to the Administrative Contracting Officer (ACO).

(b) The Contractor shall immediately provide to the Administrative Contracting Officer (ACO) notification (and documentation, if available) of any of the following changes the Contractor becomes aware of:

(1) Later revisions to drawings, specifications or standards that differ from the revision cited in the Purchase Order Text (POT), formerly known as the Acquisition Identification Description (AID), in the contract;

(2) Changes in the manufacturing process;

(3) A change in the approved source's manufacturing location; or

(4) A transfer of manufacturing facilities by the approved source since last manufacture.

(End of Clause)

**52.211-9007 Withholding of Materiel Review Board (MRB) Authority.**
As prescribed in 11.304-90(c), insert the following clause:

WITHHOLDING OF MATERIEL REVIEW BOARD (MRB) AUTHORITY - CRITICAL SAFETY ITEMS (NOV 2011)

The item being acquired is a critical safety item. Notwithstanding any other term or condition included in this contract/agreement, Materiel Review Board (MRB) authority is hereby withheld. (This clause does not apply to sources that have explicit authority to retain MRB authority, which are identified on the DLA Aviation Technical Oversight Office (TOO) Web site.)

(End of Clause)

**52.211-9009 Non-Acceptability of Government Surplus Material.**
As prescribed in 11.304-91(b), insert the following provision:

NON-ACCEPTABILITY OF GOVERNMENT SURPLUS MATERIAL (NOV 2011)

(a) Definition.

"Surplus material," as used in this clause, means new, unused material that was purchased and accepted by the U.S. Government and subsequently sold by the DLA Disposition Services, by Contractors authorized by DLA Disposition Services, or through another Federal Government surplus program. The terms "surplus" and "Government surplus" are used interchangeably in this clause.

(b) The Government has determined that offers of surplus material will not be considered for this acquisition.

(End of Provision)

**52.211-9010 Shipping Label Requirements – Military Standard (MIL-STD) 129P.**
As prescribed in 11.290(b)(1), insert the following clause:

SHIPPING LABEL REQUIREMENTS – MILITARY STANDARD (MIL-STD) 129P (APR 2014)

(a) MIL-STD-129, revision P, current version, establishes requirements for Contractors that ship packaged materiel to the Government to provide both linear bar codes and two-dimensional (2D) symbols on shipping labels (but see paragraph (d) for exceptions to the requirement for 2D symbols). Shipping labels with 2D symbols are referred to as military shipping labels (MSL). See the Defense Logistics Agency (DLA) packaging web site identified in paragraph (e) for change notices to MIL-STD-129P that apply. Linear (code 3 of 9 or code 39) bar codes continue to be required on interior packages (unit packs and intermediate packages) for the national stock number (NSN) and, when applicable, the serial number(s); and on exterior shipping containers and palletized unit loads for the NSN, commercial and Government entity (CAGE) code, contract number and, when applicable, the serial number(s). This data is also required to be linear bar-coded on the Department of Defense (DD) form 250.

(b) The shipping label described in this clause replaces former DD form 1387 and is illustrated in Figures 2a and 2b of MIL-STD-129P.

(1) The shipping label requires code 3 of 9 or code 39 linear bar codes for the transportation control number (TCN), piece number and DOD activity address code (DoDAAC) for the ultimate consignee or mark-for address.

(2) The 2D symbol on the shipping label must contain the document (requisition) number, NSN, originating activity's routing identifier code (RIC), unit of issue, quantity, condition code, and unit price, which are ordinarily included on the DD Form 250. A complete list of data elements is defined in table IV of MIL-STD-129P. The TCN should be part of the mark-for information on the contract. This mark-for should be directly below the ship-to address in the contract. All TCNs must be unique, and each part of a shipment (partial shipment of one or more pieces) loaded on a different conveyance requires a unique

TCN. Samples of TCN construction may be found at the DLA web site identified in paragraph (e) of this clause. (A general construction of a TCN is provided below.) Except for the TCN, which must always be present on the shipping label, when the contract omits any other data elements as defined in table IV of MIL-STD-129P and if the information is not available from the administrative contracting officer, then the field is not required as part of the shipping label and may be left blank.

TCN positions 1-14 requisition/document number

TCN position 15 Enter the suffix code; if none, enter "X"

TCN position 16 Enter "X" if not a partial shipment; if a partial shipment, enter "A" for first shipment, "B" for second shipment, etc. (see paragraph L., Appendix L, Part II of the Defense Transportation Regulation (DTR), DOD 4500.9-R)

TCN Position 17 Enter "X"

(c) The following must comply with the requirements in table IV of MIL-STD-129P and include all applicable data elements identified in the table.

(1) All diverted or redirected outside the contiguous United States (OCONUS) direct vendor delivery (DVD) and prime vendor shipments which pass through the Defense Transportation System (DTS) via Defense Distribution depot consolidation points (see below), aerial ports of embarkation, pre-positioned ship operations sites, or the Norfolk, Virginia container freight station.

| **Container Consolidation Point** | **DODAAC** |
|---|---|
| Defense Depot San Joaquin California (DDJC)(CCP WHSE 30) | W62N2A and SW3225 |
| Defense Depot Susquehanna Pennsylvania (DDSP)(CCP Door 135-168) | W25N14 and SW3123 |

(2) Shipments for depot storage with destinations to the following OCONUS (overseas) locations:

| **Depot Storage Site** | **DODAAC** |
|---|---|
| Defense Depot Pearl Harbor Hawaii (DDPH) | SW3144 |
| Defense Depot Yokosuka Japan (DDYJ) | SW3142 |
| Defense Depot Germersheim Germany (DDDE) | SWE300 |
| Defense Depot Sasebo Japan (DDYJ) | SW3143 |
| Defense Depot Sigonella Italy (DDSI) | SW3170 |
| Defense Depot Guam (DDPH) | SW3147 |
| Defense Depot Korea (DDDK) | SW3105 |

(3) Direct vendor delivery (DVD) shipments. The following additional guidance applies when bar coding DVD shipments:

(i) In addition to other marking requirements in the contract, the following separate lines of bar coded data, with human readable interpretation (HRI) printed clearly below the element, shall be provided. No spaces shall separate the individual data elements within each line.

(A) Document number and suffix. The document number consists of a 14-character (15 characters when a suffix is included) alpha-numeric code. It may be listed on a contract/award as the requisition number, transportation control number (TCN), etc. If there is no TCN, use the requisition number followed by "XXX."

(B) National stock number (NSN). The NSN will appear as a 13-digit code without the dashes. If there is no NSN, use the CAGE and part number.

(C) ICP routing identifier code (RIC). The RIC for each procuring activity is as follows:

S9C – DLA Land and Maritime - construction
S9E – DLA Land and Maritime – electronics
S9F – DLA Energy – missiles
S9G – DLA Aviation
S9I – DLA Troop Support - general and industrial
S9T – DLA Troop Support - clothing and textiles
S9M – DLA Troop Support - medical materiel

(D) Unit of issue. The appropriate unit of issue (U/I) will appear as a two-digit alpha character.

(E) Quantity. The quantity will appear as a five-position number, including zero fillers on the left.

(F) The above will be followed by an "A" and eight zeros (specifically, "A00000000").

(ii) These bar code markings shall be placed on labels affixed to either to DD Form 250 or the commercial packing list. If used on the DD Form 250, it should be in blocks 15, 16, 17, etcetera. In either case, these documents shall be furnished in packing list envelopes affixed to the outside of the shipping container.

(iii) The bar code symbology shall be code 3 of 9 (code 39) in accordance with the International Organization for Standardization (ISO)/ the International Electrotechnical Commission (IEC)-16388.

(d) Listed below are exceptions to requirements in Table IV of MIL-STD-129P. These shipments/orders require only a DD form 250 or commercial invoice and a shipping label, with the document number (except for shipments described in subparagraph (d)(5)); NSN; RIC; unit of issue; quantity; condition code; and unit price. This data must be code 3 of 9 (code 39) bar code symbology in accordance with ISO/IEC-16388. (Although not mandatory, a military shipping label in accordance with MIL-STD-129P is acceptable for depot shipments.)

(1) Subsistence items procured through full-line food distributors (prime vendors), "market ready" type items such as fresh milk, ice cream, and other fresh dairy products, fresh bread and other fresh bakery products, and all fresh fruits and vegetables, shipped within the contiguous United States (CONUS) to customers within CONUS.

(2) Any item for which ownership remains with the vendor until the item is placed in designated locations at the customer location prior to issuance to the customer. Government control begins upon placement of the item by the vendor into the designated location or issuance from the designated location by vendor personnel (that is, the vendor is required to stock bins at the customer location and/or issue parts from a vendor controlled parts room).

(3) Bulk purchases of petroleum, oil and lubricant products delivered by (A) pipeline; or (B) tank car, tanker and tank trailer for which the container has (1) a capacity greater than 450 liter (119 gallons) as a receptacle for a liquid; (2) a maximum net mass greater than 400 kilogram (882 pounds) and a capacity greater than 450 liter (119 gallons) as a receptacle for a solid; or (3) a water capacity greater than 454 kilogram (1000 pounds) as a receptacle for a gas.

(4) Medical items procured through DVD suppliers or prime vendors that ship directly to the end customer, such as medical treatment facilities, hospitals, or clinics, and do not pass through the Defense Transportation System.

(5) CONUS-originated shipments for depot storage with destinations to the following:

| **Depot Storage Site** | **DoDAAC** |
|---|---|
| Defense Depot Susquehanna Pennsylvania (DDSP) | W25G1U and SW3124 |
| Defense Depot San Joaquin California (DDJC) | W62G2T and SW3224 |
| Defense Depot Norfolk Virginia (DDNV) | SW3117 |
| Defense Depot San Diego California (DDDC) | SW3218 |
| Defense Depot Jacksonville Florida (DDJF) | SW3122 |
| Defense Depot Puget Washington (DDPW) | SW3216 |
| Defense Depot Cherry Point North Carolina (DDCN) | SW3113 |
| Defense Depot Richmond Virginia (DDRV) | SW0400 |
| Defense Depot Red River Texas (DDRT) | W45G19 and SW3227 |
| Defense Depot Corpus Christi Texas (DDCT) | W45H08 and SW3222 |
| Defense Depot Tobyhanna Pennsylvania (DDTP) | W25G1W and SW3114 |
| Defense Depot Anniston Alabama (DDAA) | W31G1Z and SW3120 |
| Defense Depot Hill Utah (DDHU) | SW3210 |
| Defense Depot Oklahoma City Oklahoma (DDOO) | SW3211 |
| Defense Depot Warner Robins Georgia (DDWG) | SW3119 |
| Defense Depot Barstow California (DDBC) | SW3215 |
| Defense Depot Albany Georgia (DDAG) | SW3121 |

(6) Delivery orders when the basic contract has not been modified to require MIL-STD-129P.

(e) MIL-STD-129P provides numerous illustrations of what should be bar-coded and the recommended placement of the bar code. Further information is available on the DLA packaging web site. In addition, DLA's distribution and planning and management system (DPMS) is a web-based system capable of providing shipping instructions and military shipping labels. Users must first register at DLA Distribution's website. Click "ok" then "create account" to get access to use the DPMS production site. DPMS training is available. Click "vendor application," then "user's guide."

(f) A copy of ISO/IEC-16388 is available from:

The American National Standards Institute
25 West 43rd Street, New York, NY 10036

or through www.ansi.org or www.iso.org/iso/home.html.

(End of Clause)

Alternate I (AUG 2005). As prescribed in 11.290(b), replace subparagraph (c)(3)(i)(C) of the basic clause with the following:

(C) ICP routing identifier code (RIC). The RIC for all procuring activities is "SMS."

**52.211-9012 Obsolete Components/Materials.**
As prescribed in 11.401-91, insert the following clause:

OBSOLETE COMPONENTS/MATERIALS (NOV 2011)

The Contractor shall notify the Contracting Officer immediately upon determining the unavailability of obsolete materials or components. The Contractor may recommend a solution including details regarding the impact on the contract price and delivery. If the Contracting Officer accepts the recommended solution, a modification shall be executed between the Government and the Contractor equitably adjusting the contract price and revising the delivery. Under no circumstances shall the Contractor initiate any redesign effort or incur any additional costs without the express, written authorization of the Contracting Officer. In the event the Contracting Officer does not accept the recommended solution or authorize a redesign effort by the Contractor, the contract or the affected contract line-item (CLIN), as applicable, may be terminated for convenience in accordance with Federal Acquisition Regulation (FAR) Part 49 procedures or FAR 52.212-4, Contract Terms and Conditions - Commercial Items, for commercial awards.

(End of Clause)

**52.211-9013 Shipper's Declaration of Dangerous Goods.**
As prescribed in 11.204-90, insert the following clause:

SHIPPER'S DECLARATION OF DANGEROUS GOODS (APR 2014)

(a) Contractors shall complete and attach a prescribed Shipper's Declaration for Dangerous Goods Form and an Air Waybill for each TP1 or TP2 shipment containing dangerous or hazardous goods or materials. Dangerous goods and/or hazardous materials are those items defined or classified as such in Title 49, Code of Federal Regulations, and the International Air Transport Association (IATA) Dangerous Goods Regulations. Generally, dangerous goods are those items containing any dangerous material or substance which is flammable, corrosive, combustible, explosive, poisonous, toxic, radioactive, unduly magnetic, contains oxidizing agents or is otherwise hazardous.

(b) Contractors shall not offer dangerous or hazardous goods or materials for transportation by military air until properly packaged, marked, and labeled in accordance with military standard (MIL-STD) 129P and military publication, Preparing Hazardous Materials for Military Air Shipments, AFMAN 24-204/TM 38-250/NAVSUP PUB 505/MCO P4030.19H, Defense Logistics Agency Instruction (DLAI) 4145.3.

This publication also contains instructions on how to properly complete the Shipper's Declaration for Dangerous Goods. Forms may be purchased through commercial means and can be viewed at http://www.iata.org/publications/pages/index.aspx.

(End of Clause)

**52.211-9014 Contractor Retention of Traceability Documentation.**
As prescribed in 11.304-92(a), insert the following clause:

CONTRACTOR RETENTION OF TRACEABILITY DOCUMENTATION
(AUG 2012)

(a) This clause applies whenever the Contractor is not the manufacturer of the item(s) to be furnished.

(b)(1) The Contractor shall retain evidence to document that items furnished under this contract conform to contract requirements. Evidence will generally include information tracing the items back to the manufacturing source or its authorized distributor. At a minimum, evidence shall be sufficient to establish the identity of the item, its manufacturing source, and conformance to the item description.

(2) Examples of traceability documentation include, but are not limited to, the following:

(i) Purchase order(s)/invoice(s) between manufacturer(s)/distributor(s), identifying part number (and/or technical data package (TDP) with revision level) and quantities;

(ii) Original equipment manufacturer (OEM) or approved/qualified source's packing slips, identifying part number (and/or TDP with revision level) and quantities;

(iii) OEM or approved/qualified source's certification, identifying part number (and/or TDP with revision level) and quantities; and/or

(iv) OEM or approved/qualified source's identifiable standard packaging, with part number (and/or TDP with revision level) cited on the package.

(3) The Contractor shall be responsible for the assurance of type, kind, count, and condition. Preservation, packing, packaging, and marking shall be in accordance with contractual requirements.

(4) The Contractor shall provide documentation of traceability for review—

(i) Upon request by the Contracting Officer at any time prior to or after award;

(ii) At time of Government source inspection, if applicable; and/or

(iii) During random or directed post-award audits.

(5) The Contractor shall retain documentation in accordance with this clause for 5 years after final payment under this contract.

(c) The Offeror/Contractor shall provide documentation of traceability for review—

(1) Upon request by the Contracting Officer at any time prior to or after award;

(2) At time of Government source inspection, if applicable; and/or

(3) During random or directed post-award audits.

(d) Traceability documentation shall, at a minimum, include the following:

(1) If the Offeror/Contractor is an authorized dealer/distributor for an approved source for the specific item being procured by the Government, the following requirements apply:

(i) The Offeror/Contractor shall maintain at least one of the following:

(A) A copy of its current dealer/distributorship agreement;

(B) A letter of authorization from the approved source; or

(C) A link to an official website maintained by the approved source, which shall clearly identify the Offeror as an authorized dealer/distributor.

(ii) By submission of documentation described in subparagraph (d)(1)(i) of this clause, the Offeror/Contractor represents that:

(A) The dealer/distributor relationship with the approved source applies to the specific item being procured by the Government; and

(B) If the Contractor's dealer/distributor status with the approved source changes after award, the Contractor shall promptly notify the Contracting Officer. Failure to provide such notification is grounds for cancellation of award or termination for default/cause, as applicable.

(2) If the Offeror/Contractor is not an authorized dealer/distributor for an approved source for the specific item being procured by the Government, the following requirements apply:

(i) If the Offeror/Contractor identified the offered item as "not in stock/not currently owned by the Offeror" or "not yet manufactured," the Offeror/Contractor shall—

(A) Maintain a verifiable quotation from the approved source, or from an authorized dealer/distributor for the approved source.

(B) Include the following information in its quotation:

*(1)* The item part number or designation, which shall be provided in sufficient detail to document that the item being quoted is the same as the item being procured by the Government;

*(2)* The quantity, which shall be sufficient to satisfy the solicitation requirement;

*(3)* The unit price quoted by the approved source, or by the authorized dealer/distributor for the approved source;

*(4)* The date of the quotation; and

*(5)* The name and phone number of the representative of the approved source, or of the authorized dealer/distributor for the approved source.

(C) The quotation shall be on the letterhead of the approved source, or of an authorized dealer/distributor for the approved source; or an electronic quotation, which shall be clearly identifiable as coming to the Offeror/Contractor from the approved source, or from an authorized dealer/distributor for the approved source.

(D) If the offered items are obtained from an authorized dealer/distributor for the approved source, the Offeror/Contractor shall maintain the information described in subparagraph (d)(1)(i) of this clause to document the authorized dealer/distributor arrangement; and the terms in subparagraph (d)(1)(ii) of this clause shall apply.

(ii) If the Offeror/Contractor identified the offered item as "shipped" or "in stock/currently owned by the Offeror," the following requirements apply:

(A) The Offeror/Contractor shall maintain one of the following documents:

*(1)* The invoice received by the Offeror/Contractor from the approved source, or from an authorized dealer/distributor for the approved source; or

*(2)* The packing slip that accompanied the shipment to the Offeror/ Contractor from the approved source, or from an authorized dealer/distributor for the approved source. The packing slip shall include a packing slip number. (If no packing slip number was provided, the Offeror/Contractor shall obtain and maintain written documentation from the approved source, or from the authorized dealer/distributor for the approved source, verifying the packing slip number. Such documentation shall include the name and address of the approved source, or of the authorized dealer/distributor for the approved source; the date of the correspondence; and the name and phone number of the representative of the approved source, or of the authorized dealer/distributor for the approved source, who provided the information.)

(B) The documentation furnished in accordance with subparagraph (c)(2)(ii)(A) of this clause shall include the following:

*(1)* Date;

*(2)* The name and address of the approved source, or of the authorized dealer/distributor for the approved source;

*(3)* The name and phone number of the representative of the approved source, or of the authorized dealer/distributor for the approved source;

*(4)* The item part number or designation, which shall be provided in sufficient detail to document that the item provided to the Contractor is the same as the item being procured by the Government;

*(5)* The quantity, which shall be sufficient to satisfy the solicitation requirement;

*(6)* The unit price charged by the approved source, or by the authorized dealer/distributor for the approved source; and

*(7)* The Offeror's/Contractor's name and address.

(C) If the offered items are obtained directly from an authorized dealer or distributor, the Offeror/Contractor shall maintain the information described in subparagraph (d)(1)(i) of this clause to document the authorized dealer/distributor arrangement; and the terms in subparagraph (d)(1)(ii) of this clause shall apply.

(3) If the offered items are not obtained directly from an approved source, or from an authorized dealer/distributor of an approved source, the Offeror/Contractor shall maintain documentation, as described in subparagraph (d)(2) of this clause, sufficient to establish the complete line of ownership or distribution from the approved source, or from an authorized dealer/distributor for the approved source, to the Offeror/Contractor.

(e) The Contracting Officer determines the acceptability and sufficiency of documentation or other evidence, at his or her sole discretion. If the Contracting Officer finds the evidence to be unacceptable, or if the Contractor fails to retain or provide the requested evidence, the award may be cancelled or contract may be terminated for cause/default, as applicable.

(f) At the Contracting Officer's discretion, documentation of traceability provided by the Contractor, in accordance with provisions in the solicitation and/or clauses included in this contract, may be used to determine the acceptability of documentation retained in accordance with this clause.

(g) Notwithstanding any documentation provided by the Offeror prior to purchase order issuance/contract award, the Government reserves the right to require additional documentation attesting to the authenticity of the material at any time before or after contract delivery.

(h) If the solicitation states inspection and acceptance shall take place at destination, the Government reserves the right to change the place of inspection and acceptance to origin and to invoke 52.246-9004, Product Verification Testing, at time of award, with no increase in the awarded unit price.

(i) The Contractor shall be responsible for the assurance of type, kind, count, and condition. Preservation, packing, packaging, and marking shall be in accordance with contractual requirements.

(j) The Contractor shall retain documentation in accordance with this clause for 5 years after final payment under this contract.

(End of Clause)

**52.211-9018 Availability of Mylar Drawings.**

As prescribed in 11.201(b)(S-90)(1), insert the following clause:

AVAILABILITY OF MYLAR DRAWINGS (NOV 2011)

(a) A mylar drawing is available from the Government. The mylar drawing may be provided via stable based film or electronically (refer to applicable technical repository instructions to determine available format). If unable to use the electronic format, the Contractor will be responsible for any costs incurred for conversion to a hard copy.

(b) The mylar drawings will be sent by the Government within 30 days after the effective date of the award/contract to the address on the award document, unless the Contractor indicates a different address below:

_____

(c) If mylars are not received, or for other questions, contact the contract administrator as follows.

(1) Contact then e-mail the Contract Administrator listed in the issuing office block with a copy to the following, as appropriate:

(i) DLA Land and Maritime, VTRD, (614) 692-2343.

(ii) DLA Troop Support, ITC, (215) 737-7489.

(iii) DLA Aviation, (804) 279-6695, Mylar Room. (Note: It is imperative for offerors to access the website prior to the solicitation closing date, and download or order the Technical Data Package (TDP) to determine available Mylar format. If an electronic format representation of the Mylar is not available for download at the above website, a stable based film or CD, as applicable, will be provided to the awardee at time of award.)

(2) Notification of non-receipt should include the following information

(i) Contract/purchase order number

(ii) National stock number (NSN)

(iii) Mylar document number (include revision level)

(iv) Sheet/frame number (required only in cases where partial mylar data has been received)

(End of clause)

**52.211-9019 Reduced Delivery Schedule Applies when First Article Testing Requirements are Waived.**

As prescribed at 9.306(f)(2) and 11.404 (a)(S-90) (2)(i), insert the following clause:

REDUCED DELIVERY SCHEDULE APPLIES WHEN FIRST ARTICLE TESTING REQUIREMENTS ARE WAIVED (SEP 2008)

If the requirement for first article testing is waived by the Government, the delivery schedule for the production quantity shall be reduced by the number of calendar days allotted for the submission and approval of the first articles. (In the case of indefinite delivery contracts, the reduced number of calendar days shall apply to the delivery schedule for the initial/first delivery order of the production quantity. If more than one time frame has been allocated for first article testing, this information will be itemized in the production quantity delivery schedule.) Application of a reduced delivery schedule will not be a factor in evaluation for award, unless delivery is identified as an evaluation factor in the solicitation.

(End of Clause)

**52.211-9022 Superseded Part-Numbered Items.**
As prescribed in 11.304-92, insert the following clause:

SUPERSEDED PART-NUMBERED ITEMS (NOV 2011)

(a) Part number (P/N) changes. Part number changes are acceptable only when the offeror completes the following verification:

The offeror represents that the P/N requested in the solicitation has been changed from Commercial and Government Entity (CAGE) code _____, P/N _____ to P/N _____ and that this is a part number change only. The reason for the change is _____.

The offeror represents that there has been no change to the parts form, fit, function, configuration, application, or physical nature and is therefore an exact item of replacement. Any award issued to the offeror for the new, superseding P/N shall be based on this verification. The Government may cancel any award for P/Ns determined to be unacceptable, and return any unacceptable parts for full refund including reimbursement for shipping charges. The Government also reserves the right to dispose of the unacceptable part, at Contractor expense.

The Government has the right either to reject or to require correction of nonconforming supplies. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with contract requirements.

(b) If an item is superseded during the term of this award, the Contractor shall advise the Contracting Officer within fifteen (15) business days of such determination, or within five (5) business days if the superseded item is covered by a delivery order issued prior to the determination. The notice shall include complete information concerning the replacement item as it relates to the form, fit, and function, configuration, application, or physical nature of the superseded item. The Contracting Officer will determine whether the replacement item is acceptable to the Government, advise the Contractor within fifteen (15) business days, and modify the contract accordingly.

(End of Clause)

**52.211-9023 Substitution of Item After Award.**
As prescribed in 11.304-92, insert the following clause

SUBSTITUTION OF ITEM AFTER AWARD (NOV 2011)

When the purchase order text (POT) identifies supplies by manufacturer's name, commercial and Government Entity (CAGE) code , and part number, the specified item(s) are the only item(s) acceptable under this contract. The Contractor may not substitute a different item after award.

(End of Clause)

**52.211-9024 Shelf-Life Items Manufacturing Restrictions.**
As prescribed in 11.304-93, insert the following clause:

SHELF-LIFE ITEMS MANUFACTURING RESTRICTIONS (MAY 2013)

(a) Products delivered under this contract shall be manufactured/cured/assembled to ensure that a minimum of 85% (allowing for rounding to whole months) shelf-life is remaining at time of receipt by the Government.

(b) Marking or labeling shall reflect these data.

(c) Supplies received by the Government with less than 85% shelf-life remaining will be considered to be nonconforming within the meaning of the Inspection Clause.

(End of Clause)

Alternate I As prescribed in 11.304-93 insert the following clause instead of 52.211-9024:

SHELF-LIFE ITEMS MANUFACTURING RESTRICTIONS FOR FEDERAL SUPPLY GROUP (FSG) 91, FUELS, LUBRICANTS, WAXES AND OILS - ALTERNATE I (MAY 2013)

(a) Products delivered under this contract shall be manufactured/cured/assembled to ensure that a minimum of 75% (allowing for rounding to whole months) shelf-life is remaining at time of receipt by the Government.

(b) Marking or labeling shall reflect these data.

(c) Supplies received by the Government with less than 75% shelf-life remaining will be considered to be nonconforming within the meaning of the Inspection Clause.

(End of Clause)

**52.211-9031 Marking Requirements for High and Low Pressure Cylinders.**
As prescribed in 11.204-95, insert the following clause:

MARKING REQUIREMENTS FOR HIGH AND LOW PRESSURE CYLINDERS (NOV 2011)

The serial number to be marked on each cylinder, as required by the specification cited in the Schedule of this solicitation, shall cite the DLA Aviation prefix of "CX".

(End of Clause)

**52.211-9032 Shipping and Routing.**
As prescribed in 11.404(a)(S-90) 3)(i), insert the following clause:

SHIPPING AND ROUTING (NOV 2011)

(a) The Contractor shall make shipments of the supplies called for by or ordered under this contract, by the method specified in the Schedule, to the delivery point, in the quantity, and according to the delivery date specified in the order or in the Schedule.

(b) On free on board (f.o.b.) destination items involving multiple truck load shipments, the Contractor shall assign one shipment number for shipments made on the same day.

(c) The Contractor shall furnish serially numbered seals and effectively seal all transport trucks and trucks and trailers. The marking on the seal shall be indicated on all shipping documents.

(d) Placards, as required by 49 Code of Federal Regulations (CFR) 172.506 and 49 CFR 172.508, shall be furnished and affixed to all tank trucks by the Contractor unless placards are already affixed.

(e) The Contractor shall inspect all shipping conveyances prior to loading to insure that product loaded will not be lost or contaminated by the condition of the equipment. Tank truck inspection must be performed by qualified Contractor personnel. Delegation of this responsibility shall not be passed to the tank truck operator/driver. The tank truck operator/driver may be permitted to physically load the tank truck; however, the loading operation must be under the surveillance and direction of Contractor personnel.

(End of Clause)

**52.211-9034 Packaging/Marking Requirements for Diminishing Manufacturing Sources (DMS) Buys.**
As prescribed in 11.204-97, insert the following clause:

PACKAGING/MARKING REQUIREMENTS FOR DIMINISHING MANUFACTURING SOURCES (DMS) BUYS – DLA MARITIME (NOV 2011)

Requirements apply only to line item _____, purchase request (PR) _____ , national stock number (NSN) _____.

(a) Item shall be supplied as follows:

(1) Dual-in-line type - Microcircuits shall be supplied in aluminum rails not to exceed 20 inches in length. Plastic rails are not acceptable. Stoppers in ends of rails shall be constructed of aluminum or rubber. Stoppers fabricated with any other material are unacceptable. Each rail shall be marked with the national stock number (NSN), part number (P/N), unit of issue (U/I), and quantity applicable to the devices therein. Only one identification label shall be applied to each rail.

(2) Flat pack and can type - Microcircuits shall be supplied in individual carriers designed for the device or protected in a way that is normally acceptable in industrial practice, provided this meets the

requirements of paragraph 2 below. Each interior container shall be marked with the NSN, P/N, U/I and quantity applicable to the devices therein.

(b) General precautions:

(1) Packaging shall protect the item from physical and mechanical damage and from degradation due to electrostatic (ES) and electromagnetic (EM) environmental field forces.

(2) Any wrapping and cushioning materials used shall be non-static-generating, non-corrosive, and shall not crumble, flake, powder, shed, or be of fibrous construction. Cushioning materials as required shall be of the following:

(i) Flexible cellular, plastic

(ii) Open cell, plastic

(iii) Velostat foam, black

Note: These cushioning materials may be used as a wrap.

(c) When necessary, because of limited quantities, to ship items of more than one NSN in a shipping container, all identical items shall be segregated in suitable intermediate containers and identified with the NSN, P/N, U/I and quantity.

(d) In addition to military standard (MIL-STD) 129P identification marking, each intermediate and shipping container shall be labeled with "Sensitive Electronic Device" label as shown in MIL-STD-129P. (This label shall not be affixed to aluminum rails). Delivery address and "Mark for" shall be as specified in the procurement document.

(End of Clause)

**52.211-9035 Marking Requirements.**
As prescribed in 11.204-98, insert the following clause:

MARKING REQUIREMENTS –DLA MARITIME (NOV 2011)

Marking of unit, intermediate and shipping containers for shipment and storage: Unless authorized by paragraph 7 below, all shipments, regardless of levels specified, including industrial, shall be marked in accordance with the most recent version of military standard (MIL-STD) 129P, “Marking for Shipment and Storage". In addition to MIL STD-129P requirements, the following instructions also apply:

(a) Joint Army-Navy (JAN) and other special markings in accordance with Government specifications: As designated, the following marking shall be placed on the unit package (carton, box, bag, etc., used as the initial protection), in addition to normal MIL-STD 129P marking. If the marking space on the MIL-S (JTD-129P identification side of the unit package is too small, 3 inches by 4 inches or less surface area) to accommodate this additional marking, the reverse side of the package may be used.

(1) Semiconductor Devices procured under MIL-PRF-19500M:

(i) Part or identifying number (PIN)

(ii) Manufacturer's identification (ID) and symbol

(iii) Lot identification code and code of assembly plant (if applicable)

(iv) Beryllium oxide identifier (if applicable)

(v) Electrostatic discharge sensitivity identifier (if applicable)

(vi) Country of origin

(vii) Diminishing manufacturing sources (DMS) marking (if applicable)

(2) Microcircuits procured under MIL-M-385 I0J, Notice 1:

(i) PIN

(ii) Identification code

(iii) Manufacturer's identification

(iv) Manufacture's designation symbol

(v) Country of origin

(vi) 'JAN' certification mark

(vii) Special marking

(viii) Electrostatic discharge sensitivity identifier

(3) Other semiconductor devices and microcircuits not procured under a military specification:

(i) Identification number

(ii) Manufacturer's identification

(iii) Manufacturers date code

(4) Special marking as required under an applicable Military Specification.

(b) Sensitive Electronic Devices: When the MIL-STD-2073-1D, Packaging Requirements Code specifies method of preservation GX or ZZ, with special marking code “39” (ESD Sensitive Electronic Device Requirements), sensitive electronic devices caution marking shall be applied as specified in MIL-STD-129P.

(c) Bar Code Marking: Regardless of levels of packaging specified (including Industrial), bar code marking shall be applied to all unit, intermediate, and exterior containers in accordance with MIL-STD-129P.

(1) Exterior containers: For Defense Logistics Agency (DLA) contracts, each exterior shipping containers shall be bar coded with the National Stock Number (NSN), contract number (including the call number) and Commercial and Government Entity (CAGE) code.

(2) Multipacks:

(i) Item identification markings. Item identification markings will not be bar coded on the exterior shipping container of multipack shipments. However, unit packs and intermediate containers in the multipack shall be bar coded.

(ii) Contract number. Contract number will be bar coded on the exterior shipping container of the multipack if the number applies to all unit and intermediate containers inside the multipack. If mixed contract numbers are contained in the multipack, then the exterior container will not be bar coded.

(d) Hazardous Materials: (Performance Oriented Packaging).

In addition to the packaging requirements included in the commodity specification listed below, the supplies shall comply with applicable packaging requirements of AFMAN 24-204 (DLAI 4145.3), Preparing Hazardous Material for Military Air Shipments, the International Civil Aviation Organization (ICAO) technical instructions for the safe transport of dangerous goods by air. The International Maritime Dangerous Goods Code (IMDG CODE) and Title Forty-nine of the Code of Federal Regulations (49 CFR).

To the extent that there is conflict between the requirements of the commodity specification and other packaging data listed below and the requirements of AFMAN 24-204 (DLAI 4145.3), ICAO, and IMDG CODE, the provisions in AFMAN 24-204 (DLAI 4145.3), ICAO and IMDG CODE will control over the conflicting provisions in the commodity specification and other packaging data.

Unless otherwise specified by the procuring activity, interior and exterior containers of hazardous material shall be properly classified, documented, certified, described, packaged, marked, and labeled in accordance with AFMAN 24-204 (DLAI 4145.3), ICAO, IMDG CODE, 49 CFR, and MIL-STD-129P.

In addition to the above requirements, the CAGE code, shall be marked on all unit, intermediate and exterior containers.

(e) Exterior Documentation: Packing list as specified in MIL-STD-129P is required.

(f) Parcel Post Army Post Office (APO)/Fleet Post Office (FPO) Shipments: The statement "Contents for Official Use. Exempt from Customs Requirements" shall be annotated above the mailing address.

(g) Electronics Exclusions: Electron Tubes: These items shall be marked in accordance with MIL-E-75H.

(h) Warranty markings: When specified in the contract that the supplies are being required with a warranty agreement, the unit intermediate, and shipping containers shall be marked in accordance with MIL-STD-129P.

(End of Clause)

**52.211-9036 Physical Identification/Bare Item Marking.**
As prescribed in 11.204-99, insert the following clause:

PHYSICAL ITEM IDENTIFICATION/BARE ITEM MARKING – DLA LAND AND MARITIME (NOV 2011)

Unless authorized by exclusions listed below, all items shall be marked as specified in military standard (MIL-STD) 130N. The following DLA Land and Maritime supplemental marking requirements shall take precedence in case of conflict with MIL-STD-130N.

DLA Land and Maritime Exclusion:

(a) Unless the design control document specifically cites other marking requirements, the item will be considered too small to mark under the conditions listed below (however, 52.211-9035, Marking Requirements, applies):

(1) For federal supply classes (FSCs) 5905, 5910, 5935, 5961, 5962, and 5999, items smaller than .100 inch in diameter and .250 inch in length or .100 inch square X .250 inch in length, exclusive of wire leads, will not be marked.

(2) Other FSCs managed by DLA Land and Maritime will not be marked if the item is smaller than .250 inch in diameter X .500 inch long or .250 inch square X .500 inch long, exclusive of wire leads.

(3) Restrictions (1) and (2) above will not preclude marking of items of smaller dimensions if it is the manufacturers or vendor's standard practice to do so.

(b) No other physical item marking exclusions are authorized unless specified by MIL-STD-130N.

(End of Clause)

**52.211-9037 Time of Delivery – Direct Vendor Delivery (DVD).**
As prescribed in 11.404 (a)(S-90)(2)(iii), insert the following clause:

TIME OF DELIVERY – DIRECT VENDOR DELIVERY (DVD) (NOV 2011)

Delivery orders shall specify the date of delivery based on the priority of the delivery order line item. Ramp up periods, when needed, will be as specified elsewhere in the schedule.

(a) For any delivery order which specifies a priority of 1 to 3 and has a delivery location within the contiguous United States (CONUS), the Contractor shall be required to ship and deliver the order quantities so as to ensure receipt at the delivery destination(s) within _____ days after date of order for free on board (f.o.b.) destination and/or within____ days after date of order for f.o.b. origin.

(b) For any delivery order which specifies a priority of 1 to 3 and has a delivery location outside the contiguous U.S. (OCONUS), the Contractor shall be required to ship and deliver the order quantities so as to ensure receipt at the delivery destination(s) within _____ days after date of order for f.o.b. Destination and/or within____ days after date of order for f.o.b. origin.

(c) For any delivery order which specifies a priority of 4 to 15, has a delivery location within CONUS, a required delivery date (RDD) of 444, 555, 777 N**, E** or a Julian date within 8 days of date of order, the Contractor shall be required to ship and deliver the order quantities so as to ensure receipt at the delivery destination(s) within _____ days after date of order for f.o.b. destination and/or within____ days after date of order for f.o.b. origin.

(d) For any delivery order which specifies a priority of 4 to 15, has a delivery location OCONUS, an RDD of 444, 555, 777 N**, E** or a Julian date within 8 days of date of order, the Contractor shall be required to ship and deliver the order quantities so as to ensure receipt at the delivery destination(s) within _____ days after date of order for f.o.b. destination and/or within____ days after date of order for f.o.b. origin.

(e) For all other delivery orders which specify a priority of 4 to 15 and have a delivery location within CONUS, the Contractor shall be required to ship and deliver the order quantities so as to ensure receipt at the delivery destination(s) within _____ days after date of order for f.o.b. destination and/or within____ days after date of order for f.o.b. origin.

(f) For all other delivery orders which specify a priority of 4 to 15 and have a delivery location OCONUS, the Contractor shall be required to ship and deliver the order quantities so as to ensure receipt at the delivery destination(s) within _____ days after date of order for f.o.b. destination and/or within____ days after date of order for f.o.b. origin.

(g) Shipments to stock locations:

For any delivery order which specifies delivery to a Defense Logistics Agency (DLA)/Department of Defense (DoD) stock location, the Contractor shall be required to ship and deliver the order quantities so as to ensure receipt at the delivery destination(s) within _____ days after date of order for f.o.b. destination and/or within____ days after date of order for f.o.b. origin.

(h) First article:

When first article is required, the delivery timeframe will commence upon approval of first article. The delivery date of the first delivery order will be the delivery based on the priority of the delivery order line item plus the delivery timeframe specified by Federal Acquisition Regulation (FAR) Clause 52.209-3 or 52.209-4 (Section I) for submission of approval of the first article.

(i) Offeror's proposed schedule:

Offerors proposing to meet the Government's required delivery schedule, as shown above, need not enter anything in the "Offeror's Proposed Schedule" section.

For priority 1-3 items with destinations within CONUS, delivery shall be within _____ days after date of order for f.o.b. destination and/or within____ days after date of order for f.o.b. origin.

For priority 1-3 items with destinations outside CONUS, delivery shall be within _____ days after date of order for f.o.b. destination and/or within____ days after date of order for f.o.b. origin.
For priority 4-15, destination within CONUS, an RDD of 444, 555, 777 N**, E** or a Julian date within 8 days of date of order, delivery shall be within _____ days after date of order for f.o.b. destination and/or within____ days after date of order for f.o.b. origin.

For priority 4-15, destination outside CONUS, an RDD of 444, 555, 777 N**, E** or a Julian date within 8 days of date of order, delivery shall be within _____ days after date of order for f.o.b. destination and/or within____ days after date of order for f.o.b. origin.

For priority 4 to 15 (all others), destination within CONUS, delivery shall be within _____ days after date of order for f.o.b. destination and/or within____ days after date of order for f.o.b. origin.

For priority 4 to 15 (all others), destination outside CONUS, delivery shall be within _____ days after date of order for f.o.b. destination and/or within____ days after date of order for f.o.b. origin.

For shipments to DLA/DoD stock locations, delivery shall be within _____ days after date of order for f.o.b. destination and/or within____ days after date of order for f.o.b. origin.

(j) The Contractor shall furnish copies of both shipping and delivery documents whenever requested by the Contracting Officer.

(k) Offering a greater number of delivery days than requested in (a) thru (g) may result in the offer being rejected.

(End of Clause)

**52.211-9039 Compliance with Coast Guard Requirements.**
As prescribed in 11.107-90, insert the following clause:

COMPLIANCE WITH COAST GUARD REQUIREMENTS (NOV 2011)

(a) Items furnished under this solicitation/contract must be approved by the Coast Guard before delivery by the Government.

(b) Offeror, check one:
[ ] Product has Coast Guard approval. A copy of approval is attached.
[ ] Product currently is being evaluated by the Coast Guard.
[ ] Product does not have Coast Guard approval.

(c) If the item does not have Coast Guard approval, the Contractor shall submit the following to the Commandant, United States (U.S). Coast Guard, 1300 E. Street North West, Washington, DC 20591, for approval.

(1) A preproduction sample.

(2) A copy of the specifications.

(3) Two copies of the plans.

(4) Test records in accordance with the required Coast Guard standards.

(d) The preproduction sample and test reports shall be delivered to U.S. Coast Guard within 90 days after contract award. The Contractor shall provide a copy of the letter forwarding the sample to the Coast Guard to the Contracting Officer at the address located in Block 6 of the award. The letter will also cite the contract number to which the sample is applicable.

(e) When Coast Guard approval is received, a copy of the approval and a copy of the test records citing the contract number shall be submitted to the Contracting Officer at the address located in Block 6 of the award. A notice of approval shall not relieve the Contractor from complying with applicable specifications(s) and all other terms and conditions of this contract.

(f) If the sample/test report is disapproved, the Government may terminate for default as stipulated in paragraph (g) below or the Contractor may be required, at the option of the Government, to have repeated any or all of the tests, and/or to deliver another sample as required by the Coast Guard, under the terms and conditions and within the time specified by the Government. After each requirement for additional tests, the Contractor shall, at no additional cost to the Government, make any required changes or modifications. All costs related to all tests to demonstrate compliance with Coast Guard standards shall be borne by the Contractor, including any and all costs for additional testing which may be required following disapproval of any sample/testing report.

(g) If the sample/test report is disapproved by the Coast Guard, the Contractor shall be deemed to have failed to make delivery within the meaning of the Default Clause of this contract. Approval/ disapproval typically takes place within 55 days of the submission of the sample/test report (45 days for Coast Guard evaluation plus 10 days administrative lead time).

(h) Prior to approval of the preproduction sample, the acquisition of materials or components for, or the commencement of production of, the balance of the contract quantity is at the sole risk of the Contractor. Prior to approval, the costs thereof shall not be allocable to this contract for (1) progress payments, or (2) termination settlement if the contract is terminated for the convenience of the Government.

(i) The Government reserves the right to waive the requirement for submission of a preproduction sample as stated in the specification upon satisfactory evidence that the Coast Guard previously has reviewed and accepted an identical item. However, previous Coast Guard acceptance of the item does not constitute waiver of any requirements set forth in the terms and conditions of this contract.

(j) If the item is already approved, the delivery schedule for production quantity shall be reduced by the 145 days allotted for submission and acceptance of such samples. However, the earlier delivery schedule(s) shall not be a factor in evaluation for award.

(End of Clause)

**52.211-9041 Lengths, Tickets, Packaging, Marking of Cuts or Pieces.**

As prescribed in 11.272-90, insert the following clause:

LENGTHS, TICKETS, PACKAGING, MARKING OF CUTS OR PIECES – DLA TROOP SUPPORT, CLOTHING AND TEXTILES (C&T) (NOV 2011)

(a) Lengths of cuts or pieces. The gross length of single continuous pieces (regular length) shall be as stated in the applicable specification or deviation thereto. On pieces where shade swatches have been removed, gross yards shall exclude any material cut pursuant to the shade evaluation clause. Pieces under_____ yards in length will be considered for acceptance as follows:

Gross Length Of Short Pieces (Yards)

From: To:

Maximum % Permitted Of Total Contract Yardage

Discount From Contract Price

Pieces under _____ yards in length will not be accepted. When splicing is permitted, each individual cut so spliced will nevertheless be considered as a separate piece. Short lengths listed in this paragraph as acceptable must be presented to the Government Quality Assurance Representative (QAR) in separate groupings, identified as short lengths, and segregated by respective length ranges. The total yardage within any short length range, presented for acceptance at any stage of contract performance, shall not exceed the percentage specified in relation to the total yardage (gross of all regular and short length pieces) shipped to date on the contract plus the yardage in the lot being presented for acceptance.

(b) Piece tickets:

(1) The piece ticket shall not include in the gross quantity any yardage removed there from for purposes of Contractor and Government verification testing, shade evaluation, standby samples, etc., but shall show only actual yardage in the piece.

(2) One piece ticket shall be required for each length (whether a regular length or a short length as outlined in paragraph (a) above) showing gross yardage. Information on the ticket shall be specified in the applicable requirements for preparation for delivery.

(3) Where permitted, when two or more pieces are put up on the same roll and the roll is shipped unwrapped, one ticket shall be attached to each piece and one additional ticket shall be attached to the roll.

(4) Where permitted, when two or more pieces are put up on the same roll and the roll is shipped wrapped, one ticket shall be attached to each piece and two additional tickets shall be attached to the roll. One of the additional tickets shall be inserted in the paper tube and the other such additional ticket so positioned that, though covered by the wrapping, it can be readily located and drawn. An "X" marked on the outside wrapping shall indicate the position of the latter ticket.

(5) The additional tickets required by subparagraph (3) or (4) above shall be as specified in the applicable requirements for preparation for delivery. These tickets shall show gross yardage of each piece on the reverse side and the total gross yards of the pieces comprising the roll on the face side.

(c) Packaging and marking of short length:

(1) Packaging: Lengths from _____ to _____ yards will be packed separately from regular length pieces. In addition, each length range as indicated in the table of paragraph (a), "Length of Cuts or Pieces" will, in turn, be packed separately. The total number of short lengths rolled on a tube shall be limited by the maximum yardage or maximum weight (whichever is applicable) specified for a roll.

(2) Marking: Marking of containers shall clearly indicate "Short Lengths", followed by the length range of the contents. This information shall immediately follow the nomenclature.

(End of Clause)

**52.211-9042 Additional Documentation Requirements for Source Approval Request – Critical Application Item and Critical Safety Item.**
As prescribed in 11.304-93(c), insert the following provision:

ADDITIONAL DOCUMENTATION REQUIREMENTS FOR SOURCE APPROVAL REQUEST – CRITICAL APPLICATION ITEM AND CRITICAL SAFETY ITEM (NOV 2011)

(a) If an item other than that cited in the Purchase Order Text (POT) is offered under provision 52.217-9002 of this solicitation, this provision specifies the Government's requirements for additional documentation needed to evaluate whether the offered item meets the requirements for the Critical Application Item (CAI) and/or Critical Safety Item (CSI) identified in the POT. The offeror shall determine which category applies. The specified documentation for that category, as well as that specified for all categories at subparagraph (b), shall be submitted in support of the manufacturing process. The DLA Aviation website provides the mandatory requirements to submit for CATEGORY I – III parts.

(1) Category I - Manufacturer of the same item for the Original Equipment Manufacturer (OEM) or for the Department of Defense (DoD).

(2) Category II - Manufacturer of a similar item for the OEM or DoD. (A similar item is defined as an item whose design, application, operating parameters, material, and manufacturing processes are similar to those of the item for which source approval is sought.)

(3) Category III - New manufacturer. The exact or similar item has not been previously provided to the OEM or DoD.

(b) Requirements for all categories.

(1) Documentation shall be provided stating if the company seeking approval is a nonmanufacturing source or the actual manufacturer. If the company seeking approval is a nonmanufacturing source, the required information shall also be submitted on the manufacturer.

(2) Any SAR identified to Boeing Rights Guard must comply with the Boeing Rights Guard Agreement.

(End of Provision)

**52.211-9045 Pre-market Notification.**
As prescribed in 11.204-92, insert the following provision:

PRE-MARKET NOTIFICATION - DLA TROOP SUPPORT - MEDICAL (NOV 2011)

(a) All offerors must be in compliance with Section 510(k) of the Federal Food, Drug and Cosmetic Act for those medical device products intended to be delivered to the Government. In accordance with 21 Code of Federal Regulations (CFR) Part 807 Subpart E, approval is required 90 days prior to either the submission of the initial offer (date the bid/proposal is signed) or the original opening/closing date (whichever comes first). Offerors are required to be in compliance by listing below the item number, corresponding premarket notification number and date of Food and Drug Administration (FDA) approval or the specific basis for exemption from the notification procedures as delineated in 21 CFR Part 807 Subpart E.

(b) The Government will rely on the offeror's information for evaluation and award purposes. Offerors not in compliance 90 days prior to either the submission of the initial offer (date the bid/proposal is signed) or the original opening/closing date (whichever comes first), or not providing the information below, will be determined technically unacceptable (nonresponsive if an invitation for bid (IFB) and the offer will be rejected. Offerors that are determined ineligible will not be allowed to submit evidence of compliance at a later date. False information will be grounds for terminating any contract(s) resulting from this solicitation.

Item Number Premarket Notification Number/Approval Date

OR

State Basis for Exemption

I (name of authorized representative), _____, hereby state that to the best of my knowledge and belief the information provided here is complete and accurate.

Authorized Representative's Signature _____
Authorized Representative's Title _____Date _____

(End of Provision)

**52.211-9047 Manufacturer's Make or Model Number.**
As prescribed in 11.274-4(90), insert the following provision:

MANUFACTURER'S MAKE OR MODEL NUMBER (NOV 2011)

(a) Offerors are requested to provide the following information regarding the items offered:

Manufacturer's Name
Make
Model Number
also, include National Stock Number (NSNs)
(if previously assigned to the model in your offer), and contracts (if applicable)

(b) Furnishing this information does not relieve the offeror from supplying items that conform to the item description. Information is required solely for purposes of assigning a permanent National Stock Number (NSN) and is not for use in evaluation of offers. Marking of items acquired under generic end item identification must be an NSN referenced to a specific manufacturer and his make or model number. Contractor will affix the permanent (specific) NSN to equipment data plates, container markings, and other documents required by the contract in lieu of the temporary (generic) NSN shown in this solicitation. If specific NSN assignment is not made and furnished to the Contractor as a part of the contract, notify the Administrative Contracting Officer.

(End of Provision)

**52.211-9048 Data Name Plates.**
As prescribed in 11.274-4(91), insert the following provision:

DATA NAME PLATES - DLA TROOP SUPPORT - SUBSISTENCE (NOV 2011)

(a) The most current version of military standard (MIL-STD) 130L is applicable with the exception of paragraphs 4.1, 4.5, 4.6, 4.11 and 4.13. Data name plates shall be made of minimum 20 gauge corrosion-resisting metal and attached to each item by rivets, screws, or welding in such a manner as to meet the applicable National Sanitation Foundation sanitary requirements for this equipment. The plate shall contain the following information stamped, engraved or applied by photosensitive means.

National stock number
Procurement Instrument Identification Number
Specification data
Manufacturer's name, address, phone number
Supplier's name, address, phone number
Manufacturer's model number
DIC approved manual number

(b) Each plate shall be placed so that it is readily visible to the operator during normal operating use. Each plate shall be placed in a manner as to not adversely affect the life and utility of the item.

(End of Provision)

**52.211-9050 Quantity Variance for Aerial Photographic Film.**
As prescribed in 11.703-90, insert the following clause:

QUANTITY VARIANCE FOR AERIAL PHOTOGRAPHIC FILM (JUN 2008)

The Contractor may supply short lengths of film and bill for the actual footage shipped. Short roll film length shall be equal to not less than ninety percent (90%) of the nominal film length cited in the item nomenclature. Actual film length will be cited on each short roll unit package.

(End of Clause)

**52.211-9052 Notification to Government of and Contemplated Production Phase-out.**
As prescribed in 11.9001(b)(1), insert the following clause:

NOTIFICATION TO GOVERNMENT OF AND CONTEMPLATED PRODUCTION PHASE-OUT (NOV 2011)

(a) Items described in this acquisition have been designated "critical application items;" production phase-out of such items by the manufacturer could jeopardize the Government's ability to provide continued support for weapon systems or other vital equipment or programs.

(b) In the event that manufacturing phase-out or discontinuance of production of such items is contemplated, the Contractor is required to publish the discontinuance in the Government-Industry Data Exchange Program (GIDEP), where feasible, and to provide immediate advance notice of production phase-out to the applicable supply center diminishing manufacturing suppliers and material shortages (DMSMS) point of contact (POC), with copies to the DLA HQ DMSMS program manager and the DMSMS integrated support team (IST), as designated below:

Supply Center: DLA Aviation, Office: FAGD
Address: 8000 Jefferson Davis Highway , Richmond, Virginia 23297-5862

Supply Center: DLA Troop Support
Address: 700 Robbins Avenue, Philadelphia, Pennsylvania 19111-5096

Supply Center: DLA Land and Maritime, Office: VSD
Address: 3990 East Broad Street, Columbus, Ohio 43218

DLA Headquarters (HQ): Defense Logistics Agency, Office: DLA J3
Address: 8725 John J. Kingman Rd., Suite 4240, Fort Belvoir, Virginia 22060-6221

Diminishing Manufacturing Sources and Material Shortages (DMSMS) Integrated Supplier Team (IST):
DLA DMSMS IST "VSD"
3390 East Broad Street, Columbus, Ohio 43218
Phone: (614) 692-7493

(End of Clause)

**52.211-9053 Expedited Handling Shipments.**
As prescribed in 11.604-90(b), insert the following clause:

EXPEDITED HANDLING SHIPMENTS (NOV 2011)

(1) Requisitions and contracts identified as not mission capable shipments (NMCS) shipments, requiring "expedited handling", have an NMCS code shown in the RDD block of the address label.

Applicable codes are "999" or any three digit code beginning with the letter "N". The Contractor will mark all "expedited handling" shipments with identifying labels. NMCS "999" shipments shall be marked with two 999 Labels on each container. For NMCS conditions other than 999, containers shall be marked with two "NMCS" labels. Tags shall be used when labels are impractical. Place one label adjacent to the address and the other label on the opposite side of the container. Use the largest labels that will fit.

(2) Military Shipping Labels (MSL) are required on all shipments (see Defense Logistics Acquisition Directive (DLAD) clause 52.211-9010). Enter the code "999" or "NMCS" as applicable in the required delivery date (RDD) block, and insert a large "1" in the box entitled Transpriority.

(End of Clause)

**52.211-9063 Unit Package Marking Requirement for Component Lead Finish.**
As prescribed in 11.291, insert the following clause:

UNIT PACKAGE MARKING REQUIREMENT FOR COMPONENT LEAD FINISH (NOV 2011)

(a) In addition to all other marking requirements in this contract, the Contractor shall apply one of the assigned markings in accordance with paragraphs 5.3.1 and 5.3.2 of IPC/JEDEC J-STD-609, "Marking and Labeling of Components, printed circuit boards (PCBs) and printed circuit board assemblies (PCBAs) to Identify Lead (Pb), Pb-Free and Other Attributes," to each individual unit pack of the item being acquired. Placement of the markings shall be in accordance with paragraph 6.1 of the standard.

(b) Copies of the current version of this standard may be purchased or downloaded from the Association Connecting Electronics Industry (IPC), http://www.ipc.org, or the Solid State Technology Association (JEDEC), http://www.jedec.org.

(End of Clause)

**52.211-9064 Drawing Limitations - Tank-Automotive and Armaments Command (TACOM) Depot Level Repairable (DLR) – DLA Land and Maritime.**
As prescribed in 11.204-100, insert the following clause:

DRAWING LIMITATIONS - TANK-AUTOMOTIVE AND ARMAMENTS COMMAND (TACOM) DEPOT LEVEL REPAIRABLE (DLR) – DLA LAND AND MARITIME (NOV 2011)

(a) The drawings supplied with this contract are not shop or process drawings. They are engineering design drawings that are adequate to permit manufacture, depict the completed (item(s), and serve as the basis for inspection of the completed item(s).

(b) The drawings do not cover intermediate drawings/specifications or steps in the manufacturing process. As a result, even if the Contractor meets all the dimensions and tolerances specified in the engineering design drawing for each individual part, a cumulative unacceptable fit for the contract item could result.

(c) The Contractor is responsible for producing the shop or process drawings needed to cover intermediate steps in the manufacturing process.

(d) The Contractor agrees that it has obtained all specifications and drawings necessary to manufacture the items being solicited in accordance with the Technical Data Package (TDP), including all incorporated specifications and drawings. The Contractor is responsible for having all drawings and specifications. Delivery delays are not excusable where the Contractor asserts that it did not have a specification or drawing and has failed to request, in writing, the specification from the Contracting Officer prior to the solicitation closing date.

(e) If the Contractor fails to produce an end item with a cumulative fit that conforms to Government drawings, specifications or other supplemental manufacturing documentation, the Contractor shall be responsible for correcting this condition at no additional cost to the Government and no delivery schedule extension.

(End of Clause)

**52.211-9070 Relief from Diminishing Manufacturing Sources or Material Shortages Components (F-16 Program).**
As prescribed in 11.9002-90(a), insert the following clause:

RELIEF FROM DIMINISHING MANUFACTURING SOURCES OR MATERIAL SHORTAGES COMPONENTS (F-16 PROGRAM) (APR 2013)

(a) A diminishing manufacturing sources or material shortages (DMSMS) component is a component or material, intended to be incorporated directly into an end item specified to be delivered under the purchase order or contract, that is unavailable from all manufacturers known to the Contractor, in the quantity necessary to comply with the delivery terms of the purchase order or contract.

(b) The Contractor shall promptly notify the Contracting Officer in writing whenever the Contractor believes that one or more of the components or materials intended to be incorporated directly into an end item specified to be delivered under the purchase order or contract is a diminishing manufacturing source (DMS) component. The notice shall identify the part number, national stock number, and nomenclature of each DMS component.

(c) If the Contractor believes that one or more of the components or materials intended to be incorporated directly into an end item specified to be delivered under the purchase order or contract is a DMS component, the Contractor may request contractual relief according to this clause. The Contractor shall submit the request in writing to the Contracting Officer within thirty (30) days after the Contractor discovers a DMS situation. The request shall indicate that it is a request for contractual relief according to this clause and shall include, if applicable, the following information:

(1) a part number for each DMS component, its national stock number, nomenclature an actual manufacturer; part number of the end item where the DMS component is incorporated, national stock number, nomenclature, and actual manufacturer of the end item, description of the physical location on the weapon system where the end item is used; identification of the organization or organizations within DoD that manage the end item and those that manage each DMS component of the end item; identification of other public and private entities known by the Contractor to use substantially the same DMS component or end item; all technical remedies the Contractor recommends, if any, to overcome or

mitigate the unavailability of DMS components (e.g., an engineering change proposal or the substitution of components having the same form, fit, and function); and

(2) a statement substantially as follows signed by an individual authorized to bind the Contractor contractually:

"To the best of the Contractor's knowledge and belief, the components or materials identified according to paragraph (c) of the clause titled Relief from Diminishing Source or Material Shortage Components of [purchase order or contract] number _____ are DMS component(s) according to the definition in paragraph (a) of that clause."

(d) The Contracting Officer shall decide whether the request complies with the informational requirements of paragraph (c). If the Contracting Officer finds that the request substantially complies with such requirements, the Contracting Officer shall determine whether the components or materials identified according to the paragraph (c) are DMS components. In making the determination, the Contracting Officer shall consider the information the Contractor furnished with the request; and shall consult knowledgeable technical personnel, and, to the extent practicable, the organizations and points of contact the Contractor identified in the request; and may consider any other relevant information available to the Government.

(e) If the Contracting Officer finds that the Contractor's request does not substantially comply with the informational requirements of paragraph (c), or if the Contracting Officer determines that none of the components or materials identified according to paragraph (c) is a bona fide DMS component, the Contracting Officer shall, within thirty (30) calendar days of receipt of the request, notify the Contractor in writing accordingly. The notice shall identify the deficiencies in the request, or shall state the reasons the Government disagrees with the Contractor's statement that the components or materials identified are DMS components. The Contracting Officer may, thereafter, accept a revision of the request.

(f) If the Contracting Officer finds that the Contractor's request substantially complies with the informational requirements of paragraph (c), and determines that one or more of the components or materials identified are bona fide DMS components, the Contracting Officer shall, within thirty (30) calendar days of receipt of the request, notify the Contractor in writing accordingly. The notice shall constitute the government's acknowledgment that, if the Contractor fails to deliver the end item within the time specified in the purchase order or contract, the Government will consider the DMS components to be a cause beyond the control and without the fault or negligence of the Contractor to the extent the Contractor's failure to perform is attributable to the DMS components. Additionally, the Contracting Officer may consider a proposal, if offered by the Contractor, to address the additional costs associated with alternative sources or work-around solutions to such DMS situation.

(g) No provision of this clause, nor any action taken by the Government according to this clause, shall, in itself, relieve the Contractor of the duty to respond to any delinquency notice prescribed in Federal Acquisition Regulation (FAR) 49.607. Failure to agree upon the existence of a DMS situation shall be a dispute within the meaning of the clause in this contract entitled "Disputes".

(End of Clause)

**52.211-9071 Required Source Approval - Logistics Command (LOGCOM) Depot Level Repairable (DLR) –DLA Land and Maritime.**

As prescribed in 11.304-93(f), insert the following provision:

REQUIRED SOURCE APPROVAL – LOGISTICS COMMAND (LOGCOM) DEPOT LEVEL REPAIRABLE (DLR) – DLA LAND AND MARITIME (NOV 2011)

(a) The source(s) listed below have been approved by the Government for supply of the spare/component parts called for herein in order to assure the requisite safe, dependable, effective operation, and support of military equipment. Offerors other than the below listed approved source(s) will not be considered for award under this solicitation unless:

(1) The Offeror submits prior to or concurrent with its proposal proof of prior Government approval as a supplier of the required item(s); or,

(2) The Offeror submits prior to or concurrent with its proposal evidence of having satisfactorily produced the required item(s) for the Government or the prime equipment manufacturer(s); or,

(3) The Offeror submits prior to or concurrent with its proposal a certification specifying that the required item(s) will be obtained from sources having current Government approval as a result of satisfactorily supplying the same item(s) to the Government or the prime equipment manufacturer(s); or,

(4) The Offeror submits prior to or concurrent with its proposal such complete and current engineering data for the item(s) (including manufacturing control drawings, qualification test reports, quality assurance procedures, etc.) as may be required for evaluation purposes to determine the acceptability of the item as supplied by your firm for Government use; or

(5) The Offeror, who is not the manufacturer, notifies the Procuring Contracting Officer (PCO) at least ten (10) days prior to the opening of bids or proposals that the Offeror intends to provide surplus parts manufactured by one of the approved sources listed below. The Government will determine on a case-by-case basis, whether or not surplus parts can be considered in view of the criticality of the parts, and the extent of the evidence necessary for the Offeror to establish that the parts conform to the applicable specifications.

(b) Offers based on the submittal of approval information in accordance with paragraph (a) of this clause may, as determined by the Contracting Officer, be considered for award under this solicitation only if:

(1) The evaluation of such offers is practicable and in the Government's interest considering the availability of resources and cost to the Government for the qualification of new sources for the required item(s) as well as the advantages anticipated to be derived by the Government as a result of such qualification; and,

(2) The Government can, in fact, determine that the item, as supplied by the Offeror, is acceptable for Government use; and,

(3) In all cases, the evaluation/verification of the submittal and the requisite approval and award thereon can be made in time to meet the Government's requirements.

(c) The Government's decision regarding the suitability/acceptability of Offeror submittals under paragraphs (a) and (b) hereof, and the consideration for award based thereon, shall be final.

(d) The listing of approved sources below does not constitute a predetermination of responsibility or ability of the listed sources to perform on this particular procurement.

Approved sources:

| Item Number | Manufacturer | Manufacturer Code | Part Number |
|---|---|---|---|

(End of Provision)

**52.211-9085 Prohibited Packing Materials (DLA Maritime-Norfolk and Puget Sound).**
As prescribed in 11.204-105, insert the following clause in full text:

PROHIBITED PACKING MATERIALS (DLA MARITIME-NORFOLK AND PUGET SOUND) (JUN 2011)

The following packing materials are prohibited: asbestos, excelsior, newspaper or shredded paper (all types including waxed paper, computer paper and similar hydroscopic or non-neutral material), and loose fill polystyrene. In addition, the use of yellow wrapping or packaging material is prohibited except where used for the containment of radioactive material.

(End of Clause)

**52.211-9087 Level I Material Marking (DLA Maritime-Norfolk)).**
As prescribed in 11.304-90(e), insert the following clause in full text:

LEVEL I MATERIAL MARKING (DLA MARITIME-NORFOLK) (NOV 2011)

(a) The following are the minimum marking requirements. Additions or alternative marking requirements, if applicable, will be specified in the procurement specification ordering data.

(b) All materials, which secure or act as pressure boundaries of Level I systems, supplied must be permanently and legibly marked in accordance with military standard (MIL-STD) 792 (latest revision) unless otherwise specified in the applicable specifications or drawings.

(c) The marking will not affect the fit, form or function of the material. For welded items, the marking will be located at least 1/2 inch from the weld edge. Items prepared for silver brazing will be marked outside the ultrasonic text area.

(d) Traceability markings for items with precision machined or plated surfaces or material with a suitable marking surface of less than 3/8 square inches (i.e., 3/8” x 3/8”) shall be applied to a durable tag and the tag securely affixed to the material. Mark the tag “item not permanently marked.”

(e) Traceability markings shall be maintained throughout assembly, and whenever possible shall be visible after assembly. For items where marking is not visible after assembly, a durable tag shall be securely attached to the item identifying the part number, piece number, traceability code and location of the permanent mark.

(f) When traceability markings are removed by a manufacturing or fabrication process, the marking shall be recorded prior to removal and be immediately restored upon completion of the process. If this cannot be done or is impractical, an appropriate material control procedure (such as a bag and tag, tagging, and /or tote box control) must be employed. The material control procedure must provide the method of positive control to preclude commingling of heats or loss of traceability. The traceability code shall be reapplied upon completion of the final manufacturing process.

(g) Traceability marking of consumable materials (i.e. weld filler metal, silver braze alloys, etc.) shall be by label attached to each container. Each container must contain material from the same heat, lot, or batch.

(End of Clause)

**52.211-9088 Level I Pressure Boundary Markings (DLA Maritime-Norfolk).**
As prescribed in 11.304-90(f), insert the following clause in full text:

LEVEL I PRESSURE BOUNDARY MARKINGS (DLA MARITIME-NORFOLK) (NOV 2011)

All materials which secure or act as pressure boundaries of Level I essentiality materials purchased under this contract must be permanently and legibly marked in a manner approved by military standard (MIL-STD) 792D. Marking shall be located so as not to affect the fit, form or function of the item. Additionally marking shall be located at least 1/2 inch from ends prepared for welding and outside of ultrasonic test areas of items prepared for silver brazing.

(End of Clause)

**52.211-9089 Level I Fastener identification (DLA Maritime-Norfolk).**
As prescribed in 11.304-90(g), insert the following clause in full text:

LEVEL I FASTENER IDENTIFICATION (DLA MARITIME-NORFOLK) (JUN 2011)

(a) Identification shall be maintained for Level I fasteners by unique lot number. All Level I fasteners, 1/2 inch nominal diameter and larger and all hull integrity fasteners, regardless of size, shall be marked with the kind of material, manufacturer's trademark or symbol, and traceability code (i.e., heat number, lot number). Level I fasteners less than 1/2 inch nominal diameter shall be marked as space permits using the following order of precedence:

(1) The kind of material

(2) The manufacturer's trademark or symbol

(3) The traceability code

(b) The material control process shall include requirements for the maintenance of traceability for items sent out for subcontracted operations. If such operations would remove traceability marking, purchase or work orders shall specify method and marking location for remarking. The Contractor shall also ensure that subcontractor production controls are adequate to preclude commingling of materials during

processing. The Contractor shall include the substance of this clause, including this paragraph, in all subcontracts.

(c) For material produced by batch, continuous cast, or continuous pour process, samples shall be taken no less than once every eight hours of operation for the purpose of validating proper chemical composition and mechanical properties.

(End of Clause)

**52.211-9094 Preparation for Delivery.**
As prescribed in 11.404 (a)(S-90) (2)(x), insert the following clause:

PREPARATION FOR DELIVERY (NOV 2012)

(a) DLA stock and outside contiguous United States (OCONUS) Shipments: All orders shall be packaged to military preservation standards in accordance with military standard (MIL-STD) 2073-1D coded packaging requirements, and marked in accordance with MIL-STD-129P, Military Marking for Shipment and Storage. The supplemental palletization instruction sheet will be applicable when required and provided by the contracting officer.

(b) Direct vendor delivery (DVD) shipments:

(1) Contiguous United States (CONUS).

(i) Standard commercial in accordance with ASTM-D-3951.

(ii) Marking and barcoding in accordance with MIL-STD-129P and International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC) 16388 shall apply for all shipments regardless of destination. (Also see clause 52.211-9010.)

(2) Purchase card orders: Packaging shall be in accordance with American Society for Testing and Materials (ASTM) D-3951 commercial packaging, which will ensure acceptance by the carrier. Marking shall be in accordance with MIL-STD-129P.

(c) Fast pay orders: The outer shipping container for fast pay DLA direct vendor delivery orders must be marked “fast pay.”

(d) Hazardous material: Packaging for hazardous materials shall comply with applicable requirements for performance oriented packaging contained in the Code of Federal Regulations (CFR) Titles 29, 40 and 49. All performance test requirements shall be supported by certificates and reports attesting to the date and the data results obtained from performance oriented packaging testing. The contractor, if not a self-certifier, shall be responsible for assuring that third party sources providing performance testing services are, in fact, registered with the Department of Transportation. The contractor’s signed certification that the packaged configuration meets CFR Title 49 requirements shall be incorporated on the Department of Defense (DD) Form 250, Material Inspection and Receiving Report, or other related acceptance document if the DD Form 250 is not used. All certificates and reports shall be available for inspection by authorized Government representatives for a period of three years. If hazardous material will be offered for transportation by military air see clause, 52.211-9013, Shipper’s Declaration of Dangerous Goods.

(e) Prohibited cushioning and wrapping materials: Use of excelsior, newspaper, shredded paper (all types, including wax paper), and similar hygroscopic or non-neutral materials and all types of loose-fill materials, including polystyrene, is prohibited for application such as cushioning, fill, stuffing, and dunnage.

(f) Any questions concerning packaging may be addressed to the supply chain point of contact (see http://www.landandmaritime.dla.mil/offices/packaging).

(End of Clause)

**52.211-9095 Palletization Shipments.**
As prescribed in 11.292, insert the following clause:

PALLETIZATION OF SHIPMENTS (SEP 2012)

When the shipment of items is entering the Defense Transportation System and/or the enterprise business system (EBS) palletization number MD00100452 revision B is referenced, military standard (MIL-STD) 147, Department of defense standard practice, palletized unit loads is required. The use of nonstandard commercial pallets is not permitted unless cited in the contract or purchase order. Palletization Sheet MD00100452 Revision B with additional information concerning requirements for palletization can be found at http://www.landandmaritime.dla.mil/Offices/Packaging/palletization_ WPMnotice.asp.

(End of Clause)

**52.212-9001 Application of Fast Payment to Part 12 Acquisitions.**
As prescribed in 12.301(b)(3)(90), insert the following clause:

APPLICATION OF FAST PAYMENT TO PART 12 ACQUISITIONS (NOV 2011)

This acquisition is being conducted using Federal Acquisition Regulation (FAR) Part 12, Acquisition of Commercial Items. FAR 52.213-1, Fast Payment, applies. The terms and conditions in 52.213-1 take precedence over paragraphs (a), (j), (n), (o) and (p) of the clause at FAR 52.212-4.

(End of Clause)

**52.213-9001 Evaluation Factor for Source Inspection.**
As prescribed in 13.106-90(a) and 15.304(c)(S-93), insert the following provision:

EVALUATION FACTOR FOR SOURCE INSPECTION (NOV 2011)

This solicitation contemplates an award based on destination inspection. However, source inspection will be required for those quoters/offerors to whom formal notification thereof has been issued prior to the closing date for receipt of offers under this solicitation. An evaluation factor of $250 will be added to the quoted/offered price for each source inspection required, for purposes of determining the most advantageous offer received, price and other factors considered. Quotes/ offers contingent on source inspection/acceptance and/or free on board (f.o.b.) origin may be considered technically unacceptable; if the quote/offer is evaluated, the $250 evaluation factor will be applied for each source inspection required. Nothing in this provision affects the right of the Government to perform or waive source

inspection on any resultant order/contract. If phased deliveries are required or offered, each phase of delivery will be presumed to result in one inspection.

(End of Provision)

Alternate I. Evaluation Factor for Source Inspection. As prescribed in 13.106-90(a) insert the following provision.

EVALUATION FACTOR FOR SOURCE INSPECTION ALTERNATE I (NOV 2011)

(a) If the quote or offer is evaluated in accordance with Defense Logistics Acquisition Directive (DLAD) provision 52.213-9001, in Section M, an evaluation factor will be added to the offeror's quoted price for each source inspection.

(b) This solicitation is intended to result in the award of a contract under which multiple orders may be placed. For evaluation purposes, it is anticipated that delivery orders will be issued. The evaluation factor will be applied based on a presumption that each order issued under this contract will result in a source inspection.

(End of Provision)

**52.213-9008 Automated Contract Evaluation System.**
As prescribed in 13.106-2(b)(S-90)(i), insert the following provision:

AUTOMATED CONTRACT EVALUATION SYSTEM (SEP 2015)

(a) Automated contract evaluation: Acquisitions are candidates for automated award under automated contract evaluation systems when the solicitation states that automated contract evaluation systems apply. The program uses price logic and other automated filters to make fully-automated and buyer-assisted automated awards valued at the simplified acquisition threshold or less. A purchase order with a “V” in the ninth position denotes an order issued under an automated contract evaluation system, which only considers “qualified quotes” for award. Qualified quotes are in exact compliance with the solicitation requirements (bid type equal to “bid without exception”), and are submitted on the Defense Logistics Agency’s Internet Bid Board System (DIBBS).

(1) The following are not, by themselves, considered exceptions to the solicitation requirements and will not make a quote ineligible** for an award:

(i) Quoting delivery days different than the required delivery days;

(ii) **Quoting origin inspection on solicitations requiring destination inspection;

(iii) Quoting a superseding or previously approved part or correction to a commercial and Government entity (CAGE)/part number cited in the acquisition identification description (AID) on an item described by manufacturer’s CAGE and part number;

(iv) Quoting a used, reconditioned, remanufactured item;

(v) Quoting other than a domestic end product on an unrestricted solicitation;

(vi) Quoting a hazardous item;

(vii) Quoting a new/unused Government surplus item; and

(viii) Quoting "Other" when the solicitation states a higher level quality requirement is required.

Note: The Department of Defense is implementing a policy that limits Government source inspections and permits Government source inspection for specific instances. Suppliers should submit quotes based on the requirements stated in the solicitation. If a supplier's quote does not comply with the requirements stated in the solicitation, evaluation factors will be applied. See paragraph (b)(1) below. Additionally, should a quote citing origin inspection for a solicitation requiring destination inspection be evaluated manually, the quote may become ineligible for award.

(2) The following are considered exceptions to the solicitation requirements and will make a quote ineligible for a fully-automated award:

(i) Quoting an alternate product or otherwise taking exception to the solicitation's item description;

(ii) Exceptions to packaging requirements;

(iii) Exceptions to free on board (f.o.b.) terms;

(iv) Quoting destination inspection on a solicitation requiring origin inspection;

(v) Exceptions to required quantity;

(vi) Quoting a quantity variance greater than what is specified on the solicitation;

(vii) Quoting "None" when a higher level quality requirement is required; and

(viii) Quoting the use of child labor.

(b) Evaluation factors: All qualified quotes are evaluated on the basis of price alone. Quantity price breaks are not considered. Price evaluation factors are added to the total quoted price in the following instances:

(1) $250 for quoting origin inspection when the Government's requirement is for destination inspection (see Defense Logistics Acquisition Directive (DLAD) clause 52.213-9001; factor does not apply to Foreign Military Sales (FMS) and Direct Vendor Delivery (DVD) requirements if any qualified quote is above $25,000);

(2) $200 for quoting surplus material on non-critical items; $700 for quoting surplus material on critical items. When an automated quote of surplus material is in line for award after applying the above

evaluation factors, a manual evaluation will be conducted in accordance with the more detailed evaluation criteria in 52.211-9003; and

(3) The Buy American Act (BAA) places restrictions on the purchase of supplies that are not domestic end products. Refer to Defense Federal Acquisition Regulation Supplement (DFARS) 252.225-7001 or 252.225-7036, as applicable. .

(c) Tie quotes: If evaluated offers results in a tie between qualified quotes, the award decision will be based on the following order of precedence:

(1) A domestic end product offer over a non-qualifying country end product offer;

(2) Small business offer over a large business offer;

(3) Offer with the shortest delivery (if a quote contains different deliveries for multiple line items the automated evaluation program uses the average of the delivery periods); and

(4) First quote submitted.

(d) Manual evaluation: If the solicitation did not state that it was a candidate for automated evaluation, or if the solicitation stated that it was a candidate for automated evaluation but the automated evaluation system is unable to make price reasonableness or Contractor responsibility determinations, the solicitation and quote will be evaluated and awarded manually. When a quote is manually evaluated the Contracting Officer may consider quantity price breaks offered without further solicitation or discussion.

(e) Manual evaluation factors: If the requirement is evaluated manually, price, delivery, and past performance will be considered in accordance with the terms in the solicitation. Delivery will be considered consistent with 52.211-9011.

(f) Alternate offers: Alternate offers will not be considered for automated award. Alternate offers may be submitted for evaluation for future procurements to the location identified in DLAD Clause 52.217-9002.

(g) Notice of award: The Government's offer to purchase, as evidenced by an order, is made on the basis of a submitted quotation. Suppliers are requested to notify the administrative Contracting Officer, within 14 days after receiving the notice of award, when they will not perform in accordance with an order. Failure to provide prompt notice will adversely affect your past performance evaluation if this order is later cancelled at other than the Government's request.

(h) Award distribution: The award will be posted to the DLA DIBBS web site and distributed via email notification with a Web link to an electronic copy of the DD Form 1155, Order for Supplies or Services. Orders will be transmitted via Electronic Data Interchange (EDI) to Contractors who are EDI-capable. Contractors that are not EDI-capable will receive their orders via email award notification containing Web links. Delays in the receipt of awards that are caused by email interruptions and Internet access are not excusable delays and will not extend delivery schedules.

(End of Provision)

**52.213-9010 Indefinite Delivery Purchase Order (IDPO) Evaluation.**
As prescribed in 13.390(d)(1), insert the following clause:

INDEFINITE DELIVERY PURCHASE ORDER (IDPO) EVALUATION (SEP 2012)

(a) The Government will award an IDPO resulting from this request for quote (RFQ) to the responsible offeror whose offer conforming to the terms and conditions within the RFQ will be most advantageous to the Government, price and/or other factors specified elsewhere in this solicitation considered. Evaluation of prices will be based on the estimated annual demand, as stated in the schedule.

(b) Failure to agree to the IDPO clause included in this request for quotes will affect the award decision for the solicited quantity, in that any offer received that fails to agree to an indefinite delivery purchase order maybe rejected as technically unacceptable.

(End of Clause)]

**52.213-9011 Indefinite Delivery Purchase Order (IDPO) Agreement - Unilateral.**
As prescribed in 13.390(d)(2), insert the following clause:

INDEFINITE DELIVERY PURCHASE ORDER (IDPO) AGREEMENT – UNILATERAL
(APR 2014)

(a) The Government will award a unilateral indefinite delivery purchase order (IDPO) agreement resulting from this request for quotes to the responsible offeror whose offer conforming to the IDPO terms and conditions will be most advantageous to the Government, price and/or other factors considered.

(b) The Contractor agrees that he/she will accept additional orders under the same terms and conditions specified in the basic order. The initial delivery order represents the minimum quantity, therefore the Government is under no obligation to place additional orders. The Government may place additional orders for the period of performance stated in the purchase order, effective from the date of the initial order. All additional orders will reference the basic order. The aggregate value of all orders shall not exceed the simplified acquisition threshold (see FAR 2.101); or, for acquisitions conducted using FAR Subpart 13.5, shall not exceed $6.5 million ($12 million for acquisitions described in 13.500(e)). The maximum value under the IDPO is stated in the basic order.

(c) Evaluation of Quotes. If quotes include variable pricing based upon conditions such as quantity ranges, transportation zones, and/or option years, quotes will be evaluated by establishing an average unit price. The average unit price will be established by adding all unit prices together, then dividing the sum by the number of unit prices.

(d) Pricing of Orders. When issuing orders, the unit price shall be based on the price from the quantity range that will cover the total quantity on the order, regardless of destination.

(e) Numbering. The uniform procurement instrument identification numbering (PIIN) system will be used (see Defense Federal Acquisition Regulation Supplement (DFARS) 204.7003).

(End of Clause)

**52.213-9012 Indefinite Delivery Purchase Order (IDPO) - Bilateral.**
As prescribed in 13.390(d)(3), insert the following clause:

INDEFINITE DELIVERY PURCHASE ORDER (IDPO) - BILATERAL (APR 2014)

(a) The Government will award a bilateral IDPO resulting from this request for quotes to the responsible offeror whose offer conforming to the terms and conditions in the request for quotes will be most advantageous to the Government, price and/or other factors considered.

(b) The Contractor agrees that it will accept additional orders under the same terms and conditions specified in the basic order. This agreement becomes binding upon delivery of the initial order, which is the minimum quantity for this IDPO. The initial delivery order represents the minimum quantity for this IDPO, and the Government is under no obligation to place additional orders under this IDPO. The Government may place additional orders for the period of performance stated in the purchase order, effective from the date of the basic order. All additional orders will reference the initial order. The aggregate value of all orders shall not exceed the simplified acquisition threshold (see FAR 2.101); or, for acquisitions conducted using FAR Subpart 13.5, shall not exceed $6.5 million ($12 million for acquisitions described in 13.500(e)); the maximum value is stated in the basic order.

(c) Evaluation of quotes. If quotes include variable pricing based upon conditions such as quantity ranges, transportation zones, and/or option years, quotes will be evaluated by establishing an average unit price. The average unit price will be established for an award under the maximum value, by adding all unit prices together, then dividing the sum by the number of unit prices.

(d) Pricing of orders. When issuing orders, the unit price shall be based on the price from the quantity range that will cover the total quantity on the order, regardless of destination.

(e) Numbering. The uniform procurement instrument identification numbering (PIIN) system will be used (see Defense Federal Acquisition Regulation Supplement (DFARS) 204.7003).

(End of Clause)]

**52.215-9002 Socioeconomic Proposal.**
As prescribed in 15.304(c)(4)(90), insert the following provision.

SOCIOECONOMIC PROPOSAL (FEB 2012)

Whether or not required to submit a subcontracting plan by the clause 52.219-9, all offerors shall:

(a) Provide a description of the efforts your company will make to assure that small, women-owned, historically underutilized business zone(s) **(**HUBZone), veteran-owned, service-disabled veteran-owned small business (SDVOSB**),** and economically disadvantaged women-owned small business concerns**,** and historically black colleges/universities or minority institutions (HBCUs/MIs) will have equal opportunity to compete for subcontracts under any resulting contract. Describe your current and planned proposed range of services, supplies, and any other support that will be provided to you by each of these categories. Include specific names of subcontractors to the extent they are known.

(b) Describe any future plans your company has for developing additional subcontracting opportunities for each of these categories during the contract period.

(c) Specify what proportion of your proposal, as a percentage of dollars, will be subcontracted to each of these categories.

(d) Specify what type of performance data you will accumulate and provide to the Contracting Officer regarding your support of each of these categories during the period of contract performance. Provide the name and title of the individual principally responsible for ensuring company support to such firms.

(End of Provision)

**52.215-9003 Use of Past Performance Information Retrieval System – Statistical Reporting (PPIRS-SR) Information in Past Performance Evaluation.**
As prescribed in 15.304-90(d)(2), insert in the following provision:

USE OF PAST PERFORMANCE INFORMATION RETRIEVAL SYSTEM – STATISTICAL REPORTING (PPIRS-SR) INFORMATION IN PAST PERFORMANCE EVALUATION
(APR 2014)

(a) General.

(1) Past performance is an indicator of a Contractor's ability to perform satisfactorily on future awards.

(2) When used in best value source selections, past performance information will be evaluated based upon the currency and relevancy of past performance information in order to reach a confidence assessment for each offeror from which offers were received.

(3) The Defense Logistics Agency (DLA) will evaluate offerors' past performance, which may include, but is not limited to, their record of conforming to specifications, conformance to the standards of good workmanship, adherence to contract schedules, and commitment to customer satisfaction.

(b) Past Performance Information Retrieval System – Statistical Reporting (PPIRS-SR), authorized by the Department of Defense for use by participating activities during the acquisition of supplies and services may, be used in evaluating contractor past performance.

(c) PPIRS-SR classifications are established for each supplier and can be reviewed at http://www.ppirs.gov/. Contractors are granted access to PPIRS-SR for their own classifications. Offerors are encouraged to review their own classifications as well as the PPIRS-SR reporting procedures and rating methodology detailed in the PPIRS-SR procedures manual and the PPIRS-SR user guide available at http://www.ppirs.gov.

(1) PPIRS-SR classifications. Specific information as to how PPIRS-SR determines delivery and quality classifications can be found in the PPIRS Reference Material, specifically the "PPIRS-SR Evaluation Criteria" document on the PPIRS-SR Website at http://www.ppirs.gov/ppirsfiles/reference.htm.

(2) Classifications are calculated based upon three years of data.

(3) Data sources for PPIRS-SR information can be found in the PPIRS Reference Material, "PPIRS-SR Evaluation Criteria" document on the PPIRS-SR Website at http://www.ppirs.gov/ppirsfiles/reference.htm.

(4) PPIRS-SR will make negative quality and delivery data reflected in the PPIRS-SR Classification available to contractors for review and challenge. This is accomplished within the PPIRS-SR system.

(d) The following procedures will be followed when the Contracting Officer evaluates PPIRS-SR classifications:

(1) The Contracting Officer may consider the volume of business on which the classification is based as a measure of confidence in the classification as an indication of performance risk.

(2) Specifics as to how PPIRS-SR calculations are affected when there is no delivery or quality information provided by the source data bases can be found in the PPIRS Reference Material, specifically the "PPIRS-SR Evaluation Criteria" document on the PPIRS-SR Website at http://www.ppirs.gov/ppirsfiles/reference.htm.

(3) In the case of a Contractor without a record of relevant past performance or for whom information on past performance is not available in the PPIRS-SR, the Contractor will be evaluated neither favorably nor unfavorably on past performance.

(4) Contractor-caused discrepancies or delinquencies will be reflected in a contractor's past performance assessment. Repair, replacement or reimbursement of quality and packaging defects will not provide relief of negative DLA performance data. Contractor-caused delivery extensions, regardless of consideration paid, will be reflected in the delivery classification for contracts issued by DLA.

(e) The Contracting Officer may collect and analyze other relevant information in addition to any past performance information derived from PPIRS-SR.

(End of Provision)

**52.215-9009 All or None for Automated Procurements.**
As prescribed in 15.209(e), insert the following provision:

ALL OR NONE FOR AUTOMATED PROCUREMENTS (AUG 2005)

Offers must be submitted on the total quantity of each item as offers for a part of the quantity of any listed item will be rejected.

(End of Provision)

**52.215-9011 Requirements for Quantity Increments or Ranges.**
As prescribed in 15.209(g), insert the following provision:

REQUIREMENTS FOR QUANTITY INCREMENTS OR RANGES (JUL 2006)

Offers are requested for increments or ranges of quantities as listed in the schedule of supplies or services. The awarded quantity, or quantities in the case of multiple items, will be based on the requirements of the Government and the combination of price and quantity per item that is most advantageous to the Government.

Quantity increments consist of a primary amount and alternate amounts based on incremental increases. The quantity awarded will be either the full primary or one of the alternate quantities.

Quantity ranges consist of a specific series of ranges. The quantity awarded may fall anywhere within any range.

If this is an invitation for bids (IFB), a bid that only contains prices for quantities other than those quantities solicited in the schedule of supplies or services will be determined to be non-responsive.

If this is a request for quote (RFQ) or a request for proposal (RFP), an offer that only contains prices for quantities other that those quantities indicated in the schedule of supplies or services may be precluded from consideration for award if the Contracting Officer elects to make an award without discussion of proposals.

If this solicitation requests offers for quantity ranges, the following apply:

The unit price applicable to the entire award quantity shall be the unit price offered for the quantity range in which the award quantity falls;

If an offer specifies the same price for all quantity ranges of an item, the offer may include a statement in the schedule of supplies or services that the unit price applies to all quantity ranges of that item. If an offer specifies different prices for a quantity range of an item, the offer must show a unit price in each quantity range column in the schedule of supplies or services.

Award may be made on the basis of that quantity and price combination that is most advantageous to the Government without discussion of proposals.

Cost or pricing data, if required, shall be furnished at the request of the Contracting Officer and need not be submitted with your offer.

If this solicitation includes an option provision, option prices must be included for each increment.

(End of Provision)

**52.215-9023 Reverse Auction.**
As prescribed in 15.408-90(d)(1), use the following provision.

REVERSE AUCTION (OCT 2013)

The Contracting Officer may utilize on-line reverse auctioning as a means of conducting price discussions under this solicitation. If the Contracting Officer does not conduct a reverse auction, award may be made

on the basis of initial offers or following discussions not using reverse auctioning as a pricing technique. If the Contracting Officer decides to use on-line reverse auctioning to conduct price negotiations, the Contracting Officer will notify Offerors of this decision and the following provisions will apply:

(a) The award decision will be made in accordance with the evaluation factors as set forth in the solicitation. The reverse on-line auction will be used as a pricing technique during discussions to establish the final offered prices from each Offeror. These prices will be used in conjunction with the evaluation factors stated elsewhere in the solicitation in order to make the award decision in accordance with the basis for award stated in the solicitation.

(b) Following the decision to conduct discussions using reverse auctioning as a pricing technique, the Contracting Officer or his/her representative will provide Offerors determined to be in the competitive range with information concerning the auction process.

(c) Prior to conducting the reverse auction, the Contracting Officer may hold discussions with the Offerors concerning matters appropriate for discussion, such as issues involving technical proposals or unbalanced pricing.

(d) Unless auction instructions indicate that only Offeror's rankings will be displayed, the lowest Offeror's price(s) for each round of the reverse auction will be disclosed to other Offerors and anyone else having authorized access to the auction. This disclosure is anonymous, meaning that each Offeror's identity will be concealed from other Offerors (although it will be known to the Government; only a generic identifier will be used for each Offeror's proposed pricing, such as "Offeror A" or "lowest-priced Offeror"). By submitting a proposal in response to the solicitation, Offerors agree to participate in the reverse auction and that their prices may be disclosed, including to other Offerors, during the reverse auction.

(e) An Offeror's final auction price at the close of the reverse auction will be considered its final price proposal revision. No price revisions will be accepted after the close of the reverse auction, unless the Contracting Officer decides that further discussions are needed and final price proposal revisions are again requested in accordance with Federal Acquisition Regulation (FAR) 15.307, or the Contracting Officer determines that it would be in the best interest of the Government to re-open the auction.

(f) The following requirements apply when the Government uses a commercial web-based product to conduct the reverse auction:

(1) Each Offeror identified by the Contracting Officer as a participant in the reverse auction will be contacted by Defense Logistic Agency's commercial reverse auction service provider to advise the Offeror of the event and to provide an explanation of the process.

(2) In order for an Offeror to participate in the reverse auction, such Offeror must agree with terms and conditions of the entire solicitation, including this provision, and agree to the commercial reverse auction service provider's terms and conditions for using its service. Information concerning the reverse auction process and the commercial service provider's terms and conditions is embedded within the email notification sent by the on-line reverse auction pricing tool system administrator.

(3) Offerors shall secure the passwords and other confidential materials provided by the commercial reverse auction service provider or the Government and ensure they are used only for

purposes of participation in the reverse auction. Offerors shall keep their own and other Offeror's pricing in confidence until after contract award.

(4) The reverse auction system currently in use designates offers as "Lead," meaning the current low price in that auction, or "Not Lead," meaning not the current low price in that auction. In the event of a tie offer, the reverse auction provider's system designates the first offer of that price as "Lead" and the second or subsequent offer of that price as "Not Lead." Offerors shall not submit a tie offer, since this is inconsistent with the purpose of the reverse auction. If a tie offer is submitted and no evaluation factors other than price were identified in the solicitation, the "Not Lead" Offeror that submitted the tie offer must offer a changed price; otherwise its offer will be ineligible for award if their final price in the auction is the tie offer price. If evaluation factors in addition to price were listed in the solicitation, tie offers that are "Not Lead" will be considered and evaluated in accordance with those evaluation factors.

(5) Any Offerors unable to enter pricing through the commercial reverse auction service provider's system during a reverse auction must notify the Contracting Officer or designated representative immediately. The Contracting Officer may, at his/her sole discretion, extend or re-open the reverse auction if the reason for the Offeror's inability to enter pricing is determined to be without fault on the part of the Offeror and outside the Offeror's control.

(6) The reverse auction will be conducted using the commercial reverse auction service provider's website as embedded in the email notification**.** Offerors shall be responsible for providing their own computer and internet connection.

(7) Training:

(i) The commercial reverse auction service provider and/or a Government representative will provide familiarization training to Offerors' employees; this training may be provided through written material, the commercial reverse auction service provider's website, and/or other means.

(ii) An employee of an Offeror who successfully completes the training shall be designated as a "Trained Offeror." Only Trained Offerors may participate in a reverse auction. The Contracting Officer reserves the right to request that Offerors provide an alternate Offeror employee to become a Trained Offeror. The Contracting Officer also reserves the right to take away the Trained Offeror's designation from any Trained Offeror who fails to abide by the solicitation's or commercial reverse auction service provider's terms and conditions.

(End of provision)

**52.215-9033 Competing Individual Delivery Orders Through On-Line Reverse Auctioning.**
As prescribed in 15.408-90(d)(2), use the following clause.

COMPETING INDIVIDUAL DELIVERY ORDERS THROUGH ON-LINE REVERSE AUCTIONING
(APR 2014)

The Contracting Officer may utilize reverse auctioning as a means of conducting price negotiations when placing delivery orders against this contract. If the Contracting Officer does not conduct a reverse auction, the delivery order will be placed based upon pricing established through other means specified in

the contract. If the Contracting Officer decides to use on-line reverse auctioning to conduct price negotiations when competing a specific delivery order, the Contracting Officer will notify the Contractor of this decision via email and the following will apply.

(a) The selection decision for a delivery order will be made in accordance with the evaluation criteria stated in the contract or in the request for quotation issued for the proposed delivery order. At the Contracting Officer's discretion, a reverse auction will be used as the price negotiation technique for this delivery order. If a reverse auction is used, the offered prices at the end of the reverse auction, obtained through one or more rounds of the reverse auction, will be evaluated as the Contractors' final proposed prices. These final proposed prices will be considered in making an award decision for the delivery order along with any other evaluation factors that are to be considered in accordance with the evaluation criteria and selection process stated in the contract or in the request for quotation. At the conclusion of the reverse auction, the Contracting Officer may choose to conduct additional negotiations, either through another reverse auction or a different method.

(b) Prior to the reverse auction, the Government will determine whether all participants' prices, or just the lowest price(s), will be disclosed to other auction participants and to anyone else having authorized access to the auction. This disclosure is anonymous, meaning that each participant's identity will be concealed from other participants (although it will be known to the Government). If the Government opts to disclose one or more participant's prices, only generic identifiers will be used for each participant's proposed pricing (e.g., "participant A or "lowest priced participant"). By submitting a proposal for a solicitation that includes this clause, a Contractor agrees to participate in the reverse auctions that will be conducted for award of specific delivery orders to be issued under the resulting multiple award contract program, and that its quoted prices for a delivery order may be disclosed to other Contractors participating in the reverse auction.

(c) The following information is provided regarding the procedures to be followed if reverse auction is conducted when competing a delivery order under this multiple award program.

(1) The Contracting Officer will issue a request for quote (RFQ) to all Contractors in the multiple-award program. After receiving quotes, the Contracting Officer will then send written notification, via email to Contractors with specifics regarding the reverse auction.

(2) Each Contractor identified by the Contracting Officer as a participant in the reverse auction will be contacted by DLA's commercial reverse auction service provider to advise the Contractor of the event and to provide an explanation of the process.

(3) Information concerning the reverse auction process and the commercial service provider's terms and conditions is available at the website, as embedded in the email notification.

(4) The participants in a reverse auction under this contract shall secure the passwords and other confidential materials provided by the commercial reverse auction services provider or the Government, and ensure they are used only for purposes of participation in the reverse auction. Contractors shall keep their own and other Contractors' pricing in confidence and shall not disclose this information to anyone not authorized to participate in the reverse auction until after contract award.

(5) Any participant unable to enter pricing through the commercial reverse auction service provider's system during a reverse auction must notify the Contracting Officer or designated

representative immediately. The Contracting Officer may, at his/her sole discretion, extend or re-open the reverse auction if the reason for the participant's inability to enter pricing is determined to be without fault on the part of the participant and outside the participant's control.

(6) The reverse auction will be conducted using the commercial reverse auction service provider's website, as embedded in the email notification. Participants shall be responsible for providing their own computer and Internet connection.

(7) Training:

(i) The commercial reverse auction service provider and/or a Government representative will provide familiarization training to participants' employees; this training may be provided through written material, the commercial reverse auction service provider's website, and/or other means.

(ii) An employee of a participant who successfully completes the training shall be designated as a 'trained participant.' Only trained participants may take part in a reverse auction.

(iii) The Contracting Officer reserves the right to request that participants provide an alternate employee to become a 'trained participant.' The Contracting Officer also reserves the right to review the 'trained participant' designation of any trained participant who fails to abide by the terms and conditions of this contract or the terms of the commercial reverse auction service provider. In the discretion of the Contracting Officer, such trained participant may be barred from participation in on-going or subsequent reverse auctions. The Contracting Officer's decision is subject to appeal to the task-order and delivery order ombudsman pursuant to Defense Logistics Acquisition Directive (DLAD) 16.505(b).

(End of Clause)

**52.215-9035 Sales Pricing Practices – Noncommercial Items.**
As prescribed at 15.408-90(g), insert the following provision:

SALES PRICING PRACTICES - NONCOMMERCIAL ITEMS
(JAN 2014)

(a) This provision is applicable to items under this solicitation that do not meet the definition of commercial item in FAR 2.101.

(b) Before award of a contract, the Contracting Officer and the Offeror will agree upon (1) the customer (or category of customers) that will be the basis of award and (2) the Government's price relationship to the identified customer (or category of customers). This agreement will be based on the information provided by the Offeror in accordance with paragraph (d) of this clause. Any change in this pricing arrangement during the contract period shall constitute a price reduction and be subject to the requirements of 52.215-9037, Price Reduction.

(c) Definitions.

*"Aligned customer"* means the similarly-situated customer with best current pricing for an item identified to the Government during the pricing process resulting in the final agreed to price of an item.

*"Best current pricing"* means the most recent, lowest price for an item offered to a customer similarly-situated to DLA after application of any discount, rebate, or other price reduction.

*"Similarly-situated"* means a customer with similar annual demand for an item compared to DLA's annual demand. The estimates or forecasts of Government demand in this solicitation will be used in calculating DLA's annual demand, unless a different basis is agreed to by the Offeror and the Contracting Officer. Annual demands varying (plus or minus) up to 20% are similar for purposes of this provision, unless a different variance is agreed to by the Offeror and the Contracting Officer.

(d) Provide the information described below for each item (or groups of items, as applicable) covered by this provision. The Offeror may provide a single response covering more than one item, if the information disclosed is the same for all covered items.

(1) A list of all covered items with the best current pricing available for each item. Upon request by the Contracting Officer, the Offeror shall provide substantiating documentation for claimed best current pricing. The Offeror shall provide information that is, to the best of its knowledge and belief, current, accurate, and complete as of 14 calendar days prior to its submission. In the case of certified cost or pricing data, the applicable certification requirements take precedence over this part of this provision. The Offeror shall disclose any changes in its price list(s), discounts, and/or discounting policies that occur after the offer is submitted but before the close of negotiations.

(2) The price for each item offered under this solicitation. If the offered price for an item is not equal to or less than the best current pricing available to a similarly-situated customer, the Offeror shall provide a detailed explanation of the factors justifying a higher price for the item. The Offeror shall provide certified cost or pricing data or data other than certified cost or pricing data, depending on whether certified cost or pricing data is required under this solicitation for the item(s) in question.

(3) A description of concessions offered under this solicitation that are of value to the Government and are not granted to other customers. Such concessions may include, but are not limited to, an extended warranty, a return/exchange goods policy, or enhanced or additional services.

(4) If the Offeror is a dealer/reseller or will use dealers to perform any aspect of contract requirements awarded under this solicitation, describe the functions, if any, that the dealer/reseller will perform.

(5) The final agreed-to price for each item under this contract will be aligned with the similarly-situated customer or category of customers that receives the Offeror's best current price for each item for purposes of 52.215-9037, Price Reductions.

(End of provision)

**52.215-9036 Sales Pricing Practices – Commercial Items.**
As prescribed at 15.408-90(h), insert the following provision:

SALES PRICING PRACTICES – COMMERCIAL ITEMS (JAN 2014)

(a) This provision is applicable to items meeting the definition of commercial item in FAR 2.101.

(b) Before award of a contract, the Contracting Officer, using the submitted information, and the Offeror will agree upon: (1) the customer (or category of customers) which will be aligned with the Government for pricing; and (2) the Government's price or discount relationship to the aligned customer (or category of customers). This agreement will be based on the information provided by the Offeror in accordance with paragraph (e) of this clause. Any change in this pricing arrangement during the contract period shall constitute a price reduction and be subject to the requirements of 52.215-9037, Price Reduction.

(c) Definitions.

*"Aligned customer"* means the customer (or category of customers) whose pricing is aligned with the Government pricing for purposes of the 52.215-9037, Price Reductions.

*"Concession"* means a benefit, enhancement or privilege (other than a discount), which either reduces the overall cost of a customer's acquisition or encourages a customer to consummate a purchase. Concessions include, but are not limited to, freight allowance, extended warranty, extended price guarantees, free installation, and bonus goods.

*"Discount"* means a reduction to item prices (published or unpublished). Discounts include, but are not limited to, rebates, quantity discounts, purchase option credits, and any other terms or conditions other than concessions that reduce the amount of money a customer ultimately pays for goods or services ordered or received. Any net price lower than an established or list price is considered a "discount" by the percentage difference from the established or list price to the net price.

(d) For each item included in an offer, provide the information outlined in paragraph (e). The Offeror may provide a single response covering more than one item, if the information disclosed is the same for all covered items. If discounts and concessions vary by item, model, or product line, the Offerors shall ensure that information is clearly annotated as to item or items referenced.

(e) Provide information described below for each item (or groups of items, as applicable):

(1) Two copies of the Offeror's current published (dated or otherwise identified) commercial descriptive catalogs and/or price list(s) from which discounts are offered. If special catalogs or price lists are printed for the purpose of this offer, such descriptive catalogs or price lists shall include a statement indicating the special catalog or price list represents a verbatim extract from the Offeror's commercial catalog and/or price list and shall identify the descriptive catalog and/or price list from which the information has been extracted.

(2) The discount(s) offered under this solicitation. The description of discounts offered shall include all discounts, such as prompt payment discounts, quantity/dollar volume discounts (indicate whether models/products can be combined to earn discounts), blanket purchase agreement discounts, or purchase option credits. If the terms of sale appearing in the commercial catalogs or price list on which an offer is based are in conflict with the terms of this solicitation, the latter shall govern.

(3) A description of concessions offered that are not granted to other customers. Such concessions may include, but are not limited to, an extended warranty, a return/exchange goods policy, or enhanced or additional services.

(4) If the Offeror is a dealer/reseller or will use dealers to perform any aspect of contract requirements awarded under this solicitation, describe the functions, if any, that the dealer/reseller will perform.

(5) Provide the dollar value of sales to non-DLA Department of Defense and commercial customers at or based on an established catalog or market price during the previous 12-month period or your last fiscal year. Identify the beginning and ending of the 12-month or fiscal year period, as applicable. In the event that a dollar value is not an appropriate measure of the sales, the Offeror shall provide and describe its own measure of the sales of the item(s).

(6) Based on the Offeror's written discounting policies (or standard commercial sales practices, in the event the Offeror does not have written discounting policies), state whether the discounts and any concessions being offered are equal to or better than the Offeror's best price (discount and concessions in any combination) offered to any customer acquiring the same item(s), regardless of quantity or terms and conditions. For each item or group of items for which the response is affirmative (i.e., the discounts and any concessions offered to the Government under this solicitation are equal to or better than the Offeror's best price offered to any customer), submit the information covered by the chart in paragraph (8) below for the customer(s) who receive your best discount. For each item or group of items for which the response is negative, submit the information covered by the chart in (e)(8) identifying the Offeror's written policies or standard sales practices for all customers or customer categories to whom the Offeror sells at a price (discounts and concessions in combination) that is equal to or better than the price(s) offered to the Government under this solicitation or with which the Offeror has a current agreement to sell at a discount that equals or exceeds the discount(s) offered under this solicitation. Such agreement shall be in effect on the date the offer is submitted or contain an effective date during the contract period that will result from this solicitation. If the offered price is lower than the Offeror's price to other customers or customer categories, the Offeror will be aligned with the customer or category of customers that receives the Offeror's best price for purposes of 52.215-9037, Price Reductions. Provide information required by the format in (e)(8) below in accordance with these instructions that is, to the best of the Offeror's knowledge and belief, current, accurate, and complete as of 14 calendar days prior to its submission. The Offeror shall also disclose any changes in its price list(s), discounts and/or discounting policies that occur after the offer is submitted, but before the close of negotiations. If the Offeror's discount practices vary by item, model, or product line, the discount information should be by model or product line as appropriate. The Offeror may limit the number of items, models, or product lines reported to those which exceed 75% of actual historical Government sales (commercial sales may be substituted if Government sales are unavailable) value of the item.

(7) Based on the Offeror's written discounting policies (or standard commercial sales practices, in the event the Offeror does not have written discounting policies), the Offeror shall use the format of the chart below to provide the information in each column heading for each item (or group of items for which the information is the same) covered by this solicitation. Identify each chart by the associated item(s) nomenclature. Provide a separate chart for each item (or group of items) for which the information in any of columns 2 through 5 is different from other items or groups of items. Add rows as needed for additional customers. Complete each chart in accordance with the instructions following the sample chart below.

(i) For each chart, state whether any deviations from the Offeror's written policies or standard commercial sales practices disclosed in each chart ever result in better discounts (lower prices) or concessions than indicated. In each case where there are better discounts of concessions compared to a

chart, explain basis for the deviations. When there are deviations, provide an explanation of the circumstances under which the Offeror deviates from its written policies or standard commercial sales practices disclosed in the chart and explain how often they occur. The Offeror's explanation shall include a discussion of situations that lead to deviations from standard practice, an explanation of how often they occur, and the controls the Offeror employs to assure the integrity of its pricing. Examples of typical deviations may include, but are not limited to, one-time goodwill discounts to charity organizations or to compensate an otherwise disgruntled customer; a limited sale of obsolete or damaged goods; the sale of sample goods to a new customer; or the sales of prototype goods for testing purposes.

(ii) If deviations from the Offeror's written policies or standard commercial sales practices disclosed in the chart on the Commercial Sales Practices Format are so significant and/or frequent that the Contracting Officer cannot establish whether the price(s) offered is fair and reasonable, then the Offeror may be asked to provide additional information. The Contracting Officer may ask for information to demonstrate that the Offeror has made substantial sales of the item(s) in the commercial market consistent with the information reflected on the chart on the Commercial Sales Practice Format, a description of the conditions surrounding those sales deviations, or other information that may be necessary in order for the Contracting Officer to determine whether the Offeror's price(s) is fair and reasonable. In cases where additional information is requested, the Contracting Officer will target the request in order to limit the submission of data to that needed to establish the reasonableness of the offered price.

| COLUMN 1<br>CUSTOMER | COLUMN 2<br>DISCOUNT | COLUMN 3<br>QUANTITY/VOLUME | COLUMN 4<br>FOB TERM | COLUMN 5<br>CONCESSIONS |
|---|---|---|---|---|
| | | | | |
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Column 1- Identify the applicable customer or category of customer. A "customer" is any entity that acquires supplies from the Offeror. The term includes, but is not limited to, original equipment manufacturers, value-added resellers, state and local governments, distributors, educational institutions (an elementary, junior high, or degree-granting school that maintains a regular faculty, established curriculum, and an organized body of students), dealers, national accounts, and end users. In any instance when the Offeror is asked to disclose information for a customer, the Offeror may disclose information by category of customer if the Offeror's discount policies or practices are the same for all customers in the category. (Use a separate line for each customer or category of customer.)

Column 2-Identify the discount. The term "discount" is defined in paragraph (c) of this provisione. Indicate the best discount (based on the Offeror's written discounting policies or standard commercial discounting practices if the Offeror does not have written discounting policies) at which the Offeror sells to the customer or category of customers identified in Column 1, without regard to quantity; terms and conditions of the agreements under which the discounts are given; and whether the agreements are written or oral. Net prices or discounts off of other price lists should be expressed as percentage discounts from the price list which is the basis of the Offer. If the discount disclosed is a combination of various discounts (prompt payment, quantity, etc.), the percentage should be broken out for each type of discount. If the price lists which are the basis of the discounts given to the customers identified in the chart are different than the price list submitted upon which the Offer is based, identify the type or title and date of

each price list. The Contracting Officer may require submission of these price lists. To expedite evaluation, the Offeror may provide these price lists at the time of submission.

Column 3-Identify the quantity or volume of sales. Insert the minimum quantity or sales volume which the identified customer or category of customer must either purchase/order, per order or within a specified period, to earn the discount. When purchases/orders must be placed within a specified period to earn a discount indicate the time period.

Column 4-Indicate the FOB delivery term for each identified customer. See FAR 47.3 for an explanation of FOB delivery terms.

Column 5-Indicate concessions regardless of quantity granted to the identified customer or category of customer. Concessions are defined in paragraph (c) of this provision. If the space provided is inadequate, the disclosure should be made on a separate sheet by reference.

(End of provision)

**52.215-9037 Price reductions.**
As prescribed at 15.408-90(i), insert the following clause.

PRICE REDUCTIONS (JAN 2014)

(a) This clause shall be read in conjunction with provisions 52.215-9035, Sales Pricing Practices – Noncommercial Items, and 52.215-9036, Sales Pricing Practices – Commercial Items, as applicable.

(b) During the contract period, the Contractor shall report to the Contracting Officer all price reductions to any aligned customer (or category of customers). The Contractor's report shall include an explanation of the conditions under which the reductions were made.

(c) Price reductions.

(1) *Commercial items*. A price reduction shall apply to purchases of commercial items under this contract if, after the date negotiations conclude, the Contractor —

(i) Revises the commercial catalog, pricelist, schedule, or other document upon which contract award was based to reduce prices;

(ii) Grants more favorable discounts or terms and conditions than those contained in the commercial catalog, pricelist, schedule, or other documents upon which contract award was based; or

(iii) Grants discounts to an aligned customer (or category of customers) for item pricing, and the change disturbs the price/discount relationship of the Government to that customer (or category of customers).

(2) *Noncommercial items*. A price reduction shall apply to purchases of noncommercial items under this contract if, after the date negotiations conclude, the Contractor lowers the price paid by an aligned customer. The price reduction to the Government for an item will be calculated by applying

the same percentage reduction to the Government price as was made to the price to the aligned customer.

(3) The Contractor shall offer the price reduction to the Government with the same effective date, and for the same time period, as extended to the aligned customer (or category of customers).

(4) There shall be no price reduction for sales caused by an error in quotation or billing, provided adequate documentation is furnished by the Contractor to the Contracting Officer.

(d) The Contractor may offer the Contracting Officer a voluntary price reduction at any time during the contract period.

(e) The Contractor shall notify the Contracting Officer of any price reduction subject to this clause as soon as possible, but not later than 15 calendar days after the effective date of the price reduction.

(f) The contract will be modified to reflect any price reduction that becomes applicable in accordance with this clause, with an effective date for the price change determined in accordance with paragraph (c) of this clause.

(End of clause)

**52.216-9000 Implementation of FAR 52.216-2 Economic Price Adjustment--Standard Supplies.** As prescribed in 16.203-4(S-92)(a)(1)(90) and 16.203-4(b)(1)(S-90), insert a clause that is substantially the same as the following clause:

IMPLEMENTATION OF FEDERAL ACQUISITION REGULATION (FAR) 52.216-2 ECONOMIC PRICE ADJUSTMENT - STANDARD SUPPLIES (NOV 2011)

Economic price adjustment (EPA) pursuant to the clause of this contract entitled Economic Price Adjustment–Standard Supplies (FAR 52.216-2), shall be determined as implemented herein.

EPA is limited to changes in the established price for the contract line item number (CLIN) listed below. The offeror shall report the item name, its part number and current established price (as defined in paragraph (a) of the aforementioned EPA clause), its unit of measure and free on board (f.o.b.) location, shall identify the name, source and date of the document containing such price, and shall attach to its offer, a copy of the pages from such document identifying the item and its price:

_____(Note1)_____

In the event the price cited in (b) is an established market price which the Contracting Officer determines consistently and substantially fails to reflect market conditions, the Contracting Officer may modify the contract to specify use of an appropriate substitute market price, effective on the date such market price specified in the contract begins to consistently and substantially fail to reflect market conditions.

The Contractor shall include with the final invoice, a statement that the Contractor has not experienced a decrease in the unit price for the item listed herein, or a statement that it has given notice of all such decreases in compliance with the EPA clause.

(End of Clause)

Note 1: The Contracting Officer shall list the contract line-item number (CLIN) to be subject to EPA, provide for offeror fill-in of its item name, part number, current cost, unit of measure and free on board (f.o.b.) location for such item, and for the name, source and date of the document containing such price.

**52.216-9001 Implementation of FAR 52.216-3 Economic Price Adjustment -Semistandard Supplies.** As prescribed in 16.203-4(b)(1)(S-90), insert a clause that is substantially the same as the following clause:

IMPLEMENTATION OF FEDERAL ACQUISITION REGULATION (FAR) 52.216-3 ECONOMIC PRICE ADJUSTMENT - SEMISTANDARD SUPPLIES (NOV 2011)

(a) Economic price adjustment (EPA) pursuant to the clause of this contract entitled Economic Price Adjustment–Semistandard Supplies (FAR 52.216-3), shall be determined as implemented herein.

(b) EPA is limited to changes in the established price for the contract line item number (CLIN) listed below. The offeror shall report the item name, its part number and current established price (as defined in paragraph (a) of the aforementioned EPA clause), its unit of measure and free on board (f.o.b.) location, shall identify the name, source and date of the document containing such price, and shall attach to its offer, a copy of the pages from such document identifying the item and its price:

_____(Note 1)_____

(c) In the event the price cited in (b) is an established market price which the Contracting Officer determines consistently and substantially fails to reflect market conditions, the Contracting Officer may modify the contract to specify use of an appropriate substitute market price, effective on the date such market price specified in the contract begins to consistently and substantially fail to reflect market conditions.

(d) The Contractor shall include with the final invoice, a statement that the Contractor has not experienced a decrease in the unit price for the item listed herein, or a statement that it has given notice of all such decreases in compliance with the EPA clause.

(End of Clause)

Note 1: The Contracting Officer shall list the contract line-item number (CLIN) to be subject to EPA, provide for offeror fill-in of its item name, part number, current cost, unit of measure and free on board (f.o.b.) location for such item, and for the name, source and date of the document containing such price.

**52.216-9002 Implementation of FAR 52.216-4 Economic Price Adjustment--Labor and Material.** As prescribed in 16.203-4(c)(1)(90), insert a clause that is substantially the same as the following clause:

IMPLEMENTATION OF FEDERAL ACQUISITION REGULATION (FAR) 52.216-4 ECONOMIC PRICE ADJUSTMENT - LABOR AND MATERIAL (NOV 2011)

(a) Economic price adjustment (EPA) pursuant to the clause of this contract entitled Economic Price Adjustment–Labor And Material (FAR 52.216-4), shall be determined as implemented herein.

(b) EPA is limited to changes in the Contractor's cost relative to the labor category or item of material and the related contract line item number (CLIN)) listed below. The offeror shall list its current cost per unit of labor and/or materials for such item, shall identify the name, source and date of the document containing such cost, and shall attach to its offer, a copy of the pages from such document identifying the item and its cost:
_____(Note 1)_____

(c) EPA for the specified cost element relative to each contract line item number (CLIN) shall be calculated as follows:
_____(Note 2)_____

(d) The Contractor shall include with the final invoice, a statement that the Contractor has not experienced a decrease in any labor rate and/or material unit price for the item listed herein, or a statement that it has given notice of all such decreases in compliance with the EPA clause.

(End of Clause)

Note 1: For the item to be subject to price adjustment, the Contracting Officer shall list the contract line item number (CLIN), the specific labor category or item of raw material, purchased part, etc. to be subject to EPA, provide for offeror fill-in of its current cost and unit of measure for such category/item, and for the name, source and date of the document containing such cost.

Note 2: The Contracting Officer shall identify the quantity and cost (or the dollar percentage) of the item listed in paragraph (b) that is included in CLIN price, along with an explicit description of how an increase, and how a decrease, in such item cost shall be used in calculating any EPA to the CLIN unit price. A sample calculation may be included if deemed beneficial.

**52.216-9003 Economic Price Adjustment – Specialty Metals – Market Price – Prospective Adjustments.**
As prescribed in 16.203-4(S-91)(4), insert the following clause:

ECONOMIC PRICE ADJUSTMENT-SPECIALTY METALS – MARKET PRICE - PROSPECTIVE ADJUSTMENTS (NOV 2011)

(a) Warranties. The Contractor warrants that--

(1) The base unit prices set forth in the schedule do not include allowances for any portion of the contingency covered by this clause;

(2) The contract line items (CLINS) included in the table (paragraph (f)) are subject to the Preference for Domestic Specialty Metals clause of this contract; and

(3) The prices to be invoiced shall be computed in accordance with the provisions of this clause.

(b) Definitions. As used throughout this clause--

(1) "Market price indicator," as specified in column 5 of the table is the measure of changes in the market price of the material cost for the specialty metal(s) included in the contract price of the CLINS subject to adjustment under this clause.

(2) "Base unit price" is the unit price of a CLIN listed in the table, as applicable, during the initial contract period, or during an option period, exclusive of any price adjustment pursuant to this clause.

(3) "Base period" is the three calendar months preceding the month containing, as applicable, the closing date for receipt of offers (final proposal revisions if discussions were held) under negotiation procedures or the date of bid opening under sealed bid procedures. In addition, if the contract includes a period option, the base period is the arithmetic average of the three calendar months immediately preceding the month prior to the month containing the effective date for the option exercised.

(4) "Base market price indicator" (BMPI) for a CLIN listed in the table is the arithmetic average of the market price indicator values for the base period for the specialty metal(s) specified in column (2) of the table for that CLIN.

(5) “Base specialty metals cost” (BSMC) for a CLIN listed in the table is the dollar value of the direct materials cost of a specialty metal as recorded in column (4) of the table for such item.

(6) “Adjustment period” for purposes of this contract, will be: (if none marked, adjustments will be done annually)

( ) Quarterly – adjustments will be calculated following the publication of the market price indicator for the second month in each consecutive three calendar month period.

( ) Semi-annually – adjustments will be calculated following the publication of the market price indicator for the fifth month in each consecutive six calendar month period.

( ) Annually - adjustments will be calculated following the publication of the market price indicator for the eleventh month in each consecutive twelve calendar month period.

(7) "Adjusting market price indicator" (AMPI) for a CLIN listed in the table during the first adjustment period of contract performance is the arithmetic average of the market price indicator values for the three months immediately preceding the month prior to the first month of contract performance. For subsequent adjustment periods, the adjusting market price indicator for such CLIN is the arithmetic average of the three calendar months immediately preceding the month prior to the first month of the current adjustment period for which a prospective adjustment is being calculated.

(8) “Adjusted specialty metal material cost” is the base specialty material cost, adjusted as specified in paragraph (c)(2) on a prospective basis.

(9) “Non-specialty metals base price” is the base unit price for a CLIN minus the base specialty metal material cost for that CLIN.

(10) “Adjusted CLIN unit price” is sum of the adjusted specialty metal material unit cost and the non-specialty metals unit price rounded to four decimal places.

(c) Adjustments.

(1) Promptly following publication of the market price indicator(s) for the month specified in paragraph (b)(5) of the current adjustment period, the Contracting Officer shall calculate the adjusted specialty metal material price(s) and adjusted contract line item unit price(s), and modify the contract accordingly to incorporate CLIN prices that will be applicable to new orders issued during the next adjustment period.

(2) Calculations. All calculations shall be rounded to four decimal places. On the month prior to the beginning of the next adjustment period, the price adjustment(s) shall be calculated as follows:

(A) Compute the adjusting market price indicator (AMPI) for a CLIN, i.e., the arithmetic average of prices published for the indicator(s) shown in column (5) of the table for such CLIN, for the three month period preceding the current month.

(B) Using the base market price indicator (BMPI) (column (6) of table and the adjusting market price indicator (AMPI) computed per (A) above, calculate the market price indicator percentage change as follows:

AMPI – BMPI = ± market price indicator change percentage (MPIC %) BMPI

(C) Use the base specialty metal(s) cost (BSMC $) (Column (4) of the TABLE) and the MPIC % ((B) above) to calculate the new adjusted specialty metals price as follows:

BSMC $ x MPIC % = ± specialty metal price change (SMPC)($)

± SMPC + BSMC = adjusted specialty metal cost per CLIN material price

Note: If more than one specialty metal is included in the table for a CLIN, the SMPC is calculated for each using the former of the above two formulas and the change for each (increase or decrease) added to the BSMC to calculate the adjusted specialty metal cost per CLIN (vice the latter formula above.)

(D) Determine the adjusted contract line item unit price by adding the adjusted specialty metal(s) cost(s) to the non-specialty metals portion of the CLIN price.

(3) Modifications. Price adjustments under this clause shall be effected by contract modification showing the base unit price(s), calculation of the adjusting market price(s), the base contract line item unit price, and the calculations used to arrive at the adjusted contract line item unit price(s).

(4) Invoices. The prices invoiced and payable under this contract shall be based on the unit price(s) in the contract on the date the order is awarded.

(5) Failure to deliver. Notwithstanding any other provisions of this clause, no upward adjustment shall apply to product scheduled under the contract to be delivered before the effective date of the adjustment, unless the Contractor's failure to deliver according to the delivery schedule results from causes beyond the Contractor's control and without its fault or negligence, within the meaning of the Default clause of this contract.

(6) Upward ceiling on economic price adjustment.

(i) The Contractor agrees that the total increase in any specialty metal material cost pursuant to these economic price adjustment provisions shall not exceed ___% (percent) of the original material cost in any applicable contract year (whether a single year or multiyear program), except as provided hereafter.

(ii) If at any time the Contractor has reason to believe that within the near future a price adjustment under the provisions of this clause will be required that will exceed the current contract ceiling price for any item, the Contractor shall promptly notify the Contracting Officer in writing of the expected increase. The notification shall include a revised ceiling the Contractor believes is sufficient to permit completion of remaining contract performance, along with appropriate explanation and documentation as required by the Contracting Officer.

(iii) If an actual increase in the indicator would raise a contract unit price for an item above the current ceiling, the Contracting Officer may issue a contract modification to raise the ceiling. If the contract ceiling will not be raised, the Contracting Officer shall so promptly notify the Contractor in writing.

(7) Revision of market price indicator. In the event –

(i) Any applicable market price indicator is discontinued or its method of derivation is altered substantially; or

(ii) The Contracting Officer determines that the market price indicator consistently and substantially fails to reflect market conditions, the parties shall mutually agree upon an appropriate and comparable substitute and the contract shall be modified to reflect such substitute effective on the date the price was discontinued, altered, or began to consistently and substantially fail to reflect market conditions.

(d) Final invoice. The Contractor shall include a statement on the final invoice under (1) the basic contract and under (2) each option period, that the amounts invoiced during the period have applied all adjustments required by this clause.

(e) Disputes. Any dispute arising under this clause shall be determined in accordance with and subject to the “Disputes” clause of the contract.

(f) Table. The offeror shall complete columns (1) through (4) in the table which follows, for all items containing specialty metals subject to adjustment under this clause (see paragraph (a)(2)). The offeror shall include with its offer adequate data to support derivation of the dollar value of specified material in the base unit price subject to adjustment (column (4)). Data supplied shall, at a minimum, provide an informal cost breakdown reflecting the current raw material cost, the specialty metal specification and the quantity of material per contract line item unit price.

| (1) | (2) | (3) | (4) | (5) | (6) |
|---|---|---|---|---|---|
| Contract Line Item Number (CLIN) | Specialty Metal Subject to Adjustment | Specialty Metal Amount per CLIN Unit | Base Specialty Metals Cost (see paragraph (b)(5)) in CLIN Base | Specialty Metals Market price indicator identification | Base Market Price Indicator (see paragraph (b)(4)) |

| Subject to Adjustment | | of Issue | Unit Price | and/or Name | |
|---|---|---|---|---|---|
| Sample CLIN 0000 | Titanium Tt35 | 2 pound (lb) | $30 | Platts US SG Ingot Producer | $14.10/lb |
| | | | | | |
| | | | | | |
| | | | | | |

(End of Clause)

**52.216-9006 Addition/Deletion of Items.**
As prescribed in 16.506(90), insert the following clause:

ADDITION/ DELETION OF ITEMS (AUG 2005)

(a) The Government reserves the right to unilaterally delete items that were available from only one manufacturer at the time of award if an alternate source of supply becomes available or the Government's requirements are modified to provide for full and open competition. The Government will provide a 30 day advance notice to the Contractor prior to deleting any item from the Contract.

(b) New items may be added to the contract through bilateral modification with negotiated prices. All new requirements are subject to synopsis prior to addition to the contract.

(c) Discontinued items:

(1) The Contractor agrees to provide the Government with immediate, written notification when an item is to be discontinued by the manufacturer, including a recommendation for any potential substitute or replacement items. If the Government elects to include a substitute or replacement item in the contract, the contract will be modified accordingly.

(2) If an item is discontinued without replacement, the notice should include a recommendation concerning the availability of items that are comparable in form, fit, and function. The Contractor shall not incur any costs related to alternate sources of supply without the express written approval of the Contracting Officer. The Government has the option to make a last time order, or series of orders, within 30 days after receiving written notification of the discontinued item after which the item will be deleted from the contract. The Contractor shall honor any last time order unless it is returned to the ordering office within 10 days after issuance, with written notice stating the full quantity is not available for shipment. The terms of such order(s) will be negotiated by the parties, including changes to the delivery schedule and maximum quantity available for shipment.

(End of Clause)

**52.216-9008 Offeror's Quantity Limitations.**
As prescribed in 16.506(91)(b), insert the following clause:

OFFEROR'S QUANTITY LIMITATIONS (JUL 2006)

An offer may be restricted by completing the following section, however such conditional offers may not be acceptable. Stating no restriction, either below or elsewhere in the offer, is express authorization to accept award of the total quantity offered or any part thereof.

[ ] 100% of all items offered or none.

[ ] Clearly describe other restrictions, if any, under which the offer is submitted.
_____

(End of Clause)

**52.216-9012 Economic Price Adjustment for Unitized Group Rations (UGR) - A Components – Actual Material Costs.**
As prescribed in 16.203-4(c)(2), 16.203-4-90(b), and FAR 16.203-4(c), insert the following clause:

ECONOMIC PRICE ADJUSTMENT FOR UNITIZED GROUP RATIONS (UGR) - A COMPONENTS – ACTUAL MATERIAL COSTS – DLA TROOP SUPPORT SUBSISTENCE
(NOV 2011)

(a) Warranties. The Contractor warrants that---

(1) distribution prices covered by this contract do not include allowances for any portion of the contingency covered by this clause; and

(2) all prices invoiced under this contract shall be computed in accordance with the provisions of this clause.

(b) Definitions. As used throughout this clause, the term:

(1) "Contract unit price" means the total fixed price per unit charged to DLA Troop Support for a product delivered to DLA Troop Support's customers. The contract unit price consists of two parts: Total Components price and Distribution price. The sum of these two prices shall be rounded up or down as applicable, (based on the rule of 5 or over to round up) to two (2) places to the right of the decimal point to calculate the contract unit price. Only the delivered price component of the contract unit price is subject to adjustment under this clause.

(2) "Total components price" means the total cost to the Contractor for all the food and disposable component items of the ration module, which is calculated by summing the total individual costs to the Contractor of each food and disposable component item in the ration module. The total cost to the Contractor for each ration component is calculated as the net unit price charged to the Contractor for that component, multiplied by the quantity of units per ration module. The net unit price for each component is the price paid by the Contractor to its supplier(s) for delivery of the component product to its distribution/assembly location (often called the "delivered price" or "landed cost"), taking into account any product discounts or rebates offered by the suppliers. The most recent vendor's invoice price for a ration component should usually meet this definition as the net unit price for the component. The following table gives an example of how to calculate the total components price:

| Lunch/Dinner Menu 1 Perishable - 8970-01-525-6813 - Chicken Parmesan |
|---|

| Menu Item | Net Unit | Net Unit Price | Case Pack | Qty/ Ration | Units/ Ration | Component $ / Ration |
|---|---|---|---|---|---|---|
| Chicken Parmesan | CS | $22.45 | 50 PC | 50 PC | 50/50 | $22.45 |
| Sauce | CS | $4.25 | 6 CN | 3 CN | 3/6 | $2.13 |
| Lemon Cake | CS | $5.17 | 8 EA | 2 EA | 2/8 | $1.29 |
| Total Components Price | | | | | | $25.87 |

Legend: Qty = Quantity' CS = case; PC = piece; CN = carton; EA = each

(3) "Distribution price" means the firm fixed price portion of the contract unit price, offered as a dollar amount per unit of issue, which represents all the elements of the contract price other than the total components price. The distribution price typically covers the Contractor's projected general and administrative expenses, overhead, packaging costs, transportation costs from the Contractor's distribution/assembly point, and any other projected expenses associated with delivery to DLA Troop Support's customers, plus profit. This price shall remain constant for the complete term of the contract period then in effect. Distribution prices shall be formatted to two (2) places to the right of the decimal point, for example, $4.50 per semi-perishable ration module.

(4) "Ordering catalog" means the listing of contract ration modules to be delivered to Government customers, and their corresponding contract unit prices available for ordering under this contract.

(5) "Ordering week" means the 7-day week, from Sunday at 12:01 AM through the following Saturday until midnight Eastern Time (ET), standard or daylight as applicable), during which the Government place orders for unitized group rations (UGR) A modules to the Contractor.

(c) Price adjustments.

(1) General.

(A) All ordering catalog prices shall be fixed and remain unchanged until changed pursuant to this clause or other applicable provision of the contract. If the Contractor's applicable total components price of a ration component(s) changes (i.e. increase or decrease) after the contract date, the corresponding contract unit price may be increased, or shall be decreased, by the same amount. The price change shall be effective at the beginning of the next ordering week. All ordering catalog unit prices computed in accordance with this clause and in effect when an order is placed shall remain in effect for that order through delivery. DLA Troop Support will be charged the contract unit price at time of each order regardless of any changes in the unit price occurring in any subsequent ordering week. In the event the Contractor finds a price recorded in the ordering catalog was not computed in accordance with this clause, and the error resulted in a higher contract unit price, than would have applied if this clause had been correctly applied, the Contractor shall immediately notify the Contracting Officer in writing and promptly thereafter submit a refund proposal. The posting of updated prices in the ordering catalog, calculated in accordance with this clause, constitutes a modification to this contract. No further contract modification is required to effect the change.

(B) The Contractor shall submit a request weekly for approval of price changes and for the retention of current prices, no later than Thursday, 1:00 PM eastern time (ET) to be effective in the following ordering week's ordering catalog prices. The Contractor shall notify the Contracting Officer of its request in the form of an electronic data interchange (EDI) 832 transaction set or via an update to the United States Department of Agriculture (USDA) web-ordering tool, as applicable. The notice shall include the Contractor's adjustment in the total components price component of the applicable contract unit price.

(C) The Contracting Officer may at any time require the submission of supporting data to substantiate any requested price change or the requested continuation of the pre-existing price for any item, including prices applicable to prior ordering weeks. Upon notice from the Contracting Officer that supporting data is required, the Contractor shall immediately furnish to the Government all supporting data, including but not limited to, invoices, quotes, price lists and any other substantiating information requested by the Contracting Officer.

(D) The Contracting Officer may reject any price change or request to maintain a current price for any item, to the extent such price is found not to be representative of the Contractor's current total components price.

(E) Should the Contracting Officer determine that a price change request contained an erroneous unit price or price change, the Contracting Officer may direct that the contract unit price be set at the amount determined by the Contracting Officer to reflect the accurate Total Components price. If the accurate price is lower than the erroneous price or price change, then the Contractor shall promptly thereafter submit a refund proposal.

(F) If the Contracting Officer does not notify the Contractor by Friday, 12:30 PM ET that a price or a price change request is being questioned or has been found to be erroneous, the requested contract unit price change(s) will be incorporated in the ordering catalog to be effective with the beginning of the following ordering week. Price change requests that the Contracting Officer questions or finds to be inconsistent with the requirements of this clause shall not be posted until the Contracting Officer specifically authorizes the posting.

(G) For all proposed prices that were not correctly entered in time into the ordering catalog for the following week, or were identified following the commencement of the applicable ordering week, and for any excessive prices found in prior ordering catalogs, that resulted in incorrectly higher contract unit prices, the Contractor shall promptly refund the difference between the correct amount and the incorrect amount to the Government, whether identified by the Contractor or by the Contracting Officer.

As an example, the following illustrates a request for a contract unit price change for lunch/dinner perishable menu 1:

Price effective for ordering week 13-19 Aug 2006

Lunch/Dinner Menu 1 Perishable - 8970-01-525-6813 - Chicken Parmesan

| Menu Item | Net Unit | Net Unit Price | Case Pack | Qty/ Ration | Units/ Ration | Component $ / Ration |
|---|---|---|---|---|---|---|

| | | | | | | |
|---|---|---|---|---|---|---|
| Chicken Parmesan | CS | $22.45 | 50 PC | 50 PC | 50/50 | $22.45 |
| Sauce | CS | $4.25 | 6 CN | 3 CN | 3/6 | $2.13 |
| Lemon Cake | CS | $5.17 | 8 EA | 2 EA | 2/8 | $1.29 |
| Total Components Price | | | | | | $25.87 |
| Distribution Price | | | | | | $4.25 |
| Contract Unit Price | | | | | | $30.12 |

On 15 Aug 2006, the Contractor has received a new delivery of chicken parmesan at $21.50 per case, and lemon cake at a delivered price of $5.30 per case. The Contractor would request a contract unit price change as follows (requested changes in bold):

| Menu Item | Net Unit | Net Unit Price | Case Pack | Qty/ Ration | Units/ Ration | Component $ / Ration |
|---|---|---|---|---|---|---|
| Chicken Parmesan | CS | $21.50 | 50 PC | 50 PC | 50/50 | $21.50 |
| Sauce | CS | $4.25 | 6 CN | 3 CN | 3/6 | $2.13 |
| Lemon Cake | CS | $5.30 | 8 EA | 2 EA | 2/8 | $1.33 |
| Total Components Price | | | | | | $24.96 |
| Distribution Price | | | | | | $4.25 |
| Contract Unit Price | | | | | | $29.21 |

(2) Limitations. All adjustments under this clause shall be limited to the effect on contract unit prices of actual increases or decreases in the net unit prices for material. There shall be no upward adjustment for—

(A) Production cost increases incurred by the Contractor

(B) Changes in the quantities of material.

(d) Upward ceiling on economic price adjustment. The aggregate of contract unit price increases for each item under this clause during any single performance period (base or option period) shall not exceed 10 percent (%) of the initial contract unit price in such performance period except as provided hereafter. There is no downward limitation on the aggregated percentage of decreases that may be made under this clause.

(1) If at any time the Contractor has reason to believe that within the near future a price adjustment under the provisions of this clause will be required that will exceed the current contract ceiling price for any item, or in the event the latest actual cost for an item would exceed the allowable ceiling price under the contract, then the Contractor shall immediately notify the Contracting Officer in writing of the facts and circumstances. The notification shall include a revised ceiling the Contractor believes is sufficient to permit completion of the remaining contract performance period, along with appropriate explanation and documentation as required by the Contracting Officer.

(2) If an actual increase in the component delivered prices would raise a contract unit price for an item above the current ceiling, the Contracting Officer may issue a contract modification to establish a separate price increase limit for the item for the remainder of the current performance period. If the

contract ceiling will not be raised, or raised sufficiently, to enable continued ordering of the item, the Contracting Officer shall so promptly notify the Contractor in writing.

(e) Examination of records.

The Contracting Officer or designated representative shall have the right to examine the Contractor's books, records, documents and other data the Contracting Officer deems necessary to verify Contractor adherence to the provisions of this clause. Such examination may occur during all reasonable times until the end of 3 years after the date of final payment under this contract or the time periods specified in Subpart 4.703 of the Federal Acquisition Regulation (FAR), whichever is earlier.

(f) Final invoice. The Contractor shall include a statement on the final invoice under the basic contract and any option period that the amounts invoiced hereunder have applied all decreases required by this clause.

(g) Disputes. Any dispute arising under this clause shall be determined in accordance with the "Disputes" clause of the contract.

(End of Clause)

**52.216-9013 Evaluation of Offers for Indefinite Delivery Type Solicitations.**
As prescribed in 16.506-92(a), insert the following provision:

EVALUATION OF OFFERS FOR INDEFINITE DELIVERY TYPE SOLICITATIONS (NOV 2011)

(a) When Federal Acquisition Regulation (FAR) clause 52.216-21 or one of its alternates is contained in this solicitation, this solicitation is for a requirements contract. Offers will be evaluated on the basis of the estimated annual quantity. If quantity increments are offered with various prices, the highest price offered will be used for evaluation.

(b) When FAR clause 52.216-22 is contained in this solicitation, this solicitation is for an Indefinite Quantity contract. Offers will be evaluated on the basis of the estimated annual quantity. Unless (c) is checked below, if quantity increments are offered with various prices, the highest price offered will be used for evaluation. If line items for both DLA direct and customer direct are included in the schedule, offers will be evaluated based on the total extended price for the DLA direct and customer direct line items.

(c) [ ] If checked, and subject to the terms and conditions of the solicitation relating to the evaluation of offers, the following procedures will be followed:

(1) When offers are requested on a quantity increment basis, each contract line-item (CLIN) will be evaluated for price by:

[ ] applying a weighted factor of 18% to the first quantity increment, 36% to the second increment, and 46% to the third increment to arrive at an average weighted unit price.

[ ] applying a weighted factor of 5% to the first quantity increment, 65% to the second increment, 25% to the third increment, and 5% to the fourth increment to arrive at an average weighted unit price.

This average weighted unit price will be multiplied by the estimated annual quantity that may be procured during the contract period to arrive at a total annual evaluated price for each CLIN. If the solicitation provides for separately priced option periods, average weighted prices will be calculated as described above in (1) for each option period and then added to the base contract period total to determine the total estimated price of that line item for the evaluation.

(2) When quantity increment prices are not requested, offers for each CLIN will be evaluated by multiplying the unit price by the estimated quantity that may be procured during the contract period to arrive at total price for each CLIN.

(3) Prices offered must be unit prices only which are clearly stated and which require no further interpretation by the Government to determine the actual offered price. Prices must not be stated as part of a pricing formula or as charges per lot. Unit prices offered must include costs of compliance with all solicitation requirements, with the exception of additive CLINs. For each item of supply for which a price is offered, prices must be offered for each quantity increment and year. Failure to submit proposed prices in accordance with these instructions may result in rejection of the offer.

(4) In the event first article testing and/or technical data are required for any or all of the CLINS, the cost of such testing and data will be added to the appropriate CLIN or prorated based on the ratio of the estimated quantity for each CLIN to the total estimated quantity of the various CLINs covering the same item or national stock number (NSN). In the event an offeror is low only on one CLIN (where there are several CLINs for the same item) (NSN), the cost of testing and data pertaining to that CLIN will be added for evaluation purposes.

(5) [ ] If checked, when free on board (f.o.b.) origin offers are authorized, transportation costs will be considered in evaluation and will be based on the best estimated quantity of each CLIN as specified elsewhere in this solicitation. Carload or truckload rates will be used to evaluate the cost of transportation for each CLIN unless the best estimated quantity would not constitute a carload or truckload. In such case, less than carload (LCL) or less than truckload (LTL) rates will be used for evaluation purposes.

(End of Provision)

Alternate I (APR 2008). As prescribed in 16.506-92(a) Use ALT I when assigning the greatest weight to the quantity increment most likely to be procured for each delivery order. Replace paragraph (c)(1) with:

(c) [ ] If checked, and subject to the terms and conditions of the solicitation relating to the evaluation of offers, the following procedures will be followed:

(1) When offers are requested on a quantity increment basis, each CLIN will be evaluated for price on a weighted basis.

(i) To be considered for award for any item, prices must be offered for each quantity increment cited. Incremental quantities within which it is anticipated orders are most likely to be issued are assigned the highest weights.

(ii) Offers will be evaluated by multiplying the designated weight by the unit price for each order increment and adding the results. Only one award will be made for each line item. Each delivery order will be issued at the price offered for that increment.

(iii) The weighted average evaluated price will be developed for each item using the formula stated in subparagraphs (A) through (C) below.

| Increment | Weight | Increment | Weight |
|---|---|---|---|
| A | _____ | D | _____ |
| B | _____ | E | _____ |
| C | _____ | F | _____ |

(A) The weighted average price (for a given item for a given year) will be arrived at as follows:

(Offered unit price) x (increment weight) = weighted unit price (Sum of weighted unit prices) divided by (the sum of the weights) = weighted average price.

(B) (The weighted average price) x (the estimated annual requirement) = estimated annual cost for a given item for a given year.

(C) The sum of the estimated annual costs for a given item for the base year plus any option periods = the total estimated cost for that item.

(End of Provision)

**52.216-9014 Area Requirements – Tentative Destinations.**
As prescribed in 16.506-93(a), insert the following provision:

AREA REQUIREMENTS – TENTATIVE DESTINATIONS (NOV 2011)

(a) Each item of supply described in this solicitation is identified by a national stock number (NSN). One or more tentative destinations is/are listed under each item of supply. Each tentative destination designates an area of the Contiguous United States, excluding Alaska, consisting of certain states, or other geographical locations, as more specifically described below. If offers are solicited on the basis of delivery free on board (f.o.b.) origin, the tentative destination(s) will be used in the evaluation of offers. Each tentative destination, and the area which it represents, is designated by a separate contract line item number (CLIN).

(b) Except as otherwise provided by this solicitation, the Government shall order its requirements for each item of supply within the geographic area designated by the tentative destination (CLIN).

(c) The tentative destinations (CLINS) for the supplies set forth covered by this solicitation are as follows:

| Item Number (CLIN) | Tentative Destination | Area |
|---|---|---|

(Will be indicated in the solicitation)

(End of provision)

**52.216-9015 Area Requirements- Contiguous United States (CONUS).**
As prescribed in 16.506-93(b), insert the following clause:

AREA REQUIREMENTS – CONTIGUOUS UNITED STATES (CONUS) (NOV 2011)

(a) Each item of supply of this solicitation/contract is identified by a national stock number (NSN) and a contract line item number (CLIN). Each CLIN covers the Government's requirements for item of supply to be delivered within the area of the CONUS (which is the 48 contiguous states and the District of Columbia.)

(b) Except as otherwise provided by this solicitation/contract, the Government shall order all of its requirements for each item of supply identified in the Schedule, for delivery in the area of CONUS.

(End of Clause)

**52.216-9019 Area Requirements – East and West of Mississippi.**
As prescribed in 16.506-94, insert the following provision:

AREA REQUIREMENTS – EAST AND WEST OF MISSISSIPPI - DLA TROOP SUPPORT CONSTRUCTION AND EQUIPMENT (C&E) (NOV 2011)

(a) Each item of supply in the schedule is designated by a national stock number (NSN). Each NSN is listed under two Contract Line Item Numbers (CLINS), one odd (e.g. CLIN 0003) and one even (e.g. CLIN 0004). The odd numbered CLINS represent the Government's requirements for the item of supply in the area of the contiguous United States East of the Mississippi river. The even numbered CLINS represent the Government's requirements for the item of supply in the area of the contiguous United States west of the Mississippi river, excluding Alaska.

(b) Except as otherwise provided by this solicitation/contract, the Government shall order from the Contractor who is awarded the odd-number CLIN for each item of supply all of its requirements for the CLIN within the contiguous limits of the United States east of the Mississippi river; and, except as otherwise provided by this solicitation/contract, the Government shall order from the Contractor who is awarded the even-number CLIN for each item of supply all of its requirements for the CLIN within the contiguous United States west of the Mississippi river, excluding Alaska.

(c) For ease of identification and evaluation for award, CLINs are assigned Arabic numerals and LOTS, if applicable, are assigned roman numerals. Further, odd numbered CLINS (e.g., 0001, 0003, 0005, etc.) are grouped in odd numbered roman numeral lots, (e.g., I, III, V, etc.) and even numbered CLINS are grouped in even numbered roman numeral lots.

(End of Provision)

**52.216-9022 Placement of Task/Delivery Orders Against Multiple Indefinite Delivery Contracts.**
As prescribed in 16.505(b)(S-90), insert the following clause:

PLACEMENT OF TASK/DELIVERY ORDERS AGAINST MULTIPLE INDEFINITE DELIVERY CONTRACTS (APR 2014)

(a) In accordance with Federal Acquisition Regulation (FAR) 52.216-27, Single or Multiple Awards, the Government may elect to award multiple contracts under this solicitation. Proposals will be evaluated in accordance with the evaluation provision(s) specified in Section M of this solicitation. In the event of multiple awards, the same evaluation criteria will be used to determine which proposals represent the best value to the Government. The exact number of awards is left to the discretion of the Contracting Officer considering the cost to the Government to administer multiple awards, the recurring nature of the requirement, the need to increase the active production base, and/or the benefits that may be achieved through continued competition.

(b) Task/delivery order placement procedure:

(1) In the event of multiple awards, each awardee will be considered for placement of individual task/delivery orders unless an exception at FAR 16.505(b)(2) applies. However, those awardees subject to testing and approval requirements, such as, but not limited to, First Article Testing, shall not receive orders until satisfactory completion of any testing requirements. Failure to successfully complete required testing will constitute grounds for contract termination for default by the Government.

(2) The criteria used for evaluating offers for task/delivery orders under this contract are price, past performance, and delivery. Price is of _____ importance than (to) the other factors combined. Past performance will include performance on orders previously placed under the contract and may include performance under other contracts. In evaluating performance under previous orders, consideration will be given to delivery, quality of supplies furnished, and success in implementing any socioeconomic support programs (small business, Defense Logistics Agency (DLA) Mentoring Business Agreement, AbilityOne) which may be applicable to the contract.

(c) Task and delivery order ombudsman: In accordance with FAR 16.505(b)(8), complaints or questions regarding the placement of individual task/delivery orders will be addressed by the competition advocate. Correspondence should be directed to the appropriate supply chain listed below:

For DLA Aviation:

DLA Aviation
Competition Advocate, BPP
8000 Jefferson Davis Highway
Richmond, Virginia 23297-5124

For DLA Troop Support's construction and equipment, clothing and textile, subsistence, and medical supply chains:

DLA Troop Support
Competition Advocate, BPA
700 Robbins Avenue
Philadelphia, Pennsylvania 19111-5096

For DLA Land and Maritime:

DLA Land and Maritime
Competition Advocate
Post Office (P.O.) Box 3990
Columbus, Ohio 43218-3990

(End of Clause)

**52.216-9026 Pricing of Delivery Orders with Quantity Increments.**
As prescribed in 16.506-96(b), insert the following clause:

PRICING OF DELIVERY ORDERS WITH QUANTITY INCREMENTS (NOV 2011)

(a) In pricing delivery orders requiring delivery of one national stock number (NSN) to multiple destinations, the price for each destination will be determined as follows, depending on the box checked:

☐ (1) The quantity range price based on the total quantity of the NSN being procured under each delivery order regardless of destination; or

☐ (2) The total quantity being shipped to all destinations within each zone as defined elsewhere in this contract.

(b) If this solicitation/contract contains a provision for placement of orders through an electronic ordering system, unit prices for those orders will be determined as follows, depending on the box checked:

☐ (1) The total quantity of all requirements for each NSN issued via the electronic ordering system in a single day, regardless of the number of individual orders; or

☐ (2) The quantity of each individual order.

(c) The minimum quantity to be ordered, per destination, will be the minimum ordering range quantity if specified in section B of the solicitation/contract for each item.

(End of Clause)

**52.216-9027 Evaluation of Quantity Sensitive and Indefinite Delivery Contracts.**
As prescribed in 16.504-90, insert the following clause:

EVALUATION OF QUANTITY SENSITIVE AND INDEFINITE DELIVERY CONTRACTS (SEP 2008)

Prices will be evaluated on a weighted basis. To be considered for award for any item, prices must be offered for each quantity increment cited. Incremental quantities within which it is anticipated orders are most likely to be issued are assigned the highest weights. Offers will be evaluated by multiplying the designated weight by the unit price for each order increment and adding the results. Only one award will be made for each line item. Each delivery order will be issued at the price offered for that increment.

(End of Clause)

**52.216-9028 Economic Price Adjustment (EPA) – Labor and Material.**
As prescribed in 16.203-4-90(k), use the following clause.

ECONOMIC PRICE ADJUSTMENT LABOR AND MATERIAL (NOV 2011)

To be completed by the Contractor - material proposed for economic price adjustment.

The following types of materials and labor, if applicable, are subject to price adjustment pursuant to Federal Acquisition Regulation (FAR) clause 52.216-4, Economic Price Adjustment (Section I), included herein:

Quantities and types of material

Direct cost

Types of material

Rate of per unit of labor

(End of Clause)

**52.216-9029 Economic Price Adjustment (EPA) Lead, Battery Consignment Program.**
As prescribed in 16.203-4-90(c), use the following clause.

ECONOMIC PRICE ADJUSTMENT (EPA) LEAD, BATTERY CONSIGNMENT PROGRAM (NOV 2011)

(a) Warranties. The Contractor warrants that --

(1) The prices set forth in the Schedule do not include allowances for any contingency covered by this clause; and

(2) The Contractor further agrees that there will be no price adjustment in the contract unit prices as provided by this clause for any additional costs incurred applicable to items purchased under this contract during the first 12 month contract period, nor prior to the effective date of a contract modification effecting such an adjustment.

(3) The prices to be invoiced shall be computed in accordance with the provisions of this clause.

(b) Definitions. As used throughout this clause--

(1) "Unit price subject to adjustment" (UPSA) is the estimated unit lead price per battery. The Contracting Officer will calculate the UPSA at the time of award using the London metals exchange standard lead average price for the most recent month available at the time of award, and the Government estimate of the number of pounds of lead required for each battery. The UPSA shall remain fixed throughout the life of the contract, including option periods and shall not be affected by any adjustment

under this clause. For purposes of this contract, the Government's estimate of the number of pounds of lead required for each battery is as follows:

| Contract line-item number (CLIN) National stock number (NSN) | Government estimated pounds of lead / battery |
|---|---|
| _____ | _____ |
| _____ | _____ |

(2) "Total adjusted lead price" (TALP) for each contract year after the first is the price of the lead contained in each battery at the time of adjustment based on the Government estimated pounds and the London metal exchange standard lead monthly average from the tenth month of the preceding contract year.

(3) For purposes of this clause, "contract year" is a 365-day (366-day for leap year) period beginning with and including the first effective day of each contract performance/ordering period.

(4) "Adjustment band" is the minimum percentage increase or decrease in the TALP compared to the UPSA (for the first adjustment) or the previous contract year's TALP (for subsequent adjustments) required in order to warrant a price adjustment. For purposes of this contract, the adjustment band is +___% to -___%. When the percentage change is less than the specified percentages, no price adjustment will be made.

(5) "Adjusted contract unit Price" is the revised unit price of the specified CLIN/NSN, based on the TALP.

(c) Adjustments.

(1) The calculation required for adjustment of the contract item unit prices shall be calculated before the beginning of each contract year after the first. Not more than 60 days and not less than 30 days prior to the end of the current contract year the Contractor will submit the calculated TALP and, if applicable based on the adjustment band, the adjusted increased or decreased contract unit price to the Contracting Officer. The Contractor shall also submit the London metals exchange standard lead prices used in the calculations.

(2) The calculation of the TALP for the next contract year shall be made by multiplying the Government estimated pounds of lead for each battery line item by the average of published final prices per pound for standard lead from the London metals exchange for the tenth month of the contract year in which the calculation is being made.

(3) If the percentage change between the TALP for the next contract year and the UPSA (for the first adjustment) or the current TALP (for subsequent adjustments) is equal to or greater than the percentages established in the adjusting band, then the calculated percentage change (up or down) will be applied to the current contract unit price to arrive at the adjusted contract unit price (correspondingly up or down) for each battery line item, which is applicable in the next contract year in accordance with (4) below.

(4) Any price adjustment under this clause will be effected by a contract modification showing the revised contract unit prices in Section B. The Contracting Officer may unilaterally determine the

applicable price adjustment if the data required in paragraph (c)(1) of this clause is not submitted as required in paragraph (c)(1).

(5) Calculations. All calculations shall be rounded to two decimal places.

(6) Upward ceiling on economic price adjustment. The Contractor agrees that the total cumulative increase in any contract unit price pursuant to this economic price adjustment provision shall not exceed ___% (percent) of the original UPSA for each contract year. There is no limitation on the amount of decreases that may be made under this clause.

(7) Revision of market price indicator. In the event –

(i) The applicable market price indicator is discontinued or its method of derivation is altered substantially; or

(ii) The Contracting Officer determines that the market price indicator consistently and substantially fails to reflect market conditions, the parties shall mutually agree upon an appropriate and comparable substitute and the contract shall be modified to reflect such substitute effective on the date the price was discontinued, altered, or began to consistently and substantially fail to reflect market conditions.

(d) Final invoice. The Contractor shall include a statement on the final invoice that the amounts invoiced hereunder have applied all decreases required by this clause.

(e) Disputes. Any dispute arising under this clause shall be determined in accordance with and subject to the "disputes" clause of the contract.

(End of Clause)

**52.216-9030 Economic Price Adjustment - Department of Labor Index.**
As prescribed in 16.203-4-90(d)(1), use the following clause.

Notes for fill-in text:

(a)(i) Paragraph (b)(1): Enter the appropriate Price Index (ECI, PPI, etc.) code number identification and title in the fill-in. Normally, unadjusted indexes should be used (as opposed to seasonally adjusted indexes). Note: If it is determined that the index to be used will only measure part of the cost of production or material, then that percentage which is measured can be specified. For example, if the component is cotton and the Bureau of Labor Statistics (BLS) index is only judged to measure 50% of the contract price, then this should be specified such as 50% times the base price.

(ii) Paragraph (b)(2): Enter the number of months, or quarters for ECI, for the adjusting price index.

(iii) Paragraph (b)(3): One box must be selected. Enter the number of months, or quarters for ECI, in each fill-in. Note: If final indexes are used, adjust the number of months, or quarters, in the second fill-in to account for first published indexes.

b. Paragraph (c)(1): Enter the number of price adjustments per contract year.

c. Paragraph (d): Enter the appropriate percentage price increase ceiling, considering the length of contract performance, index volatility, and ratio of the cost covered by this clause to the total contract price. Any percentage over 10 percent requires approval by the chief of the contracting office .

d. Paragraph (f)(2): Enter the minimal dollar amount for an adjustment to be made for retroactive price changes. The default is $500.

ECONOMIC PRICE ADJUSTMENT – DEPARTMENT OF LABOR PRICE INDEX (SEP 2015)

(a) Warranties. The Contractor warrants that--

(1) The base unit prices set forth in the Schedule do not include allowances for any portion of the contingency covered by this clause; and

(2) The prices to be invoiced shall be computed in accordance with the provisions of this clause.

(b) Definitions. As used throughout this clause –

(1) *"Index"* for the purpose of price adjustment under this clause shall be the Producer Price Index(es) reported in the monthly publication entitled, "Producer Price Indexes", published by the United States (U.S.) Department of Labor (DOL), Bureau of Labor Statistics (BLS) for the following code number(s) and title(s): _____(buyer fill-in)_____; or the Employment Cost Index(es) reported in the quarterly publication entitled, "Employment Cost Indexes," published by the United States (U.S.) Department of Labor (DOL), Bureau of Labor Statistics (BLS) for the following code number(s) and title(s): _____(buyer fill-in)_____.

(2) *"Base index"* is the arithmetic average of the final version of the indexes published for the ____ months, or ____ quarters for ECI, preceding the closing date for receipt of proposals or the date required for receipt of final proposal revisions, if discussions were held.

(3) *"Adjusting index"* shall be the ____ arithmetic average of the [ ] first published or [ ] final version of the index for the ____ months, or ____ quarters for ECI, prior to the month in which the adjusting contract modification is effective.

(4) *"Base unit price"* is the unit price applicable to a quantity of a contract line item established at contract award, exclusive of any price adjustment pursuant to this clause.

(5) *"Adjustment period"* is the period during which a particular adjustment to the unit price under this clause (calculated at the beginning of the adjustment period) will be applicable. The length of each adjustment period in months shall be calculated by dividing 12 by the number of adjustments allowed per year in (c)(1) below.

(c) Adjustments. Prior to the end of each adjustment period, the Contracting Officer shall calculate the adjusting index and any adjusted contract unit price(s) for the new adjustment period, and modify the contract accordingly. Price adjustments pursuant to this clause shall be made by contract modification, issued by the Contracting Officer and will show the base index, the adjusting index, the base unit price, the mathematical calculations, and the changed unit price(s). The price adjustment shall be applicable to

orders issued after the effective date of the contract modification establishing the unit price for the adjustment period. The price adjustment(s) for each adjustment period will be based on the percentage change between the base index and the adjusting index for the adjustment period, as applied to the base unit price.

(1) The Government shall be entitled to a price decrease in any particular adjustment period if the adjusting index is less than the base index. There shall be _____ price adjustments per contract year.

(2) Example of adjustment calculation:

| | |
|---|---|
| Base Index = | 109.88* |
| Adjusting index = | 112.72* |
| Less base index = | 109.88 |
| Change to index = | 2.84 |
| Divide change to index by base index = | 2.84 / 109.88 = .02585 (2.585%)** |
| Multiply by the base unit price = | $50.00 x .02585 = $1.29***<br>= Unit Price Adjustment |
| Adjusted unit price = | $51.29 |

* In computing the base and adjusting indexes, the resulting figure shall be rounded to the second decimal place.
** This figure shall be rounded to the fourth decimal place.
*** All dollar figures shall be rounded to the nearest cent.

(d) Upward ceiling on economic price adjustment. No upward ceiling shall apply under this economic price adjustment clause, unless the BLS series is based on indices below the six-digit level (an index "below the six-digit level" in BLS usage means an index whose identifier exceeds six-digits). For any BLS series that is below the six-digit level, the following ceiling shall apply: The Contractor agrees that the aggregate of the increases in any contract unit price under this clause shall not exceed ___% (percent) of the original base unit price, except as provided hereafter.

(1) If at any time the Contractor has reason to believe that within the near future a price adjustment under the provisions of this clause will be required that will exceed the adjustment ceiling for any item, the Contractor shall promptly notify the Contracting Officer in writing of the expected increase. The notification shall include a revised ceiling the Contractor believes is sufficient to permit completion of remaining contract performance, along with appropriate explanation and documentation as required by the Contracting Officer.

(2) If an increase in the index would raise a contract unit price for an item above the current ceiling, the Contracting Officer may issue a contract modification to raise the ceiling. If the contract ceiling will not be raised, the Contracting Officer shall so promptly notify the Contractor in writing.

(e) Invoices. The prices payable under this contract will be based on the latest adjusted unit price incorporated into the contract as of the date of order.

(f) Retroactive adjustment. Paragraph applies only if "first published index" is selected in paragraph (b)(3) above. The Contractor may request a retroactive adjustment for orders that have been delivered during an adjustment period for which payment has already been made, based on the difference between a higher final

revised index applicable to an adjustment period and the index values used in calculating the unit price for that adjustment period, and subject to the adjustment ceiling in (d) above and when the following conditions are met:

(1) The request for equitable adjustment clearly establishes that the unit price adjustment for the adjustment period would have been higher if the final revised index had been used, and identifies all invoices and payments to which it is applicable, cites the specific index differences relating to the requested adjustment, and provides a calculation of the total net price adjustment for items delivered during that adjustment period.

(2) No retroactive equitable adjustment shall be made under this clause unless the total dollar change for items delivered is $_____ ($500.00 unless otherwise stated) or more for the applicable adjustment period(s).

(3) The Contractor's written request must be received by the Contracting Officer within 45 days following publication of the final revised index.

The Government shall be entitled to a downward adjustment based on the difference between a lower final revised index applicable to an adjustment period and the index values used in calculating the unit price for that adjustment period, subject to the limitation in paragraph (f)(2).

(g) Revision of index. In the event –

(1) Any applicable index is discontinued or its method of derivation is altered substantially; or

(2) The Contracting Officer determines that the index consistently and substantially fails to reflect market conditions, the parties shall mutually agree upon an appropriate and comparable substitute and the contract shall be modified to reflect such substitute effective on the date the index was discontinued, altered, or began to consistently and substantially fail to reflect market conditions.

(h) Final invoice. The Contractor shall include a statement on the final invoice that the amounts invoiced hereunder have applied all decreases required by this clause.

(i) Disputes. Any dispute arising under this clause shall be determined in accordance with and subject to the "Disputes" clause of the contract.

(End of Clause)

**52.216-9032 Economic Price Adjustment (EPA) - Established Market Price – Milk**
As prescribed in 16.203-4-90(f), use the following clause:

ECONOMIC PRICE ADJUSTMENT (EPA) - ESTABLISHED MARKET PRICE – MILK (FEB 2009)

(a) To the extent that contingent cost increases are provided for by this clause, the Contractor warrants that prices included in the contract do not include any amount to protect against such contingent cost increases.

(b) This EPA clause applies to skim milk and butterfat fluid milk products classified as class I milk only (i.e., whole milk, fat-free milk, low fat milk, light milk, reduced fat milk, milk drinks, eggnog and cultured buttermilk, including any such beverage products that are flavored, cultured, modified with added nonfat milk solids, sterilized, concentrated, or reconstituted. As used in this paragraph, the term concentrated milk means milk that contains not less than 25.5 percent, and not more than 50 percent, total milk solids). Any package sizes other than gallons will be pro-rated based upon the price adjustment per gallon.

(c) Class I milk, as described in this clause, is subject to the regulations of the United States Department of Agriculture under the Federal milk marketing orders.

(d) The economic indicator for the purpose of prospective adjustments to contract prices under this clause shall be the Class I price [(base skim milk price for Class I times 0.965) plus (advanced butterfat pricing factor times 3.5)] in the announcement of advanced prices and pricing factors released by the U.S. Department of Agriculture, Agricultural Marketing Service, dairy programs. The announcement is released on the Friday before the 23rd of the month unless the 23rd of the month falls on a Friday in which case, Friday the 23rd will be the release date.

(e) Price adjustments shall be based on the following:

(1) The "base price" for the purpose of the initial adjustment calculation under this clause shall be the current month price of the economic indicator in effect at (i) the closing date for proposals, if no discussions are held, or (ii) the due date for final proposal revisions, if discussions are held. The "base price" for each subsequent monthly adjustment calculation shall be the adjusting price from the previous month.

(2) The "adjusting price" shall be the monthly price of the economic indicator released following the month used to determine the "base price".

(f) For the purpose of price adjustments pursuant to this clause:

(1) Adjustments will be made in increments of $0.01 per gallon when and only when the change per gallon in either direction is equal to or greater than +/-$0.0100.

(2) Adjustments in excess of $0.0100 per gallon and in excess of $0.0050 for units other than a gallon (i.e., half gallon, quart, pint and half pint) will be rounded to two decimal places to accommodate systems requirements of the subsistence total order receipt electronic system (STORES), as follows:

$0.0050 to $0.0099 = $0.01

$0.0100 to $0.0149 = $0.01

$0.0150 to $0.0199 = $0.02

$0.0200 to $0.0249 = $0.02

$0.0250 to $0.0299 = $0.03, etc.

(3) One hundred weight (CWT) as used in the price of the economic indicator equates to 11.63 gallons of milk deliverable under this contract.

(g) Promptly following release of the announcement of advanced prices and pricing factors applicable to the following month, the Contracting Officer shall compute the adjustments, if any, to the current contract prices for the purpose of determining any revised prices applicable to orders for the next month in the manner detailed below:

(1) Compute adjusting price.

(2) Compute base price.

(3) Compute change from base price.

(4) Convert the price change to price per gallon.

(5) Compute price change for other units other than a gallon.

(6) Round price adjustment(s) from lines (4) and (5) to nearest $0.01 increment (see paragraph (f)(2)).

(7) Compute adjusted contract unit price(s). The following sample price computation is an illustration using January as the base price and February as the adjusting price.

| | | |
|---|---|---|
| (1) Adjusting price | | |
| Base skim milk price for Class I | $7.72 CWT X 0.965 | $ 7.4498 |
| Advanced butterfat pricing factor | $0.9302 LB X 3.5 | $ 3.2557 |
| Class I Price | | $10.7055 |
| (2) Base price base skim milk | | |
| Price for Class I | $7.72 CWT X 0.965 | $ 7.4498 |
| Advanced butterfat pricing factor | $0.9854 LB X 3.5 | $ 3.4489 |
| Class I Price | | $10.8987 |
| (3) Change from base price per CWT | | ($0.1932) |
| (4) Price change per gallon Line (3) divide by 11.63 gallons/cwt | | ($0.0166) |
| (5) Price change per half gallon | | ($0.0083) |
| Price change per quart | | ($0.0042) |
| Price change per pint | | ($0.0021) |
| Price change per half pint | | ($0.0010) |
| (6) Price adjustment per gallon | | ($0.02) |
| Price adjustment per half gallon | | ($0.01) |
| Price change per quart | | $0.00 |
| Price change per pint | | $0.00 |
| Price change per half pint | | $0.00 |
| (7) Adjusted contract unit price | | |
| Item per gallon (current unit price - $0.02) | | |
| Item per half gallon (current unit price - $0.01) | | |
| Item per quart (No adjustment) | | |
| Item per pint (No adjustment) | | |
| Item per half pint (No adjustment) | | |

(h) Revised prices will become effective on the 1st Sunday of the next month and will remain in effect until the next price change occurs.

(i) Price adjustments pursuant to this clause will not be made by separate contract modifications. Adjustments will be implemented by the government as follows, and these actions shall constitute a modification to the contract:

(1) The adjusted contract unit price(s) for the following month will be input in STORES,

(2) A facsimile transmission will be sent to Contractors who do not have electronic access, and

(3) The calculations used to derive the adjusted contract unit price(s) for the following month will be posted on the Internet.

(j) The aggregate of the increases in any contract unit price under this clause shall not exceed 30% of the original contract unit price. The original contract unit price is the price in effect on the date of award. If at any time during the term of the contract, a proposed economic price adjustment will exceed this ceiling, the Government reserves the right to raise this ceiling where changes in market conditions during the contract period support an increase. There is no percentage limitation on the amount of downward adjustments that may be made under this clause.

(k) In the event publication of the economic indicator is discontinued or its method of calculation substantially altered so that it no longer reflects market prices, the parties shall mutually agree upon an appropriate substitute for price adjustment(s) under this clause.

(l) Any dispute arising under this clause is subject to the "disputes" clause of the contract.

(End of Clause)

**52.216-9032 Economic price adjustment (EPA) - Established Market Price –Alternate I.**
As prescribed in 16.203-4-90(f)(i) use the following clause.

ECONOMIC PRICE ADJUSTMENT (EPA) - ESTABLISHED MARKET PRICE ALTERNATE I
(FEB 2009)

(a) To the extent that contingent cost increases are provided for by this clause, the Contractor warrants that prices included in the contract do not include any amount to protect against such contingent cost increases.

(b) This EPA clause applies to Class I milk only (i.e., milk used in fluid products, including whole, low fat, extra light, nonfat and half-and-half). Any package sizes other than gallons will be pro-rated based upon the price adjustment per gallon.

(c) Class I milk, as described in this clause, is subject to the regulations of the California Department of Food and Agriculture under the stabilization and marketing plans for market milk.

(d) The economic indicator shall be the “state-wide average CWT Class 1 price based upon production”, as released monthly by the California Department of Food and Agriculture dairy marketing branch in the “minimum prices for class 1 market milk f.o.b. processing plant” price letter. (Note: The California Department of Food and Agriculture is not part of the Federal milk marketing order (FMMO) system and maintains its own milk-marketing program).

(e) Price adjustments shall be based on the following:

(1) The "base price" for the purpose of the initial adjustment calculation under this clause shall be the current month price of the economic indicator in effect at

(i) the closing date for proposals, if no discussions are held, or

(ii) the due date for final proposal revisions, if discussions are held.

The "base price" for each subsequent monthly adjustment calculation shall be the adjusting price from the previous month.

(2) The "adjusting price" shall be the monthly price of the economic indicator released following the month used to determine the "base price".

(f) For the purpose of price adjustments pursuant to this clause:

(1) Adjustments will be made in increments of $0.01 per gallon when and only when the change per gallon in either direction is equal to or greater than +/-$0.0100.

(2) Adjustments in excess of $0.0100 per gallon and in excess of $0.0050 for units other than a gallon (i.e., half gallon, quart, pint and half pint) will be rounded to two decimal places to accommodate systems requirements of the subsistence total order receipt electronic system (STORES), as follows:

$0.0050 to $0.0099 = $0.01
$0.0100 to $0.0149 = $0.01
$0.0150 to $0.0199 = $0.02
$0.0200 to $0.0249 = $0.02
$0.0250 to $0.0299 = $0.03, etc.

(3) One hundred weight (CWT) as used in the price of the economic indicator equates to 11.63 gallons of milk deliverable under this contract.

(g) Promptly following release of the minimum price letter applicable to the following month, the Contracting Officer shall compute the adjustments, if any, to the current contract prices for the purpose of determining any revised prices applicable to orders for the next month in the manner detailed below:

(1) Determine adjusting price.

(2) Determine base price.

(3) Compute change from base price.

(4) Convert the price change to price per gallon.

(5) Compute price change for other units other than a gallon.

(6) Round price adjustment(s) from lines (4) and (5) to nearest $0.01 increment (see paragraph (f)(2).

(7) Compute adjusted contract unit price(s).

The following sample price computation is an illustration using January as the base price and February as the adjusting price.

| | | | |
|---|---|---|---|
| (1) | Adjusting Price | $ 11.75 | CWT |
| (2) | Base Price | $ 11.98 | CWT |
| (3) | Change from Base Price per CWT | $(0.23) | |
| (4) | Price change per gallon<br>(Line (3) divide by 11.63 gallons/cwt) | $(0.0198) | |
| (5) | Price change per half gallon | $(0.0099) | |
| | Price change per quart | $(0.0049) | |
| | Price change per pint | $(0.0025) | |
| | Price change per half pint | $(0.0012) | |
| (6) | Price adjustment per gallon | $ (0.02) | |
| | Price adjustment per half gallon | $ (0.01) | |
| | Price adjustment per quart | $ (0.00) | |
| | Price adjustment per pint | $ (0.00) | |
| | Price adjustment per half pint | $ (0.00) | |
| (7) | Adjusted contract unit price | | |
| | Item per gallon (Current Unit Price - $0.02) | | |
| | Item per half gallon (Contract Unit Price - $0.01) | | |
| | Item per quart (No adjustment) | | |
| | Item per pint (No adjustment) | | |
| | Item per half pint (No adjustment) | | |

(h) Revised prices will become effective on the 1st Sunday of the next month and will remain in effect until the next price change occurs.

(i) Price adjustments pursuant to this clause will not be made by separate contract modifications. Adjustments will be implemented by the Government as follows, and these actions shall constitute a modification to the contract:

(1) The adjusted contract unit price(s) for the following month will be input in STORES,

(2) A facsimile transmission will be sent to Contractors who do not have electronic access, and

(3) The calculations used to derive the adjusted contract unit price(s) for the following month will be posted on the internet.

(j) The aggregate of the increases in any contract unit price under this clause shall not exceed 30% of the original contract unit price. The original contract unit price is the price in effect on the date of award. If at any time during the term of the contract, a proposed economic price adjustment will exceed this ceiling, the Government reserves the right to raise this ceiling where changes in market conditions during the contract period support an increase There is no percentage limitation on the amount of downward adjustments that may be made under this clause.

(k) In the event publication of the economic indicator is discontinued or its method of calculation substantially altered so that it no longer reflects market prices, the parties shall mutually agree upon an appropriate substitute for price adjustment(s) under this clause.

(l) Any dispute arising under this clause is subject to the "Disputes" clause of the contract.

(End of Clause)

**52.216-9032 Economic price adjustment (EPA) - Established Market Price – Milk Alternate II.** As prescribed in 16.203-4-90(f)(ii) use the following clause:

ECONOMIC PRICE ADJUSTMENT (EPA) - ESTABLISHED MARKET PRICE – MILK ALTERNATE II (FEB 2009)

(a) To the extent that contingent cost increases are provided for by this clause, the Contractor warrants that prices included in the contract do not include any amount to protect against such contingent cost increases.

(b) This EPA clause applies to skim milk and butterfat fluid milk products classified as Class I milk only (i.e., whole milk, fat-free milk, low fat milk, light milk, reduced fat milk, milk drinks, eggnog and cultured buttermilk, including any such beverage products that are flavored, cultured, modified with added nonfat milk solids, sterilized, concentrated, or reconstituted. As used in this paragraph, the term concentrated milk means milk that contains not less than 25.5 percent, and not more than 50 percent, total milk solids). Any package sizes other than gallons will be pro-rated based upon the price adjustment per gallon.

(c) Class I milk, as described in this clause, is subject to the regulations of the United States Department of Agriculture under the Federal milk marketing orders.

(d) The economic indicator for the purpose of prospective adjustments to contract prices under this clause shall be the Class I price [(base skim milk price for Class I times 0.965) plus (advanced butterfat pricing factor times 3.5)] in the announcement of advanced prices and pricing factors released by the U.S. Department of Agriculture, Agricultural Marketing Service, Dairy Programs. The announcement is released on the Friday before the 23rd of the month unless the 23rd of the month falls on a Friday in which case, Friday the 23rd will be the release date.

(e) Price adjustments shall be based on the following:

(1) The "base price" for the purpose of the initial adjustment calculation under this clause shall be the current month price of the economic indicator in effect at

(i) the closing date for proposals, if no discussions are held, or

(ii) the due date for final proposal revisions, if discussions are held.

The "base price" for each subsequent monthly adjustment calculation shall be the adjusting price from the previous month.

(2) The "adjusting price" shall be the monthly price of the economic indicator released following the month used to determine the "base price".

(f) For the purpose of price adjustments pursuant to this clause:

(1) Adjustments will be made when and only when the change per gallon in either direction is equal to or greater than +/-$0.0100.

(2) Adjustments will be rounded to two decimal places to accommodate systems requirements of the subsistence total order receipt electronic system (STORES).

(3) One hundred weight (CWT) as used in the price of the economic indicator equates to 11.63 gallons of milk deliverable under this contract.

(g) Promptly following release of the Announcement of Advanced Prices and Pricing Factors applicable to the following month, the Contracting Officer shall compute the adjustments, if any, to the current contract prices for the purpose of determining any revised prices applicable to orders for the next month in the manner detailed below:

(1) Compute adjusting price.

(2) Compute base price.

(3) Compute change from base price.

(4) Convert the price change to price per gallon.

(5) Compute price change for a box of 27 half pints (1.6875 gallons).

(6) Compute adjusted contract unit price(s).

The following sample price computation is an illustration using January as the base price and February as the adjusting price.

| | | |
|---|---|---|
| (1) Adjusting price | | |
| Base skim milk price for Class I | $7.72 CWT X 0.965 | $ 7.4498 |
| Advanced butterfat pricing factor | $0.9302 LB X 3.5 | $ 3.2557 |
| Class I Price | | $10.7055 |

| | | |
|---|---|---|
| (2) Base price | | |
| Base skim milk price for Class I | $7.72 CWT X 0.965 | $ 7.4498 |
| Advanced butterfat pricing factor | $0.9854 LB X 3.5 | $ 3.4489 |
| Class I Price | | $10.8987 |
| (3) Change from base price per CWT | | ($0.1932) |
| (4) Price change per gallon Line (3) divide by 11.63 gallons/cwt | | ($0.0166) |
| (5) Price change per box | | |
| ($0.0166) x 1.6875 gallons | | ($0.0280) |
| Rounded to two decimals | | ($0.03) |
| (6) Adjusted contract unit price | | |
| Current unit price - $0.03 | | |

(h) Revised prices will become effective on the 1st Sunday of the next month and will remain in effect until the next price change occurs.

(i) Price adjustments pursuant to this clause shall be made by contract modification showing the calculations used to derive the adjusted contract unit prices.

(j) Payment on this contract shall be at the current contract price, which shall change upon issuance of an adjusting modification.

(k) The aggregate of the increases in any contract unit price under this clause shall not exceed 30% of the original contract unit price. The original contract unit price is the price in effect on the date of award. If at any time during the term of the contract, a proposed economic price adjustment will exceed this ceiling, the Government reserves the right to raise this ceiling where changes in market conditions during the contract period support an increase. There is no percentage limitation on the amount of downward adjustments that may be made under this clause.

(l) In the event publication of the economic indicator is discontinued or its method of calculation substantially altered so that it no longer reflects market prices, the parties shall mutually agree upon an appropriate substitute for price adjustment(s) under this clause.

(m) Any dispute arising under this clause is subject to the “Disputes” clause of the contract.

(End of Clause)

**52.216-9032 Economic price adjustment (EPA) - Established Market Price – Milk Alternate III.** As prescribed in 16.203-4-90(f)(iii) use the following clause:

ECONOMIC PRICE ADJUSTMENT (EPA) - ESTABLISHED MARKET PRICE – MILK ALTERNATE III (FEB 2009)

(a) To the extent that contingent cost increases are provided for by this clause, the Contractor warrants that prices included in the contract do not include any amount to protect against such contingent cost increases.

(b) This EPA clause applies to Class I milk only (i.e., milk used in fluid products, including whole, low fat, extra light, nonfat and half-and-half). Any package sizes other than gallons will be pro-rated based upon the price adjustment per gallon.

(c) Class I milk, as described in this clause, is subject to the regulations of the California Department of Food and Agriculture under the stabilization and marketing plans for market milk.

(d) The economic indicator shall be the "State-Wide Average CWT Class 1 Price Based Upon Production", as released monthly by the California Department of Food and Agriculture dairy marketing branch in the "Minimum Prices for Class 1 Market Milk F.O.B. Processing Plant" price letter. (Note: The California Department of Food and Agriculture is not part of the federal milk marketing order (FMMO) system and maintains its own milk-marketing program).

(e) Price adjustments shall be based on the following:

(1) The "base price" for the purpose of the initial adjustment calculation under this clause shall be the current month price of the economic indicator in effect at

(i) the closing date for proposals, if no discussions are held, or

(ii) the due date for final proposal revisions, if discussions are held.

The "base price" for each subsequent monthly adjustment calculation shall be the adjusting price from the previous month.

(2) The "adjusting price" shall be the monthly price of the economic indicator released following the month used to determine the "base price".

(f) For the purpose of price adjustments pursuant to this clause:

(1) Adjustments will be made when and only when the change per gallon in either direction is equal to or greater than +/-$0.0100.

(2) Adjustments will be rounded to two decimal places to accommodate systems requirements of the subsistence total order receipt electronic system (STORES).

(3) One hundred weight (CWT) as used in the price of the economic indicator equates to 11.63 gallons of milk deliverable under this contract.

(g) Promptly following release of the minimum price letter applicable to the following month, the Contracting Officer shall compute the adjustments, if any, to the current contract prices for the purpose of determining any revised prices applicable to orders for the next month in the manner detailed below:

(1) Determine adjusting price.

(2) Determine base price.

(3) Compute change from base price.

(4) Convert the price change to price per gallon.

(5) Compute price change for a box of 27 half pints (1.6875 gallons).

(6) Compute adjusted contract unit price(s).

The following sample price computation is an illustration using January as the base price and February as the adjusting price.

| | | | |
|---|---|---|---|
| (1) | Adjusting price | $11.75 | CWT |
| (2) | Base price | $11.98 | CWT |
| (3) | Change from base price per CWT | ($0.23) | |
| (4) | Price change per gallon<br>(Line (3) divide by 11.63 gallons/cwt) | ($0.0198) | |
| (5) | Price change per box<br>($0.0198) x 1.6875 gallons<br>Rounded to two decimals | <br>($0.0334)<br>($0.03) | |
| (6) | Adjusted contract unit price<br>Current unit price - $0.03 | | |

(h) Revised prices will become effective on the 1st Sunday of the next month and will remain in effect until the next price change occurs.

(i) Price adjustments pursuant to this clause shall be made by contract modification showing the calculations used to derive the adjusted contract unit prices.

(j) Payment on this contract shall be at the current contract price, which shall change upon issuance of an adjusting modification.

(k) The aggregate of the increases in any contract unit price under this clause shall not exceed 30% of the original contract unit price. The original contract unit price is the price in effect on the date of award. If at any time during the term of the contract, a proposed economic price adjustment will exceed this ceiling, the Government reserves the right to raise this ceiling where changes in market conditions during the contract period support an increase There is no percentage limitation on the amount of downward adjustments that may be made under this clause.

(l) In the event publication of the economic indicator is discontinued or its method of calculation substantially altered so that it no longer reflects market prices, the parties shall mutually agree upon an appropriate substitute for price adjustment(s) under this clause.
(m) Any dispute arising under this clause is subject to the "disputes" clause of the contract.

(End of Clause)

**52.216-9033 Economic Price Adjustment (EPA) - Established Prices.**
As prescribed in 16.203-4-90(g), use the following clause. Complete paragraph (c)(1) by entering the appropriate percentage price increase ceiling, considering the length of contract performance. Any percentage over 10 percent requires approval by the chief of the contracting office.

ECONOMIC PRICE ADJUSTMENT – ESTABLISHED PRICES (FEB 2009)

(a) The Contractor warrants that the unit price stated in the Schedule for _____ [offeror insert Schedule line item number] is not in excess of the Contractor's applicable established price in effect on the contract date for like quantities of the same item. The term "unit price" excludes any part of the price directly resulting from requirements for preservation, packaging, or packing beyond standard commercial practice. The term "established price" means a price that --

(1) Is an established catalog or market price for a commercial item sold in substantial quantities to the general public; and

(2) Is the net price after applying any standard trade discounts offered by the Contractor.

(b) The Contractor shall promptly notify the Contracting Officer of the amount and effective date of each decrease in any applicable established price. Each corresponding contract unit price shall be decreased by the same percentage that the established price is decreased. The decrease shall apply to those items delivered on and after the effective date of the decrease in the Contractor's established price, and this contract shall be modified accordingly.

(c) If the Contractor's applicable established price is increased after the contract date, the corresponding contract unit price shall be increased, upon the Contractor's written request to the Contracting Officer, by the same percentage that the established price is increased, and the contract shall be modified accordingly, subject to the following limitations:

(1) The aggregate of the increases in any contract unit price under this clause shall not exceed ___ percent of the original contract unit price.

(2) The increased contract unit price shall be effective –

(i) On the effective date of the increase in the applicable established price if the Contracting Officer receives the Contractor's written request within 10 days thereafter; or

(ii) If the written request is received later, on the date the Contracting Officer receives the request.

(3) The increased contract unit price shall not apply to quantities scheduled under the contract for delivery before the effective date of the increased contract unit price, unless failure to deliver before that date results from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of the default clause.

(4) No modification increasing a contract unit price shall be executed under this paragraph (c) until the Contracting Officer verifies the increase in the applicable established price.

(5) Within 30 days after receipt of the Contractor's written request, the Contracting Officer may cancel, without liability to either party, any undelivered portion of the contract items affected by the requested increase, except as follows.

(i) The Contractor may, after that time, deliver any items that were completed or in the process of manufacture at the time of receipt of the cancellation notice, provided the Contractor certifies and notifies the Contracting Officer of such items within 10 days after the Contractor receives the cancellation notice.

(ii) The Government shall pay for those items at the contract unit price increased to the extent provided by paragraph (d) of this clause.

(iii) Any standard steel supply item shall be deemed to be in the process of manufacture when the steel for that item is in the state of processing after the beginning of the furnace melt.

(d) During the time allowed for the cancellation provided for in subparagraph (c)(5) of this clause, and thereafter if there is no cancellation, the Contractor shall continue deliveries according to the contract delivery schedule, and the Government shall pay for such deliveries at the contract unit price, increased to the extent provided by paragraph (c) of this clause.

(e) The Contractor shall certify on each invoice that each unit price stated therein reflects all decreases required by this clause and shall certify on the final invoice that all price decreases required by this clause have been applied in the manner required herein.

(f) Disputes. Any dispute arising under this clause shall be determined in accordance with the Disputes clause of the contract.

(End of Clause)

**52.216-9034 Economic Price Adjustment – Published Market Price – Silver.**
As prescribed in 16.203-4-90(h), use the following clause.

ECONOMIC PRICE ADJUSTMENT – PUBLISHED MARKET PRICE – SILVER (FEB 2009)

(a) Warranties. The Contractor warrants that--

(1) The base unit prices set forth in the schedule do not include allowances for any portion of the contingency covered by this clause;

(2) ___ ounces of silver are contained in each unit offered which will be the basis for price adjustment under this clause; and

(3) The prices to be invoiced shall be computed in accordance with the provisions of this clause.

(b) Definitions. As used throughout this clause:

(1) "Unit price" means the unit price offered, as set out in the contract schedule.

(2) "Base market price" means the sum of one-half the simple average of the Englehard industrial bullion quotations, plus one-half the simple average of the Handy and Harman base price quotations, for silver on the New York market over the fifteen working days immediately preceding bid opening, or the date of award for negotiated contracts, as reported in the Wall Street Journal. If the quotation for silver on a particular day is set out as a range of prices, the average of these prices shall be considered the price for that day.

(3) "Adjusting market price" means the sum of one-half the simple average of the Englehard industrial bullion quotations, plus one-half the Handy and Harman Base Price Quotations, for silver on the New York market, as reported in the Wall Street Journal, for the fifteen working days prior to a delivery date specified in the contract schedule or delivery order. If the quotation for silver on a particular day is set out as a range of prices, the average of these prices shall be considered the price for that day.

(4) "Weight factor" means the amount of silver contained in each unit delivered. For purposes of this definition, the amount of silver per unit will be deemed to be the number of troy ounces stated in paragraph (a)(2).

(5) "Delivery date" means the date originally specified in the contract or delivery order plus any extension attributable solely to reasons determined by the Contracting Officer to be excusable within the meaning of the "Default" clause. It does not include any extension of the delivery schedule, however accomplished, except for such excusable causes.

(c) Adjustments.

(1) Notification. The Contractor shall promptly notify the Contracting Officer in writing, with accompanying calculations, upon a net change (increase or decrease) of $500 or more in the price of the items scheduled for delivery under an order due to an increase or decrease in the price of silver, as calculated in accordance with (c)(2) below. No adjustment will be made under this clause unless the calculated price change for an individual order resulting from change in the price of silver is $500 or more.

(2) Calculations. All calculations shall be rounded to two decimal places. The price adjustment will be calculated by computing, as a dollar amount per ounce of silver, the difference (increase or decrease) between the base market price and the adjusting market price, multiplying the result by the number of ounces of silver per unit specified in (a)(2) above, and adding or subtracting (as appropriate) that result to/from the unit price, resulting in the adjusted contract unit price applicable to that order.

(3) Modification. Price adjustments under this clause shall be effected by contract modifications showing the base market price, calculation of the adjusting market price, the base unit price, and the calculations used to arrive at the adjusted contract unit price(s).

(4) Exceptions.

(i) No adjustment is allowed based on Contractor requests for a price increase that are submitted more than sixty days after the delivery date of items for which a price increase is requested.

(ii) There will be no adjustment for increases which occur after the required delivery date unless the Contractor's failure to deliver according to the delivery schedule results from causes beyond the Contractor's control and without its fault or negligence, within the meaning of the Default clause of this contract.

(5) Invoices. The prices payable for a particular delivery under this contract will be the contract unit price for the items supplied plus the product of the net difference between the applicable adjusting market price and the base market price times the weight factor times the number of units delivered.

(d) Upward ceiling on economic price adjustment. The Contractor agrees that the total increase in any contract unit price pursuant to these economic price adjustment provisions shall not exceed____% of the original base unit price in any applicable contract year (whether a single year or multiyear program), except as provided hereafter:

(i) If at any time the Contractor has reason to believe that within the near future a price adjustment under the provisions of this clause will be required that will exceed the current contract ceiling price for any item, the Contractor shall promptly notify the Contracting Officer in writing of the expected increase. The contract ceiling price means the unit price limitation stated in (d). The notification shall include a revised ceiling the Contractor believes is sufficient to permit completion of remaining contract performance, along with appropriate explanation and documentation as required by the Contracting Officer.

(ii) If an actual increase in the market price would raise a contract unit price for an item above the current ceiling, the Contracting Officer may issue a contract modification to raise the ceiling. If the contract ceiling will not be raised, the Contracting Officer shall so promptly notify the Contractor in writing.

(e) Revision of market price indicator. In the event --

(1) A market price is discontinued or its method of derivation is altered substantially; or

(2) The Contracting Officer determines that a market price consistently and substantially fails to reflect market conditions,

The parties shall mutually agree upon an appropriate and comparable substitute and the contract shall be modified to reflect such substitute effective on the date the price was discontinued, altered, or began to consistently and substantially fail to reflect market conditions.

(f) Options. If this contract contains a term (period) option provision which is exercised, the contract price(s) for each succeeding term shall be subject to adjustment pursuant to this EPA clause. The contract price(s) in effect on the last day of the term or period immediately preceding the period for which the option has been exercised will be the contract price(s) on the first day of the succeeding option period.

(g) Disputes. Any dispute arising under this clause shall be determined in accordance with the Disputes clause of the contract.

(h) Final invoice. The Contractor shall include a statement on the final invoice that the amounts invoiced hereunder have applied all decreases required by this clause.

(End of Clause)

**52.216-9035 Economic Price Adjustment – Published Market Price – Lead.**
As prescribed in 16.203-4-90(i), use the following clause.

ECONOMIC PRICE ADJUSTMENT – PUBLISHED MARKET PRICE – LEAD (FEB 2009)

(a) Warranties. The Contractor warrants that—

(1) The base unit prices set forth in the schedule do not include allowances for any portion of the contingency covered by this clause;

(2) ___ pounds of lead are contained in each unit offered which will be the basis for price adjustment under this clause; and

(3) The prices to be invoiced shall be computed in accordance with the provisions of this clause.

(b) Definitions. As used throughout this clause:

(1) "Unit price" means the unit price offered, as set out in the contract schedule.

(2) "Base market price" means the average of the prices for standard lead as reported on the London metals exchange, over the fifteen working days immediately preceding bid opening or the day set for receipt of proposals. If the quotation for lead on a particular day is set out as a range of prices, the average of these prices shall be considered the price for that day.

(3) "Adjusting market price" means the average price of standard lead as reported on the London metals exchange, for the fifteen working days prior to a delivery date specified in the contract schedule or delivery order.

(4) "Weight factor" means the amount of lead contained in each unit delivered. For purposes of this definition, the amount of lead per unit will be deemed to be the number of pounds stated in (a)(2) of this clause, rounded off to the nearest hundredth of a pound.

(5) "Delivery date" means the date originally specified in the contract or delivery order plus any extension attributable solely to reasons determined by the Contracting Officer to be excusable within the

meaning of the "default" clause. It does not include any extension of the delivery schedule, however accomplished, except for such excusable causes

(c) Adjustments.

(1) Notification. The Contractor shall promptly notify the Contracting Officer in writing, with accompanying calculations, upon a net change (increase or decrease) of at least $500 in the price of the items scheduled for delivery. No adjustment will be made under this clause unless the total change in the contract amount is $500 or more.

(2) Calculations. All calculations shall be rounded to two decimal places.

(3) Modification. Price adjustments under this clause shall be effected by contract modifications showing the base market price, calculation of the adjusting market price, the base unit price, and the calculations used to arrive at the adjusted contract unit price(s).

(4) Exceptions.

(i) The Contractor claims for a price increase that are submitted more than sixty days after the delivery date of items for which a price adjustment under this clause is requested will not be honored.

(ii) There will be no adjustment for increases which occur after the required delivery date unless the Contractor's failure to deliver according to the delivery schedule results from causes beyond the Contractor's control and without its fault or negligence, within the meaning of the default clause of this contract.

(5) Invoices. The prices payable for a particular delivery under this contract will be the contract unit price for the items supplied and the product of the net difference (adjusting market price less the base market price) times the weight factor, multiplied by the number of units delivered.

(d) The Contractor agrees that the total increase in any contract unit price pursuant to these economic price adjustment provisions shall not exceed ____% of the original base unit price in any applicable contract year (whether a single year or multiyear program), except as provided hereafter:

(1) If at any time the Contractor has reason to believe that within the near future a price adjustment under the provisions of this clause will be required that will exceed the current contract ceiling price for any item, the Contractor shall promptly notify the Contracting Officer in writing of the expected increase. The notification shall include a revised ceiling the Contractor believes is sufficient to permit completion of remaining contract performance, along with appropriate explanation and documentation as required by the Contracting Officer.

(2) If an actual increase in the market price would raise a contract unit price for an item above the current ceiling, the Contracting Officer may issue a contract modification to raise the ceiling. If the contract ceiling will not be raised, the Contracting Officer shall so promptly notify the Contractor in writing.

(e) Revision of market price indicator. In the event –

(1) A market price is discontinued or its method of derivation is altered substantially; or

(2) The Contracting Officer determines that a market price consistently and substantially fails to reflect market conditions, the parties shall mutually agree upon an appropriate and comparable substitute and the contract shall be modified to reflect such substitute effective on the date the price was discontinued, altered, or began to consistently and substantially fail to reflect market conditions.

(f) Options. If this contract contains a term (period) option provision which is exercised, the contract price(s) for each succeeding term shall be subject to adjustment pursuant to this EPA clause. The contract price(s) in effect on the last day of the term or period immediately preceding the period for which the option has been exercised will be the contract price(s) on the first day of the succeeding option period.

(g) Disputes. Any dispute arising under this clause shall be determined in accordance with and subject to the "disputes" clause of the contract.

(h) Final invoice. The Contractor shall include a statement on the final invoice that the amounts invoiced hereunder have applied all decreases required by this clause.

(End of Clause)

**52.216-9036 Evaluation of Offers – Economic Price Adjustment.**
As prescribed in 16.203-4-90(j)(i), use the following clause.

EVALUATION OF OFFERS - ECONOMIC PRICE ADJUSTMENT (FEB 2009)

(a) Offers in response to solicitations will be evaluated without adding any amount for economic price adjustment unless the economic price adjustment (EPA) clause included in the solicitation provides for offerors to specify the portion of the contract price subject to EPA. In this case, the offered price(s) subject to the EPA clause will be adjusted to the maximum possible extent under the EPA using the price ceiling limitation provision of such clause for the basic contract plus all options covered by the evaluation. The resulting price(s) will be used for evaluation of offers.

(b) If a successful offeror stipulates a lower maximum increase limitation then that included in the solicitation, it will be incorporated into the resulting contract.

(c) Offers which (1) increase the maximum ceiling percentage specified in the solicitation, (2) stipulate a maximum decrease limit, or (3) delete or otherwise alter the economic price adjustment clause, will not be considered for award, unless the Contracting Officer determines that award on such basis is in the best interests of the Government and all Offerors are afforded an opportunity to offer on the same basis.

(End of Clause)

**52.216-9037 Evaluation of Bids – Economic Price Adjustment.**
As prescribed in 16.203-4-90(j)(ii), use the following clause.

EVALUATION OF BIDS - ECONOMIC PRICE ADJUSTMENT (NOV 2011)

(a) Bids will be evaluated without adding any amount for economic price adjustment.

(b) If the bid selected for award stipulates an economic price adjustment ceiling lower than that included in the solicitation, it will be incorporated into the resulting contract.

(c) Bids will be rejected as nonresponsive if they:

(1) increase the maximum percentage stipulated,

(2) stipulate a maximum decrease limit or

(3) delete or otherwise alter the economic price adjustment clause.

(End of Clause)

**52.216-9038 Price Redetermination – Prospective (DEVIATION - PERMANENT).**
As prescribed in 16.205-4-90(a), insert the following clause:

PRICE REDETERMINATION PROSPECTIVE (DEVIATION - PERMANENT) (DEC 2012)

(a) General. The unit prices and the total price stated in this contract shall be periodically redetermined in accordance with this clause, except that --

(1) The prices for supplies ordered and services performed before the first effective date of price redetermination (see paragraph (c) of this clause) shall remain fixed; and

(2) In no event shall the total amount paid under this contract exceed any ceiling price included in the contract.

(b) Definition. "Costs," as used in this clause, means allowable costs in accordance with Part 31 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract.

(c) Price redetermination periods. For the purpose of price redetermination, performance of this contract is divided into successive periods. The first period shall extend from the date of the contract to _____, (see note (1)) and the second and each succeeding period shall extend for _____ [insert appropriate number] months from the end of the last preceding period, except that the parties may agree to vary the length of the final period. The first day of the second and each succeeding period shall be the effective date of price redetermination for that period.

(d) Data submission.

(1) Not more than _____ nor less than _____ (see note (2)) days before the end of each redetermination period, except the last, the Contractor shall submit --

(i) Proposed prices for supplies that may be ordered or services that may be performed in the next succeeding period, and –

(A) An estimate and breakdown of the costs of these supplies or services in the format of Table 15-2, FAR 15.408, or in any other form on which the parties may agree;

(B) Sufficient data to support the accuracy and reliability of this estimate; and

(C) An explanation of the differences between this estimate and the original (or last preceding) estimate for the same supplies or services; and

(ii) A statement of all costs incurred in performing this contract through the end of the ___ month (see Note (3) before the submission of proposed prices in the format of Table 15-2, FAR 15.408 (or in any other form on which the parties may agree), with sufficient supporting data to disclose unit costs and cost trends for --

(A) Supplies ordered and services performed; and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary).

(2) The Contractor shall also submit, to the extent that it becomes available before negotiations on redetermined prices are concluded –

(i) Supplemental statements of costs incurred after the date stated in subdivision (d)(1)(ii) of this section for --

(A) Supplies ordered and services performed; and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary); and

(C) Any other relevant data that the Contracting Officer may reasonably require.

(3) If the Contractor fails to submit the data required by subparagraphs (d)(1) and (2) of this section, within the time specified, the Contracting Officer may suspend payments under this contract until the data are furnished. If it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the data submittal period, the amount of the excess shall bear interest, computed from the date the data were due to the date of repayment, at the rate established in accordance with the Interest clause.

(e) Price redetermination. Upon the Contracting Officer's receipt of the data required by paragraph (d) of this section, the Contracting Officer and the Contractor shall promptly negotiate to redetermine fair and reasonable prices for supplies that may be ordered or services that may be performed in the period following the effective date of price redetermination.

(f) Contract modifications. Each negotiated redetermination of prices shall be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer, stating the redetermined prices that apply during the redetermination period.

(g) Adjusting billing prices. Pending execution of the contract modification (see paragraph (f) of this section), the Contractor shall submit invoices or vouchers in accordance with the billing prices stated in this contract. If at any time it appears that the then-current billing prices will be substantially greater than the estimated final prices, or if the Contractor submits data showing that the redetermined price will be substantially greater than the current billing prices, the parties shall negotiate an appropriate decrease or

increase in billing prices. Any billing price adjustment shall be reflected in a contract modification and shall not affect the redetermination of prices under this clause. After the contract modification for price redetermination is executed, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the agreed-upon prices, and any requested additional payments, refunds, or credits shall be made promptly.

(h) Quarterly limitation on payments statement. This paragraph (h) applies only during periods for which firm prices have not been established.

(1) Within 45 days after the end of the quarter of the Contractor's fiscal year in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and for each quarter thereafter, the Contractor shall submit to the contract administration office (with a copy to the contracting office and the cognizant contract auditor) a statement, cumulative from the beginning of the contract, showing --

(i) The total contract price of all supplies or services ordered and accepted by the Government and for which final prices have been established;

(ii) The total costs (estimated to the extent necessary) reasonably incurred for, and properly allocable solely to, the supplies or services ordered and accepted by the Government and for which final prices have not been established;

(iii) The portion of the total interim profit (used in establishing the initial contract price or agreed to for the purpose of this paragraph (h)) that is in direct proportion to the supplies or services ordered and accepted by the Government and for which final prices have not been established; and

(iv) The total amount of all invoices or vouchers for supplies or services ordered and accepted by the Government (including amounts applied or to be applied to liquidate progress payments).

(2) The statement required by subparagraph (h)(1) of this section need not be submitted for any quarter for which either no costs are to be reported under subdivision (h)(1)(ii) of this section, or revised billing prices have been established in accordance with paragraph (g) of this section, and do not exceed the existing contract price, the Contractor's price-redetermination proposal, or a price based on the most recent quarterly statement, whichever is least.

(3) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount under subdivision (h)(1)(iv) of this section exceeds the sum due the Contractor, as computed in accordance with subdivisions (h)(1)(i), (ii), and (iii) of this section, the Contractor shall immediately refund or credit to the Government the amount of this excess. The Contractor may, when appropriate, reduce this refund or credit by the amount of any applicable tax credits due the Contractor under 26 U.S.C.1481 and by the amount of previous refunds or credits affected under this clause. If any portion of the excess has been applied to the liquidation of progress payments, then that portion may, instead of being refunded, be added to the unliquidated progress payment account, consistent with the Progress Payments clause. The Contractor shall provide complete details to support any claimed reductions in refunds.

(4) If the Contractor fails to submit the quarterly statement within 45 days after the end of each quarter and it is later determined that the Government has overpaid the Contractor, the Contractor shall

repay the excess to the Government immediately. Unless repaid within 30 days after the end of the statement submittal period, the amount of the excess shall bear interest, computed from the date the quarterly statement was due to the date of repayment, at the rate established in accordance with the Interest clause.

(i) Subcontracts. No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis.

(j) Disagreements. If the Contractor and the Contracting Officer fail to agree upon redetermined prices for any price redetermination period within 60 days (or within such other period as the parties agree) after the date on which the data required by paragraph (d) of this section are to be submitted, the Contracting Officer shall promptly issue a decision in accordance with the Disputes clause. For the purpose of paragraphs (f), (g), and (h) of this section, and pending final settlement of the disagreement on appeal, by failure to appeal, or by agreement, this decision shall be treated as an executed contract modification. Pending final settlement, price redetermination for subsequent periods, if any, shall continue to be negotiated as provided in this clause.

(k) Termination. If this contract is terminated, prices shall continue to be established in accordance with this clause for

(1) completed supplies and services accepted by the Government and

(2) those supplies and services not terminated under a partial termination. All other elements of the termination shall be resolved in accordance with other applicable clauses of this contract.

(End of Clause)

Notes:

(1) Express in terms of units ordered, or as a date; but in either case the period should end on the last day of a month.

(2) Insert the numbers of days chosen so that the Contractor's submission will be late enough to reflect recent cost experience (taking into account the Contractor's accounting system), but early enough to permit review, audit (if necessary), and negotiation before the start of the prospective period.

(3) Insert "first," except that "second" may be inserted if necessary to achieve compatibility with the Contractor's accounting system.

**52.216-9039 Economic Price Adjustment – Standard Supplies - DEVIATION.**
As prescribed in 16.203-4(a)(1)(S-91), insert the following

ECONOMIC PRICE ADJUSTMENT – STANDARD SUPPLIES – DEVIATION (JAN 2009)

(a) The Contractor warrants that the unit price stated in the schedule for _____ [offeror insert schedule line item number] is not in excess of the Contractor's applicable established price in effect on the contract date for like quantities of the same item. The term "unit price" excludes any part of the price

directly resulting from requirements for preservation, packaging, or packing beyond standard commercial practice. The term "established price" means a price that --

(1) Is an established catalog or market price for a commercial item sold in substantial quantities to the general public; and

(2) Is the net price after applying any standard trade discounts offered by the Contractor.

(b) The Contractor shall promptly notify the Contracting Officer of the amount and effective date of each decrease in any applicable established price. Each corresponding contract unit price shall be decreased by the same percentage that the established price is decreased. The decrease shall apply to those items ordered on and after the effective date of the decrease in the Contractor's established price, and this contract shall be modified accordingly.

(c) If the Contractor's applicable established price is increased after the contract date, the corresponding contract unit price shall be increased, upon the Contractor's written request to the Contracting Officer, by the same percentage that the established price is increased, and the contract shall be modified accordingly, subject to the following limitations:

(1) The aggregate of the increases in any contract unit price under this clause shall not exceed 10 percent of the contract unit price [at the outset of each performance/ordering period].

(2) The increased contract unit price shall be effective --

(i) On the effective date of the increase in the applicable established price if the Contracting Officer receives the Contractor's written request within 10 days thereafter; or

(ii) If the written request is received later, on the date the Contracting Officer receives the request.

(3) The increased contract unit price shall not apply to quantities [ordered] under the contract before the effective date of the increased contract unit price.

(4) No modification increasing a contract unit price shall be executed under this paragraph (c) until the Contracting Officer verifies the increase in the applicable established price.

(5) Within 30 days after receipt of the Contractor's written request, the Contracting Officer may cancel, without liability to either party, any undelivered portion of the contract items affected by the requested increase.

(d) During the time allowed for the cancellation provided for in subparagraph (c)(5) of this clause, and thereafter if there is no cancellation, the Contractor shall continue deliveries according to the contract delivery schedule, and the Government shall pay for such deliveries at the contract unit price, increased to the extent provided by paragraph (c) of this clause.

(End of Clause)

**52.216-9040 Economic Price Adjustment – Established Catalog Price Two Upward Adjustments Per Year Open Season E-CAT Solicitation.**
As prescribed in 16.203-4(a)(2)(90)(i), 16.203-4(a)(2)(96)(ii), and 16.203-4(a)(2)(97)(iii), insert the following clause:

ECONOMIC PRICE ADJUSTMENT – ESTABLISHED CATALOG PRICE TWO UPWARD ADJUSTMENTS PER YEAR OPEN SEASON E-CAT SOLICITATION (MAR 2016)

(a) All price adjustments authorized or mandated by this clause are based upon changes in the Contractor's list prices and certain Federal Supply Schedule (FSS) unit prices. The clause also provides for voluntary price reductions (VPR) in the form of "specials" or "discounts".

(b) Definitions:

(1) Contract unit price: The price per unit of issue comprised of the "list price" and the applicable "discount". The contract unit price is determined by reducing the applicable list price by the appropriate discount. Proposed revised prices are loaded by the Contractor into an E-CAT file and are forwarded electronically to the Government. The Contractor shall also separately submit (in Excel spreadsheet or ACCESS database format) the additional information as required in paragraphs (g) and (h) below in order for the Government to review and evaluate these proposed price changes. Upon the Government's determination that the offered unit prices are acceptable/fair and reasonable, the Government shall release them into the contract electronic catalog residing in the E-CAT system. (Contract unit prices, list prices, and discounts under this contract are not visible in the E-CAT System to the Contractor or any customer. The prices visible in the E-CAT system to the Contractor or any customer are the delivered unit prices which are the contract unit prices plus the DLA Troop Support administrative fee percentage (in effect at that time) charged customers ordering under this contract.)

(2) Discount: The percentage reduction off the list price proposed by the Contractor, accepted by the Government, and maintained in the contract file (not the E-CAT System) by the Government. These percentages may vary per item and quantity ordered. They shall be agreed to at time of award and may not be reduced for the life of the contract. These discounts are in addition to any standard trade discounts in the Contractor's established commercial catalog/price list. (Contractors may offer larger discounts and/or reduced list prices at any time.)

(3) List price: The established catalog unit prices of the items. In order for a "list price" to meet the criteria as an established catalog price, it must meet the definition in (c)(1) below.

(4) Voluntary price reduction (VPR): See paragraph (l).

(c) Established catalog unit price.

(1) The term "established catalog unit price", as used in this clause, means a unit price that (i) is a catalog price for a commercial item sold in substantial quantities to the general public and (ii) is the net price after applying any standard trade discounts offered by the Contractor.

(2) Unless otherwise specified, all reference to the terms "FSS unit price"(s) or "FSS price(s)" as used in this clause, shall be the prices appearing in the Contractor's current Federal Supply Schedule for the same items under this contract.

(d) The offeror/Contractor warrants that (1) the list prices and the subsequent revisions thereto are the established catalog unit prices in effect at time of award or adjustment for like quantities of the same items and (2) any contract unit prices determined using these list prices do not include allowances for any portion of the contingency covered by this clause. The offeror/Contractor also warrants that any contract unit prices determined using FSS unit prices do not include allowances for any portion of the contingency covered by this clause.

(e) Prior to award, the Contractor must furnish:

(1) their current established catalog/price list, offered discounts, proposed contract unit prices; and

(2) a copy of their current FSS's, FSS unit prices, and the FSS contract expiration dates applicable to items offered as well as any other information required by the Contracting Officer.

(f) Upon acceptance by the Government, the award unit prices will be established at the list prices minus the offered discounts provided the resulting contract unit prices do not exceed the current FSS unit price for the same item. Accordingly, offers are cautioned to propose discounts which, when applied to the list prices, will not exceed FSS unit prices.

(g) Downward adjustments.

(1) Downward adjustments to contract unit prices are mandated whenever there are decreases in either 1) list prices or 2) FSS unit prices when the reduction results in a revised FSS Price which is now lower than the current contract unit price. The Contractor shall promptly notify the Contracting Officer in writing of the amount and effective date of each decrease in list price and any FSS unit price reduction which results in an FSS unit price which is now lower than the current contract unit price. If the offered price decrease is based upon a reduction in list price or FSS price, the Contractor shall propose a lower contract unit price taking into consideration the benchmarks in paragraphs (g)(2) and (3) below.

The Contractor must furnish a copy of the revised catalog/price list or FSS unit price as soon as it is available. Also, for reductions in list prices, the Contractor must provide a copy of the "E-CAT file" at least 60 days, unless otherwise specified in the contract, prior to the date when the reduced list prices take effect. For reductions in FSS, the Contractor shall provide a copy of the E-CAT file at least 30 days, unless otherwise specified in the contract, prior to the date the reduced FSS unit price takes effect.

In addition to the "E-CAT file" and any other information required by the Contracting Officer, the Contractor shall also separately furnish, within the appropriate timeframe above (i.e., at least 60 days, unless otherwise specified in the contract, for a reduction in list price; at least 30 days, unless otherwise specified in the contract, for a reduction in FSS), an Excel spreadsheet or ACCESS database (in both hard copy and disc) that displays for each item with an offered decrease in contract unit price the appropriate information below:

(i) For list price or FSS changes: The item number; e.g., 0001AA.

(ii) For list price or FSS changes: The supplier (catalog); e.g., ABC Imaging, Inc.

(iii) For list price or FSS changes: The product name/nomenclature; e.g., high speed handpiece.

(iv) For list price or FSS changes: part number; HIH 2000

(v) For list price or FSS changes: The list price upon which the current contract unit price is based.

(vi) For list price or FSS changes: The applicable contract discount used as a basis for determining the current contract unit price.

(vii) For list price or FSS changes: The contract unit price currently in effect.

(viii) For list price changes: The reduced list price.

(ix) For list price or FSS changes: The applicable contract discount or larger contract discount now offered.

(x) For list price or FSS changes: The reduced contract unit price now offered.

(xi) For list price changes: The percentage decrease in list price from the list price which determined the current contract unit price to the new, lower list price.

(xii) For list price changes: The percentage change in contract unit price from the current contract unit price to the new lower contract unit price now offered.

(xiii) For FSS changes: The current FSS unit price which is about to expire and the new reduced FSS unit price which will replace it and triggered this contract unit price reduction.

(xiv) For list price changes: For any items offered to the Department of Veterans Affairs (DVA) under the FSS, the current FSS unit price(s) for the same item.

(2) Reductions in list price(s). if the offered price decrease is based upon a reduction in the list price, the appropriate discount or larger discount now offered will be applied to each reduced list price to determine the adjusted contract unit price provided the proposed lower contract unit price does not exceed the lower of the following two benchmarks:

(i) The offered reduction in contract unit price on a percentage basis must be at least equal to the percentage reduction from the list price currently in effect under the contract to the new lower list price; i.e., the current contract unit price must, as a minimum, be reduced by the percentage decrease in list price.

(ii) The new proposed lower contract unit price shall not exceed the current FSS unit price for the same item.

(3) FSS price reductions. If the offered price decrease is based upon a reduction in the FSS price, the proposed lower contract unit price shall not exceed the following benchmark: The new proposed lower contract unit price shall not exceed the revised lower FSS price for the same item.

(4) If the proposed contract unit price exceeds the lower of the appropriate list price benchmarks (for reductions based upon reduced list prices) or the FSS price benchmark (for reductions based upon reduced FSS prices), the Contracting Officer shall determine the proposed price reductions unreasonable and negotiate a price reduction which results in a contract unit price that does not exceed the appropriate benchmarks.

(i) All negotiated price reductions shall be confirmed in writing and will include the agreed-to price(s) and the list or FSS price(s) and discount(s) which make up these prices.)

(ii) If an agreement cannot be reached the Contracting Officer has the option of removing these items from the E-CAT system or taking the action in the last sentence below. If the proposed contract unit price does not exceed the lowest of the appropriate list price or FSS price benchmarks, it will be determined fair and reasonable.

(iii) Upon acceptance of any proposed price decreases, the Government shall modify the contract electronic catalog residing in the E-CAT System to include the reduced Contract unit prices. These reduced Contract unit prices shall apply to those items ordered on or after the date when these prices appear in the contract electronic catalog residing in the E-CAT system. (Revisions will not be added to the electronic catalog prior to date they take effect).

(iv) If the Contractor fails to notify the Contracting Officer of any list price or FSS price decreases within the timeframe and in the manner stated above or agreement on any reduction cannot be reached, the Contracting Officer may determine the applicable adjustment and authorize a unilateral price adjustment retroactively applied to all items ordered on or after the effective date of the decrease in the Contractor's established list or FSS prices.

(h) Upward Adjustments.

(1) The Contractor is authorized to submit a maximum of two requests for upward adjustment for each contract year. Each request for upward price adjustment must be based upon increases in list prices only. They may be submitted from, for the first contract year, 30 days after award to sixty days prior to the end of that year and, for each subsequent contract year, from 30 days after the anniversary date of the contract award to 60 days prior to the end of each contract year. The Contractor shall propose a contract unit price taking into consideration the benchmarks in paragraph (g)(2). The request shall include a copy of the revised catalog/price list, the "E-CAT file" and the following for each item with a proposed increase in contract unit price:

(i) A separate Excel spreadsheet or ACCESS database, in both hard copy and disc, that displays for each item with a proposed price increase the following information:

(A) The item number; e.g., 0003.

(B) The supplier(catalog); e.g., ABC Dental, Inc.

(C) The product name/nomenclature; e.g., high speed handpiece.

(D) The part number; e.g., HIH2000.

(E) For the initial year, the list price that determined the award unit price, the applicable contract discount, and the award unit price. For all subsequent contract years, the list price that determined the highest contract unit price that was in effect at any time during the preceding contract year, the applicable discount, and the highest contract unit price that was in effect during the preceding contract year.

(F) The increased list price and its effective date, the applicable contract discount or larger contract discount now offered, and the proposed higher contract unit price.

(G) For the initial year, the percentage change from the list price that determined the award unit price to the new higher list price. For all subsequent contract years, the percentage change from the list price that determined the highest contract unit price that was in effect at any time during the preceding contract year to the new higher list price.

(H) For the initial year, the percentage change from the award unit price to the new higher proposed contract unit price. for all subsequent contract years, the percentage change from the highest contract unit price that was in effect at any time during the preceding contract year to the new higher proposed contract unit price.

(I) For any items offered to the Department of Veterans Affairs (DVA) under the FSS, the current FSS unit price(s) for the same item.

(J) Any other information required by the Contracting Officer.

(2) Benchmarks. If any list price increases, and the increase is authorized under this clause, the Contract unit prices for any corresponding items ordered after the increase takes effect in the E-CAT system shall be determined using the increased list price and either the applicable discount originally awarded or any larger discount now offered that applies to the affected item. Proposed increases will be considered fair and reasonable if they do not exceed whichever is the lowest of the following three benchmarks:

(i) For the initial year of the contract, the proposed increase in contract unit price on a percentage basis cannot exceed the percentage increase from the list price that determined the award unit price to the new higher list price. For all subsequent contract years, the proposed increase in contract unit price on a percentage basis cannot exceed the percentage increase from the list price that determined the highest contract unit price that was in effect at any time during the preceding contract year to the new higher list price.

(ii) Any proposed higher contract unit price shall not exceed the current FSS unit price for the same item.

(iii) Any proposed higher contract unit prices are subject to the following limitations:

(A) For the initial contract year, contract unit price increases shall be limited to the following annual ceiling(s) applied to the award unit price for the same item (i.e., any proposed higher contract unit price cannot exceed the award unit price plus the annual ceiling).

(B) For all subsequent contract years, contract unit price increases shall be limited to the following annual ceiling(s) applied to the highest contract unit price in effect during the preceding contract year for the same item (i.e., any proposed higher contract unit price cannot exceed the highest contract unit price in effect during the preceding contract year plus the annual ceiling.)

Annual ceiling, all items: 10%

There is no percentage limit on downward adjustments under this clause.

(3) Upon approval of the proposed price increases, the Government shall modify the contract electronic catalog residing in the E-CAT System to include the increased contract unit prices. Upward price adjustments shall be effective once they appear in the contract electronic catalog residing in the E-CAT system. These updates will take place within 60 days after receipt of the Contractor's request for upward price adjustment (or at the same time the increased list price takes effect, whichever is later) unless the Contracting Officer is unable to determine during that period that a price increase on any item or items is fair and reasonable (i.e., the proposed contract unit price exceeds the lowest of the three benchmarks above).

(i) In this case, no price increases will be authorized for those items until the Contracting Officer is able to determine the price increases for those items to be fair and reasonable. If necessary, the Contracting Officer shall conduct discussions with the Contractor to negotiate a price reduction which results in a contract unit price that does not exceed the lowest of the three benchmarks. When discussions have concluded and an agreement which results in fair and reasonable prices is reached, the Contractor shall confirm the agreed-to price(s) in writing and forward an E-CAT file which includes the agreed-to price(s). (The agreement shall also identify the list price and discount which makes up each agreed-to price.) Once the written agreement is received, the Government shall modify the contract electronic catalog residing in the E-CAT system to include the increased contract unit prices.

(ii) If the Contracting Officer and the Contractor are unable to agree upon the price for any items, the Contracting Officer will delete these items from the catalog in the E-CAT System. (This procedure applies to only those items whose prices the Contracting Officer is unable to determine fair and reasonable within the 60-day period the Government has to evaluate prices and update the E-CAT System. The remainder of the items whose price increases are determined fair and reasonable, shall be entered into the E-CAT system within the prescribed period.) In addition, the Contracting Officer may also, at any time, remove any item from the catalog in the E-CAT System that the Contracting Officer believes is no longer reasonably priced (if the Contracting Officer and the Contractor are unable to agree upon a reduced price) and notify customers accordingly.

(4) Isolated incidents may occur for an item or group of items when proposed increases could exceed the annual ceiling benchmark in paragraph (h)(2)(iii). In such cases the Contractor can submit an adequately justified written request for Contracting Officer approval of an increase in contract unit price that exceeds the ceiling. The Contracting Officer may approve the request on a one-time basis, increase the ceiling for the item or group of items if appropriate, negotiate a lower contract unit price, or delete the item(s) from the contract electronic catalog residing in the E-CAT system. In no case may the increase in Contract Unit Price exceed the ceiling without written authorization from the Contracting Officer. Also, no increase will be authorized that results in a contract unit price that exceeds the other benchmarks.

(5) Any increased list prices shall not be used to compute contract unit prices for delivery orders issued before the date the adjusted contract unit prices take effect under the contract (i.e., the date they appear in the contract electronic catalog residing in the E-CAT system).

(6) If the Contracting Officer removes items from the E-CAT system for price unreasonableness (see (g)(4) and (h)(3)and (4) above), all outstanding orders issued prior to the date the items are removed shall be delivered in accordance with the contract delivery schedule and the Government shall pay for such items at the contract unit price in effect at the time of the order.

(i) If the Contracting Officer at any time has any reason to believe that the established list price has been discontinued, the basis for the list price has been substantially altered, or that the item no longer meets the criteria to qualify as an established catalog priced item, the Contractor shall furnish relevant information as required by the Contracting Officer. If the Contracting Officer determines that any of the preceding conditions are present and a substitute for determining price adjustments is needed, the parties shall promptly agree upon an appropriate substitute for determining adjustments pursuant to this clause. The Contract shall be modified to incorporate the substitute and its effective date.

(j) Pricing actions pursuant to paragraph (c) entitled "Changes" of Federal Acquisition Regulation (FAR) clause 52.212-4 (including any revisions by addendum thereto) or any other provision of this Contract will be priced as though there were no provisions for Economic Price Adjustment.

(k) Pending approval of any proposed price changes and revision of the contract unit prices in the contract electronic catalog residing in the E-CAT System, payment shall be made at the contract unit prices in effect at the time of order.

(l) Voluntary price reductions (VPR):

(1) A "special or discount" offered by the Contractor which results in a voluntary price reduction for an item or group of items for a given period of time. The Contractor may offer a VPR at any time. The price reductions resulting from these VPRs will be in addition to any price reductions mandated by this EPA clause. The Contractor shall notify the Contracting Officer when the VPR takes effect, which items are items included, and the length of time the VPR will remain in effect. Once the "special or discount" period expires, prices will revert to the contract unit price(s) in effect at that time.

(2) If a list price (or FSS Unit Price) decreases when a VPR is in effect, the VPR will remain in effect until it expires if it is lower than the proposed unit price decrease. If the Contractor requests a contract unit price increase based upon an increased list price when a VPR is in effect, the VPR shall remain in effect until it expires. Upon expiration of the VPR, prices will revert to the adjusted contract unit prices, as calculated in accordance with this clause as if no VPR had been in effect.

(End of Clause)

**52.216-9041 Economic Price Adjustment – Federal Supply Schedule Prices – Open Season E-CAT Solicitation.**
As prescribed in 16.203-4(a)(2)(91)(i), 16.203-4(a)(2)(94)(ii), and 16.203-4(a)(2)(95)(iii), insert the following clause:

ECONOMIC PRICE ADJUSTMENT – FEDERAL SUPPLY SCHEDULE PRICES - OPEN SEASON E-CAT SOLICITATION (MAR 2016)

(a) This clause applies to any items under this contract where the offeror has proposed the same (or discounted) prices as their current Federal Supply Schedule (FSS) prices and the Contracting Officer has accepted this pricing methodology. During the life of this contract, the Contracting Officer and the Contractor may agree in writing to also apply this clause to any other items that previously were not, but subsequently become, available under both this contract and any concurrent FSS contract(s).

(b) Definitions:

(1) FSS Price(s): "FSS Prices" or "FSS Unit Prices" refer to the unit prices for specific commercial items the Contractor and the Department of Veterans Affairs (DVA) have agreed to and are included in one or more current Federal Supply Schedule Contracts. All references to "FSS prices" or "FSS unit prices" shall be the prices appearing on the current Federal Supply Schedule for the same items under this contract.

(2) Discount: The percentage reduction off the FSS unit price proposed by the Contractor, accepted by the Government, and maintained in the contract file (not the E-CAT System) by the Government. These percentages may vary per item and quantity ordered. They shall be agreed to at time of award and may not be reduced for the life of the contract. (Contractors may offer larger discounts and/or reduced contract unit prices at any time.)

(3) Contract unit price: The price per unit of issue comprised of the FSS unit price and the applicable "discount". The contract unit price is determined by reducing the FSS unit price by the appropriate discount. Proposed revised prices are loaded by the Contractor into an E-CAT file and are forwarded electronically to the Government. The Contactor shall also separately submit (in Excel spreadsheet or ACCESS database format) the additional information as required in paragraphs (e) and (f) below in order for the Government to review and evaluate these proposed price changes. Upon the Government's determination that the offered prices are acceptable/fair and reasonable, the Government shall release them into the contract electronic catalog residing in the E-CAT System. (Contract unit prices, FSS unit prices and discounts under this contract are not visible in the E-CAT System to the Contractor or any customer. The prices visible in the E-CAT System to the Contractor or any customer are the delivered unit prices, which are the contract unit prices plus the DLA Troop Support administrative fee percentage (in effect at that time) charged customers ordering under this contract.)

(4) Voluntary price reduction (VPR): See paragraph (k).

(c) The offeror/Contractor warrants that (1) the FSS unit prices and the subsequent revisions thereto are the FSS unit prices in effect at time of award or adjustment for like quantities of the same items and (2) any contract unit prices determined using these FSS unit prices do not include allowances for any portion of the contingency covered by this clause.

(d) Prior to award, the Contractor must furnish a copy of their current FSSs, FSS unit prices and the FSS contract expiration date for each item. The Contractor shall also furnish its offered discounts and proposed contract unit prices. at the option of the Contracting Officer, the Contractor shall also furnish the documentation set forth in paragraphs (f)(1)(i)(I) and (f)(1)(ii) below. Upon acceptance by the Government, the award unit prices shall be established at the FSS unit prices minus the offered discounts.

(e) Downward adjustments.

(1) Downward adjustments to contract unit prices are mandated whenever there are decreases in FSS unit prices. The Contractor shall promptly notify the Contracting Officer in writing of the amount and effective date of each decrease in FSS unit price. The Contractor shall propose a lower contract unit price taking into consideration the benchmark in paragraph (e)(2) below. The Contractor must furnish a copy of the revised FSS contract and FSS unit prices as soon as they are available. Also, the Contractor must provide a copy of the "E-CAT file" at least 30 days, unless otherwise specified in the contract, prior to the date when the reduced FSS unit price takes effect. Finally, the Contractor shall also furnish, within the timeframe above, a separate Excel spreadsheet or ACCESS database (in both hard copy and disc) that displays for each item with an offered decrease in contract unit price the following information:

(i) The item number; e.g., 0003.

(ii) The supplier; for example, ABC Dental, Incorporated.

(iii) The product name/nomenclature; e.g., high speed handpiece.

(iv) The part number; for example, HPH2000.

(v) The applicable contract discount used as a basis for determining the current contract unit price.

(vi) The FSS unit price upon which the current contract unit price is based.

(vii) The contract unit price currently in effect.

(viii) The applicable contract discount or larger contract discount now offered.

(ix) The reduced FSS unit price.

(x) The reduced contract unit price now offered.

(xi) The percentage decrease in FSS unit price from the FSS unit price that determined the current contract unit price to the new, lower FSS unit price.

(xii) The percentage decrease in contract unit price from the current contract unit price to the new lower contract unit price now offered.

(2) Benchmark for FSS price reductions.

The appropriate contract discount or larger discount now offered will be applied to each reduced FSS unit price to determine the adjusted contract unit price provided the adjusted contract unit price does not exceed the following benchmark:

The offered reduction in contract unit price on a percentage basis must be at least equal to the percentage reduction from the FSS unit price that determined the current contract unit price to the new lower FSS

unit price, i.e., the current contract unit price must, as a minimum, be reduced by the percentage decrease in the FSS unit price.

(3) If the proposed contract unit price exceeds the benchmark above, the Contracting Officer shall determine the proposed price reductions unreasonable. The Contracting Officer and Contractor shall negotiate a reduction in the proposed contract unit price to an amount that does not exceed the benchmark above. (All negotiated price reductions shall be confirmed in writing and will include the agreed-to price(s) and the FSS prices and discount(s) which make up these prices.)

(i) If an agreement cannot be reached, the Contracting Officer has the option of removing these items from the E-CAT system or taking the action in the last sentence below. If the proposed contract unit price does not exceed the benchmark above, it will be determined fair and reasonable.

(ii) Upon acceptance of any proposed price decreases, the Government shall modify the contract electronic catalog residing in the E-CAT system to include the reduced prices. These reduced contract unit prices shall apply to those items ordered on or after the date when these lower prices appear in the contract electronic catalog residing in the E-CAT system. (Revisions will not be added to the electronic catalog prior to date they take effect.)

(iii) If the Contractor fails to notify the Contracting Officer of any FSS unit price decreases within the timeframe and in the manner stated above or agreement on any reduction cannot be reached, the Contracting Officer may determine the applicable adjustment and authorize a unilateral price adjustment retroactively applied to all items ordered on or after the date the new FSS unit price takes effect.

(f) Upward adjustments.

(1) Upward adjustments may be requested at any time. The requested upward price adjustments must be based upon increases in the Contractor's FSS unit prices. The request shall include a copy of the revised FSS unit prices, the "E-CAT file", and the following for each item with a proposed increase in contract unit price:

(i) A separate Excel spreadsheet or ACCESS database, in both hard copy and disc, that displays for each item with a proposed price increase the following information:

(A) The item number; e.g., 0003.

(B) The supplier; e.g., ABC Dental, Inc.

(C) The product name/nomenclature; e.g., high speed handpiece.

(D) The part number; e.g., HPH2000.

(E) For the initial year, the FSS unit price that determined the award unit price, the applicable contract discount, and the award unit price. For all subsequent contract years, the FSS unit price that determined the highest contract unit price that was in effect at any time during the preceding contract year, the applicable discount, and the highest contract unit price that was in effect during the preceding contract year.

(F) The increased FSS unit price, the applicable contract discount or larger contract discount now offered, and the proposed higher contract unit price.

(G) For the initial year, the percentage change from the FSS unit price that determined the award unit price to the new higher FSS unit price. For all subsequent contract years, the percentage change from the FSS unit price that determined the highest contract unit price that was in effect at any time during the preceding contract year to the new higher FSS unit price.

(H) For the initial year, the percentage change from the award unit price to the new higher proposed contract unit price. For all subsequent contract years, the percentage change from the highest contract unit price that was in effect at any time during the preceding contract year to the new higher proposed contract unit price.

(I) For any items offered to the Department of Veterans Affairs and the General Services Administration at other than Federal Supply Schedule (FSS) prices, the non-FSS prices/discounts (if different than the reported FSS unit prices/discounts) offered to those agencies.

(ii) Any other applicable supporting data requested by the Contracting Officer.

(2) Benchmarks for FSS price increases: If any FSS unit price increases, and the increase is authorized under this clause, the contract unit prices for any corresponding items shall be determined using the increased FSS unit price(s) and either the applicable discount(s) originally awarded or any larger discount(s) now offered. These increased contract unit prices shall apply to all orders issued on or after the date these revised unit prices appear in the electronic catalog residing in the E-CAT system. Proposed increases will be considered fair and reasonable if they do not exceed whichever is the lower of the following two benchmarks:

(i) For the initial year of the contract, any proposed increase in contract unit price on a percentage basis cannot exceed the percentage increase from the FSS unit price that determined the award unit price to the new higher FSS unit price. For all subsequent contract years, any proposed increase in contract unit price on a percentage basis cannot exceed the percentage increase from the FSS unit price that determined the highest contract unit price that was in effect at any time during the preceding contract year to the new higher FSS unit price.

(ii) Any proposed higher contract unit prices are subject to the following limitations:

(A) For the initial contract year, contract unit price increases shall be limited to the following annual ceiling(s) applied to the award unit price for the same item (i.e., any proposed higher contract unit price cannot exceed the award unit price plus the annual ceiling).

(B) For all subsequent contract years, contract unit price increases shall be limited to the following annual ceiling(s) applied to the highest contract unit price in effect during the preceding contract year for the same item (i.e., any proposed higher contract unit price cannot exceed the highest contract unit price in effect during the preceding contract year plus the annual ceiling.)

Annual ceiling, all items: 10%

There is no percentage limit on downward adjustments under this clause.

(3) Upon approval of the proposed price increases, the Government shall modify the contract electronic catalog residing in the E-CAT System to include the increased contract unit prices. Upward price adjustments shall be effective once they appear in the contract electronic catalog residing in the E-CAT system.

(i) These updates will take place within 60 days after receipt of the Contractor's request for upward price adjustment (or at the same time the increased FSS price takes effect, whichever is later) unless the Contracting Officer is unable to determine during that period that a price increase on any item or items is fair and reasonable (i.e., the proposed contract unit price exceeds the lower of the two benchmarks above). In this case, no price increases will be authorized for those items until the Contracting Officer is able to determine the price increases for those items to be fair and reasonable.

(ii) If necessary, the Contracting Officer shall conduct discussions with the Contractor to reduce the proposed contract unit price to an amount which does not exceed the lower of the two benchmarks and reach an agreement on fair and reasonable prices.

(iii) When discussions have concluded, the Contractor shall confirm the agreed-to price(s) in writing and forward an E-CAT file which includes the agreed-to price(s). (The agreement shall also identify the FSS price and discount which makes up each agreed-to price.) Once the written agreement is received, the Government shall modify the contract electronic catalog residing in the E-CAT System to include the increased contract unit prices. If the Contracting Officer and the Contractor are unable to agree upon the price for any items, the Contracting Officer will delete these items from the catalog in the E-CAT System.

(iv) This procedure applies to only those items whose prices the Contracting Officer is unable to determine fair and reasonable within the 60-day period the Government has to evaluate prices and update the E-CAT System. The remainder of the items whose price increases are determined fair and reasonable, shall be entered into the E-CAT system within the prescribed period.

(v) In addition, the Contracting Officer may also, at any time, remove any item from the catalog in the E-CAT System that the Contracting Officer believes is no longer reasonably priced (if the Contracting Officer and the Contractor are unable to agree upon a reduced price) and notify customers accordingly.

(4) Isolated incidents may occur for an item or group of items when proposed increases could exceed the annual ceiling benchmark in paragraph (f)(2)(ii). In such cases the Contractor can submit an adequately justified written request for Contracting Officer approval of an increase in contract unit price that exceeds the ceiling. The Contracting Officer may approve the request on a one-time basis, increase the ceiling for the item or group of items if appropriate, negotiate a lower contract unit price, or delete the item from the contract electronic catalog residing in the E-CAT system. In no case may the increase in contract unit price exceed the ceiling without written authorization from the Contracting Officer. Also, no increase will be authorized that results in a contract unit price that exceeds the other benchmark.

(5) Any increased FSS unit prices shall not be used to compute contract unit prices for delivery orders issued before the date the adjusted contract unit prices take effect under the contract (i.e., the date they appear in the contract electronic catalog residing in the E-CAT system).

(g) If the Contracting Officer removes items from the E-CAT system for price unreasonableness (see (e)(3), (f)(3) and (4) above), all outstanding orders issued prior to the date the items are removed shall be delivered in accordance with the contract delivery schedule and the Government shall pay for such items at the Contract Unit Price in effect at the time of the order.

(h) If the Contracting Officer at any time has any reason to believe that the FSS unit price has been discontinued, the Contractor shall furnish relevant information as required by the Contracting Officer. If the Contracting Officer determines that the FSS unit price has been discontinued, the parties shall promptly agree upon an appropriate substitute for determining adjustments pursuant to this or some other appropriate EPA clause. The Contract shall be modified to incorporate the substitute and its effective date.

(i) Pricing actions pursuant to paragraph (c) entitled "Changes" of Federal Acquisition Regulation (FAR) clause 52.212-4 (including any revisions by addendum thereto) or any other provision of this Contract will be priced as though there were no provisions for economic price adjustment.

(j) Pending approval of any proposed price changes and revision of the contract unit prices in the contract electronic catalog residing in the E-CAT System, payment shall be made at the contract unit prices in effect at the time of order.

(k) Voluntary price reductions (VPR):

(1) A "special or discount" offered by the Contractor which results in a voluntary price reduction for an item or group of items for a given period of time. The Contractor may offer a VPR at any time. The price reductions resulting from these VPRs will be in addition to any price reductions mandated by this EPA clause. The Contractor shall notify the Contracting Officer when the VPR takes effect, the applicable items included, and the length of time the VPR will remain in effect. Once the special or discount period expires, prices will revert to the contract unit prices in effect at that time.

(2) If an FSS unit price decreases when a VPR is in effect, the VPR will remain in effect until it expires if it is lower than the proposed unit price decrease. If the Contractor requests a contract unit price increase based upon an increased FSS unit price when a VPR is in effect, the VPR shall remain in effect until it expires. Upon expiration of the VPR, prices will revert to the adjusted contract unit prices, as calculated in accordance with this clause if no VPR had been in effect.

(End of Clause)

**52.216-9042 Economic Price Adjustment (EPA) – Department of Labor Bureau of Labor Statistics – Consumer Price Index.**
As prescribed in 16.203-4(d)(2)(90), insert the following clause:

ECONOMIC PRICE ADJUSTMENT (EPA) - DEPARTMENT OF LABOR BUREAU OF LABOR STATISTICS - CONSUMER PRICE INDEX(CPI) (NOV 2011)

(a) The Contractor warrants that the contract unit prices do not include allowances for any portion of the contingency covered by this clause.

(b) Consumer Price Indexes (CPIs) are published by the United States (U.S.) Department of Labor, Bureau of Labor Statistics. The CPI for the expenditure category "Prescription Drugs and Medical Supplies" or "Nonprescription Drugs and Medical Supplies" located in Table 3 under "Medical Care Commodities" will be the economic indicator used for calculating the proposed new unit price for any option period to be exercised by the Government. The CPI, as used in this clause, means the index, as published monthly, not seasonally adjusted, for all urban consumers (CPI-U), U.S. city average. The index for a given month is available approximately two weeks into the following month. The item(s) offered are:

Prescription ( ) Nonprescription ( ) (Offeror must check appropriate block)

(c) All references to the terms "federal supply schedule (FSS) unit price(s)" or "FSS Price(s)" used herein, means the prices appearing in the Contractor's current federal supply schedule for the same items under this contract.

(d) Price adjustments based upon CPI changes.

(1) Price adjustments (increases and decreases) based upon changes in the CPI indexes are authorized once for each option period provided the Government elects to exercise that option. Price increases must be requested by the Contractor. Any request for a price increase must be submitted to the Contracting Officer at least thirty days prior to the expiration of the current contract period in order for a price increase to take effect at the same time the upcoming option period takes effect (all indexes used to calculate the base and adjusting indexes should be available by this time). The request must include the calculations used to compute the proposed new unit price and a comparison of the appropriate benchmarks to the proposed new unit price. Price decreases are mandated by this clause. The Contractor shall notify the Contracting Officer of any price decreases in accordance with the same timeframe and provide the same information as required for increases above.

(2) Price Increases: If a request is not submitted within the required timeframe, increases will not take effect until 30 days after the request is received. If no request is received within 60 days after the New Option Period takes effect, the Contractor waives its right to a price increase for that Option Period. Price Decreases: If the Contractor fails to report any price decrease, the Contracting Officer will unilaterally establish a New Option Period Unit Price based upon the parameters for adjustment under this clause.

(e) Additional Price Adjustment(s). The Contractor is required to notify the Contracting Officer whenever there is a reduction in the Contractor's FSS unit price and/or the Federal ceiling price (FCP) at least 30 days prior to its taking effect for the same item(s) as under this contract when that reduction results in an FSS price and/or FCP that is now lower than the current contract unit price. This notification will trigger a price reduction in the current contract unit price to an amount equal to the lower FSS unit price and/or FCP. (For covered drugs where both the FSS and FCP have been reduced, the contract unit price shall be reduced to the lower of the two.)

(f) Calculation of the unit price (U/P) for the option periods based upon changes in the CPI.

(1) A "Base" and "Adjusting" index shall be established for each option period. (See paragraph (g) below).

(2) The unit price for the contract period about to expire will be increased or decreased based upon the percentage change from the base index to the applicable adjusting index using the formulas below.

First option period:

| | | | | |
|---|---|---|---|---|
| Proposed new U/P for First option period | = | Adjusting Index / Base Index | x | Current Contract U/P for the expiring Base Period |

Subsequent option periods:

| | | | | |
|---|---|---|---|---|
| Proposed new U/P for Upcoming Option Period | = | Adjusting Index / Base Index | x | Current Contract U/P for the expiring Option Period |

(3) The proposed new unit price will be used to price the upcoming option period provided it does not exceed the lowest of the applicable benchmarks. If it does exceed the lowest of the applicable benchmarks, however, the Contractor shall agree on a price reduction to an amount which is equal to or lower than the lowest of the applicable benchmarks. This reduced unit price will then be used to price the upcoming option period.

(g) Determining the "base" and "adjusting" indexes for price changes based upon the CPI. A base and adjusting index shall be established for each option period.

(1) For the first option period, the base index shall be the arithmetic average of the CPI indexes published for the month before and the actual month the award is made. The Adjusting Index shall be the arithmetic average of the CPI indexes published for the third and fourth month prior to the month the Base Period expires (e.g., if the Base Period expires in June, the Adjusting Index would be the average of the indexes published for February and March of the Base Period.)

(2) For subsequent option periods, the base index for any upcoming option period shall be the previously established adjusting index (e.g., the base index for the upcoming second option period shall be the adjusting index established for the first option period.) The adjusting index for any upcoming option period shall be the arithmetic average of the CPI Indexes published for the third and fourth months prior to the month the current option period expires (e.g., if the first option period expires in June, the adjusting index for the upcoming second option period would be the average of the indexes published for February and March of the first option period).

(h) Benchmarks for price changes based upon the CPI:

(1) Any proposed new unit price calculated as a result of using the formula in (f) above shall not exceed whichever is the lowest of the following applicable benchmarks:

(i) The maximum ceiling unit price calculated by escalating the expiring contract period unit price by 10% (e.g., the ceiling for the first option period unit price will be based on the base period unit price escalated by 10%; the ceiling for the third option period unit price will be based on the second option period unit price escalated by 10%.) (Applies to price increases only. There is no percentage limit on downward adjustments under this clause.);

(ii) The Contractor's current federal supply schedule price for the same item (applies to all adjustments where the Contractor has a concurrent FSS for the same item(s) as under this contract); and

(iii) The current Federal ceiling price for the same item (applies to covered drugs only).

(i) All price increases or decreases (including any decreases under paragraph (e) above) under this clause shall be effected through the issuance of a modification. The modification shall indicate the new unit price and the effective date of that price, which, in most cases, should be on the same date the option period takes effect. All delivery orders issued after the effective date shall be priced using the new unit price. The modification shall also include the Adjusting Index.

(j) Payment on each delivery order under this contract shall be at the contract unit price in effect at the time the order is issued.

(k) In the event publication of any CPI index used under this clause is discontinued or its method of calculation is altered substantially in that it fails to reflect market conditions, the Contracting Officer may modify the contract to specify use of an appropriate substitute index or alternate method for adjusting prices. The substitute index or alternate adjustment method will take effect on the date the original index begins to fail to reflect market conditions.

(l) Any pricing actions pursuant to paragraph (c) entitled "Changes" of Federal Acquisition Regulation (FAR) clause 52.212-4 (including any revisions by addendum thereto) or any other provisions of the contract shall be priced as though there were no provisions for economic price adjustment.

(m) Voluntary price reductions (VPR):

(1) A "special or discount" offered by the Contractor which results in a voluntary price reduction for an item or group of items for a given period of time. The Contractor may offer a VPR at any time. The price reductions resulting from these VPRs will be in addition to any price reductions mandated by this EPA clause. The Contractor shall notify the Contracting Officer when the VPR takes effect, the applicable items included, and the length of time the VPR will remain in effect. Once the "special or discount" period expires, prices will revert to the contract unit prices that would be in effect at that time.

(2) If any VPR is in effect when a price decrease is mandated under this clause, the VPR will remain in effect until it expires if it is lower than the price decrease. If the Contractor requests a price increase based upon an increase in the CPI indexes when a VPR is in effect, the VPR shall remain in effect until it expires. Upon expiration of the VPR, prices will revert to the adjusted contract unit prices, as calculated in accordance with this clause as if no VPR had been in effect.

(End of Clause)

**52.216-9043 Economic Price Adjustment – Federal Supply Schedule Prices.**
As prescribed in 16.203-4(a)(2)(92), insert the following clause:

ECONOMIC PRICE ADJUSTMENT – FEDERAL SUPPLY SCHEDULE PRICES (FSS) (NOV 2011)

(a) This clause applies to any items under this contract where the offeror has proposed the same (or discounted) prices as their current FSS prices and the Contracting Officer has accepted this pricing

methodology. During the life of this contract, the Contracting Officer and the Contractor may agree in writing to also apply this clause to any other items that previously were not, but subsequently become, available under both this contract and any concurrent FSS contract(s).

(b) Definitions:

(1) FSS Price(s): "FSS prices" or "FSS unit prices" refer to the unit prices for specific commercial items the Contractor and the Department of Veterans Affairs (DVA) have agreed to and are included in one or more current Federal Supply Schedule Contracts. All references to "FSS prices" or "FSS unit prices" shall be the prices appearing on the current Federal supply schedule for the same items under this contract.

(2) Discount: The percentage reduction off the FSS unit price proposed by the Contractor and accepted by the Government. These percentages may vary per item and quantity ordered. They shall be agreed to at time of award and may not be reduced for the life of the contract. (Contractors may offer larger discounts and/or reduced contract unit prices at any time.)

(3) Contract unit price: The price per unit of issue comprised of the FSS unit price and the applicable "discount". The contract unit price is determined by reducing the FSS unit price by the appropriate discount.

(4) Voluntary price reduction (VPR): See paragraph (k).

(c) The offeror/Contractor warrants that (1) the FSS unit prices and the subsequent revisions thereto are the FSS unit prices in effect at time of award or adjustment for like quantities of the same items and (2) any contract unit prices determined using these FSS unit prices do not include allowances for any portion of the contingency covered by this clause.

(d) Prior to award, the Contractor must furnish a copy of their current FSSs, FSS unit prices and the FSS contract expiration date for each item. The Contractor shall also furnish its offered discounts and proposed contract unit prices. At the option of the Contracting Officer, the Contractor shall also furnish the documentation set forth in paragraphs (f)(1)(i)(I) and (f)(1)(ii) below. Upon acceptance by the Government, the award unit prices shall be established at the FSS unit prices minus the offered discounts.

(e) Downward adjustments.

(1) Downward adjustments to contract unit prices are mandated whenever there are decreases in FSS unit prices. The Contractor shall promptly notify the Contracting Officer in writing of the amount and effective date of each decrease in FSS Unit Price. The Contractor shall propose a lower contract unit price taking into consideration the benchmark in paragraph (e)(2) below. The Contractor must furnish a copy of the revised FSS contract and FSS unit prices as soon as they are available. Also, at least 30 days prior to the date when the reduced FSS unit price takes effect, the Contractor shall furnish an Excel spreadsheet or ACCESS database (in both hard copy and disc) that displays for each item with an offered decrease in contract unit price the following information:

(i) The item number; e.g., 0003.

(ii) The supplier; e.g., ABC Dental, Inc.

(iii) The product name/nomenclature; e.g., high speed handpiece.

(iv) The part number; e.g., HPH2000.

(v) The applicable contract discount used as a basis for determining the current contract unit price.

(vi) The FSS unit price upon which the current contract unit price is based.

(vii) The contract unit price currently in effect.

(viii) The applicable contract discount or larger contract discount now offered.

(ix) The reduced FSS unit price.

(x) The reduced contract unit price now offered.

(xi) The percentage decrease in FSS unit price from the FSS unit price that determined the current contract unit price to the new, lower FSS unit price.

(xii) The percentage decrease in contract unit price from the current contract unit price to the new lower contract unit price now offered.

(2) Benchmark for FSS price reductions. The appropriate contract discount or larger discount now offered will be applied to each reduced FSS Unit Price to determine the adjusted contract unit price provided the adjusted Contract Unit Price does not exceed the following benchmark:

The offered reduction in contract unit price on a percentage basis must be at least equal to the percentage reduction from the FSS unit price that determined the current contract unit price to the new lower FSS Unit Price, i.e., the current contract unit price must, as a minimum, be reduced by the percentage decrease in the FSS Unit Price.

(3) If the proposed contract unit price exceeds the benchmark above, the Contracting Officer shall determine the proposed price reductions unreasonable. The Contracting Officer and Contractor shall negotiate a reduction in the proposed contract unit price to an amount that does not exceed the benchmark above. All negotiated price reductions shall be confirmed in writing and will include the agreed-to price(s) and the FSS prices and discount(s) which make up these prices. The Contract will be modified as discussed directly below.)

(i) If the proposed contract unit price does not exceed the benchmark above, it will be determined fair and reasonable.

(ii) Upon acceptance of any proposed price decreases, the Government shall modify the contract to include the reduced contract unit price(s) which will take effect on the same day the reduced FSS Unit Price takes effect. The modification will also show the applicable discount, the reduced FSS Unit Price(s) and their effective date(s).

(iii) The reduced contract unit prices shall apply to those items ordered on or after the effective date of the decrease in the Contractor's FSS Price(s).

(iv) If the Contractor fails to notify the Contracting Officer of any FSS Unit Price decreases within the timeframe and in the manner stated above or agreement on any reduction cannot be reached, the Contracting Officer may determine the applicable adjustment and authorize a unilateral price adjustment retroactively applied to all items ordered on or after the date the new FSS Unit Price takes effect.

(f) Upward adjustments.

(1) Upward adjustments may be requested at any time. The requested upward price adjustments must be based upon increases in the Contractor's FSS Unit Prices. The request shall include a copy of the revised FSS Unit Prices, and the following for each item with a proposed increase in contract unit price:

(i) An Excel spreadsheet or ACCESS database, in both hard copy and disc, that displays for each item with a proposed price increase the following information:

(A) The item number; e.g., 0003.

(B) The supplier; e.g., ABC Dental, Inc.

(C) The product name/nomenclature; e.g., high speed handpiece.

(D) The part number; e.g., HPH2000.

(E) For the initial year, the FSS unit price that determined the award unit price, the applicable contract discount, and the award unit price. For all subsequent contract years, the FSS unit price that determined the highest contract unit price that was in effect at any time during the preceding contract year, the applicable discount, and the highest contract unit price that was in effect during the preceding contract year.

(F) The increased FSS unit price, the applicable contract discount or larger contract discount now offered, and the proposed higher contract unit price.

(G) For the initial year, the percentage change from the FSS unit price that determined the award unit price to the new higher FSS unit price. For all subsequent contract years, the percentage change from the FSS unit price that determined the highest contract unit price that was in effect at any time during the preceding contract year to the new higher FSS unit price.

(H) For the initial year, the percentage change from the award unit price to the new higher proposed contract unit price. For all subsequent contract years, the percentage change from the highest contract unit price that was in effect at any time during the preceding contract year to the new higher proposed contract unit price.

(I) For any items offered to the Department of Veterans Affairs and the General Services Administration at other than Federal Supply Schedule (FSS) prices, the non-FSS prices/discounts (if different than the reported FSS unit prices/discounts) offered to those agencies.

(ii) Any other applicable supporting data requested by the Contracting Officer.

(2) Benchmarks for FSS price increases: If any FSS unit price increases, and the increase is authorized under this clause, the contract unit prices for any corresponding items shall be determined using the increased FSS unit price(s) and either the applicable discount(s) originally awarded or any larger discount(s) now offered. These increased contract unit prices shall apply to all orders issued on or after the effective date of these increases (see (f)(3) below). Proposed increases will be considered fair and reasonable if they do not exceed whichever is the lower of the following two benchmarks:

(i) For the initial year of the contract, any proposed increase in contract unit price on a percentage basis cannot exceed the percentage increase from the FSS unit price that determined the award unit price to the new higher FSS unit price. For all subsequent contract years, any proposed increase in contract unit price on a percentage basis cannot exceed the percentage increase from the FSS unit price that determined the highest contract unit price that was in effect at any time during the preceding contract year to the new higher FSS unit price.

(ii) Any proposed higher contract unit prices are subject to the following limitations:

(A) For the initial contract year, contract unit price increases shall be limited to the following annual ceiling(s) applied to the award unit price for the same item (i.e., any proposed higher contract unit price cannot exceed the award unit price plus the annual ceiling).

(B) For all subsequent contract years, contract unit price increases shall be limited to the following annual ceiling(s) applied to the highest contract unit price in effect during the preceding contract year for the same item (i.e., any proposed higher contract unit price cannot exceed the highest contract unit price in effect during the preceding contract year plus the annual ceiling.)

Annual ceiling, all items: 10%

There is no percentage limit on downward adjustments under this clause.

(3) Upon acceptance of any proposed price increases, the Government shall modify the contract showing the increased contract unit prices and when they become effective, the applicable discount, and the increased FSS unit price(s) and their effective date(s). Upward price adjustments shall be effective within 60 days after receipt of the Contractor's request for upward price adjustment (or at the same time the increased FSS price takes effect, whichever is later) unless the Contracting Officer is unable to determine during that period that a price increase on any item or items is fair and reasonable (i.e., the proposed contract unit price exceeds the lower of the two benchmarks above). in this case, no price increases will be authorized for those items until the Contracting Officer is able to determine the price increases for those items to be fair and reasonable.

If necessary, the Contracting Officer shall conduct discussions with the Contractor to reduce the proposed contract unit price to an amount which does not exceed the lower of the two benchmarks and reach an agreement on fair and reasonable prices. When discussions have concluded, the Contractor shall confirm the agreed-to price(s) in writing. (The agreement shall also identify the FSS price and discount which makes up each agreed-to price.)

Once the written agreement is received, the Government shall modify the contract showing the increased contract unit prices and when they become effective, the applicable discount, and the increased FSS Unit Price(s) and their effective date(s). (No increases will be effective prior to the date the increased FSS takes effect.)

If the Contracting Officer and the Contractor are unable to agree upon the price for any items, the Contracting Officer will remove these items from the contract.

(4) Isolated incidents may occur for an item or group of items when proposed increases could exceed the annual ceiling benchmark in paragraph (f)(2)(ii). In such cases the Contractor can submit an adequately justified written request for Contracting Officer approval of an increase in Contract Unit Price that exceeds the ceiling. The Contracting Officer may approve the request on a one-time basis, increase the ceiling for the item or group of items if appropriate, negotiate a lower Contract Unit Price, or delete the item from the contract. In no case may the increase in Contract Unit Price exceed the ceiling without written authorization from the Contracting Officer. Also, no increase will be authorized that results in a Contract Unit Price that exceeds the other benchmark.

(5) Any increased FSS unit prices shall not be used to compute contract unit prices for delivery orders issued before the date the adjusted contract unit prices take effect under the Contract.

(g) If the Contracting Officer removes items from the contract for price unreasonableness (see (e)(3), (f)(3) and (4) above), all outstanding orders issued prior to the date the items are removed shall be delivered in accordance with the contract delivery schedule and the Government shall pay for such items at the Contract Unit Price in effect at the time of the order.

(h) If the Contracting Officer at any time has any reason to believe that the FSS unit price has been discontinued, the Contractor shall furnish relevant information as required by the Contracting Officer. If the Contracting Officer determines that the FSS Unit Price has been discontinued, the parties shall promptly agree upon an appropriate substitute for determining adjustments pursuant to this or some other appropriate EPA clause. The contract shall be modified to incorporate the substitute and its effective date.

(i) Pricing actions pursuant to paragraph (c) entitled “Changes” of Federal Acquisition Regulation (FAR) clause 52.212-4 (including any revisions by addendum thereto) or any other provision of this Contract will be priced as though there were no provisions for Economic Price Adjustment.

(j) Pending approval of any proposed price changes and the issuance of any subsequent modification establishing the effective date of these changes, payment shall be made at the contract unit prices in effect at the time of order.

(k) Voluntary price reductions (VPR): A “special or discount” offered by the Contractor which results in a voluntary price reduction for an item or group of items for a given period of time.

The Contractor may offer a VPR at any time. The price reductions resulting from these VPRs will be in addition to any price reductions mandated by this EPA clause. The Contractor shall notify the Contracting Officer when the VPR takes effect, the applicable items included, and the length of time the VPR will remain in effect. Once the “special or discount” period expires, prices will revert to the contract unit prices in effect at that time.

If an FSS unit price decreases when a VPR is in effect, the VPR will remain in effect until it expires if it is lower than the proposed unit price decrease. If the Contractor requests a contract unit price increase based upon an increased FSS unit price when a VPR is in effect, the VPR shall remain in effect until it expires. Upon expiration of the VPR, prices will revert to the adjusted contract unit prices, as calculated in accordance with this clause if no VPR had been in effect.

(End of Clause)

**52.216-9044 Economic Price Adjustment – Established Catalog Price Multiple Adjustments Authorized Per Clause Terms.**
As prescribed in 16.203-4(a)(2)(93), insert the following clause:

ECONOMIC PRICE ADJUSTMENT – ESTABLISHED CATALOG PRICE - MULTIPLE ADJUSTMENTS AUTHORIZED PER CLAUSE TERMS - NON-ECAT (NOV 2011)

(a) All price adjustments authorized or mandated by this clause are based upon changes in the Contractor's list prices and certain Federal Supply Schedule (FSS) unit prices. The clause also provides for voluntary price reductions (VPR) in the form of "specials" or "discounts".

(b) Definitions:

(1) Contract unit price: The price per unit of issue comprised of the "list price" and the applicable "discount". The contract unit price is determined by reducing the applicable list price by the appropriate discount. The list prices and discounts shall be listed in the contract. The resulting net contract unit prices may or may not be listed in the contract at the discretion of the Contracting Officer.

(2) Discount: The percentage reduction off the list price proposed by the Contractor and accepted by the Government. These percentages may vary per item and quantity ordered. They shall be agreed to at time of award and may not be reduced for the life of the contract. These discounts are in addition to any standard trade discounts in the Contractor's established commercial catalog/price list. (Contractors may offer larger discounts and/or reduced list prices at any time.)

(3) List price: The established catalog unit prices of the items. In order for a "list price" to meet the criteria as an established catalog price, it must meet the definition in (c)(1) below.

(4) Voluntary price reduction (VPR): See paragraph (l) below.

(c) Established catalog unit price.

(1) The term "established catalog unit price", as used in this clause, means a unit price that (i) is a catalog price for a commercial item sold in substantial quantities to the general public and (ii) is the net price after applying any standard trade discounts offered by the Contractor.

(2) Unless otherwise specified, all reference to the terms "FSS unit price"(s) or "FSS price(s)" as used in this clause, shall be the prices appearing in the Contractor's current Federal Supply Schedule for the same items under this contract.

(d) The offeror/Contractor warrants that (1) the list prices and the subsequent revisions thereto are the established catalog unit prices in effect at time of award or adjustment for like quantities of the same items and (2) any contract unit prices determined using these list prices do not include allowances for any portion of the contingency covered by this clause. The offeror/Contractor also warrants that any contract unit prices determined using FSS unit prices do not include allowances for any portion of the contingency covered by this clause.

(e) Prior to award the Contractor must furnish:

(1) their current established catalog/price list, offered discounts, proposed contract unit prices; and

(2) a copy of their current FSS's, FSS unit prices, and the FSS contract expiration dates applicable to any items offered as well as any other information required by the Contracting Officer.

(f) Upon acceptance by the Government, the award unit prices will be established at the list prices minus the offered discounts provided the resulting contract unit prices do not exceed any current FSS unit price for the same item. Accordingly, offers are cautioned to propose discounts which, when applied to the list prices, will not exceed FSS Unit Prices.

(g) Downward adjustments.

(1) Downward adjustments to contract unit prices are mandated whenever there are decreases in either 1) List Prices or 2) FSS Unit Prices when the reduction results in a revised FSS Price which is now lower than the current Contract Unit Price. The Contractor shall promptly notify the Contracting Officer in writing of the amount and effective date of each decrease in list price and any FSS Unit Price reduction which results in an FSS Unit Price which is now lower than the current Contract Unit Price.

If the offered price decrease is based upon a reduction in list price or FSS Price, the Contractor shall propose a lower Contract Unit Price taking into consideration the benchmarks in paragraphs (g)(2) and (3) below. The Contractor must furnish a copy of the revised Catalog/Price List or FSS Unit Price as soon as it is available. Also, the Contractor must provide an Excel spreadsheet or ACCESS Database (in both hard copy and disc) that displays for each item with an offered decrease in Contract Unit Price the appropriate information below.

For reductions in List Price(s), the Contractor shall submit this information at least 60 days prior to the date when the reduced List Prices take effect. For reductions in FSS Price(s), the Contractor shall provide this information at least 30 days prior to the date the reduced FSS unit price(s) takes effect.

(i) For list price or FSS changes: The item number; e.g., 0001AA.

(ii) For list price or FSS changes: The Supplier (Catalog); e.g., ABC Imaging, Inc.

(iii) For list price or FSS changes: The Product Name/Nomenclature; e.g., High Speed Handpiece.

(iv) For list price or FSS changes: Part Number; e.g., HIH 2000

(v) For list price or FSS changes: The list price upon which the current Contract Unit Price is based.

(vi) For list price or FSS changes: The applicable Contract Discount used as a basis for determining the current Contract Unit Price.

(vii) For list price or FSS changes: The Contract Unit Price currently in effect.

(viii) For list price changes: The reduced List Price.

(ix) For list price changes: The applicable Contract Discount or larger Contract Discount now offered.

(x) For list price or FSS changes: The reduced contract unit price now offered.

(xi) For list price changes: The percentage decrease in list price from the list price which determined the current Contract Unit Price to the new, lower List Price.

(xii) For list price changes: The percentage change in Contract Unit Price from the current Contract Unit Price to the new lower Contract Unit Price now offered.

(xiii) For FSS changes: The current FSS Unit Price which is about to expire and the new reduced FSS Unit Price which will replace it and triggered this Contract Unit Price reduction.

(xiv) For list price changes: For any items offered to the Department of Veterans Affairs (DVA) under the FSS, the current FSS Unit Price(s) for the same item.

(2) Reductions in List Price(s). If the offered price decrease is based upon a reduction in the List Price, the appropriate discount or larger discount now offered will be applied to each reduced list price to determine the adjusted Contract Unit Price provided the proposed lower Contract Unit Price does not exceed the lower of the following two benchmarks:

(i) The offered reduction in Contract Unit Price on a percentage basis must be at least equal to the percentage reduction from the list price currently in effect under the contract to the new lower List Price; i.e., the current Contract Unit Price must, as a minimum, be reduced by the percentage decrease in List Price.

(ii) The new proposed lower Contract Unit Price shall not exceed the current FSS Unit Price for the same item.

(3) FSS Price Reductions. If the offered price decrease is based upon a reduction in the FSS Price, the proposed lower Contract Unit Price shall not exceed the following benchmark: The new proposed lower Contract Unit Price shall not exceed the revised lower FSS Price for the same item.

(4) If the proposed Contract Unit Price exceeds the lower of the appropriate list price benchmarks (for reductions based upon reduced List Prices) or the FSS Price benchmark (for reductions based upon reduced FSS Prices), the Contracting Officer shall determine the proposed price reductions unreasonable

and negotiate a price reduction which results in a Contract Unit Price that does not exceed the appropriate benchmarks.

(i) All negotiated price reductions shall be confirmed in writing and will include the agreed-to price(s) and the list price(s) and discount(s) which make up these prices. Changes based upon FSS price reductions will be expressed in terms of the current list price and an appropriate discount which results in an adjusted Contract Unit Price which does not exceed the revised lower FSS Price.

(ii) If an agreement cannot be reached the Contracting Officer has the option of removing these items from the Contract or taking the action in the last sentence below. If the proposed Contract Unit Price does not exceed the lowest of the appropriate list price or FSS Price benchmarks, it will be determined fair and reasonable.

(iii) Upon acceptance of any proposed price decreases, the Government shall modify the contract to include the reduced list prices and discounts (changes based upon FSS price reductions will be expressed in terms of the current list price and an appropriate discount which results in an adjusted Contract Unit Price which does not exceed the revised lower FSS Price). The adjusted contract unit prices may or may not be shown in the modification at the discretion of the Contracting Officer. These reduced contract unit prices shall apply to those items ordered on or after the effective date of the reduced List or FSS Unit Price(s).

(iv) If the Contractor fails to notify the Contracting Officer of any list price or FSS Price decreases within the timeframe and in the manner stated above or agreement on any reduction cannot be reached, the Contracting Officer may determine the applicable adjustment and authorize a unilateral price adjustment retroactively applied to all items ordered on or after the effective date of the decrease in the Contractor's established List or FSS Prices.

(h) Upward Adjustments.

(1) Upward adjustments may be requested at any time. However, any request for upward price adjustment must be based upon increases in List Prices only. The Contractor shall propose a Contract Unit Price taking into consideration the benchmarks in paragraph (g)(2). The request shall include a copy of the revised Catalog/Price List and the following for each item with a proposed increase in Contract Unit Price:

(i) A separate Excel spreadsheet or ACCESS database, in both hard copy and disc, that displays for each item with a proposed price increase the following information:

(A) The item number; e.g., 0003.

(B) The Supplier(Catalog); e.g., ABC Dental, Inc.

(C) The Product Name/Nomenclature; e.g., High Speed Handpiece.

(D) The Part Number; e.g., HIH2000.

(E) For the initial year, the list price that determined the Award Unit Price, the applicable Contract Discount, and the Award Unit Price. For all subsequent contract years, the list price that

determined the highest Contract Unit Price that was in effect at any time during the preceding Contract Year, the applicable discount, and the highest Contract Unit Price that was in effect during the preceding Contract Year.

(F) The increased list price and its effective date, the applicable Contract Discount or larger Contract Discount now offered, and the proposed higher Contract Unit Price.

(G) For the initial year, the percentage change from the list price that determined the award unit price to the new higher List Price. For all subsequent contract years, the percentage change from the list price that determined the highest Contract Unit Price that was in effect at any time during the preceding Contract Year to the new higher List Price.

(H) For the initial year, the percentage change from the award unit price to the new higher proposed Contract Unit Price. For all subsequent contract years, the percentage change from the highest Contract Unit Price that was in effect at any time during the preceding contract year to the new higher proposed Contract Unit Price.

(I) For any items offered to the Department of Veterans Affairs (DVA) under the FSS, the current FSS Unit Price(s) for the same item.

(J) Any other information required by the Contracting Officer.

(2) Benchmarks. If any list price increases, and the increase is authorized under this clause, the contract unit prices for any corresponding items ordered after the increase takes effect shall be determined using the increased list price and either the applicable Discount originally awarded or any larger Discount now offered that applies to the affected item. Proposed increases will be considered fair and reasonable if they do not exceed whichever is the lowest of the following three benchmarks:

(i) For the Initial Year of the contract, the proposed increase in Contract Unit Price on a percentage basis cannot exceed the percentage increase from the list price that determined the award unit price to the new higher List Price. For all subsequent Contract Years, the proposed increase in Contract Unit Price on a percentage basis cannot exceed the percentage increase from the list price that determined the highest Contract Unit Price that was in effect at any time during the preceding contract year to the new higher List Price.

(ii) Any proposed higher Contract Unit Price shall not exceed the current FSS Unit Price for the same item.

(iii) Any proposed higher contract unit prices are subject to the following limitations:

(A) For the initial Contract Year, Contract Unit Price increases shall be limited to the following annual ceiling(s) applied to the award unit price for the same item (i.e., any proposed higher Contract Unit Price cannot exceed the award unit price plus the annual ceiling).

(B) For all subsequent Contract Years, Contract Unit Price increases shall be limited to the following annual ceiling(s) applied to the highest Contract Unit Price in effect during the preceding Contract Year for the same item (i.e., any proposed higher Contract Unit Price cannot exceed the highest Contract Unit Price in effect during the preceding Contract Year plus the annual ceiling.)

Annual Ceiling, All Items: 10%

There is no percentage limit on downward adjustments under this clause.

(3) Upon approval of the proposed price increases, the Government shall modify the contract to include the increased list prices and discounts. The adjusted contract unit prices may or may not be included in the modification at the discretion of the Contracting Officer.

(i) Upward price adjustments shall be effective within 60 days after receipt of the Contractor's request for upward price adjustment (or at the same time the increased list price takes effect, whichever is later) unless the Contracting Officer is unable to determine during that period that a price increase on any item or items is fair and reasonable (i.e., the proposed Contract Unit Price exceeds the lowest of the three benchmarks above). In this case, no price increases will be authorized for those items until the Contracting Officer is able to determine the price increases for those items to be fair and reasonable. If necessary, the Contracting Officer shall conduct discussions with the Contractor to negotiate a price reduction which results in a Contract Unit Price that does not exceed the lowest of the three benchmarks.

(ii) When discussions have concluded and an agreement which results in fair and reasonable prices is reached, the Contractor shall confirm the agreed-to price(s) in writing (The agreement shall also identify the list price and discount which makes up each agreed-to price.) Once the written agreement is received, the Government shall modify the contract to include the increased list prices and discounts. The adjusted contract unit prices may or may not be included in the modification at the discretion of the Contracting Officer (No increases will be effective prior to the date the increased List Price(s) take effect.)

(iii) If the Contracting Officer and the Contractor are unable to agree upon the price for any items, the Contracting Officer will delete these items from the contract. In addition, the Contracting Officer may also, at any time, remove any item from the contract that the Contracting Officer believes is no longer reasonably priced (if the Contracting Officer and the Contractor are unable to agree upon a reduced price) and notify customers accordingly.

(4) Isolated incidents may occur for an item or group of items when proposed increases could exceed the annual ceiling benchmark in paragraph (h)(2)(iii). In such cases the Contractor can submit an adequately justified written request for Contracting Officer approval of an increase in contract unit price that exceeds the ceiling. The Contracting Officer may approve the request on a one-time basis, increase the ceiling for the item or group of items if appropriate, negotiate a lower contract unit price, or delete the item(s) from the contract. In no case may the increase in Contract Unit Price exceed the ceiling without written authorization from the Contracting Officer. Also, no increase will be authorized that results in a contract unit price that exceeds the other benchmarks.

(5) Any increased list prices shall not be used to compute contract unit prices for delivery orders issued before the date the adjusted contract unit prices take effect under the contract.

(6) If the Contracting Officer removes items from the contract for price unreasonableness (see (g)(4) and (h)(3) and (4) above), all outstanding orders issued prior to the date the items are removed shall be delivered in accordance with the contract delivery schedule and the Government shall pay for such items at the Contract Unit Price in effect at the time of the order.

(i) If the Contracting Officer at any time has any reason to believe that the established list price has been discontinued, the basis for the list price has been substantially altered, or that the item no longer meets the criteria to qualify as an established Catalog Priced item, the Contractor shall furnish relevant information as required by the Contracting Officer. If the Contracting Officer determines that any of the preceding conditions are present and a substitute for determining price adjustments is needed, the parties shall promptly agree upon an appropriate substitute for determining adjustments pursuant to this or another appropriate clause. The Contract shall be modified to incorporate the substitute and its effective date.

(j) Pricing actions pursuant to paragraph (c) entitled "Changes" of Federal Acquisition Regulation (FAR) clause 52.212-4 (including any revisions by addendum thereto) or any other provision of this Contract will be priced as though there were no provisions for Economic Price Adjustment.

(k) Pending approval of any proposed price changes and the subsequent modification of the contract unit prices, payment shall be made at the contract unit prices in effect at the time of order.

(l) Voluntary Price Reductions (VPR): A "special or discount" offered by the Contractor which results in a voluntary price reduction for an item or group of items for a given period of time. The Contractor may offer a VPR at any time. The price reductions resulting from these VPRs will be in addition to any price reductions mandated by this EPA clause.

(1) The Contractor shall notify the Contracting Officer when the VPR takes effect, which items are included, and the length of time the VPR will remain in effect. Once the "special or discount" period expires, prices will revert to the Contract Unit Price(s) in effect at that time.

(2) If a list price (or FSS Unit Price) decreases when a VPR is in effect, the VPR will remain in effect until it expires if it is lower than the proposed unit price decrease. If the Contractor requests a Contract Unit Price increase based upon an increased list price when a VPR is in effect, the VPR shall remain in effect until it expires. Upon expiration of the VPR, prices will revert to the adjusted contract unit prices, as calculated in accordance with this clause as if no VPR had been in effect.

(End of Clause)

**52.216-9045 Economic Price Adjustment – Other Federal Agency Contracts – E-CAT.**
As prescribed in 16.203-4(a)(2)(94)(i), insert the following clause:

ECONOMIC PRICE ADJUSTMENT – OTHER FEDERAL AGENCY CONTRACTS – E-CAT
(NOV 2011)

(a) This clause applies to any items under this contract where the offeror has proposed the same (or discounted) prices as are included in any current contract(s) the Contractor may have with Other Federal Agencies (OFA) and the Contracting Officer agrees to use this pricing methodology. During the life of this contract, the Contracting Officer and the Contractor may agree in writing to also apply this clause to any other items that previously were not, but subsequently become, available under both this contract and any concurrent OFA contract(s).

(b) Definitions:

(1) Other Federal Agency (OFA) Price: "OFA Prices" or "OFA Unit Prices" refer to the unit prices for specific commercial items the Contractor and another Federal Agency have agreed to and are included in one or more current Contracts.

(2) Discount: The percentage reduction off the OFA Unit Price proposed by the Contractor, accepted by the Government, and maintained in the contract file (not the E-CAT System) by the Government. These percentages may vary per item and quantity ordered. They shall be agreed to at time of award and may not be reduced for the life of the contract. (Contractors may offer larger discounts and/or reduced contract unit prices at any time.)

(3) Contract Unit Price: The price per unit of issue comprised of the OFA Unit Price and the applicable "Discount". The Contract Unit Price is determined by reducing the OFA Unit Price by the appropriate Discount. contract unit prices and any subsequent proposed revisions thereto are loaded by the Contractor into an E-CAT file and are forwarded electronically to the Government. For proposed price changes, the Contactor shall also separately submit (in Excel Spreadsheet or ACCESS Database format) the additional information as required in paragraphs (e) and (f) below in order for the Government to review and evaluate these proposed price changes. Upon the Government's determination that the offered prices are acceptable/fair and reasonable, the Government shall release them into the contract electronic catalog residing in the E-CAT System. (Contract unit prices, OFA unit prices and discounts under this contract are not visible in the E-CAT System to the Contractor or any customer. The prices visible in the E-CAT System to the Contractor or any customer are the Delivered Unit Prices, which are the contract unit prices plus the DLA Troop Support Administrative Fee percentage (in effect at that time) charged customers ordering under this contract.)

(4) Voluntary Price Reduction (VPR): See paragraph (k).

(c) The offeror/Contractor warrants that (1) the OFA Unit Prices and the subsequent revisions thereto are the OFA unit prices in effect at time of award or adjustment for like quantities of the same items and (2) any contract unit prices determined using these OFA Unit Prices do not include allowances for any portion of the contingency covered by this clause.

(d) Prior to award, the Contractor must furnish a copy of their current OFA Contract, OFA contract unit prices and the OFA contract expiration date for each item. The Contractor shall also furnish its offered Discounts and proposed contract unit prices. At the option of the Contracting Officer, the Contractor shall also furnish the documentation set forth in paragraphs (f)(1)(i)(I) and (f)(1)(ii) below. Upon acceptance by the Government, the Award Unit Prices shall be established at the OFA Unit Prices minus the offered Discounts.

(e) Downward Adjustments.

(1) Downward adjustments to contract unit prices are mandated whenever there are decreases in OFA Unit Prices. The Contractor shall promptly notify the Contracting Officer in writing of the amount and effective date of each decrease in OFA Unit Price. The Contractor shall propose a lower Contract Unit Price taking into consideration the benchmark in paragraph (e)(2) below. The Contractor must furnish a copy of the revised OFA Contract and OFA Unit Prices as soon as they are available. Also, the Contractor must provide a copy of the "E-CAT file" at least 30 days prior to the date when the reduced OFA Unit Price takes effect. Finally, the Contractor shall also furnish, within the timeframe above, a

separate Excel spreadsheet or ACCESS database (in both hard copy and disc) that displays for each item with an offered decrease in Contract Unit Price the following information:

(i) The item number; e.g., 0003.

(ii) The Supplier; e.g., ABC Dental, Inc.

(iii) The Product Name/Nomenclature; e.g., High Speed Handpiece.

(iv) The Part Number; e.g., HPH2000.

(v) The applicable contract discount used as a basis for determining the current Contract Unit Price.

(vi) The OFA Unit Price upon which the current Contract Unit Price is based.

(vii) The Contract Unit Price currently in effect.

(viii) The applicable Contract Discount or larger Contract Discount now offered.

(ix) The reduced OFA Unit Price.

(x) The reduced Contract Unit Price now offered.

(xi) The percentage decrease in OFA Unit Price from the OFA Unit Price that determined the Current Contract Unit Price to the new, lower OFA Unit Price.

(xii) The percentage decrease in Contract Unit Price from the current Contract Unit Price to the new lower Contract Unit Price now offered.

(2) Benchmark For OFA Price Reductions.

(i) The appropriate Contract Discount or larger Discount now offered will be applied to each reduced OFA Unit Price to determine the adjusted Contract Unit Price provided the adjusted Contract Unit Price does not exceed the following benchmark:

(ii) The offered reduction in Contract Unit Price on a percentage basis must be at least equal to the percentage reduction from the OFA Unit Price that determined the current Contract Unit Price to the new lower OFA Unit Price, i.e., the current Contract Unit Price must, as a minimum, be reduced by the percentage decrease in the OFA Unit Price.

(3) If the proposed Contract Unit Price exceeds the benchmark above, the Contracting Officer shall determine the proposed price reductions unreasonable. The Contracting Officer and Contractor shall negotiate a reduction in the proposed Contract Unit Price to an amount that does not exceed the benchmark above. (All negotiated price reductions shall be confirmed in writing and will include the agreed-to price(s) and the OFA prices and discount(s) which make up these prices.)

(i) If an agreement cannot be reached, the Contracting Officer has the option of removing these items from the E-CAT system or taking the action in the last sentence below. If the proposed Contract Unit Price does not exceed the benchmark above, it will be determined fair and reasonable. Upon acceptance of any proposed price decreases, the Government shall modify the contract electronic catalog residing in the E-CAT system to include the reduced prices. These reduced contract unit prices shall apply to those items ordered on or after the date when these lower prices appear in the contract electronic catalog residing in the E-CAT system. (Revisions will not be added to the electronic catalog prior to date they take effect.)

(ii) If the Contractor fails to notify the Contracting Officer of any OFA Unit Price decreases within the timeframe and in the manner stated above or agreement on any reduction cannot be reached, the Contracting Officer may determine the applicable adjustment and authorize a unilateral price adjustment retroactively applied to all items ordered on or after the date the new OFA Unit Price takes effect.

(f) Upward Adjustments.

(1) The Base Year contract unit prices are not subject to any upward adjustment. The Contractor is authorized to submit one request for any upward adjustments to contract unit prices for each Option Year. This request shall be submitted no later than 30 days prior to the effective date of the upcoming Option Year (if exercised). The requested upward price adjustments must be based upon increases in the Contractor's OFA Unit Prices. The request shall include a copy of the revised OFA Unit Prices, the "E-CAT file", and the following for each item with a proposed increase in Contract Unit Price:

(i) A separate Excel spreadsheet or ACCESS database, in both hard copy and disc, that displays for each item with a proposed price increase the following information:

(A) The item number; e.g., 0003.

(B) The Supplier; e.g., ABC Dental, Inc.

(C) The Product Name/Nomenclature; e.g., High Speed Handpiece.

(D) The Part Number; e.g., HPH2000.

(E) For the initial Option year, the OFA Unit Price that determined the Award Unit Price, the applicable Contract Discount, and the Award Unit Price. For all subsequent Option years, the OFA Unit Price that determined the highest Contract Unit Price that was in effect at any time during the preceding Contract Year, the applicable discount, and the highest Contract Unit Price that was in effect during the preceding Contract Year.

(F) The increased OFA Unit Price, the applicable Contract Discount or larger Contract Discount now offered, and the proposed higher Contract Unit Price.

(G) For the initial Option year, the percentage change from the OFA Unit Price that determined the award unit price to the new higher OFA Unit Price. For all subsequent Option years, the percentage change from the OFA Unit Price that determined the highest Contract Unit Price that was in effect at any time during the preceding Contract Year to the new higher OFA Unit Price.

(H) For the initial Option year, the percentage change from the award unit price to the new higher proposed Contract Unit Price. For all subsequent contract years, the percentage change from the highest Contract Unit Price that was in effect at any time during the preceding contract year to the new higher proposed contract unit price.

(I) For any items offered to Federal Agencies at other than OFA Contract Prices, the non-OFA prices/discounts (if different than the reported OFA Unit Prices/Discounts) offered to those agencies.

(ii) Any other applicable supporting data requested by the Contracting Officer.

(2) Benchmarks For OFA Price Increases: If any OFA Unit Price increases, and the increase is authorized under this clause, the contract unit prices for any corresponding items shall be determined using the increased OFA Unit Price(s) and either the applicable Discount(s) originally awarded or any larger Discount(s) now offered. These increased contract unit prices shall apply to all orders issued on or after the effective date of the increase. Proposed increases will be considered fair and reasonable if they do not exceed whichever is the lower of the following two benchmarks:

(i) For the Initial Option Year of the contract, any proposed increase in Contract Unit Price on a percentage basis cannot exceed the percentage increase from the OFA Unit Price that determined the award unit price to the new higher OFA Unit Price. For all subsequent Option Years, any proposed increase in Contract Unit Price on a percentage basis cannot exceed the percentage increase from the OFA Unit Price that determined the highest Contract Unit Price that was in effect at any time during the preceding contract year to the new higher OFA Unit Price.

(ii) Any proposed higher contract unit prices are subject to the following limitations:

(A) For the initial Option Year, Contract Unit Price increases shall be limited to the following annual ceiling(s) applied to the award unit price for the same item (i.e., any proposed higher Contract Unit Price cannot exceed the award unit price plus the annual ceiling).

(B) For all subsequent Option Years, Contract Unit Price increases shall be limited to the following annual ceiling(s) applied to the highest Contract Unit Price in effect during the preceding Contract Year for the same item (i.e., any proposed higher Contract Unit Price cannot exceed the highest Contract Unit Price in effect during the preceding Contract Year plus the annual ceiling.)

Annual Ceiling, All Items: 10%

There is no percentage limit on downward adjustments under this clause.

(3) Upon approval of the proposed price increases, the Government shall modify the contract electronic catalog residing in the E-CAT System to include the increased contract unit prices. Upward price adjustments shall be effective on the same day that the Option Year takes effect unless either of the following occurs:

(i) If the Contractor's request for price adjustment is not received a minimum of 30 days prior to the effective date of the upcoming Option Year (if exercised), any approved upward price adjustment shall not be effective until 30 days after receipt of the request.

(ii) If, during the 30-day period the Government has to evaluate prices and update the E-CAT system, the Contracting Officer is unable to determine that a price increase on any item or items is fair and reasonable (i.e., the proposed Contract Unit Price exceeds the lower of the two benchmarks above). In this case, no price increases will be authorized for those items until the Contracting Officer is able to determine the price increases for those items to be fair and reasonable.

(A) If necessary, the Contracting Officer shall conduct discussions with the Contractor to reduce the proposed Contract Unit Price to an amount which does not exceed the lower of the two benchmarks and reach an agreement on fair and reasonable prices. When discussions have concluded, the Contractor shall confirm the agreed-to price(s) in writing and forward an E-CAT file which includes the agreed-to price(s). (The agreement shall also identify the OFA price and discount which makes up each agreed-to price.) Once the written agreement is received, the Government shall modify the contract electronic catalog residing in the E-CAT System to include the increased contract unit prices.

(B) If the Contracting Officer and the Contractor are unable to agree upon the price for any items, the Contracting Officer will delete these items from the catalog in the E-CAT System. (This procedure applies to only those items whose prices the Contracting Officer is unable to determine fair and reasonable within the 30-day period the Government has to evaluate prices and update the E-CAT System. The remainder of the items whose price increases are determined fair and reasonable, shall be entered into the E-CAT system within the prescribed period.)

(C) In addition, the Contracting Officer may also, at any time, remove any item from the catalog in the E-CAT System that the Contracting Officer believes is no longer reasonably priced (if the Contracting Officer and the Contractor are unable to agree upon a reduced price) and notify customers accordingly.

(4) Isolated incidents may occur for an item or group of items when proposed increases could exceed the annual ceiling benchmark in paragraph (f)(2)(ii). In such cases the Contractor can submit an adequately justified written request for Contracting Officer approval of an increase in contract unit price that exceeds the ceiling. The Contracting Officer may approve the request on a one-time basis, increase the ceiling for the item or group of items if appropriate, negotiate a lower contract unit price, or delete the item from the contract electronic catalog residing in the E-CAT system. In no case may the increase in contract unit price exceed the ceiling without written authorization from the Contracting Officer. Also, no increase will be authorized that results in a Contract Unit Price that exceeds the other benchmark.

(5) Any increased OFA unit prices shall not be used to compute contract unit prices for delivery orders issued before the date the adjusted contract unit prices take effect under the Contract.

(g) If the Contracting Officer removes items from the E-CAT system for price unreasonableness (see (e)(3), (f)(3)(ii) and (4) above), all outstanding orders issued prior to the date the items are removed shall be delivered in accordance with the contract delivery schedule and the Government shall pay for such items at the Contract Unit Price in effect at the time of the order.

(h) If the Contracting Officer at any time has any reason to believe that the OFA Unit Price has been discontinued (e.g., the current OFA contract expires and the Contractor does not receive a subsequent contract), the Contractor shall furnish relevant information as required by the Contracting Officer. If the Contracting Officer determines that the OFA Unit Price has been discontinued, the parties shall promptly agree upon an appropriate substitute for determining adjustments pursuant to this or some other appropriate EPA clause. The Contract shall be modified to incorporate the substitute and its effective date.

(i) Pricing actions pursuant to paragraph (c) entitled "Changes" of Federal Acquisition Regulation (FAR) clause 52.212-4 (including any revisions by addendum thereto) or any other provision of this Contract will be priced as though there were no provisions for Economic Price Adjustment.

(j) Pending approval of any proposed price changes and revision of the contract unit prices in the contract electronic catalog residing in the E-CAT System, payment shall be made at the contract unit prices in effect at the time of order.

(k) Voluntary price reductions (VPR): A "special or discount" offered by the Contractor which results in a voluntary price reduction for an item or group of items for a given period of time. The Contractor may offer a VPR at any time. The price reductions resulting from these VPRs will be in addition to any price reductions mandated by this EPA clause.

(1) The Contractor shall notify the Contracting Officer when the VPR takes effect, the applicable items included, and the length of time the VPR will remain in effect. Once the "special or discount" period expires, prices will revert to the contract unit prices in effect at that time.

(2) If an OFA unit price decreases when a VPR is in effect, the VPR will remain in effect until it expires if it is lower than the proposed unit price decrease. If the Contractor requests a contract unit price increase based upon an increased OFA unit price when a VPR is in effect, the VPR shall remain in effect until it expires. Upon expiration of the VPR, prices will revert to the adjusted contract unit prices, as calculated in accordance with this clause if no VPR had been in effect.

(End of Clause)

**52.216-9046 Economic Price Adjustment – Other Federal Agency Contracts – E-CAT.**
As prescribed in 16.203-4(a)(2)(95)(i), insert the following clause:

ECONOMIC PRICE ADJUSTMENT – OTHER FEDERAL AGENCY CONTRACTS - E-CAT
(NOV 2011)

(a) This clause applies to any items under this contract where the offeror has proposed the same (or discounted) prices as are included in any current contract(s) the Contractor may have with other Federal Agencies (OFA) and the Contracting Officer agrees to use this pricing methodology. OFA contracts include GSA Schedule, Federal Supply Schedule, and Department of Veterans Affairs (DVA) National Acquisition Contracts. During the life of this contract, the Contracting Officer and the Contractor may agree in writing to also apply this clause to any other items that previously were not, but subsequently become, available under both this contract and any concurrent OFA contract(s).

(b) Definitions:

(1) Other Federal Agency (OFA) Price: "OFA Prices" or "OFA Unit Prices" refer to the unit prices for specific commercial items the Contractor and another Federal Agency have agreed to and are included in one or more current contracts.

(2) Discount: The percentage reduction off the OFA unit price proposed by the Contractor, accepted by the Government, and maintained in the contract file (not the E-CAT System) by the Government. These percentages may vary per item and quantity ordered. They shall be agreed to at time of award and may not be reduced for the life of the contract. (Contractors may offer larger discounts and/or reduced contract unit prices at any time.)

(3) Contract unit price: The price per unit of issue comprised of the OFA Unit Price and the applicable "Discount". The contract unit price is determined by reducing the OFA Unit Price by the appropriate Discount. Proposed revised prices are loaded by the Contractor into an E-CAT file and are forwarded electronically to the Government. The Contactor shall also separately submit (in Excel Spreadsheet or ACCESS Database format) the additional information as required in paragraphs (e) and (f) below in order for the Government to review and evaluate these proposed price changes. Upon the Government's determination that the offered prices are acceptable/fair and reasonable, the Government shall release them into the contract electronic catalog residing in the E-CAT System. (contract unit prices, OFA Unit Prices and Discounts under this contract are not visible in the E-CAT System to the Contractor or any customer. The prices visible in the E-CAT System to the Contractor or any customer are the delivered unit prices, which are the contract unit prices plus the DLA Troop Support administrative fee percentage (in effect at that time) charged customers ordering under this contract.)

(4) Voluntary price reduction (VPR): See paragraph (k).

(c) The offeror/Contractor warrants that (1) the OFA unit prices and the subsequent revisions thereto are the OFA unit prices in effect at time of award or adjustment for like quantities of the same items and (2) any contract unit prices determined using these OFA unit prices do not include allowances for any portion of the contingency covered by this clause.

(d) Prior to award, the Contractor must furnish a copy of their current OFA Contract, OFA contract unit prices and the OFA contract expiration date for each item. The Contractor shall also furnish its offered Discounts and proposed contract unit prices. At the option of the Contracting Officer, the Contractor shall also furnish the documentation set forth in paragraphs (f)(1)(i)(I) and (f)(1)(ii) below. Upon acceptance by the Government, the Award Unit Prices shall be established at the OFA Unit Prices minus the offered Discounts.

(e) Downward Adjustments.

(1) Downward adjustments to contract unit prices are mandated whenever there are decreases in OFA Unit Prices. The Contractor shall promptly notify the Contracting Officer in writing of the amount and effective date of each decrease in OFA Unit Price. The Contractor shall propose a lower Contract Unit Price taking into consideration the benchmark in paragraph (e)(2) below. The Contractor must furnish a copy of the revised OFA Contract and OFA Unit Prices as soon as they are available. Also, the Contractor must provide a copy of the "E-CAT file" at least 30 days prior to the date when the reduced OFA Unit Price takes effect. Finally, the Contractor shall also furnish, within the timeframe above, a

separate Excel spreadsheet or ACCESS database (in both hard copy and disc) that displays for each item with an offered decrease in Contract Unit Price the following information:

(i) The item number; e.g., 0003.

(ii) The Supplier; e.g., ABC Dental, Inc.

(iii) The Product Name/Nomenclature; e.g., High Speed Handpiece.

(iv) The Part Number; e.g., HPH2000.

(v) The applicable contract discount used as a basis for determining the current Contract Unit Price.

(vi) The OFA Unit Price upon which the current Contract Unit Price is based.

(vii) The Contract Unit Price currently in effect.

(viii) The applicable Contract Discount or larger Contract Discount now offered.

(ix) The reduced OFA Unit Price.

(x) The reduced Contract Unit Price now offered.

(xi) The percentage decrease in OFA Unit Price from the OFA Unit Price that determined the Current Contract Unit Price to the new, lower OFA Unit Price.

(xii) The percentage decrease in Contract Unit Price from the current Contract Unit Price to the new lower Contract Unit Price now offered.

(2) Benchmark For OFA Price Reductions. The appropriate Contract Discount or larger Discount now offered will be applied to each reduced OFA Unit Price to determine the adjusted Contract Unit Price provided the adjusted Contract Unit Price does not exceed the following benchmark:

The offered reduction in Contract Unit Price on a percentage basis must be at least equal to the percentage reduction from the OFA Unit Price that determined the current Contract Unit Price to the new lower OFA Unit Price, i.e., the current Contract Unit Price must, as a minimum, be reduced by the percentage decrease in the OFA Unit Price.

(3) If the proposed Contract Unit Price exceeds the benchmark above, the Contracting Officer shall determine the proposed price reductions unreasonable. The Contracting Officer and Contractor shall negotiate a reduction in the proposed Contract Unit Price to an amount that does not exceed the benchmark above. (All negotiated price reductions shall be confirmed in writing and will include the agreed-to price(s) and the OFA prices and discount(s) which make up these prices.) If an agreement cannot be reached, the Contracting Officer has the option of removing these items from the E-CAT system or taking the action in the last sentence below.

If the proposed Contract Unit Price does not exceed the benchmark above, it will be determined fair and reasonable. Upon acceptance of any proposed price decreases, the Government shall modify the contract electronic catalog residing in the E-CAT system to include the reduced prices. These reduced contract unit prices shall apply to those items ordered on or after the date when these lower prices appear in the contract electronic catalog residing in the E-CAT system (Revisions will not be added to the electronic catalog prior to date they take effect).

If the Contractor fails to notify the Contracting Officer of any OFA Unit Price decreases within the timeframe and in the manner stated above or agreement on any reduction cannot be reached, the Contracting Officer may determine the applicable adjustment and authorize a unilateral price adjustment retroactively applied to all items ordered on or after the date the new OFA unit price takes effect.

(f) Upward adjustments.

(1) Upward adjustments may be requested at any time. The requested upward price adjustments must be based upon increases in the Contractor's OFA Unit Prices. The request shall include a copy of the revised OFA unit prices, the "E-CAT file", and the following for each item with a proposed increase in contract unit price:

(i) A separate Excel spreadsheet or ACCESS database, in both hard copy and disc, that displays for each item with a proposed price increase the following information:

(A) The item number; e.g., 0003.

(B) The supplier; e.g., ABC Dental, Inc.

(C) The product name/nomenclature; e.g., high speed hand-piece.

(D) The part number, e.g., HPH2000.

(E) For the initial year, the OFA unit price that determined the award unit price, the applicable contract discount, and the award unit price. For all subsequent contract years, the OFA unit price that determined the highest contract unit price that was in effect at any time during the preceding contract year, the applicable discount, and the highest contract unit price that was in effect during the preceding contract year.

(F) The increased OFA Unit Price, the applicable Contract Discount or larger Contract Discount now offered, and the proposed higher Contract Unit Price.

(G) For the initial year, the percentage change from the OFA Unit Price that determined the award unit price to the new higher OFA Unit Price. For all subsequent contract years, the percentage change from the OFA Unit Price that determined the highest Contract Unit Price that was in effect at any time during the preceding Contract Year to the new higher OFA Unit Price.

(H) For the initial year, the percentage change from the award unit price to the new higher proposed contract unit price. For all subsequent contract years, the percentage change from the highest contract unit price that was in effect at any time during the preceding contract year to the new higher proposed contract unit price.

(I) For any items offered to the Department of Veterans Affairs and the General Services Administration at other than OFA contract prices, the non-OFA prices/discounts (if different than the reported OFA unit prices/discounts) offered to those agencies.

(ii) Any other applicable supporting data requested by the Contracting Officer.

(2) Benchmarks for OFA price increases: If any OFA unit price increases, and the increase is authorized under this clause, the contract unit prices for any corresponding items shall be determined using the increased OFA unit price(s) and either the applicable discount(s) originally awarded or any larger discount(s) now offered. These increased contract unit prices shall apply to all orders issued on or after the date these revised unit prices appear in the electronic catalog residing in the E-CAT system. Proposed increases will be considered fair and reasonable if they do not exceed whichever is the lower of the following two benchmarks:

(i) For the initial year of the contract, any proposed increase in contract unit price on a percentage basis cannot exceed the percentage increase from the OFA unit price that determined the award unit price to the new higher OFA unit price. For all subsequent contract years, any proposed increase in contract unit price on a percentage basis cannot exceed the percentage increase from the OFA unit price that determined the highest contract unit price that was in effect at any time during the preceding contract year to the new higher OFA unit price.

(ii) Any proposed higher contract unit prices are subject to the following limitations:

(A) For the initial contract year, contract unit price increases shall be limited to the following annual ceiling(s) applied to the award unit price for the same item (i.e., any proposed higher contract unit price cannot exceed the award unit price plus the annual ceiling).

(B) For all subsequent Contract Years, Contract Unit Price increases shall be limited to the following annual ceiling(s) applied to the highest Contract Unit Price in effect during the preceding Contract Year for the same item (i.e., any proposed higher Contract Unit Price cannot exceed the highest Contract Unit Price in effect during the preceding Contract Year plus the annual ceiling.)

Annual Ceiling, All Items: 10%

There is no percentage limit on downward adjustments under this clause.

(3) Upon approval of the proposed price increases, the Government shall modify the contract electronic catalog residing in the E-CAT System to include the increased contract unit prices.

Upward price adjustments shall be effective once they appear in the contract electronic catalog residing in the E-CAT system. These updates will take place within 60 days after receipt of the Contractor's request for upward price adjustment (or at the same time the increased OFA Price takes effect, whichever is later) unless the Contracting Officer is unable to determine during that period that a price increase on any item or items is fair and reasonable (i.e., the proposed Contract Unit Price exceeds the lower of the two benchmarks above).

In this case, no price increases will be authorized for those items until the Contracting Officer is able to determine the price increases for those items to be fair and reasonable.

If necessary, the Contracting Officer shall conduct discussions with the Contractor to reduce the proposed Contract Unit Price to an amount which does not exceed the lower of the two benchmarks and reach an agreement on fair and reasonable prices. When discussions have concluded, the Contractor shall confirm the agreed-to price(s) in writing and forward an E-CAT file which includes the agreed-to price(s). (The agreement shall also identify the OFA price and discount which makes up each agreed-to price.)

Once the written agreement is received, the Government shall modify the contract electronic catalog residing in the E-CAT System to include the increased contract unit prices. If the Contracting Officer and the Contractor are unable to agree upon the price for any items, the Contracting Officer will delete these items from the catalog in the E-CAT System. (This procedure applies to only those items whose prices the Contracting Officer is unable to determine fair and reasonable within the 60-day period the Government has to evaluate prices and update the E-CAT System.

The remainder of the items whose price increases are determined fair and reasonable, shall be entered into the E-CAT system within the prescribed period.)

In addition, the Contracting Officer may also, at any time, remove any item from the catalog in the E-CAT System that the Contracting Officer believes is no longer reasonably priced (if the Contracting Officer and the Contractor are unable to agree upon a reduced price) and notify customers accordingly.

(4) Isolated incidents may occur for an item or group of items when proposed increases could exceed the annual ceiling benchmark in paragraph (f)(2)(ii). In such cases the Contractor can submit an adequately justified written request for Contracting Officer approval of an increase in Contract Unit Price that exceeds the ceiling. The Contracting Officer may approve the request on a one-time basis, increase the ceiling for the item or group of items if appropriate, negotiate a lower Contract Unit Price, or delete the item from the contract electronic catalog residing in the E-CAT system. In no case may the increase in Contract Unit Price exceed the ceiling without written authorization from the Contracting Officer. Also, no increase will be authorized that results in a contract unit price that exceeds the other benchmark.

(5) Any increased OFA unit prices shall not be used to compute contract unit prices for Delivery Orders issued before the date the adjusted contract unit prices take effect under the Contract(i.e., the date they appear in the contract electronic catalog residing in the E-CAT system).

(g) If the Contracting Officer removes items from the E-CAT system for price unreasonableness (see (e)(3), (f)(3) and (4) above), all outstanding orders issued prior to the date the items are removed shall be delivered in accordance with the contract delivery schedule and the Government shall pay for such items at the Contract Unit Price in effect at the time of the order.

(h) If the Contracting Officer at any time has any reason to believe that the OFA Unit Price has been discontinued (e.g., the current OFA contract expires and the Contractor does not receive a subsequent contract), the Contractor shall furnish relevant information as required by the Contracting Officer. If the Contracting Officer determines that the OFA unit price has been discontinued, the parties shall promptly agree upon an appropriate substitute for determining adjustments pursuant to this or some other appropriate EPA clause. The contract shall be modified to incorporate the substitute and its effective date.

(i) Pricing actions pursuant to paragraph (c) entitled "Changes" of Federal Acquisition Regulation (FAR) clause 52.212-4 (including any revisions by addendum thereto) or any other provision of this Contract will be priced as though there were no provisions for Economic Price Adjustment.

(j) Pending approval of any proposed price changes and revision of the contract unit prices in the contract electronic catalog residing in the E-CAT System, payment shall be made at the contract unit prices in effect at the time of order.

(k) Voluntary price reductions (VPR): A "special or discount" offered by the Contractor which results in a voluntary price reduction for an item or group of items for a given period of time. The Contractor may offer a VPR at any time. The price reductions resulting from these VPRs will be in addition to any price reductions mandated by this EPA clause. The Contractor shall notify the Contracting Officer when the VPR takes effect, the applicable items included, and the length of time the VPR will remain in effect. Once the "special or discount" period expires, prices will revert to the contract unit prices in effect at that time.

If an OFA unit price decreases when a VPR is in effect, the VPR will remain in effect until it expires if it is lower than the proposed unit price decrease. If the Contractor requests a contract unit price increase based upon an increased OFA unit price when a VPR is in effect, the VPR shall remain in effect until it expires. Upon expiration of the VPR, prices will revert to the adjusted contract unit prices, as calculated in accordance with this clause if no VPR had been in effect.

(End of Clause)

**52.216-9047 Economic Price Adjustment – Established Catalog Price – One Upward Adjustment Per Option Year E-CAT Solicitation.**
As prescribed in 16.203-4(a)(2)(90)(ii), 16.203-4(a)(2)(91)(ii), 16.203-4(a)(2)(96)(i), and 16.203-4(a)(2)(97), insert the following clause:

ECONOMIC PRICE ADJUSTMENT – ESTABLISHED CATALOG PRICE ONE UPWARD ADJUSTMENT PER OPTION YEAR E-CAT SOLICITATION (NOV 2011)

(a) All price adjustments authorized or mandated by this clause are based upon changes in the Contractor's list prices and certain Other Federal Agency (OFA) contract unit prices. The clause also provides for voluntary price reductions (VPR) in the form of "specials" or "discounts".

(b) Definitions:

(1) Contract Unit Price: The price per unit of issue comprised of the "List Price" and the applicable "Discount". The Contract Unit Price is determined by reducing the applicable list price by the appropriate discount. Contract unit prices and any revisions thereto are loaded by the Contractor into an E-CAT File and are forwarded electronically to the Government. For proposed price changes, the Contractor shall also separately submit (in Excel Spreadsheet or ACCESS Database format) the additional information as required in paragraphs (g) and (h) below in order for the Government to review and evaluate these proposed price changes. Upon the Government's determination that the offered unit prices are acceptable/fair and reasonable, the Government shall release them into the contract electronic catalog residing in the E-CAT System. (Contract unit prices, list prices, and discounts under this contract are not

visible in the E-CAT System to the Contractor or any customer. The prices visible in the E-CAT System to the Contractor or any customer are the delivered unit prices which are the contract unit prices plus the DLA Troop Support administrative fee percentage (in effect at that time) charged customers ordering under this contract.)

(2) Discount: The percentage reduction off the list price proposed by the Contractor, accepted by the Government, and maintained in the contract file (not the E-CAT System) by the Government. These percentages may vary per item and quantity ordered. They shall be agreed to at time of award and may not be reduced for the life of the contract. These discounts are in addition to any standard trade discounts in the Contractor's established commercial Catalog/Price List. (Contractors may offer larger discounts and/or reduced List Prices at any time.)

(3) List Price: The established Catalog Unit Prices of the items. In order for a "List Price" to meet the criteria as an established Catalog Price, it must meet the definition in (c)(1) below.

(4) Voluntary Price Reduction (VPR): See paragraph (l).

(c)(1) The term "established Catalog Unit Price", as used in this clause, means a Unit Price that (i) is a Catalog Price for a commercial item sold in substantial quantities to the general public and (ii) is the net price after applying any standard trade discounts offered by the Contractor.

(2) Unless otherwise specified, all reference to the terms "OFA Unit Price"(s) or " OFA Price(s)" as used in this clause, shall be the prices appearing in the Contractor's current contract it may have with another Federal Agency for the same items under this contract.

(d) The offeror/Contractor warrants that (1) the List Prices and the subsequent revisions thereto are the established Catalog Unit Prices in effect at time of Award or adjustment for like quantities of the same items and (2) any contract unit prices determined using these List Prices do not include allowances for any portion of the contingency covered by this clause. The offeror/Contractor also warrants that any contract unit prices determined using OFA Unit Prices do not include allowances for any portion of the contingency covered by this clause.

(e) Prior to award the Contractor must furnish:

(1) Their current established Catalog/Price List, offered Discounts, proposed contract unit prices; and

(2) If applicable, a copy of their current OFA Contract(s), OFA Unit Prices, and the OFA contract expiration dates applicable to items offered as well as any other information required by the Contracting Officer.

(f) Upon acceptance by the Government, the Award Unit Prices will be established at the List Prices minus the offered Discounts provided the resulting contract unit prices do not exceed the current OFA Unit Price (if applicable) for the same item. Accordingly, offers are cautioned to propose discounts which, when applied to the list prices, will not exceed OFA Unit Prices (if applicable).

(g) Downward Adjustments.

(1) Downward adjustments to contract unit prices are mandated whenever there are decreases in either 1) List Prices or 2) OFA Unit Prices when the reduction results in a revised OFA Price which is now lower than the current Contract Unit Price. The Contractor shall promptly notify the Contracting Officer in writing of the amount and effective date of each decrease in list price and any OFA Unit Price reduction which results in an OFA Unit Price which is now lower than the current Contract Unit Price. If the offered price decrease is based upon a reduction in list price or OFA Price, the Contractor shall propose a lower Contract Unit Price taking into consideration the benchmarks in paragraphs (g)(2) and (3) below. The Contractor must furnish a copy of the revised Catalog/Price List or OFA Unit Price as soon as it is available. Also, the Contractor must provide a copy of the "E-CAT file" at least 30 days prior to the date when the reduced List Price(s) or OFA Price(s) take effect. In addition to the "E-CAT file" and any other information required by the Contracting Officer, the Contractor shall also separately furnish, within the timeframe above, an Excel spreadsheet or ACCESS database (in both hard copy and disc) that displays for each item with an offered decrease in Contract Unit Price the appropriate information below:

(i) For List or OFA Price changes: The item number; e.g., 0001AA.

(ii) For List or OFA Price changes: The Supplier (Catalog); e.g., ABC Imaging, Inc.

(iii) For List or OFA Price changes: The Product Name/Nomenclature; e.g., High Speed Handpiece.

(iv) For List or OFA Price changes: Part Number; HIH 2000

(v) For List or OFA Price changes: The list price upon which the current Contract Unit Price is based.

(vi) For List or OFA Price changes: The applicable Contract Discount used as a basis for determining the current Contract Unit Price.

(vii) For List or OFA Price changes: The Contract Unit Price currently in effect.

(viii) For list price changes: The reduced List Price.

(ix) For List or OFA Price changes: The applicable Contract Discount or larger Contract Discount now offered.

(x) For List or OFA Price changes: The reduced Contract Unit Price now offered.

(xi) For list price changes: The percentage decrease in list price from the list price which determined the current contract unit price to the new, lower list price.

(xii) For list price changes: The percentage change in contract unit price from the current contract unit price to the new lower contract unit price now offered.

(xiii) For OFA Price changes: The current OFA unit price which is about to expire and the new reduced OFA unit price which will replace it and triggered this contract Unit Price reduction.

(xiv) For list price changes: For any items offered to Federal Agencies under an OFA Contract, the current OFA Unit Price(s) for the same item.

(2) Reductions in list price(s). if the offered price decrease is based upon a reduction in the list price, the appropriate discount or larger discount now offered will be applied to each reduced list price to determine the adjusted contract unit price provided the proposed lower contract unit Price does not exceed the lower of the following two benchmarks:

(i) The offered reduction in Contract Unit Price on a percentage basis must be at least equal to the percentage reduction from the list price currently in effect under the contract to the new lower List Price; i.e., the current Contract Unit Price must, as a minimum, be reduced by the percentage decrease in List Price.

(ii) The new proposed lower Contract Unit Price shall not exceed the current OFA Unit Price for the same item.

(3) OFA price reductions. If the offered price decrease is based upon a reduction in the OFA price, the proposed lower contract unit price shall not exceed the following benchmark:

The new proposed lower contract unit price shall not exceed the revised lower OFA price for the same item.

(4) If the proposed contract unit price exceeds the lower of the appropriate list price benchmarks (for reductions based upon reduced List Prices) or the OFA Price benchmark (for reductions based upon reduced OFA Prices), the Contracting Officer shall determine the proposed price reductions unreasonable and negotiate a price reduction which results in a Contract Unit Price that does not exceed the appropriate benchmarks. (All negotiated price reductions shall be confirmed in writing and will include the agreed-to price(s) and the list price(s) and discount(s) which make up these prices.

Changes based upon OFA Price reductions will be expressed in terms of the current list price and an appropriate discount which results in an adjusted Contract Unit Price which does not exceed the revised lower OFA Price.) If an agreement cannot be reached the Contracting Officer has the option of removing these items from the E-CAT system or taking the action in the last sentence below. If the proposed Contract Unit Price does not exceed the lowest of the appropriate list price or OFA Price benchmarks, it will be determined fair and reasonable.

Upon acceptance of any proposed price decreases, the Government shall modify the contract electronic catalog residing in the E-CAT System to include the reduced contract unit prices. (Changes based upon OFA Price reductions will be expressed in terms of the current list price and an appropriate discount which results in an adjusted Contract Unit Price which does not exceed the revised lower OFA Price). These reduced contract unit prices shall apply to those items ordered on or after the date the reduced list or OFA prices take effect (Revisions will not be added to the electronic catalog prior to date they take effect).

If the Contractor fails to notify the Contracting Officer of any list price or OFA Price decreases within the timeframe and in the manner stated above or agreement on any reduction cannot be reached, the Contracting Officer may determine the applicable adjustment and authorize a unilateral price adjustment

retroactively applied to all items ordered on or after the effective date of the decrease in the Contractor's established List or OFA Prices.

(h) Upward Adjustments.

(1) The Base Year contract unit prices are not subject to any upward adjustment. The Contractor is authorized to submit one request for any upward adjustments to contract unit prices for each Option Year. This request shall be submitted no later than 30 days prior to the effective date of the upcoming Option Year (if exercised). Each request for upward price adjustment must be based upon increases in List Prices only. The Contractor shall propose a Contract Unit Price taking into consideration the benchmarks in paragraph (h)(2). The request shall include a copy of the revised Catalog/Price List, the "E-CAT file" and the following for each item with a proposed increase in Contract Unit Price:

(i) A separate Excel spreadsheet or ACCESS database, in both hard copy and disc, that displays for each item with a proposed price increase the following information:

(A) The item number; e.g., 0003.

(B) The Supplier(Catalog); e.g., ABC Dental, Inc.

(C) The Product Name/Nomenclature; e.g., High Speed Handpiece.

(D) The Part Number; e.g., HIH2000.

(E) For the initial Option year, the list price that determined the Award Unit Price, the applicable Contract Discount, and the Award Unit Price. For all subsequent Option years, the list price that determined the highest Contract Unit Price that was in effect at any time during the preceding Contract Year, the applicable discount, and the highest Contract Unit Price that was in effect during the preceding Contract Year.

(F) The increased list price and its effective date, the applicable Contract Discount or larger Contract Discount now offered, and the proposed higher Contract Unit Price.

(G) For the initial Option year, the percentage change from the list price that determined the award unit price to the new higher List Price. For all subsequent Option years, the percentage change from the list price that determined the highest Contract Unit Price that was in effect at any time during the preceding Contract Year to the new higher List Price.

(H) For the initial Option year, the percentage change from the award unit price to the new higher proposed Contract Unit Price. For all subsequent Option years, the percentage change from the highest Contract Unit Price that was in effect at any time during the preceding contract year to the new higher proposed Contract Unit Price.

(I) For any items offered to another Federal Agency under an OFA Contract, the current OFA Unit Price(s) for the same item.

(J) Any other information required by the Contracting Officer.

(2) Benchmarks. If any list price increases, and the increase is authorized under this clause, the contract unit prices for any corresponding items ordered after the increase takes effect shall be determined using the increased list price and either the applicable Discount originally awarded or any larger Discount now offered that applies to the affected item. Proposed increases will be considered fair and reasonable if they do not exceed whichever is the lowest of the following three benchmarks:

(i) For the Initial Option Year of the contract, the proposed increase in Contract Unit Price on a percentage basis cannot exceed the percentage increase from the list price that determined the award unit price to the new higher List Price. For all subsequent Option Years, the proposed increase in Contract Unit Price on a percentage basis cannot exceed the percentage increase from the list price that determined the highest Contract Unit Price that was in effect at any time during the preceding contract year to the new higher List Price.

(ii) Any proposed higher Contract Unit Price shall not exceed the current OFA Unit Price for the same item.

(iii) Any proposed higher contract unit prices are subject to the following limitations:

(A) For the initial Option Year, Contract Unit Price increases shall be limited to the following annual ceiling(s) applied to the award unit price for the same item (i.e., any proposed higher Contract Unit Price cannot exceed the award unit price plus the annual ceiling).

(B) For all subsequent Option Years, Contract Unit Price increases shall be limited to the following annual ceiling(s) applied to the highest Contract Unit Price in effect during the preceding Contract Year for the same item (i.e., any proposed higher Contract Unit Price cannot exceed the highest Contract Unit Price in effect during the preceding Contract Year plus the annual ceiling.)

Annual Ceiling, All Items: 10%

There is no percentage limit on downward adjustments under this clause.

(3) Upon approval of the proposed price increases, the Government shall modify the contract electronic catalog residing in the E-CAT System to include the increased contract unit prices. Upward price adjustments shall be effective on the same day that the Option Year takes effect unless either of the following occurs:

(i) If the Contractor's request for price adjustment is not received a minimum of 30 days prior to the effective date of the upcoming Option Year (if exercised), any approved upward price adjustment shall not be effective until 30 days after receipt of the request.

(ii) If, during the 30-day period the Government has to evaluate prices and update the E-CAT system, the Contracting Officer is unable to determine that a price increase on any item or items is fair and reasonable (i.e., the proposed Contract Unit Price exceeds the lowest of the three benchmarks above). In this case, no price increases will be authorized for those items until the Contracting Officer is able to determine the price increases for those items to be fair and reasonable.

If necessary, the Contracting Officer shall conduct discussions with the Contractor to negotiate a price reduction which results in a Contract Unit Price that does not exceed the lowest of the three benchmarks.

When discussions have concluded and an agreement which results in fair and reasonable prices is reached, the Contractor shall confirm the agreed-to price(s) in writing and forward an E-CAT file which includes the agreed-to price(s). (The agreement shall also identify the list price and discount which makes up each agreed-to price.)

Once the written agreement is received, the Government shall modify the contract electronic catalog residing in the E-CAT System to include the increased contract unit prices. If the Contracting Officer and the Contractor are unable to agree upon the price for any items, the Contracting Officer will delete these items from the catalog in the E-CAT System. (This procedure applies to only those items whose prices the Contracting Officer is unable to determine fair and reasonable within the 30-day period the Government has to evaluate prices and update the E-CAT System. The remainder of the items whose price increases are determined fair and reasonable, shall be entered into the E-CAT system within the prescribed period.) In addition, the Contracting Officer may also, at any time, remove any item from the catalog in the E-CAT System that the Contracting Officer believes is no longer reasonably priced (if the Contracting Officer and the Contractor are unable to agree upon a reduced price) and notify customers accordingly.

(4) Isolated incidents may occur for an item or group of items when proposed increases could exceed the annual ceiling benchmark in paragraph (h)(2)(iii). In such cases the Contractor can submit an adequately justified written request for Contracting Officer approval of an increase in Contract Unit Price that exceeds the ceiling. The Contracting Officer may approve the request on a one-time basis, increase the ceiling for the item or group of items if appropriate, negotiate a lower Contract Unit Price, or delete the item(s) from the contract electronic catalog residing in the E-CAT system. In no case may the increase in Contract Unit Price exceed the ceiling without written authorization from the Contracting Officer. Also, no increase will be authorized that results in a Contract Unit Price that exceeds the other benchmarks.

(5) Any increased List Prices shall not be used to compute contract unit prices for Delivery Orders issued before the date the adjusted contract unit prices take effect under the Contract.

(6) If the Contracting Officer removes items from the E-CAT system for price unreasonableness (see (g)(4) and (h)(3)(ii) and (4) above), all outstanding orders issued prior to the date the items are removed shall be delivered in accordance with the contract delivery schedule and the Government shall pay for such items at the Contract Unit Price in effect at the time of the order.

(i) If the Contracting Officer at any time has any reason to believe that the established list price has been discontinued, the basis for the list price has been substantially altered, or that the item no longer meets the criteria to qualify as an established Catalog Priced item, the Contractor shall furnish relevant information as required by the Contracting Officer. If the Contracting Officer determines that any of the preceding conditions are present and a substitute for determining price adjustments is needed, the parties shall promptly agree upon an appropriate substitute for determining adjustments pursuant to this clause. The contract shall be modified to incorporate the substitute and its effective date.

(j) Pricing actions pursuant to paragraph (c) entitled “Changes” of Federal Acquisition Regulation (FAR) clause 52.212-4 (including any revisions by addendum thereto) or any other provision of this Contract will be priced as though there were no provisions for Economic Price Adjustment.

(k) Pending approval of any proposed price changes and revision of the contract unit prices in the contract electronic catalog residing in the E-CAT System, payment shall be made at the contract unit prices in effect at the time of order.

(l) Voluntary price reductions (VPR): A "special or discount" offered by the Contractor which results in a voluntary price reduction for an item or group of items for a given period of time. The Contractor may offer a VPR at any time. The price reductions resulting from these VPRs will be in addition to any price reductions mandated by this EPA clause. The Contractor shall notify the Contracting Officer when the VPR takes effect, which items are items included, and the length of time the VPR will remain in effect. Once the "special or discount" period expires, prices will revert to the Contract Unit Price(s) in effect at that time.

If a list price (or OFA unit price) decreases when a VPR is in effect, the VPR will remain in effect until it expires if it is lower than the proposed unit price decrease. If the Contractor requests a contract unit price increase based upon an increased list price when a VPR is in effect, the VPR shall remain in effect until it expires. Upon expiration of the VPR, prices will revert to the adjusted contract unit prices, as calculated in accordance with this clause as if no VPR had been in effect.

(End of Clause)

**52.216-9048 Economic Price Adjustment – Established Catalog Price – Multiple Adjustments Authorized Per Clause Terms – E-CAT Solicitation.**
As prescribed in 16.203-4(a)(2)(97), insert the following clause:

ECONOMIC PRICE ADJUSTMENT – ESTABLISHED CATALOG PRICE - MULTIPLE ADJUSTMENTS AUTHORIZED PER CLAUSE TERMS - E-CAT SOLICITATION (NOV 2011)

(a) All price adjustments authorized or mandated by this clause are based upon changes in the Contractor's list prices and certain Federal Supply Schedule (FSS) unit prices. The clause also provides for voluntary price reductions (VPR) in the form of "specials" or "discounts".

(b) Definitions:

(1) Contract unit price: The price per unit of issue comprised of the "List Price" and the applicable "Discount". The Contract unit price is determined by reducing the applicable list price by the appropriate Discount. Proposed revised prices are loaded by the Contractor into an E-CAT File and are forwarded electronically to the Government. The Contractor shall also separately submit (in Excel Spreadsheet or ACCESS database format) the additional information as required in paragraphs (g) and (h) below in order for the Government to review and evaluate these proposed price changes. Upon the Government's determination that the offered unit prices are acceptable/fair and reasonable, the Government shall release them into the contract electronic catalog residing in the E-CAT System. (Contract unit prices, list prices, and discounts under this contract are not visible in the E-CAT System to the Contractor or any customer. The prices visible in the E-CAT System to the Contractor or any customer are the delivered unit prices which are the contract unit prices plus the DLA Troop Support administrative fee percentage (in effect at that time) charged customers ordering under this contract.)

(2) Discount: The percentage reduction off the list price proposed by the Contractor, accepted by the Government, and maintained in the contract file (not the E-CAT System) by the Government. These

percentages may vary per item and quantity ordered. They shall be agreed to at time of award and may not be reduced for the life of the contract. These discounts are in addition to any standard trade discounts in the Contractor's established commercial catalog/price list. (Contractors may offer larger discounts and/or reduced list prices at any time.)

(3) List price: The established catalog unit prices of the items. In order for a "List Price" to meet the criteria as an established Catalog Price, it must meet the definition in (c)(1) below.

(4) Voluntary price reduction (VPR): See paragraph (l).

(c)(1) The term "established catalog unit price", as used in this clause, means a unit price that (i) is a catalog price for a commercial item sold in substantial quantities to the general public and (ii) is the net price after applying any standard trade discounts offered by the Contractor.

(2) Unless otherwise specified, all reference to the terms "FSS Unit Price"(s) or "FSS Price(s)" as used in this clause, shall be the prices appearing in the Contractor's current Federal Supply Schedule for the same items under this contract.

(d) The offeror/Contractor warrants that (1) the List Prices and the subsequent revisions thereto are the established Catalog Unit Prices in effect at time of Award or adjustment for like quantities of the same items and (2) any contract unit prices determined using these List Prices do not include allowances for any portion of the contingency covered by this clause. The offeror/Contractor also warrants that any contract unit prices determined using FSS unit prices do not include allowances for any portion of the contingency covered by this clause.

(e) Prior to award the Contractor must furnish:

(1) Their current established Catalog/Price List, offered Discounts, proposed contract unit prices; and

(2) A copy of their current FSS's, FSS unit prices, and the FSS contract expiration dates applicable to items offered as well as any other information required by the Contracting Officer.

(f) Upon acceptance by the Government, the award unit prices will be established at the list prices minus the offered discounts provided the resulting contract unit prices do not exceed the current FSS unit price for the same item. Accordingly, offers are cautioned to propose discounts which, when applied to the list prices, will not exceed FSS unit prices.

(g) Downward Adjustments.

(1) Downward adjustments to contract unit prices are mandated whenever there are decreases in either 1) List prices or 2) FSS unit prices when the reduction results in a revised FSS Price which is now lower than the current contract unit price. The Contractor shall promptly notify the Contracting Officer in writing of the amount and effective date of each decrease in list price and any FSS unit price reduction which results in an FSS unit price which is now lower than the current contract unit price. If the offered price decrease is based upon a reduction in list price or FSS price, the Contractor shall propose a lower Contract Unit Price taking into consideration the benchmarks in paragraphs (g)(2) and (3) below. The Contractor must furnish a copy of the revised Catalog/Price List or FSS Unit Price as soon as it is

available. Also, for reductions in List Prices, the Contractor must provide a copy of the "E-CAT file" at least 60 days prior to the date when the reduced List Prices take effect. For reductions in FSS, the Contractor shall provide a copy of the E-CAT file at least 30 days prior to the date the reduced FSS Unit Price takes effect.

In addition to the "E-CAT file" and any other information required by the Contracting Officer, the Contractor shall also separately furnish, within the appropriate timeframe above (i.e., at least 60 days for a reduction in List Price; at least 30 days for a reduction in FSS), an Excel spreadsheet or ACCESS database (in both hard copy and disc) that displays for each item with an offered decrease in Contract Unit Price the appropriate information below:

(i) For list price or FSS changes: The item number; e.g., 0001AA.

(ii) For list price or FSS changes: The Supplier (Catalog); e.g., ABC Imaging, Inc.

(iii) For list price or FSS changes: The Product Name/Nomenclature; e.g., High Speed Handpiece.

(iv) For list price or FSS changes: Part Number; HIH 2000

(v) For list price or FSS changes: The list price upon which the current Contract Unit Price is based.

(vi) For list price or FSS changes: The applicable Contract Discount used as a basis for determining the current Contract Unit Price.

(vii) For list price or FSS changes: The Contract Unit Price currently in effect.

(viii) For list price changes: The reduced list price.

(ix) For list price or FSS changes: The applicable contract discount or larger contract discount now offered.

(x) For list price or FSS changes: The reduced Contract Unit Price now offered.

(xi) For list price changes: The percentage decrease in list price from the list price which determined the current contract unit price to the new, lower list price.

(xii) For list price changes: The percentage change in contract unit price from the current contract unit price to the new lower contract unit price now offered.

(xiii) For FSS changes: The current FSS unit price which is about to expire and the new reduced FSS Unit Price which will replace it and triggered this contract unit price reduction.

(xiv) For list price changes: For any items offered to the Department of Veterans Affairs (DVA) under the FSS, the current FSS Unit Price(s) for the same item.

(2) Reductions in list price(s). If the offered price decrease is based upon a reduction in the list price, the appropriate discount or larger discount now offered will be applied to each reduced list price to determine the adjusted contract unit price provided the proposed lower contract unit price does not exceed the lower of the following two benchmarks:

(i) The offered reduction in contract unit price on a percentage basis must be at least equal to the percentage reduction from the list price currently in effect under the contract to the new lower list price; i.e., the current contract unit price must, as a minimum, be reduced by the percentage decrease in list price.

(ii) The new proposed lower contract unit price shall not exceed the current FSS unit price for the same item.

(3) FSS price reductions. If the offered price decrease is based upon a reduction in the FSS price, the proposed lower contract unit price shall not exceed the following benchmark:

The new proposed lower Contract Unit Price shall not exceed the revised lower FSS Price for the same item.

(4) If the proposed contract unit price exceeds the lower of the appropriate list price benchmarks (for reductions based upon reduced list prices) or the FSS Price benchmark (for reductions based upon reduced FSS Prices), the Contracting Officer shall determine the proposed price reductions unreasonable and negotiate a price reduction which results in a Contract Unit Price that does not exceed the appropriate benchmarks. (All negotiated price reductions shall be confirmed in writing and will include the agreed-to price(s) and the list price(s) and discount(s) which make up these prices.

Changes based upon FSS price reductions will be expressed in terms of the current list price and an appropriate discount which results in an adjusted Contract Unit Price which does not exceed the revised lower FSS Price.) If an agreement cannot be reached the Contracting Officer has the option of removing these items from the E-CAT system or taking the action in the last sentence below. If the proposed contract unit price does not exceed the lowest of the appropriate list price or FSS Price benchmarks, it will be determined fair and reasonable.

Upon acceptance of any proposed price decreases, the Government shall modify the contract electronic catalog residing in the E-CAT System to include the reduced contract unit prices. (Changes based upon FSS price reductions will be expressed in terms of the current list price and an appropriate discount which results in an adjusted contract unit price which does not exceed the revised lower FSS price.) These reduced contract unit prices shall apply to those items ordered on or after the date when these prices appear in the contract electronic catalog residing in the E-CAT system (Revisions will not be added to the electronic catalog prior to date they take effect).

If the Contractor fails to notify the Contracting Officer of any list price or FSS Price decreases within the timeframe and in the manner stated above or agreement on any reduction cannot be reached, the Contracting Officer may determine the applicable adjustment and authorize a unilateral price adjustment retroactively applied to all items ordered on or after the effective date of the decrease in the Contractor's established List or FSS Prices.

(h) Upward Adjustments.

(1) Upward adjustments may be requested at any time. However, any request for upward price adjustment must be based upon increases in List Prices only. The Contractor shall propose a Contract Unit Price taking into consideration the benchmarks in paragraph (g)(2). The request shall include a copy of the revised Catalog/Price List, the "E-CAT file" and the following for each item with a proposed increase in Contract Unit Price:

(i) A separate Excel spreadsheet or ACCESS database, in both hard copy and disc, that displays for each item with a proposed price increase the following information:

(A) The item number; e.g., 0003.

(B) The Supplier(Catalog); e.g., ABC Dental, Inc.

(C) The Product Name/Nomenclature; e.g., High Speed Handpiece.

(D) The Part Number; e.g., HIH2000.

(E) For the initial year, the list price that determined the Award Unit Price, the applicable Contract Discount, and the Award Unit Price. For all subsequent contract years, the list price that determined the highest Contract Unit Price that was in effect at any time during the preceding Contract Year, the applicable discount, and the highest Contract Unit Price that was in effect during the preceding Contract Year.

(F) The increased list price and its effective date, the applicable Contract Discount or larger Contract Discount now offered, and the proposed higher Contract Unit Price.
(G) For the initial year, the percentage change from the list price that determined the award unit price to the new higher list price. For all subsequent contract years, the percentage change from the list price that determined the highest contract unit price that was in effect at any time during the preceding contract year to the new higher list price.

(H) For the initial year, the percentage change from the award unit price to the new higher proposed contract unit price. For all subsequent contract years, the percentage change from the highest contract unit price that was in effect at any time during the preceding contract year to the new higher proposed contract unit price.

(I) For any items offered to the Department of Veterans Affairs (DVA) under the FSS, the current FSS Unit Price(s) for the same item.

(J) Any other information required by the Contracting Officer.

(2) Benchmarks. If any list price increases, and the increase is authorized under this clause, the contract unit prices for any corresponding items ordered after the increase takes effect in the E-CAT system shall be determined using the increased list price and either the applicable discount originally awarded or any larger discount now offered that applies to the affected item. Proposed increases will be considered fair and reasonable if they do not exceed whichever is the lowest of the following three benchmarks:

(i) For the initial year of the contract, the proposed increase in contract unit price on a percentage basis cannot exceed the percentage increase from the list price that determined the award unit price to the new higher list price. For all subsequent contract years, the proposed increase in contract unit price on a percentage basis cannot exceed the percentage increase from the list price that determined the highest contract unit price that was in effect at any time during the preceding contract year to the new higher list price.

(ii) Any proposed higher Contract Unit Price shall not exceed the current FSS Unit Price for the same item.

(iii) Any proposed higher contract unit prices are subject to the following limitations:

(A) For the initial Contract Year, Contract Unit Price increases shall be limited to the following annual ceiling(s) applied to the award unit price for the same item (i.e., any proposed higher Contract Unit Price cannot exceed the award unit price plus the annual ceiling).

(B) For all subsequent contract years, contract unit price increases shall be limited to the following annual ceiling(s) applied to the highest contract unit price in effect during the preceding contract year for the same item (i.e., any proposed higher contract unit price cannot exceed the highest contract unit price in effect during the preceding contract year plus the annual ceiling.)

Annual Ceiling, All Items: 10%

There is no percentage limit on downward adjustments under this clause.

(3) Upon approval of the proposed price increases, the Government shall modify the contract electronic catalog residing in the E-CAT System to include the increased contract unit prices. Upward price adjustments shall be effective once they appear in the contract electronic catalog residing in the E-CAT system. These updates will take place within 60 days after receipt of the Contractor's request for upward price adjustment (or at the same time the increased list price takes effect, whichever is later) unless the Contracting Officer is unable to determine during that period that a price increase on any item or items is fair and reasonable (i.e., the proposed Contract Unit Price exceeds the lowest of the three benchmarks above). In this case, no price increases will be authorized for those items until the Contracting Officer is able to determine the price increases for those items to be fair and reasonable.

If necessary, the Contracting Officer shall conduct discussions with the Contractor to negotiate a price reduction which results in a Contract Unit Price that does not exceed the lowest of the three benchmarks. When discussions have concluded and an agreement which results in fair and reasonable prices is reached, the Contractor shall confirm the agreed-to price(s) in writing and forward an E-CAT file which includes the agreed-to price(s). (The agreement shall also identify the list price and discount which makes up each agreed-to price.)

Once the written agreement is received, the Government shall modify the contract electronic catalog residing in the E-CAT System to include the increased contract unit prices. (No increase will be effective prior to the date the increased list price(s) take effect.) If the Contracting Officer and the Contractor are unable to agree upon the price for any items, the Contracting Officer will delete these items from the catalog in the E-CAT System.

In addition, the Contracting Officer may also, at any time, remove any item from the catalog in the E-CAT System that the Contracting Officer believes is no longer reasonably priced (if the Contracting Officer and the Contractor are unable to agree upon a reduced price) and notify customers accordingly.

(4) Isolated incidents may occur for an item or group of items when proposed increases could exceed the annual ceiling benchmark in paragraph (h)(2)(iii). In such cases the Contractor can submit an adequately justified written request for Contracting Officer approval of an increase in contract unit price that exceeds the ceiling. The Contracting Officer may approve the request on a one-time basis, increase the ceiling for the item or group of items if appropriate, negotiate a lower contract unit price, or delete the item(s) from the contract electronic catalog residing in the E-CAT system. In no case may the increase in contract unit price exceed the ceiling without written authorization from the Contracting Officer. Also, no increase will be authorized that results in a contract unit price that exceeds the other benchmarks.

(5) Any increased list prices shall not be used to compute contract unit prices for Delivery Orders issued before the date the adjusted contract unit prices take effect under the Contract (i.e., the date they appear in the contract electronic catalog residing in the E-CAT system).

(6) If the Contracting Officer removes items from the E-CAT system for price unreasonableness (see (g)(4) and (h)(3)and (4) above), all outstanding orders issued prior to the date the items are removed shall be delivered in accordance with the contract delivery schedule and the Government shall pay for such items at the contract unit price in effect at the time of the order.

(i) If the Contracting Officer at any time has any reason to believe that the established list price has been discontinued, the basis for the list price has been substantially altered, or that the item no longer meets the criteria to qualify as an established catalog priced item, the Contractor shall furnish relevant information as required by the Contracting Officer. If the Contracting Officer determines that any of the preceding conditions are present and a substitute for determining price adjustments is needed, the parties shall promptly agree upon an appropriate substitute for determining adjustments pursuant to this or another appropriate clause. The Contract shall be modified to incorporate the substitute and its effective date.

(j) Pricing actions pursuant to paragraph (c) entitled “Changes” of Federal Acquisition Regulation (FAR) clause 52.212-4 (including any revisions by addendum thereto) or any other provision of this Contract will be priced as though there were no provisions for Economic Price Adjustment.

(k) Pending approval of any proposed price changes and revision of the contract unit prices in the contract electronic catalog residing in the E-CAT System, payment shall be made at the contract unit prices in effect at the time of order.

(l) Voluntary price reductions (VPR): A “special or discount” offered by the Contractor which results in a voluntary price reduction for an item or group of items for a given period of time. The Contractor may offer a VPR at any time.

The price reductions resulting from these VPRs will be in addition to any price reductions mandated by this EPA clause. The Contractor shall notify the Contracting Officer when the VPR takes effect, which items are included, and the length of time the VPR will remain in effect. Once the “special or discount” period expires, prices will revert to the contract unit price(s) in effect at that time.

If a list price (or FSS Unit Price) decreases when a VPR is in effect, the VPR will remain in effect until it expires if it is lower than the proposed unit price decrease. If the Contractor requests a contract unit price increase based upon an increased list price when a VPR is in effect, the VPR shall remain in effect until it expires. Upon expiration of the VPR, prices will revert to the adjusted contract unit prices, as calculated in accordance with this clause as if no VPR had been in effect.

(End of Clause)

**52.216-9049 Economic Price Adjustment (EPA) of the Annual Management Fee(s) and Annual Management Cost(s) for the Option Years.**
As prescribed in 16.203-4(d)(2)(91), insert the following clause:

ECONOMIC PRICE ADJUSTMENT (EPA) OF THE ANNUAL MANAGEMENT FEE(S) AND ANNUAL MANAGEMENT COST(S) FOR THE OPTION YEARS (NOV 2011)

(a)(1) The Contractor warrants that the prices/costs and fees included in the Solicitation/Contract do not include allowances for any portion of the contingency covered by this clause. Any management fees and related management costs applicable to this contract (e.g., inventory and/or program) shall be calculated in accordance with this clause. The type(s) of management fee(s) and related management cost(s) that apply are specified elsewhere in this contract.

(2) Adjustments under this clause are predicated upon the Government exercising one or more option year extensions. The Government, at its discretion may choose to exercise or not exercise an option to extend the contract.

(b) The economic indicator for the purpose of calculating the management fee(s) (expressed as a percentage) and management cost(s) for each option year except the initial option year* under this clause shall be the initial publication of the preliminary producer price index for code number 4931104931101 entitled General Warehousing And Storage. This information is contained in the publication entitled "Producer Price Indexes", as published by the United States (U.S.) Department of Labor (DoL), Bureau of Labor Statistics (BLS). The preliminary index for a given month is available approximately two weeks into the following month. The index is also available through the Bureau of Labor Statistics web site at www.bls.gov. Click on “get detailed statistics” and select “series report”. Enter Series ID pcu4931104931101, select number of years and format for output, and then select “retrieve data” at the bottom of the page. (*Note: The base index for the first option year will use the revised PPI).

(c) This clause authorizes only one calculation annually (see paragraph (d)) to determine the management fee(s) and management cost(s) applicable to the upcoming option year. (The management fee(s) and management cost(s) for the base contract period are not subject to adjustment under this clause.) This calculation is as follows:

(1) A "base" and "adjusting" index shall be established for each option year (see paragraph (e) below).

(2) The percentage change (upward or downward) between the applicable "base" index and "adjusting" index shall be calculated.

(3) The management fee(s) for the contract year about to expire shall be increased or decreased based upon the percentage change in the indexes (see paragraph (h) for upward adjustments) in order to determine the management fee(s) for the upcoming option year. (However, for increases or decreases, Contractors may offer lower management fee(s) than those calculated in accordance with this formula).

(4) (A) The new management fee(s) for the upcoming option year shall be applied to one or more categories of guaranteed coverage (e.g., Contractor inventory material (CIM), Contractor furnished material (CFM), and Government purchased material (GPM)) as spelled out elsewhere in this contact.) The resultant subtotals represent the management cost(s) for each applicable category of guaranteed coverage and are added together to get the total management cost(s) for the upcoming option year. For payment purposes, the total management cost(s) for the upcoming option year may be paid on a monthly, quarterly, or some other basis at the discretion of the Contracting Officer.

(B) Prior to applying the new or current management fee(s) to the guaranteed coverage, the value of each category of guaranteed coverage is updated yearly by the Contracting Officer. This is accomplished by applying the DAPA, Federal Supply Schedule (FSS), ECAT, or Department of Defense (DoD) national contract price(s) (whichever is lower) in effect 60 days prior to the date the option takes effect to the quantities in each category of guaranteed coverage for the upcoming option year. The resultant subtotals represent the new value for each applicable category of guaranteed coverage and added together, represents the total inventory value for the upcoming option year.

(d)(1) Adjustment requests and notifications.

(i) If the “adjusting” index is higher than the “base” index, the Contractor may request an increase in accordance with the terms of this clause in the management fee(s) applicable to the upcoming option year. This written request must be received by the Contracting Officer within 30 days after the indexes used to calculate the adjusting index are available. The request may be generic or may include the specific calculations required by this clause to determine the revised management fee(s). When making the calculations, the 10% ceiling (paragraph (h) below) shall be taken into consideration. The Contractor has the option of proposing a management fee based upon these calculations or a lower management fee(s).

(ii) If the “adjusting” index is lower than the “base” index, a decrease in the management fee(s) is mandated by this clause. As above, the Contractor shall notify the Contracting Officer in writing of this decrease. This notification must be received by the Contracting Officer within 30 days after the indexes used to calculate the adjusting index are available. The notification may be generic or may include the specific calculations required by this clause to determine the revised management fee(s). The Contractor has the option of proposing the inventory management fee(s) based upon these calculations or a lower management fee(s).

(2) Upon receipt of a request for an upward adjustment or notification of a downward adjustment by the Contractor, the Contracting Officer shall review and validate the Contractor’s submittal. If acceptable, the Contracting Officer will calculate the management fees, if necessary, and the management cost(s) for the upcoming option year in accordance with paragraph (c) (4) above. If no increase is requested and a mandated decrease is not warranted, the Contracting Officer shall use the current management fee(s) to calculate the management cost(s) applicable to the upcoming option year. In either case, the management fee(s), management cost(s), and the total inventory value reserved for this contract for the upcoming option year shall be included in a contract modification.

If a request for an upward adjustment is received after the required 30-day timeframe, the Contracting Officer reserves the right to reject the request, as money may not available to fund the increase. If funds are available, the Contracting Officer shall have 30 days from the date the Contractor's request is received to review the request, make the required calculations and issue an adjustment modification. The upward adjustment shall take effect on the same day the modification takes effect. If a notification of a downward adjustment is not submitted until after the required 30-day timeframe or the Contractor fails to notify the Contracting Officer of a decrease, the Contracting Officer shall unilaterally make the required adjustments in accordance with this clause. The effective date of the downward adjustment shall be retroactive to the date the new option year takes effect.

(e) Determining the "base" and "adjusting" indexes.

(1) First option year:

(i) The base index shall be the arithmetic average of the revised indexes published for the month before and the month of the closing of the final proposal revisions.

(ii) The adjusting index shall be the arithmetic average of the preliminary indexes published for the third and fourth month prior to the month the base period expires (e.g., if the base period expires in June, the adjusting index would be the average of the indexes published for February and March of the base period.)

(2) Subsequent option years:

(i) The base index for any upcoming option year shall be the previously established adjusting index (e.g., the base index for the upcoming 2nd option year shall be the adjusting index established for the first option year. Note: If no adjustment was made for option year 1, determine the adjusting index for that year anyway in order to establish the base index for upcoming 2nd option year. This applies to any time an adjustment is not made for a given year.)

(ii) The adjusting index for any upcoming option year shall be the arithmetic average of the preliminary indexes published for the third and fourth months prior to the month the current option year expires (e.g., if the first option year expires in June, the adjusting index for the upcoming second option year would be the average of the indexes published for February and March of the first option year.)

(f) Following is a hypothetical example of adjustment calculations to determine the inventory management fee for option year III, and the associated inventory management costs (the base and adjusting indexes, the inventory management fee for option year II, and the CIM and CFM inventory values for option year III are hypothetical and are used only to illustrate how the inventory management fee and inventory management costs are calculated. Any management fee(s) and management cost(s) that may apply would be calculated in the same manner.):

(1) Base index: 102.05 Adjusting index: 103.75

(2) Inventory management fee for option year II: 1.50%

(3) Inventory value for guaranteed coverage (CIM and CFM) for option year III. (There are only 2 categories of guaranteed coverage for this hypothetical example.):

CIM: $405,000 CFM: $300,000

(4) Calculate the inventory management fee:

(i) Establish base index (use previously established adjusting index for the option year II which is the average of the preliminary indexes published for 3rd and 4th month prior to the month option year I expires. For example, if option year I expires in June, the base index for option year III would be the average of the preliminary indexes for February and March of option year I.)

Feb Index: 101.10 Mar Index: 103.00 Base Index (Average of Feb and Mar): 102.05

(ii) Establish Adjusting Index (average of preliminary indexes published for February and March of 2nd Option Year.)

Feb Index: 102.30 Mar Index: 105.20 Adjusting Index (Average of Feb and Mar): 103.75

Adjusting Index: 103.75
Less Base Index: -102.05
---
Increase to index 1.70

Divide increase to index by Base Index 1.70/102.05 = 0.016659 = Adjustment Factor (1.6659 %)

Inv. Man. Fee for Yr II x Adjustment Factor plus 1 = Inv. Man. Fee for Option

Option Year III 1.50% x 1.016659 = 1.52%

Ceiling provision:

Max Fee for Option Year III cannot exceed 10% increase of Op Yr II fee Max Fee = 1.10 (ceiling) x .0150 (Inv Man Fee for Op Yr II expressed as a decimal ) = .0165 (1.65%) (Maximum allowable fee 1.65%) 1.52% adjusted fee is less than 1.65% maximum fee, therefore 1.52% is new fee

(5) Contracting Officer to calculate the following:

CIM Inventory Value for OP YR III: $405,000.00
Multiplied by 1.52% (converted to a decimal value) x .0152
---
CIM Inventory Management Cost for OP YR III $6,156.00

CFM Inventory Value for OP YR III: $300,000.00
Multiplied by 1.52% (converted to a decimal value) x .0152
---
CFM Inventory Management Cost for OP YR III $4,560.00

| | |
|---|---|
| CIM Inventory Management Cost for OP YR III: | $6,156.00 |
| CFM Inventory Management Cost for OP YR III | + $4,560.00 |
| | --- |
| Inventory Management Cost for OP YR III | $10,716.00 |

(Total Inventory Value is $705,000, i.e., CIM Inventory Value plus CFM Inventory Value)

Note: Round all computations involving the PPIs to two decimal places.
Round adjustment factor to six decimal places.
Round inventory management fees to two decimal places when expressed as a percentage and four decimal places when expressed as a decimal.
Round all dollar figures to nearest cent.

(g) The adjusting contract modification will show all the calculations used to establish the management fee(s), management cost(s) and total inventory value covering the new option year.

(h) Any request to increase the management fee(s) in accordance with the requirements of this clause for any upcoming option year shall be limited to 10% of the same management fee(s) for the previous contract year. If the management fee(s) increase exceeds 10% of the management fee(s) for the previous contract year, and the Contractor has requested an increase of 10% or more, the Contractor shall be limited to the 10% increase. There is no percentage limit on any decreases in the management fee(s) under this clause. Contractors can also propose lower management fee(s) than those calculated in accordance with the requirements of this clause.

(i) The Contractor shall include a statement on the final invoice for each contract year/period that amounts invoiced under this contract reflect all decreases required by this clause.

(j) Payment on this contract shall be at the current management fee(s) and management cost(s) pending the issuance of the modification establishing the management fee(s), management cost(s), and total inventory value for the applicable option year. The management fee(s) and management cost(s) will, if necessary, be retroactively adjusted if the applicable price adjustment is delayed by the Government. In this case, any retroactive adjustment shall cover performance only from when the adjustment should have taken effect but for the delay caused by the Government through the day that the EPA modification takes effect.

(k) In the event that the publication of the economic indicator is discontinued, its method of derivation is altered substantially, or the Contracting Officer determines that the index consistently and substantially fails to reflect market conditions, the parties shall mutually agree upon an appropriate substitute method or adjustment mechanism to determine the management fee(s) and/or management cost(s). The contract shall be modified to specify the use of an appropriate substitute, which will be effective on the date the Index is no longer published, the derivation of the index is substantially altered, or the Index begins to consistently and substantially fail to reflect marked conditions.

(l) Any pricing actions pursuant to Federal Acquisition Regulation (FAR) clause 52.212-4, paragraph (c) entitled "Changes" (including any revisions by addendum thereto) or other provisions of the Contract shall be priced as though there were no provisions for economic price adjustment.

(m) No adjustment shall be made under this EPA clause unless the total change in contract amount exceeds $500.00.

(End of Clause)

**52.216-9050 Economic Price Adjustment (EPA) of the Annual Inventory Holding Fee and Annual Inventory Holding Cost for the Option Years.**
As prescribed in 16.203-4(d)(2)(92), insert the following clause:

ECONOMIC PRICE ADJUSTMENT (EPA) OF THE ANNUAL INVENTORY HOLDING FEE AND ANNUAL INVENTORY HOLDING COST FOR THE OPTION YEARS (NOV 2011)

(a) The Contractor warrants that the prices/costs and fees included in the Solicitation/Contract do not include allowances for any portion of the contingency covered by this clause. Adjustments under this clause are predicated upon the Government exercising one or more option year extensions. The Government, at its discretion may choose to exercise or not exercise an option to extend the Contract.

(b) The economic indicator, for the purpose of calculating the inventory holding fee (expressed as a percentage) and inventory holding cost for each option year under this clause, shall be the prime rate, as published Monday through Friday in the Wall Street Journal.

(c) This clause authorizes only one calculation annually (see paragraph d) to determine the inventory holding fee and inventory holding cost applicable to the upcoming option year. (The inventory holding fee and inventory holding cost for the base contract period are not subject to adjustment under this clause.) This calculation is as follows:

(1) A "base" and "adjusting" prime rate shall be established for each option year (see paragraph (e) below).

(2) Determine the change in points (upward or downward) between the Base Prime Rate and Adjusting Prime Rate for the twelve-month period* which ends 60 days prior to the upcoming option year for which the new inventory holding fee and inventory holding cost will be calculated. (*Note: The period for the adjustment for option year I may be longer or shorter than twelve months.)

(3)(i) Increases. The actual change in points up to the maximum allowed in accordance with paragraph (h) shall be added to the Inventory Holding Fee for the contract year/period about to expire to determine the inventory holding fee for the upcoming option year. Upward adjustments shall not exceed 1.50 points.

(ii) Decreases. The actual change in points shall be subtracted from the inventory holding fee for the contract year/period about to expire to determine the inventory holding fee for the upcoming option year.

(iii) For increases or decreases, Contractors may offer lower inventory holding fees than those calculated in accordance with the above.

(4) To determine the inventory holding cost for the upcoming option year, the Contracting Officer will apply the new inventory holding fee to the value of contractor furnished material inventory reserved

for this contract (hereafter referred to as the CFM inventory) for the upcoming option year (i.e., the value of the CFM inventory for the upcoming option year x new inventory holding fee expressed as a decimal to four decimal places = new inventory holding cost for the upcoming option year). The Contracting Officer will update the value of the CFM inventory for each contract year by applying the current DAPA, FSS, ECAT, or DoD national contract prices (whichever is lower) to the CFM inventory coverage for the upcoming contract year. For payment purposes, the inventory holding cost for the upcoming option year may be paid on a monthly, quarterly, or some other basis at the discretion of the Contracting Officer.

(d)(1) Adjustment requests and notifications:

(i) If the adjusting prime rate is higher than the base prime rate, the Contractor may request an increase in accordance with the terms of this clause in the inventory holding fee applicable to the upcoming option year. This written request must be received by the Contracting Officer within 30 days after the adjusting prime rate is published and may be generic or may include the specific calculations required by this clause to determine the revised inventory holding fee. The ceiling provision (paragraph (h) below) must also be considered when making the calculations. The Contractor has the option of proposing an inventory holding fee based upon these calculations or a lower inventory holding fee.

(ii) If the adjusting prime rate is lower than the base prime rate, a decrease in the inventory holding fee is mandated by this clause. Accordingly, the Contractor shall notify the Contracting Officer in writing of this decrease. This notification must be received by the Contracting Officer within 30 days after the adjusting prime rate is published and may be generic or may include the specific calculations required by this clause to determine the revised inventory holding fee. The Contractor has the option of proposing the inventory holding fee based upon these calculations or a lower inventory holding fee.

(2) Upon receipt of a request for an upward adjustment or notification of a downward adjustment by the Contractor, the Contracting Officer shall review and validate the Contractor's submittal. If acceptable, the Contracting Officer will calculate the inventory holding fee, if necessary, and the inventory holding cost for the upcoming option year in accordance with paragraph (c)(4) above. If no increase is requested and a mandated decrease is not warranted, the Contracting Officer shall use the current inventory holding fee to calculate the inventory holding cost for the upcoming option year. In either case, the inventory holding fee, inventory holding cost, and the value of the CFM inventory for the upcoming option year shall be included in a contract modification.

(3) If a request for an upward adjustment is received after the required 30-day timeframe, the Contracting Officer reserves the right to reject the request, as money may not available to fund the increase. If funds are available, the Contracting Officer shall have 30 days from the date the Contractor's request is received to review and validate the request, make the required calculations and issue an adjustment modification. The upward adjustment shall take effect on the same day the modification takes effect. If a notification of a downward adjustment is not submitted until after the required 30-day timeframe or the Contractor fails to notify the Contracting Officer of a decrease, the Contracting Officer shall unilaterally make the required adjustments in accordance with this clause. The effective date of the downward adjustment shall be retroactive to the date the new option year takes effect.

(e) Determining the "base" and "adjusting" indexes.

(1) The base prime rate used to calculate the inventory holding fee and inventory holding cost covering option year I under this clause shall be the prime rate, as published on the date of closing of the

final proposal revision. The base prime rate used to calculate the inventory holding fee and inventory holding cost for each subsequent option year shall be the prime rate, as published 60 days prior to the effective date of each previous option year (e.g., the base prime rate for option year III will be the prime rate published 60 days prior to the effective date of option year II.)

(2) The adjusting prime rate used to calculate the inventory holding fee and inventory holding cost for each option year shall be the prime rate, as published 60 days prior to the effective date of each option year (e.g., the adjusting prime rate for option year III will be the prime rate published 60 days prior to the effective date of option year III).

(f) Following is a hypothetical example of adjustment calculations to determine the inventory holding fee for option year III and the associated inventory holding cost. (The base and adjusting prime rates, the inventory holding fee for option year II and the value of the CFM inventory for option year III are hypothetical and are used only to illustrate how the inventory holding fee and inventory holding cost are calculated):

(1) Base prime rate (in effect 60 days prior to effective date of option year II): 4.00

(2) Adjusting prime rate (in effect 60 days prior to effective date of option year III): 5.75

(3) Current contract inventory holding fee for option year II: 3.75

(4) Calculate the inventory holding fee:

| | |
|---|---|
| Adjusting Prime Rate: | 5.75 |
| Base Prime Rate: | -4.00 |
| | --- |
| Change in (Prime Rate) Points: (-Increase-) | 1.75 |

Maximum increase allowed is 1.50 points: Clause ceiling of 1.50 is less than 1.75 calculated; therefore the allowable increase is 1.50 points.

| | |
|---|---|
| Inventory Holding Fee for Option Year II: | 3.75 |
| Maximum Increase in Prime Rate Allowed: | + 1.50 |
| | --- |
| Inventory Holding Fee for Option Year III: | 5.25 |

(5) Contracting Officer to calculate the Inventory Holding Cost:

Value of CFM Inventory as adjusted for Option Year III: $20,000,000.00

$20,000,000.00 x .0525 = $1,050,000 (Annual Inventory Holding Cost for Option Year III)

(g) The adjusting contract modification will show all the calculations used to establish the inventory holding fee, inventory holding cost, and the value of the CFM inventory covering the new option year.

(h) Any request to increase the Inventory Holding Fee in accordance with the requirements of this clause for any upcoming option year shall be limited to the point increase (in increments of 0.25) in the

prime rate, up to, but not exceeding 1.50 points. This will be determined when calculating the change in points in the prime rate using the base and adjusting prime rates described in paragraph (c)(2) and (c)(3)(i) and illustrated in paragraph (f). If the prime rate increase exceeds 1.50 points and the Contractor has requested an increase of 1.50 points or more, the Contractor shall be given the 1.50 point increase. There are no limitations on downward adjustments under this clause. Contractors can also propose lower inventory holding fees than those calculated in accordance with the requirements of this clause.

(i) The Contractor shall include a statement on the final invoice for each contract year/period that amounts invoiced under this contract reflect all decreases required by this clause.

(j) Payment on this contract shall be at the current inventory holding fee and inventory holding cost pending the issuance of the modification establishing the new inventory holding fee, inventory holding cost, and value of the CFM inventory for the applicable option year. The inventory holding fee and inventory holding cost will, if necessary, be retroactively adjusted if the applicable price adjustment is delayed by the Government. In this case, any retroactive adjustment shall cover performance only from when the adjustment should have taken effect but for the delay caused by the Government through the day that the EPA modification takes effect.

(k) In the event that the prime rate is discontinued, its method of derivation is altered substantially, or the Contracting Officer determines that the prime rate consistently and substantially fails to reflect market conditions, the parties shall mutually agree upon an appropriate substitute method or adjustment mechanism to determine the annual inventory holding fee and/or inventory holding cost. The Contract shall be modified to specify the use of an appropriate substitute, which will be effective on the date the prime rate is no longer published, the derivation of the prime rate is substantially altered, or the prime rate begins to consistently and substantially fail to reflect market conditions. If the base or adjusting prime rates established in paragraph (e) above fall on a day the prime rate is not published, use the next day the prime rate is published.

(l) Any pricing actions pursuant to Federal Acquisition Regulation (FAR) clause 52.212-4, paragraph (c) entitled "Changes" (including any revisions by addendum thereto) or other provisions of the Contract shall be priced as though there were no provisions for economic price adjustment.

(m) No adjustment shall be made under this EPA clause unless the total change in contract amount exceeds $500.00.

(End of Clause)

**52.216-9051 Economic Price Adjustment – Federal Ceiling Prices – One Adjustment Per Year.**
As prescribed in 16.203-4(d)(2)(93), insert the following clause:

ECONOMIC PRICE ADJUSTMENT – FEDERAL CEILING PRICES – ONE ADJUSTMENT PER YEAR (NOV 2011)

(a) All price adjustments authorized or mandated by this clause are based upon changes in the Federal ceiling price or Federal Supply Schedule (FSS) Price for each item. The clause also provides for voluntary price reductions (VPR) in the form of “specials” or “discounts”. The Government reserves the right not to exercise an Option.

(b) The offeror/Contractor warrants that any contract unit prices determined using the Federal ceiling price or FSS Price do not include allowances for any portion of the contingency covered by this clause.

(c) Prior to award, the Contractor must furnish a copy of the current Federal ceiling price, FSS Price, the Veteran Administration (VA) approval of those prices, and any other information required by the Contracting Officer. During the life of the contract, any changes to the Federal ceiling price and the FSS Price, as well as the VA's approval of those price changes and any other information required by the Contracting Officer, must be furnished in writing not later than 15 workdays after the effective dates of those price changes.

(d) Award unit prices shall not exceed the current federal ceiling price as well as any current FSS price in effect for the same item.

(e) Downward Adjustments.

(1) During the base year of the contract, downward adjustments to contract unit prices are mandated whenever there are decreases in the Federal ceiling price and/or whenever a reduction to the FSS price results in a revised FSS price which is now lower than the current contract unit price. During the Option years of the contract, downward adjustments to contract unit prices are mandated whenever reductions to the Federal ceiling price and/or the FSS price results in a revised Federal ceiling price and/or FSS price that is lower than the current contract unit price.

The Contractor shall promptly notify the Contracting Officer in writing of the amount and effective date of each decrease in the Federal ceiling price and/or FSS price. The Contractor shall propose a lower contract unit price taking into consideration the benchmarks in paragraphs (e)(2) and (3) below. The Contractor must furnish a copy of the revised Federal ceiling price and/or FSS price within 15 workdays after it takes effect.

If the decrease is based upon a lower Federal ceiling price (FCP), the Contractor shall furnish the information in (i)-(viii) below. If the decrease is based upon a lower FSS Price, the Contractor shall furnish the information in (i), (iii), (v), (vi), (viii), and (ix) below.

(i) FCP/FSS: The item number; e.g., 0002.

(ii) FCP: The previous Federal ceiling price.

(iii) FCP/FSS: The Federal ceiling price now in effect.

(iv) FCP: The percentage change in Federal ceiling price from the previous Federal ceiling price to the new, lower Federal ceiling price.

(v) FCP/FSS: The current Contract Unit Price.

(vi) FCP/FSS: The reduced Contract Unit Price now offered.

(vii) FCP: The percentage decrease from the current Contract Unit Price to the new lower Contract Unit Price.

(viii) FCP/FSS: For any items offered to the Department of Veterans Affairs (DVA) under the FSS, the current FSS price(s) for the same item.

(ix) FSS: For any items offered to the DVA under the FSS, the previous FSS price(s) for the same item.

(2) Federal ceiling price reduction. If the offered price decrease is based upon a reduction in the Federal ceiling price, the proposed lower contract unit price shall not exceed the lower of the following two benchmarks:

(i) For the base contract year adjustment, the offered reduction in contract unit price on a percentage basis must be at least equal to the percentage reduction from the previous Federal ceiling price under the contract to the new lower Federal ceiling price; i.e., the current contract unit price, must, as a minimum, be reduced by the percentage decrease in Federal ceiling price. For each option year adjustment, the new proposed lower contract unit price shall not exceed the new Federal ceiling price.

(ii) The new proposed lower contract unit price shall not exceed the current FSS price for the same item.

(3) FSS price reduction. If the offered price decrease is based upon a reduction in the FSS Price, the proposed lower contract unit price shall not exceed the lower of the following two benchmarks:

(i) The new proposed lower contract unit price shall not exceed the revised lower FSS Price for the same item.

(ii) The new proposed lower contract unit price shall not exceed the current Federal ceiling price.

(4) If the proposed contract unit price exceeds the lower of the appropriate Federal Ceiling Price benchmarks (for reductions based upon a reduced Federal Ceiling Price) or FSS Price benchmarks (for reductions based upon a reduced FSS Price), the Contracting Officer shall determine the proposed price reductions unreasonable and negotiate a price reduction which results in a Contract Unit Price that does not exceed the appropriate benchmarks. (All negotiated price reductions shall be confirmed in writing and will include the agreed-to price(s).) If the proposed Contract Unit Price does not exceed the lower of the appropriate Federal Ceiling Price or FSS Price benchmarks, it will be determined fair and reasonable.

Upon approval of the proposed price decrease, the Government shall modify the contract to include the reduced Contract Unit Price which, will take effect on the same day that the reduced Federal Ceiling Price or FSS Price takes effect, as appropriate. The modification will also show the current Federal Ceiling Price and FSS Price. The adjusted Contract Unit Price shall apply to those items ordered on or after the new Federal Ceiling Price or FSS Price takes effect, as appropriate. Any delivery orders issued after the reduced Federal Ceiling Price or FSS Price takes effect but before the Contracting Officer modifies the contract to incorporate the reduced Contract Unit Price, will be retroactively reduced to the new lower Contract Unit Price (see paragraph (i)).

If the Contractor fails to notify the Contracting Officer of any Federal Ceiling Price or FSS Price decreases within the timeframe and in the manner stated above, or agreement on any reduction cannot be reached, the Contracting Officer may determine the applicable adjustment and authorize a unilateral price

adjustment retroactively applied to all items ordered on or after the effective date of the decrease in the Federal Ceiling Price or FSS Price, as appropriate.

(f) Upward adjustments.

(1) The Contractor is authorized to submit one request for upward adjustment to the Contract Unit Price each Contract Year (i.e. one adjustment during the Base Year and one adjustment during each Option Year, if the option is exercised by the Government). The request for upward price adjustment must be based upon increases in the Federal Ceiling Price and shall be submitted no later than 15 workdays after the effective date of the new Federal Ceiling Price. The Contractor shall propose a Contract Unit Price taking into consideration the benchmarks in paragraph (f)(2). The request shall be in writing and include the following:

(i) The item number; e.g., 0002.

(ii) The previous Federal ceiling price.

(iii) The increased Federal Ceiling Price now in effect.

(iv) The percentage change from the previous Federal Ceiling Price to the new, higher Federal Ceiling Price.

(v) The current contract unit price in effect.

(vi) The increased Contract Unit Price now proposed.

(vii) The percentage change from the current Contract Unit Price in effect to the new proposed higher Contract Unit Price.

(viii) For any items offered to the Department of Veterans Affairs (DVA) under the FSS, the current FSS price(s) for the same item.

(ix) For any items offered to the DVA under the FSS, the previous FSS price(s) for the same item.

(x) Any other information required by the Contracting Officer.

(2) Upon receipt of the request for a Contract Unit Price increase based upon an increase in the Federal Ceiling Price, the Contracting Officer shall review the information the Contractor is required to submit and verify that the proposed increase is fair and reasonable. The proposed increase will be considered fair and reasonable if it does not exceed whichever is the lower of the following two benchmarks:

(i) For the Base Contract Year adjustment, the proposed increase in Contract Unit Price on a percentage basis cannot exceed the percentage increase from the previous Federal Ceiling Price to the new higher Federal Ceiling Price; i.e., the proposed Contract Unit Price cannot exceed the current Contract Unit Price plus the percentage increase in the Federal Ceiling Price. For each Option Year adjustment, the new proposed higher Contract Unit Price shall not exceed the new Federal Ceiling Price.

(ii) The proposed higher Contract Unit Price shall not exceed the current FSS Price for the same item.

(3) If the proposed higher Contract Unit Price exceeds the lower of the two benchmarks, the Contracting Officer shall determine the proposed price reductions unreasonable and negotiate a price reduction which results in a Contract Unit Price that does not exceed the lower of the two benchmarks. (All negotiated price reductions shall be confirmed in writing and will include the agreed-to price(s)).

If the proposed increased Contract Unit Price does not exceed the lower of the two benchmarks, it will be determined fair and reasonable. Upon approval of the proposed price increases, the Government shall modify the contract to include the increased Contract Unit Price(s). The modification will also show the current Federal Ceiling Price and FSS Price. If the request for price increase is submitted within the required 15-day timeframe (see (f)(1)), the effective date of the increased Contract Unit Price will be on the same day the new Federal Ceiling Price takes effect and this increase shall apply to all orders issued thereafter.

Accordingly, any delivery orders issued after the increased Federal Ceiling Price takes effect but before the Contracting Officer modifies the contract to incorporate the increased Contract Unit Price(s), will be retroactively increased to the new higher Contract Unit Price (see paragraph (i)). If the request for increase is not received within the 15-day timeframe, the Contracting Officer reserves the right not to retroactively adjust any orders issued before an adjusting modification is issued. In this case, the effective date of the increase will be on the same day the adjusting modification takes effect.

(g) If the Contracting Officer at any time has any reason to believe that the Federal Ceiling Price or FSS price has been discontinued, the Contractor shall furnish relevant information as required by the Contracting Officer. If the Contracting Officer determines that a substitute for determining price adjustments is needed, the parties shall promptly agree upon an appropriate substitute method for determining adjustments. The Contract shall be modified to incorporate the substitute and its effective date.

(h) Pricing actions pursuant to paragraph (c) entitled “Changes” of Federal Acquisition Regulation (FAR) clause 52.212-4 (including any revisions by addendum thereto) or any other provision of this Contract will be priced as though there were no provisions for Economic Price Adjustment.

(i) Pending the issuance of an adjusting modification revising the Contract Unit Price, payment shall be made at the contract unit prices in effect at the time of order.

(j) Any increased Federal Ceiling Price shall not be used to compute contract unit prices for Delivery Orders issued before the date the increased Federal Ceiling Price takes effect.

(k)(1) Voluntary Price Reductions (VPR): A "special or discount" offered by the Contractor which results in a voluntary price reduction for an item or group of items for a given period of time. The Contractor may offer a VPR at any time. The price reductions resulting from these VPRs will be in addition to any price reductions mandated by this EPA clause. The Contractor shall notify the Contracting Officer when the VPR takes effect, which items are included, and the length of time the VPR will remain in effect. Once the "special or discount" period expires, prices will revert to the Contract Unit Price(s) in effect at that time.

(2) If the Ceiling Price (or FSS Unit Price) decreases when a VPR is in effect, the VPR will remain in effect until it expires if it is lower than the proposed unit price decrease. If the Contractor requests a Contract Unit Price increase based upon an increased Federal Ceiling Price when a VPR is in effect, the VPR shall remain in effect until it expires. Upon expiration of the VPR, prices will revert to the adjusted contract unit prices, as calculated in accordance with this clause as if no VPR had been in effect.

(End of Clause)

**52.216-9052 Economic Price Adjustment – Federal Ceiling Prices – One Adjustment Per Year.** As prescribed in 16.203-4(d)(2)(94), insert the following clause:

ECONOMIC PRICE ADJUSTMENT – FEDERAL CEILING PRICES – ONE ADJUSTMENT PER YEAR (NOV 2011)

(a) All price adjustments authorized or mandated by this clause are based upon changes in the Federal Ceiling Price or Federal Supply Schedule (FSS) Price for each item. The clause also provides for voluntary price reductions (VPR) in the form of "specials" or "discounts". The Government reserves the right not to exercise an option.

(b) The offeror/Contractor warrants that any contract unit prices determined using the Federal Ceiling Price or FSS Price do not include allowances for any portion of the contingency covered by this clause.

(c) Prior to award, the Contractor must furnish a copy of the current Federal Ceiling Price, FSS Price, the Department of Veteran Affairs (VA) approval of those prices, and any other information required by the Contracting Officer. During the life of the contract, any changes to the Federal Ceiling Price and the FSS Price, as well as the VA's approval of those price changes and any other information required by the Contracting Officer, must be furnished in writing not later than 15 workdays after the effective dates of those price changes.

(d) Award unit prices shall not exceed the current Federal ceiling price as well as any current FSS price in effect for the same item.

(e) Downward adjustments.

(1) Downward adjustments to contract unit prices are mandated whenever there are decreases in the Federal Ceiling Price and/or whenever a reduction to the FSS Price results in a revised FSS Price which is now lower than the current Contract Unit Price. The Contractor shall promptly notify the Contracting Officer in writing of the amount and effective date of each decrease in the Federal Ceiling Price and/or FSS Price. The Contractor shall propose a lower Contract Unit Price taking into consideration the benchmarks in paragraphs (e)(2) and (3) below. The Contractor must furnish a copy of the revised Federal Ceiling Price and/or FSS Price within 15 workdays after it takes effect. If the decrease is based upon a lower Federal Ceiling Price (FCP), the Contractor shall furnish the information in (i)-(viii) below. If the decrease is based upon a lower FSS Price, the Contractor shall furnish the information in (i), (iii), (v), (vi), (viii), and (ix) below.

(i) FCP/FSS: The item number; e.g., 0002.

(ii) FCP: The previous Federal Ceiling Price.

(iii) FCP/FSS: The Federal Ceiling Price now in effect.

(iv) FCP: The percentage change in Federal Ceiling Price from the previous Federal Ceiling Price to the new, lower Federal Ceiling Price.

(v) FCP/FSS: The current Contract Unit Price.

(vi) FCP/FSS: The reduced Contract Unit Price now offered.

(vii) FCP: The percentage decrease from the current Contract Unit Price to the new lower Contract Unit Price.

(viii) FCP/FSS: For any items offered to the Department of Veterans Affairs (DVA) under the FSS, the current FSS price(s) for the same item.

(ix) FSS: For any items offered to the DVA under the FSS, the previous FSS price(s) for the same item.

(2) Federal Ceiling Price Reduction. If the offered price decrease is based upon a reduction in the Federal Ceiling Price, the proposed lower Contract Unit Price shall not exceed the lower of the following two benchmarks:

(i) The offered reduction in Contract Unit Price on a percentage basis must be at least equal to the percentage reduction from the previous Federal Ceiling Price under the contract to the new lower Federal Ceiling Price; i.e., the current Contract Unit Price, must, as a minimum, be reduced by the percentage decrease in Federal Ceiling Price.

(ii) The new proposed lower Contract Unit Price shall not exceed the current FSS Price for the same item.

(3) FSS Price Reduction. If the offered price decrease is based upon a reduction in the FSS Price, the proposed lower Contract Unit Price shall not exceed the lower of the following two benchmarks:

(i) The new proposed lower Contract Unit Price shall not exceed the revised lower FSS Price for the same item.

(ii) The new proposed lower Contract Unit Price shall not exceed the current Federal Ceiling Price.

(4) If the proposed Contract Unit Price exceeds the lower of the appropriate Federal Ceiling Price benchmarks (for reductions based upon a reduced Federal Ceiling Price)or FSS Price benchmarks (for reductions based upon a reduced FSS Price), the Contracting Officer shall determine the proposed price reductions unreasonable and negotiate a price reduction which results in a Contract Unit Price that does not exceed the appropriate benchmarks. (All negotiated price reductions shall be confirmed in writing and will include the agreed-to price(s).) If the proposed Contract Unit Price does not exceed the lower of the appropriate Federal Ceiling Price or FSS Price benchmarks, it will be determined fair and reasonable.

Upon approval of the proposed price decrease, the Government shall modify the contract to include the reduced Contract Unit Price which, will take effect on the same day that the reduced Federal Ceiling Price or FSS Price takes effect, as appropriate. The modification will also show the current Federal Ceiling Price and FSS Price. The adjusted Contract Unit Price shall apply to those items ordered on or after the new Federal Ceiling Price or FSS Price takes effect, as appropriate. Any delivery orders issued after the reduced Federal Ceiling Price or FSS Price takes effect but before the Contracting Officer modifies the contract to incorporate the reduced Contract Unit Price, will be retroactively reduced to the new lower Contract Unit Price (see paragraph I).

If the Contractor fails to notify the Contracting Officer of any Federal Ceiling Price or FSS Price decreases within the timeframe and in the manner stated above, or agreement on any reduction cannot be reached, the Contracting Officer may determine the applicable adjustment and authorize a unilateral price adjustment retroactively applied to all items ordered on or after the effective date of the decrease in the Federal Ceiling Price or FSS Price, as appropriate.

(f) Upward Adjustments.

(1) The Contractor is authorized to submit one request for upward adjustment to the Contract Unit Price each Contract Year (i.e. one adjustment during the Base Year and one adjustment during each Option Year, if the option is exercised by the Government). The request for upward price adjustment must be based upon increases in the Federal Ceiling Price and shall be submitted no later than 15 workdays after the effective date of the new Federal Ceiling Price. The Contractor shall propose a Contract Unit Price taking into consideration the benchmarks in paragraph (f)(2). The request shall be in writing and include the following:

(i) The item number; e.g., 0002.

(ii) The previous Federal Ceiling Price.

(iii) The increased Federal Ceiling Price now in effect.

(iv) The percentage changed from the previous Federal Ceiling Price to the new, higher, Federal Ceiling Price.

(v) The current Contract Unit Price in effect.

(vi) The increased Contract Unit Price now proposed.

(vii) The percentage change from the current Contract Unit Price in effect to the new, proposed, higher Contract Unit Price.

(viii) For any items offered to the Department of Veterans Affairs (DVA) under the FSS, the current FSS price(s) for the same item.

(ix) For any items offered to the DVA under the FSS, the previous FSS price(s) for the same item.

(x) Any other information required by the Contracting Officer.

(2) Upon receipt of the request for a Contract Unit Price increase based upon an increase in the Federal Ceiling Price, the Contracting Officer shall review the information the Contractor is required to submit and verify that the proposed increase is fair and reasonable. The proposed increase will be considered fair and reasonable if it does not exceed whichever is the lower of the following two benchmarks:

(i) The proposed increase in Contract Unit Price on a percentage basis cannot exceed the percentage increase from the previous Federal Ceiling Price to the new, higher, Federal Ceiling Price, i.e., the proposed Contract Unit Price cannot exceed the current Contract Unit Price plus the percentage increase in the Federal Ceiling Price.

(ii) The proposed higher Contract Unit Price shall not exceed the current FSS Price for the same item.

(3) If the proposed higher Contract Unit Price exceeds the lower of the two benchmarks, the Contracting Officer shall determine the proposed price reductions unreasonable and negotiate a price reduction which results in a Contract Unit Price that does not exceed the lower of the two benchmarks. (All negotiated price reductions shall be confirmed in writing and will include the agreed-to price(s)). If the proposed increased Contract Unit Price does not exceed the lower of the two benchmarks, it will be determined fair and reasonable.

Upon approval of the proposed price increases, the Government shall modify the contract to include the increased Contract Unit Price(s). The modification will also show the current Federal Ceiling Price and FSS Price. If the request for price increase is submitted within the required 15-day timeframe (see (f)(1)), the effective date of the increased Contract Unit Price will be on the same day the new Federal Ceiling Price takes effect and this increase shall apply to all orders issued thereafter.

Accordingly, any delivery orders issued after the new Federal Ceiling Price takes effect but before the Contracting Officer modifies the contract to incorporate the increased Contract Unit Price(s), will be retroactively increased to the new higher Contract Unit Price (see paragraph (i)).

If the request for increase is not received within the 15-day timeframe, the Contracting Officer reserves the right not to retroactively adjust any orders issued before an adjusting modification is issued. In this case, the effective date of the increase will be on the same day the adjusting modification takes effect.

(g) If the Contracting Officer at any time has any reason to believe that the Federal Ceiling Price or FSS price has been discontinued, the Contractor shall furnish relevant information as required by the Contracting Officer. If the Contracting Officer determines that a substitute for determining price adjustments is needed, the parties shall promptly agree upon an appropriate substitute method for determining adjustments. The Contract shall be modified to incorporate the substitute and its effective date.

(h) Pricing actions pursuant to paragraph (c) entitled “Changes” of Federal Acquisition Regulation (FAR) clause 52.212-4 (including any revisions by addendum thereto) or any other provision of this Contract will be priced as though there were no provisions for Economic Price Adjustment.

(i) Pending the issuance of an adjusting modification revising the Contract Unit Price, payment shall be made at the contract unit prices in effect at the time of order.

(j) Any increased Federal Ceiling Price shall not be used to compute contract unit prices for Delivery Orders issued before the date the increased Federal Ceiling Price takes effect.

(k)(1) Voluntary Price Reductions (VPR): A "special or discount" offered by the Contractor which results in a voluntary price reduction for an item or group of items for a given period of time. The Contractor may offer a VPR at any time. The price reductions resulting from these VPRs will be in addition to any price reductions mandated by this EPA clause. The Contractor shall notify the Contracting Officer when the VPR takes effect, which items are included, and the length of time the VPR will remain in effect. Once the "special or discount" period expires, prices will revert to the Contract Unit Price(s) in effect at that time.

(2) If the Ceiling Price (or FSS Unit Price) decreases when a VPR is in effect, the VPR will remain in effect until it expires if it is lower than the proposed unit price decrease. If the Contractor requests a Contract Unit Price increase based upon an increased Federal Ceiling Price when a VPR is in effect, the VPR shall remain in effect until it expires. Upon expiration of the VPR, prices will revert to the adjusted contract unit prices, as calculated in accordance with this clause as if no VPR had been in effect.

(End of Clause)

**52.216-9053 Economic Price Adjustment (EPA) - Established Market Price – Dehydrated Orange Juice.**
As prescribed in 16.203-1(a)(90), 16.203-4-90, and FAR 16.203-1(a)(1), insert the following:

ECONOMIC PRICE ADJUSTMENT (EPA) - ESTABLISHED MARKET PRICE – DEHYDRATED ORANGE JUICE (NOV 2011)

(a) Warranties. The Contractor warrants that the unit prices included in the Schedule does not include allowances for any portion of the contingency covered by this clause.

(b) An established market price is a price that is established in the course of ordinary and usual trade between buyers and sellers free to bargain and that can be substantiated by data from sources independent of the offeror(s); and the net price after applying any standard trade discounts offered by the Contractor. The established market price under this clause may reflect industry-wide and/or geographically based market price fluctuations for commodity groups or specific supplies. The established market price that shall be used for adjustments to contract prices under this clause shall be the price for Frozen Concentrated Orange Juice (FCOJ) as published daily by the New York Board of Trade (NYBoT) in the Daily Market Reports Futures.

(1) The base unit price for the purpose of the adjustment calculations under this clause shall be the arithmetic average of the first three month's Settle prices published daily within 30 calendar days for FCOJ as published by the NYBoT immediately preceding (i) the closing date for proposals, if no discussions are held, (ii) the due date for final proposal revisions, if discussions are held, or (iii) the opening date, if sealed bidding is used. Settle price as defined in financial dictionaries is an average of the trading prices in the futures market during the last few minutes of trading.

(2) The adjusting unit price shall be the arithmetic average of the of the first three month's Settle Price published daily within 30 calendar days for FCOJ as published by the NYBoT immediately preceding the date the option is exercised.

(c) With respect to increases or decreases under this clause, no adjustment shall be made to the base term contract unit price(s). One adjustment calculation shall be made annually to determine the unit price(s) applicable to the forthcoming option term (if exercised).

(d) Allowance Factor. For the purpose of price adjustment pursuant to this clause, it shall be conclusively presumed that 1.14 pounds of Frozen Concentrated Orange Juice (FCOJ) solids is needed to produce one can of dehydrated orange juice. This allowance factor remains fixed throughout the life of the contract unless a Government authorized change is made to the contract which affects this allowance.

(e) Adjustments shall be calculated as follows:

Compute the Adjusting Unit Price and the Base Unit Price of each ingredient.

(Adjusting Unit Price – Base Unit Price)/Base Unit Price = Market Price Change (+ or -).

The adjusting unit price and base unit price are based on the three month arithmetic average published by the New York Board of Trade (NYBoT) for Frozen Concentrated Orange Juice (FCOJ) as discussed in paragraphs b(1) and b(2) of this clause.

Adjusting Unit Price – Base Unit Price = Change in Price (+ or -).

The percentage change in price equals the change in price divided by the base unit price i.e. (3022/9000 = 0.3358). This change in market prices is rounded to four decimal places to determine percentage (%) market price change.

(3) Percentage Market Price Change X Price for Allowance Factor = Contract Unit Price Adjustment (+ or -) (Round to two decimal places). This calculation is used to determine upward or downward increases for price adjustments to frozen concentrated orange juice unit prices for the option periods.

(4) The original option unit price(s) for each option will be the sum of the firm fixed price portion and the portion subject to the EPA (as discussed in section (e) above, the portion of the price subject to the EPA is the Allowance Factor). The adjusted unit price(s) for each option shall be determined by increasing or decreasing (as appropriate) the Allowance Factor by the Contract Unit Price Adjustment and adding that to the firm fixed price portion agreed to at the time of award for the option period being adjusted. Price adjustments pursuant to this clause shall be made by contract modification showing the calculations used to derive the adjusted contract unit prices.

(5) The three month average of the base unit price based on published prices by the New York Board of Trade (NYBoT) for Frozen Concentrated Orange Juice (FCOJ) used in this example was 9000.

The following examples assume identical upward or downward adjustments in the price of FCOJ to illustrate the impact on contract unit prices. In the first example of an upward adjustment, the three month adjusting unit price average for Option Year 2 was 12,022. In the second example of a downward

adjustment, the three month adjusting unit price was 5,978. The change in price is multiplied times the price for the allowance factor of $1.11 which results in either an upward or downward adjustment of $0.37 in the unit price.

In the actual contract modification the detailed calculation showing the daily prices, monthly average, and average prices for three months would be shown. The price adjustment would be applied to the actual quantities ordered by the Government per the terms of the contract. The minimum and maximum quantities shown below illustrate the potential price impact that would be seen in a contract modification for Option Year 2 depending on whether an upward or downward adjustment was applicable.

(f) Modification: Price adjustments made under this clause shall be effected by contract modification showing the change in contract unit price adjustment and the minimum and maximum price differential for the option year using the methodology shown below.

Calculation for Contract Unit Price Adjustment

| | Upward Adjustment | Downward Adjustment |
|---|---|---|
| Adjusting Unit Price (NYBoT) | 12022 | 5978 |
| Less: Base Unit Price (NYBoT) | 9000 | 9000 |
| Change in Price | 3022 | (3022) |
| % Market Price Change | 0.3358 | (0.3358) |
| Multiply by the Allowance Factor | $1.11 | $1.11 |
| Contract Unit Price Adjustment | $0.37 | $(0.37) |

Calculation for Upward Adjusted Unit Price for Option Year 2

| | | | | | | | | Price | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | Original | | | Adjusted | | | Differential | | |
| Min. | Max. | Unit | Min. | Max. | Unit | Min. | Max. | Unit | Min. | Max. |
| Qty. | Qty. | Price | Amt. | Amt. | Price | Amt. | Amt. | Price | Amt. | Amt. |
| 10,000 | 120,0000 | $4.75 | $47,500 | $570,000 | $5.12 | $51,200 | $614,400 | $0.37 | $3,700 | $44,400 |

Calculation for Downward Adjusted Unit Price for Option Year 2

| | | | | | | | | Price | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | Original | | | Adjusted | | | Differential | | |
| Min. | Max. | Unit | Min. | Max. | Unit | Min. | Max. | Unit | Min. | Max. |
| Qty. | Qty. | Price | Amt. | Amt. | Price | Amt. | Amt. | Price | Amt. | Amt. |
| 10,000 | 120,0000 | $4.75 | $47,500 | $570,000 | $4.38 | $43,800 | $525,600 | ($0.37) | ($3,700) | ($44,400) |

Legend: Min. = Minimum; Qty. = Quantity; Max. = Maximum; Amt. = Amount.

(g) Payments: Payment for an adjustment under this clause shall be at the current contract price until an adjustment modification has been effected. The Government shall pay the Contractor, upon the submission of proper invoices or vouchers, the unit price stipulated in the contract modification for the applicable option period. The Contractor also represents by submitting its final invoice that the total amount billed under this contract reflects all increases or decreases required or authorized by this clause.

(h) Any pricing actions pursuant to the CHANGES clause or other provisions of the contract will be priced as though there were no provisions for economic price adjustment.

(i) No adjustment will be made under this clause unless the total change in the contract amount is $500.00 or more.

(j) Upward ceiling on economic price adjustment: The aggregate of the increases in any contract unit price shall not exceed 10% per year of the original option unit prices agreed to at time of award. There is no percentage limit on downward adjustments under this clause.

(k) Revision of market price indicator: In the event that (i) any applicable market price indicator is discontinued or its method of derivation is altered substantially or; (ii) the Contracting Officer determines that the market price indicator consistently and substantially fails to reflect market conditions, -- the parties shall mutually agree upon an appropriate and comparable substitute and the contract shall be modified to reflect such substitute effective on the date the indicator was discontinued, altered, or began to consistently and substantially fail to reflect market conditions

(l) Disputes: If the parties fail to agree on an appropriate substitute market price indicator, or implementation of other matters addressed by this EPA clause then the matter shall be resolved in accordance with the DISPUTES clause of the contract.

(m) Examination of records. The Contractor agrees that the Contracting Officer or designated representative shall have the right to examine the Contractor's books, records, documents, or other data the Contracting Officer deems necessary to verify Contractor adherence to the provisions of the clause.

(End of Clause)

**52.216-9054 ECONOMIC PRICE ADJUSTMENT - POLYMERIC TRAYPACK RATION**

The clause at 52.216-9054 may be used in solicitations and contracts for polymeric traypack rations. The Contracting Officer may add additional components based upon customer requirements within paragraph (b) of the clause. Prior to incorporation of any additional component(s) into a solicitation or contract, the Contracting Officer shall provide the requested new components along with supporting documentation to the cost/price office for review and approval. DLA Troop Support will keep track of any items added and/or those that should be deleted from the clause and report to DLA HQ, Attention: J73 every two years for review and updating of the clause as necessary.

As prescribed in FAR 16.203-1(a)(1), Defense Logistics Acquisition Directive (DLAD) 16.203-1(a)(90) and 16.203-4(90) insert the following clause:

ECONOMIC PRICE ADJUSTMENT - POLYMERIC TRAYPACK RATION (SEP 2015)

(a) Warranties. For the portion of the schedule that is covered by this EPA clause, the Contractor warrants that the unit prices included in the Schedule do not include allowances for any portion of the contingency covered by this clause.

(b) The base unit prices for the purpose of the adjustment calculations under this clause shall be the arithmetic average of the weekly or monthly prices of each applicable economic indicator only (e.g. an average of beef indices for beef products, an average of poultry indices for poultry products, etc.) for the period specified under the "Adjusted (ADJ.) Unit Price" below immediately preceding either the solicitation closing date for proposals (if no discussions are held), the due date for final proposal revisions (if discussions are held) or the solicitation opening date (if sealed bidding is used).

| TRAY PACK | EPA | ECONOMIC | PUBLICATION / | PUBLISHED | BASE | ADJ. |
|---|---|---|---|---|---|---|

| ITEM | FACTOR | INDICATOR | PUBLISHER | | UNIT PRICE | UNIT PRICE |
|---|---|---|---|---|---|---|
| Beef, ground, Creamed | Beef | Boneless process Beef, trimmings, Weighted Average, 85%, BPN U24 | Weekly National Carlot Meat Report / USDA | Weekly | 52 week period | 52 week period |
| Turkey Cutlets In gravy | Turkey | Breasts, B/S, TOM, National Young Turkey Parts & Bulk Meat, Weighted Average Price | USDA Turkey Market News Report (Monday Edition) / USDA | Weekly | 52-week period | 52 week period |
| Ham Slices Potatoes w/cheese & ham | Ham | Ham bone-in, trimmed, 23-27#m spec 1, BPN U62 | Weekly National Carlot Meat Report USDA | Weekly | 52-week period | 52 week period |
| Pork diced in sweet & sour | Pork | Picnics, fresh, Smkr trm,RS, Combo, weighted average, BPN U50 | Weekly National Carlot Meat Report / USDA | Weekly | 52-week period | 52 week period |
| Chili Macaroni w/beef, corn and beans | Beef | Boneless process Beef, trimmings, Weighted average 85% BPN U24 | Weekly National Carlot Meat Report / USDA | Weekly | 52-week period | 52 week period |
| Corned Beef hash | Beef | IMPS 167A, round, knuckle, trimmed, Weighted Average, BPNU12 | Weekly National Carlot Meat Report / USDA | Weekly | 52-week period | 52 week period |
| Turkey Sausage Links | Turkey | Breasts, B/S, TOM, National Young Turkey Parts & Bulk Meat, Weighted Average Price | USDA Turkey Market News Report (Monday Edition) / USDA | Weekly | 52-week period | 52 week period |
| Meatballs in gravy | Beef | Boneless process Beef, trimmings, Weighted Average 85%, BPN U24 | Weekly National Carlot Meat Report / USDA | Weekly | 52-week period | 52 week period |
| Spaghetti w/meatballs | Beef | Boneless process Beef, trimmings, Weighted Average 85%, BPN U24 | Weekly National Carlot Meat Report / USDA | Weekly | 52-week period | 52 week period |
| Chicken breasts In gravy | Chicken Breast | Breasts – B/S, Georgia FOB Dock Prices. | USDA Broiler Market News Report (Monday Edition) / USDA | Weekly | 52-week period | 52 week period |
| Chicken breast in | Chicken Breast | Breasts – B/S, Georgia FOB Dock | USDA Broiler Market News Report | Weekly | 52-week period | 52 week period |

| | | | | | | |
|---|---|---|---|---|---|---|
| lemon pepper sauce | | Prices. | (Monday Edition) / USDA | | | |
| Chicken, Buffalo Style in spicy sauce | Chicken | Heavy Type Hens, S.E. Heavy Live Hen Report, At Farm Buyer Loading, Weighted Average | USDA Broiler Market News Report (Monday Edition) / USDA | Weekly | 52-week period | 52 week period |
| Stuffing w/sausage | Pork | Picnics, fresh, Smkr trm,RS, Combo, Weighted Average, BPN U50 | Weekly National Carlot Meat Report /USDA | Weekly | 52-week period | 52 week period |
| Pork sausage Links | Pork | Picnics, fresh, Smkr trm,RS, Weighted Average, Combo, BPN U50 | Weekly National Carlot Meat Report /USDA | Weekly | 52-week period | 52 week period |
| Pork ribs in BBQ Sauce | Pork | Picnic cushion Meat, combo 92%, fresh or frozen, BPN U50 | Weekly National Carlot Meat Report /USDA | Weekly | 52-week period | 52 week period |
| Pork sausage in Cream gravy | Pork | Picnics, fresh, Smkr trm,RS, Combo, Weighted Average, BPN U50 | Weekly National Carlot Meat Report /USDA | Weekly | 52-week period | 52 week period |
| Pasta w/ground hot Italian sausage | Pork | Picnics, fresh, Smkr trm,RS, Combo, Weighted Average, BPN U50 | Weekly National Carlot Meat Report /USDA | Weekly | 52-week period | 52 week period |
| Beef taco filling | Beef | IMPS 167A round knuckle, trimmed, Weighted Average, BPN U12 | Weekly National Carlot Meat Report /USDA | Weekly | 52-week period | 52 week period |
| Blueberry dessert | Blueberries | Frozen, 30 lb f.o.b. Michigan | The Food Institute Report Monthly Price Range / USDA | Monthly | 12 month period | 12 month period |
| Beef Burgundy | Beef | IMPS 167A round knuckle, trimmed, Weighted Average, BPN U12 | Weekly National Carlot Meat Report /USDA | Weekly | 52-week period | 52 week period |
| Chicken in Szechwan Style Sauce | Chicken Breast | Breasts –B/S, Georgia FOB Dock Prices. | USDA Broiler Market News Report (Monday Edition) / USDA | Weekly | 52-week period | 52 week period |
| Polypro-pylene (PP) Resin | PP Resin | Polypropylene Large Buyer Contract Price | Chemical Data/ Monthly Petrochemical & Plastics Analysis | Monthly | 12 month period | 12 month period |

| | | | | | | |
|---|---|---|---|---|---|---|
| Linerboard | Linerboard | Linerboard (42-lb) Unbleached kraft, East | PPI Pulp & Paper Week | Monthly | Semi-annual | Semi-annual |

In addition to the components shown above, the following are also included:

| TRAY PACK ITEM | EPA FACTOR | ECONOMIC INDICATOR | PUBLICATION / PUBLISHER | PUBLISHED | BASE UNIT PRICE | ADJ. UNIT PRICE |
|---|---|---|---|---|---|---|

(To be completed as required)

(c) The adjusting unit prices shall be the arithmetic average of the weekly or monthly prices of each applicable economic indicator only for the period specified under the Adjusting Unit Price column shown in paragraph (b) immediately preceding the effective date the option term is exercised.

(d) An established market price is a price that is established in the course of ordinary and usual trade between buyers and sellers free to bargain and that can be substantiated by data from sources independent of the offeror(s); and the net price after applying any standard trade discounts offered by the Contractor. The established market price under this clause may reflect industry-wide and/or geographically based market price fluctuations for commodity groups or specific supplies. The established market price that shall be used for the EPA factors subject to price adjustments under this clause, and the economic indicators and publications to be used are listed in paragraph (b) of this clause.

(1) The base unit prices for the purpose of the adjustment calculations under this clause shall be the arithmetic average of the weekly or monthly prices of each applicable economic indicator only for the period specified under the Base Unit Price column in paragraph (b) immediately preceding (i) the closing date for proposals, if no discussions are held, (ii) the due date for final proposal revisions, if discussions are held, or (iii) the opening date, if sealed bidding is used.

(2) The adjusting unit prices shall be the arithmetic average of the weekly or monthly prices of each applicable economic indicator for the period specified under the Adjusting Unit Price column in paragraph (b) immediately preceding the effective date the option term is exercised, except for linerboard which shall require one additional adjustment six months after each option term is exercised.

(e) With respect to increases or decreases under this clause, no adjustment shall be made to the base term contract unit prices. One adjustment calculation shall be made annually to determine the unit prices applicable to the forthcoming option term (if exercised), except linerboard which will be adjusted on a semi-annual basis.

(f) ALLOWANCE FACTOR: For the purpose of price adjustment pursuant to this clause, it shall be conclusively presumed that the amount shown under “Portion Subject to EPA” represents the cost of each item that is subject to adjustment. The portion subject to EPA refers to the element of cost for each item that is outside the control of the vendor and in “Schedule B” the offerors will be required to fill in this amount. This is the only portion of the cost that will be subject to the EPA provision. The EPA provisions based on changes in market prices for product material costs such as beef, turkey, ham, pork, chicken, and blueberries are subject to the EPA, because there is serious doubt concerning the stability of market conditions. The balance of product costs for items such as labor, overhead, General and Administrative (G&A), transportation, and profit, are those contingencies that can be included in the contract price and can be identified and covered separately through firm-fixed-price. This allowance

factor remains fixed throughout the life of the contract unless a Government authorized change is made to the contract which affects this allowance.

(1) The United States Army Research, Development and Engineering Command (RDECOM) Natick Soldier Center (NSC) who prepares the specifications has moved from Military Specifications to Performance Requirements. The Government no longer states the specific amount of meat, potatoes, gravy, etc. that goes into a tray pack item, only an overall amount with a protein and carbohydrate requirement. Meeting the protein requirement indicates that the Contractor has put in sufficient meat quantities in the tray/pouch to satisfy the requirement. Different Contractors will put in differing quantities of beef, turkey, ham, pork, chicken breast, etc. to meet the protein performance requirements. This is why specific weights or quantities cannot be specified in advance in this EPA as would be used in a Military Specification and the cost for the items subject to adjustment will be entered by the Contractor in Section B. The Government performs oversight to ensure that the performance requirements are met or exceeded.

(g) Adjustments shall be calculated as follows: (Round to four decimal places)

(1) Compute the Adjusting Unit Price and the Base Unit Price.

(2) (Adjusting Unit Price – Base Unit Price)/Base Unit Price = Market Price Change (+ or -).

(3) Market Price Change X Allowance Factor = Price Adjustment (+ or -).

(4) Determine the Contract Unit Price Adjustment by computing the sum total of the price Adjustment of all items subject to EPA.

(5) The original option unit price(s) for each option will be the sum of the firm fixed price portion and the portion subject to the EPA (as discussed in section (f) above, the portion of the price subject to the EPA is the Allowance Factor). The adjusted unit price(s) for each option shall be determined by increasing or decreasing (as appropriate) the EPA Allowance Factor by the Contract Unit Price Adjustment and adding that to the firm fixed price portion agreed to at the time of award for the option period being adjusted.

(h) Price adjustments pursuant to this clause shall be made by contract modification showing the calculations used to derive the adjusted contract unit price.

(i) Payments: Payment for an adjustment under this clause shall be at the current contract price until an adjustment modification has been effected. The Government shall pay the Contractor, upon submission of proper invoices or vouchers the unit price stipulated in the contract modification for the applicable option period. The Contractor also represents by submitting its final invoice that the total amount billed under this contract reflects all increases or decreases required or authorized by this clause.

(j) Any pricing actions pursuant to the “CHANGES” clause or other provisions of the contract will be priced as though there were no provisions for economic price adjustment.

(k) No adjustment will be made under this clause unless the total change in the contract amount is $500.00 or more.

(l) Upward ceiling on economic price adjustment: The total increase in any contract unit price shall not exceed 10% per year of the original option unit prices agreed to at time of award. There is no percentage limit on downward adjustments under this clause.

(m) Revision of market price indicator: In the event that (i) any applicable market price indicator is discontinued or its method of derivation is altered substantially; or (ii) the Contracting Officer determines that a particular market price indicator consistently and substantially fails to reflect market conditions, -- the parties shall mutually agree upon an appropriate and comparable substitute and the contract shall be modified to reflect such substitute effective on the date the indicator was discontinued, altered, or began to consistently and substantially fail to reflect market conditions.

(n) Disputes: If the parties fail to agree on an appropriate substitute market price indicator or implementation of other matters addressed by this EPA clause then the matter shall be resolved in accordance with the Disputes clause of the contract.

(o) Authority to add additional traypack items to Polymeric Traypack Ration EPA clause. Paragraph (b) of this clause identifies 23 unique components contained in the polymeric traypack ration. These components are selected based on historical data and may not be included in every polymeric traypack ration. Refer elsewhere in the solicitation/contract for listing of the exact component makeup. Due to customer requirements, the Contracting Officer may add additional components to the polymeric traypack ration. The Contracting Officer will show within paragraph (b) the additional components(s).

(p) Examination of records: The Contractor agrees that the Contracting Officer or designated representative shall have the right to examine the Contractor's books, records, documents, or other data the Contracting Officer deems necessary to verify Contractor adherence to the provisions of the clause.

(q) In the event any applicable market price indicator is not published for any week(s), that week will not be included in calculating the base unit price or the adjusting unit price as applicable. For instance, if within a 52 week period an indicator is not published 4 times, the average of the 48 published prices only will be calculated. When a range of prices is provided, for the purposes of the calculations the arithmetic average of the high and low number will be calculated to determine the indicator for that period.

(End of Clause)

**52.216-9058 Economic Price Adjustment (EPA) – Established Market Price – Wool Cloth .**
As prescribed in 16.203-4-90 (l)(1) and FAR 16.203-1(a)(1), insert the following provision:

ECONOMIC PRICE ADJUSTMENT (EPA) - ESTABLISHED MARKET PRICE – WOOL CLOTH
(SEP 2015)

(a) Warranties. For the portion of the schedule that is covered by this EPA clause, the Contractor warrants that the unit prices included in the Schedule do not include allowances for any portion of the contingency covered by this clause.

(b) An established market price is a price that is established in the course of ordinary and usual trade between buyers and sellers free to bargain and that can be substantiated by data from sources independent of the offeror(s); and the net price after applying any standard trade discounts offered by the Contractor. The established market price shall be used for adjustment(s) to contract price(s) under this clause. The established market price shall be the average price for [*buyer Fill in with grade of wool*] Australian Wool,

clean delivered price in United States (U.S) Dollars, published during a specified period by the United States Department of Agriculture (USDA), in the "USDA Weekly National Lamb Market Summary (WNLMS)".

(1) Base unit price. The base unit price for the purpose of calculating the adjustment(s) under this clause shall be the arithmetic average price for Australian wool clean delivered [buyer fill-in] published during the latest four week period immediately preceding the closing date for proposals (if no discussions are held), the due date of final proposal revision (if discussions are held), or the solicitation opening date (if sealed bidding is used.)

(2) Adjusting unit price. The adjusting unit price shall be the arithmetic average price for Australian wool clean delivered [*buyer fill in with grade of wool*] buyer fill-in grade of wool] published during the four week period immediately preceding the effective date the option term is exercised.

(c) With respect to increases or decreases under this clause, no adjustment shall be made to the base term contract unit prices. One adjustment calculation shall be made annually to determine the unit price applicable to the forthcoming option term (if exercised).

(d) Allowance factor: For the purpose of the price adjustment pursuant to this clause, it shall be conclusively presumed that [Fill in with pounds of wool/yard] will be required to produce one linear yard of finished cloth. This allowance factor remains fixed throughout the life of the contract unless a Government authorized change is made to the contract which affects this allowance. The price adjustment under this EPA clause shall apply only to the cost of wool and shall not apply to any other direct or indirect cost or profit.

(e) Adjustments shall be calculated as follows: (Round to four decimal places).

(1) compute the adjusting unit price and the base unit price.

(2) (Adjusting unit price – base price = market price change (+ or -).

(3) Market price change x allowance factor = contract unit price adjustment, (+/-).

(4) The adjusted unit price(s) for each option period exercised shall be determined by increasing or decreasing (as appropriate) the original option unit price(s) by the contract unit price adjustment. The original option unit prices are those unit prices agreed to at time of award for the option (i.e.; 1, 2, 3, or 4) being adjusted.

The following example is provided:

Example of adjustment calculation

Base unit price calculation

Final proposal revision due date: 24 October 2006

The average mean of the prices for 22 micron, United States Department of Agriculture (USDA) grade 64's Australian wool, clean delivered price in United States (U.S.) Dollars published during the 4 week

period immediately preceding the due date for Final Proposal Revisions will be used to calculate the base unit price for the wool component as follows (i.e.; the four weeks immediately preceding the due date for final proposal revisions covers the 28 day period 26 September 2006 – 23 October 2006):

Base unit price calculation

USDA Weekly National Lamb Market Summary: USDA Grade 64's (22 Micron) Australian wool clean, delivered price in U.S. dollars

| Date | Price in $ (64's) (22 Micron) |
|---|---|
| 20 October 2006 | 2.6100 |
| 13 October 2006 | 2.4900 |
| 06 October 2006 | 2.4500 |
| 29 September 2006 | 2.4900 |
| Total Four Weeks | 10.0400 |
| Total /4 = Average mean price | 2.5100 |

Note: For some four week periods, the USDA may publish fewer than 4 issues of the summary due to events such as Federal Holidays. In all such cases, only those issues published for the relevant four week period will be used in calculations.

Base award date: 18 December 2006

Adjusting unit price calculation

Option Number 1 exercised: 12 September 2007

The average mean of the prices for clean delivered 64's (22 Micron) Australian Wool in US Dollars published during the four week period immediately preceding the effective date of option invocation will be used to calculate the adjusting unit price (11 September 2007 – 15 August 2007):

| Date | Price in $ 64's) (22 Micron) |
|---|---|
| 07 Sep 2007 | 3.6100 |
| 31 Aug 2007 | 3.4700 |
| 24 Aug 2007 | 3.5800 |
| 17 Aug 2007 | 3.6900 |
| Total Four Weeks | 14.3500 |
| Total /4 = Average Mean Price | 3.5875 |

1. Calculate the Base and Adjusting Unit Price (U/P): From above, Base U/P = $2.5100 and Adjusting Unit Price = $3.5875 (Round to 4 decimal places)

2. Calculate Market Price Change (+/-): Adjusting U/P – Base U/P = $3.5875 - $2.5100 = $1.0775. (Round to 4 decimal places).

3. Calculate Contract Unit Price Adjustment (+/-): Market Price Change x Allowance Factor $1.0775/pound x 0.2714 pound/yard = $0.2924/yard

Net Adjustment Per linear yard = $0.29 (Round to nearest cent).

4. Calculate adjusted U/P for Option No 1 (+/-): Original Option No 1 U/P (+/-) contract U/P adjustment. (Option Number 1 original option price = $10.05) $10.05 + $0.29 = $10.34.

Note: The above is a hypothetical example of an upward adjustment in the Option No 1 unit price. The dates used above are not representative of those dates anticipated to be experienced during actual contract performance.

(f) Price adjustments pursuant to this clause shall be made by contract modification showing the calculations used to derive the adjusted contract unit prices.

(g) Payments: Payment for an adjustment under this clause shall be at the current contract price until an adjustment modification has been effected. The Government shall pay the Contractor, upon the submission of proper invoices or vouchers, the unit price stipulated in the contract modification for the applicable option period. The Contractor also represent by submitting its final invoice that the total amount billed under this contract reflects all increases or decreases required or authorized by this clause.

(h) Any pricing actions pursuant to the "CHANGES" clause or other provisions of the contract will be priced as though there were no provision for economic price adjustment.

(i) No adjustment will be made under this clause unless the total change in the contract amount is $500.00 or more.
(j) Upward ceiling on economic price adjustment: The total increase in any contract unit price shall not exceed 10% per year of the original option unit prices agreed to at time of award. There is no percentage limit on downward adjustment under this clause.

(k) Revision of market price indicator: In the event that (i) any applicable market price indicator is discontinued or its method of derivation is altered substantially or; (ii) the Contracting Officer determines that the market price indicator consistently and substantially fails to reflect market conditions, -- the parties shall mutually agree upon an appropriate and comparable substitute and the contract shall be modified to reflect such substitute effective on the date the indicator was discontinued, altered, or began to consistently and substantially fail to reflect market conditions

(l) Disputes: If the parties fail to agree on an appropriate substitute market price indicator, or implementation of other matters addressed by this EPA clause then the matter shall be resolved in accordance with the Disputes clause of the contract.

(m) Examination of records: The Contractor agrees that the Contracting Officer or designated representative shall have the right to examine the Contractor's books, records, documents, or other data the Contracting Officer deems necessary to verify Contractor adherence to the provisions of the clause.

(End of Clause)

**52.216-9059 Economic Price Adjustment - Meal Cold Weather/Long Range Patrol (MCW/LRP)**
As prescribed at 16.203-4-90(l)(4) and FAR 16.203(a)(1), insert the following clause:

ECONOMIC PRICE ADJUSTMENT (EPA) - MEAL COLD WEATHER/LONG RANGE PATROL (MCW/LRP) (SEP 2015)

(a) Warranties: For the portion of the schedule that is covered by this EPA clause, the Contractor warrants that the unit prices included in the Schedule does not include allowances for any portion of the contingency covered by this clause.

(b) The base unit prices for the purpose of the adjustment calculations under this clause shall be the arithmetic average of the weekly or monthly prices of each applicable economic indicator only (e.g. an average of beef indices for beef products, an average of poultry indices for poultry products, etc.) for the period specified under the "Base Unit Price" below immediately preceding either the solicitation closing date for proposals (if no discussions are held), the due date for final proposal revisions (if discussions are held) or the solicitation opening date (if sealed bidding is used).

| ITEM | MENU | EPA FACTOR/ COMPONENT | ECONOMIC INDICATOR | PUBLISHER / PUBLICATION / FREQUENCY PUBLISHED | BASE UNIT PRICE | ADJ. UNIT PRICE |
|---|---|---|---|---|---|---|
| | | | | | | |
| **Chicken** | #1 | Spicy Oriental Chicken w/ Rice | Breasts, B/S, Georgia, FOB Dock, Wtd. Avg. Price | USDA / USDA Broiler Market News Report / 3 X Per Wk | 52 Week period | 52 Week period |
| | #5 | Chicken & Rice | Breasts, B/S, Georgia, FOB Dock, Wtd. Avg. Price | USDA / USDA Broiler Market News Report / 3 X Per Wk | 52 Week period | 52 Week period |
| | #9 | Rice and Chicken, Mexican | Breasts, B/S, Georgia, FOB Dock, Wtd. Avg. Price | USDA / USDA Broiler Market News Report / 3 X Per Wk | 52 Week period | 52 Week period |
| | #3 | Soup, Noodle, Ramen, Instant, Fried Noodle, Cup | Flour, hard winter Kansas City cwt | WSJ / WSJ Commodity Cash Prices / Daily | 52 Week period | 52 Week period |
| | | | | | | |
| **Beef** | #2 | Beef Stroganoff w/ Noodles | IMPS 167A Round, Knuckle, Trimmed, Wtd, Avg. (BPN U-12) | USDA / Weekly Nation Carlot Meat Report / Weekly | 52 Week period | 52 Week period |
| | #3 | Chili Macaroni | Boneless Processing Beef/Beef Trimmings, FOB National, Wtd. Avg. 85% fr (BPN U-24) | USDA / Weekly Nation Carlot Meat Report / Weekly | 52 Week period | 52 Week period |
| | #7 | Beef Stew | IMPS 167A Round, Knuckle, Trimmed, Wtd, Avg. (BPN U-12) | USDA / Weekly Nation Carlot Meat Report / Weekly | 52 Week period | 52 Week period |
| | #8 | Spaghetti w/ Meat Sauce | Flour, hard winter Kansas City cwt | WSJ / WSJ Commodity Cash Prices / Daily | 52 Week period | 52 Week period |
| | #3 | Soup, Noodle, Ramen, Instant, | Flour, hard winter Kansas City cwt | WSJ / WSJ Commodity Cash | 52 Week period | 52 Week period |

| ITEM | MENU | EPA FACTOR/ COMPONENT | ECONOMIC INDICATOR | PUBLISHER / PUBLICATION / FREQUENCY PUBLISHED | BASE UNIT PRICE | ADJ. UNIT PRICE |
|---|---|---|---|---|---|---|
| | | Fried Noodle, Cup | | Prices / Daily | | |
| | | | | | | |
| **Pork** | #10 | Scrambled Eggs w/ cheese, Western style (type III- Ham dices) | National Liquid, Whole, Wtd. Avg | USDA / USDA Egg Market News / 2 X Per Wk | 52 Week period | 52 Week period |
| | #11 | Scrambled Eggs w/ Bacon (type II- Bacon pieces) | National Liquid, Whole, Wtd. Avg | USDA / USDA Egg Market News / 2 X Per Wk | 52 Week period | 52 Week period |
| | #12 | Scrambled Eggs w/ cheese, Western style (type III- Ham dices) | National Liquid, Whole, Wtd. Avg | USDA / USDA Egg Market News / 2 X Per Wk | 52 Week period | 52 Week period |
| | | | | | | |
| **Turkey** | #4 | Turkey Tetrazzini | Turkey Breasts, B/S, Tom | USDA / USDA Turkey Market News Report / 3 X Per Wk | 52 Week period | 52 Week period |
| | | | | | | |
| **Eggs** | #10 | Scrambled Eggs w/ cheese, Western style | National Liquid, Whole, Wtd. Avg | USDA / USDA Egg Market News / 2 X Per Wk | 52 Week period | 52 Week period |
| | #11 | Scrambled Eggs w/ Bacon | National Liquid, Whole, Wtd. Avg | USDA / USDA Egg Market News / 2 X Per Wk | 52 Week period | 52 Week period |
| | #12 | Scrambled Eggs w/ cheese, Western style | National Liquid, Whole, Wtd. Avg | USDA / USDA Egg Market News / 2 X Per Wk | 52 Week period | 52 Week period |
| | | | | | | |
| **Cheese** | #3 | Cheese spread | Cheese Average Price Per Pound (Class III) | USDA / Federal Milk Order Price Announcements / Monthly | 12 Month period | 12 Month period |
| | #4 | Cheese spread | Cheese Average Price Per Pound (Class III) | USDA / USDA Federal Milk Order Price Announcements / Monthly | 12 Months period | 12 Month period |
| | #10 | Scrambled Eggs w/ cheese, Western style | National Liquid, Whole, Wtd. Avg | USDA / USDA Egg Market News / 2 X Per Wk | 52 Week period | 52 Week period |
| | #12 | Scrambled Eggs w/ cheese, Western style | National Liquid, Whole, Wtd. Avg | USDA / USDA Egg Market News / 2 X Per Wk | 52 Week period | 52 Week period |
| | | | | | | |
| **Non-Fat Dry Milk Powder** | #1 & #12 | Dairy shake | Base Skim Milk Price for Class I time 0.965 plus Advanced Butterfat Pricing Factor times 3.5 | USDA / USDA, AMS, Dairy Programs / Monthly | 12 Month period | 12 Month period |
| | #10 | Cocoa beverage powder | Cocoa, Ivory Coast, $ per metric ton | WSJ / WSJ Commodity Cash Prices / Daily | 52 Week period | 52 Week period |

| ITEM | MENU | EPA FACTOR/ COMPONENT | ECONOMIC INDICATOR | PUBLISHER / PUBLICATION / FREQUENCY PUBLISHED | BASE UNIT PRICE | ADJ. UNIT PRICE |
|---|---|---|---|---|---|---|
| | #11 | Cocoa beverage powder | Cocoa, Ivory Coast, $ per metric ton | WSJ / WSJ Commodity Cash Prices / Daily | 52 Week period | 52 Week period |
| | #2 | Chocolate Sports Bar | Cocoa, Ivory Coast, $ per metric ton | WSJ / WSJ Commodity Cash Prices / Daily | 52 Week period | 52 Week period |
| | | | | | | |
| | All Accessory Packets | Non-Dairy Creamer | Soybean oil, crude; Central Illinois lb. | WSJ / WSJ Commodity Cash Prices / Daily | 52 Week period | 52 Week period |
| | | | | | | |
| **Peanut Butter / Peanuts** | #3 | Chocolate Peanut Pan Coated Disks | Virginia Peanuts Average Price per pound | USDA / National Agriculture Statistical Studies (NASS) Peanut Prices / Weekly | 52 Week period | 52 Week period |
| | #2 & #6 | Nut & Fruit Mix | Virginia Peanuts Average Price per pound | USDA / National Agriculture Statistical Studies (NASS) Peanut Prices / Weekly | 52 Week period | 52 Week period |
| | #8 | Chocolate Peanut Spread | Virginia Peanuts Average Price per pound | USDA / National Agriculture Statistical Studies (NASS) Peanut Prices / Weekly | 52 Week period | 52 Week period |
| **Packaging Materials** | | Linerboard | Linerboard (42-lb) Unbleached Kraft, East, Sh. Ton, Semi-Annual | Miller Freeman, Inc. / Pulp & Paper Week / Weekly/Prices are Published Monthly | Semi-annual | Semi-annual |
| **Packaging Materials** | | Resins | LDPE Resins, Large Buyer Price Film Liner Grade | Chemical Data / Monthly Petrochemical & Plastic Analysis / Monthly | 12 month period | 12 month period |

In addition to the components shown above, the following are also included

| ITEM | MENU | EPA FACTOR/ COMPONENT | ECONOMIC INDICATOR | PUBLISHER / PUBLICATION / FREQUENCY PUBLISHED | BASE UNIT PRICE | ADJ. UNIT PRICE |
|---|---|---|---|---|---|---|

(To be completed as required)

(c) The adjusting unit prices shall be the arithmetic average of the weekly or monthly prices of each applicable economic indicator only for the period specified under the “Adjusting Unit Price” column shown in paragraph (b) immediately preceding the effective date the option term is exercised.

(d) An established market price is a price that is established in the course of ordinary and usual trade between buyers and sellers free to bargain and that can be substantiated by data from sources independent of the offeror(s); and the net price after applying any standard trade discounts offered by the Contractor. The established market price under this clause may reflect industry-wide and/or geographically based market price fluctuations for commodity groups or specific supplies. The established market price that shall be used for the EPA factors subject to price adjustments under this clause, and the economic indicators and publications to be used are listed in paragraph (b) of this clause.

(1) The base unit prices for the purpose of the adjustment calculations under this clause shall be the arithmetic average of the weekly or monthly prices of each applicable economic indicator only for the period specified under the "Base Unit Price" column in paragraph (b) immediately preceding (i) the closing date for proposals, if no discussions are held, (ii) the due date for final proposal revisions, if discussions are held, or (iii) the opening date, if sealed bidding is used.

(2) The adjusting unit prices shall be the arithmetic average of the weekly or monthly prices of each applicable economic indicator for the period specified under the Adjusting Unit Price column in paragraph (b) immediately preceding the effective date the option term is exercised, except for linerboard which shall require one additional adjustment six months after each option term is exercised.

(e) With respect to increases or decreases under this clause, no adjustment shall be made to the base term contract unit prices. One adjustment calculation shall be made annually to determine the unit prices applicable to the forthcoming option term (if exercised), except linerboard which will be adjusted on a semi-annual basis.

(f) EPA allowance factor: For the purpose of price adjustment pursuant to this clause, it shall be conclusively presumed that the amount shown under "Portion Subject to EPA" represents the cost of each item that is subject to adjustment. The portion subject to EPA refers to the element of cost for each item that is outside the control of the vendor and in "Schedule B" the offerors will be required to fill in this amount. This is the only portion of the cost that will be subject to the EPA provision. The EPA provisions based on changes in market prices for product material costs such as chicken, beef, turkey, eggs, cheese, dry milk powder, and peanuts are subject to the EPA, because there is serious doubt concerning the stability of market conditions. The balance of product costs for items such as labor, overhead, General and Administrative (G&A), transportation, and profit are those contingencies that can be included in the contract price and can be identified and covered separately through firm fixed prices. The EPA allowance factor remains fixed throughout the life of the contract unless a Government authorized change is made to the contract which affects this allowance.

(g) Performance requirement: The United States Army Research, Development and Engineering Command (RDECOM) Natick Soldier Center (NSC) who prepares the specifications has moved from Military Specifications to Performance Requirements. The Government no longer states the specific amount of product (meat, flour, cheese, eggs, etc.) that goes into a Meal Cold Weather/Long Range Patrol (MCW/LRP), only an overall amount with a protein and carbohydrate requirement. Meeting the protein requirement indicates that the Contractor has put in sufficient (meat) quantities in the MCW/LRP to satisfy the requirement. (Different Contractors will put in differing quantities of chicken, beef, turkey, eggs, cheese, etc. to meet the protein performance requirements). This is why specific weights or quantities cannot be specified in advance in this EPA as would be used in a military specification and the cost for the items subject to adjustment will be entered by the Contractor in Section B. The Government performs oversight to ensure that the performance requirements are met or exceeded.

(h) Adjustments shall be calculated as follows: (Round to four decimal places)

(1) Compute the adjusting unit price and the base unit price.

(2) (Adjusting unit price – base unit price)/base unit price = market price change (+ or -).

(3) Market price change x allowance factor = contract unit price adjustment (+ or -) for each item subject to EPA adjustment.

(4) The original option unit price(s) for each option will be the sum of the firm fixed price portion and the portion subject to the EPA (Allowance Factor). The adjusted unit price(s) for each option shall be determined by increasing or decreasing (as appropriate) the allowance factor by the contract unit price adjustment and adding that to the firm fixed price portion agreed to at the time of award for the option period being adjusted.

(5) Determine the contract price adjustment by computing the sum total of the price adjustment of all items subject to EPA.

(i) Price adjustments pursuant to this clause shall be made by contract modification showing the calculations used to derive the adjusted contract unit price.

(j) Payments: Payment for items pending adjustment under this clause shall be at the existing unadjusted current unit price until an adjustment modification has been issued. Following issuance of an adjusting contract modification, the Government shall pay the Contractor, upon submission of proper invoices or vouchers, the adjusted price stated in the contract modification for the applicable option period. The Contractor represents by submitting its final invoice that the total amount billed under this contract reflects all increases or decreases required or authorized by this clause.

(k) Any pricing actions pursuant to the “Changes” clause or other provisions of the contract will be priced as though there were no provisions for economic price adjustment.

(l) No adjustment will be made under this clause unless the total change in the contract amount is $500.00 or more.

(m) Upward ceiling on economic price adjustment: The total increase in any contract unit price shall not exceed 10% per annum of the original option unit prices agreed to at time of award. There is no percentage limit on downward adjustments under this clause.

(n) Revision of market price indicator: In the event (i) any applicable market price indicator is discontinued or its method of derivation is altered substantially or (ii) the Contracting Officer determines that a particular market price indicator consistently and substantially no longer reflects market conditions, the parties shall mutually agree upon an appropriate and comparable substitute and the contract shall be modified to reflect such substitute effective on the date the indicator was discontinued, altered, or began to consistently and substantially fail to reflect market conditions.

(o) Disputes: If the parties fail to agree on an appropriate substitute market price indicator or implementation of other matters addressed by this EPA clause then the matter shall be resolved in accordance with the Disputes clause of the contract.

(p) Authority to add additional items to this clause: Paragraph (b) of this clause identifies 30 unique components contained in the MCW/LRP. These components are selected based on historical data and may not be included in every ration. Refer elsewhere in the solicitation/contract for listing of the exact component makeup. Due to customer requirements, the Contracting Officer may add additional components to the ration. The Contracting Officer will show within paragraph (b) the additional components(s).

(q) Examination of records: The Contractor agrees that the Contracting Officer or designated representative shall have the right to examine the Contractor's books, records, documents, or other data the Contracting Officer deems necessary to verify Contractor adherence to the provisions of the clause.

(r) In the event any applicable market price indicator is not published for any week(s), that week will not be included in calculating the base unit price or the adjusting unit price as applicable. For instance, if within a 52 week period an indicator is not published 4 times, the average of the 48 published prices only will be calculated. When a range of prices is provided, for the purposes of the calculations the arithmetic average of the high and low number will be calculated to determine the indicator for that period.

(End of Clause)

**52.216-9060 Economic Price Adjustment - Meal Ready To Eat (MRE) Assembly.**
As prescribed at 16.203-4-90(l)(6) and FAR 16.203(a)(1), insert the following clause.

ECONOMIC PRICE ADJUSTMENT (EPA) – MEAL READY TO EAT (MRE) ASSEMBLY
(SEP 2015)

(a) Warranties: For the portion of the schedule that is covered by this EPA clause, the Contractor warrants that the unit prices included in the Schedule do not include allowances for any portion of the contingency covered by this clause.

(b) The base unit prices for the purpose of the adjustment calculations under this clause shall be the arithmetic average of the weekly or monthly prices of each applicable economic indicator only (e.g. an average of beef indices for beef products, an average of poultry indices for poultry products, etc.) for the period specified under the "Base Unit Price" below immediately preceding either the solicitation closing date for proposals (if no discussions are held), the due date for final proposal revisions (if discussions are held) or the solicitation opening date (if sealed bidding is used).

| ITEM | ECONOMIC INDICATOR | PUBLISHER / PUBLICATION / FREQUENCY PUBLISHED | BASE UNIT PRICE | ADJ. UNIT PRICE |
|---|---|---|---|---|
| **Beef Brisket** | Boneless Processing Beef/Beef Trimmings, FOB National, Wtd. Avg. 85% fr (BPN U-24) | USDA / Weekly National Carlot Meat Report / Weekly | 52-week period | 52-week period |
| | | | | |
| **Beef Patty** | Boneless Processing Beef/Beef Trimmings, FOB National, Wtd. Avg. 85% fr (BPN U-24) | USDA / Weekly National Carlot Meat Report / Weekly | 52-week period | 52-week period |

| ITEM | ECONOMIC INDICATOR | PUBLISHER / PUBLICATION / FREQUENCY PUBLISHED | BASE UNIT PRICE | ADJ. UNIT PRICE |
|---|---|---|---|---|
| | | | | |
| **Beef Ravioli** | Boneless Processing Beef/Beef Trimmings, FOB National, Wtd. Avg. 85% fr (BPN U-24) | USDA / Weekly National Carlot Meat Report / Weekly | 52-week period | 52-week period |
| | | | | |
| **Beef Stew** | IMPS 167A Round, Knuckle, Trimmed, Wtd. Avg. (BPN U-12) | USDA / Weekly National Carlot Meat Report / Weekly | 52-week period | 52-week period |
| | | | | |
| **Southwest Beef and Black Beans** | IMPS 167A Round, Knuckle, Trimmed, Wtd. Avg. (BPN U-12) | USDA / Weekly National Carlot Meat Report / Weekly | 52-week period | 52-week period |
| | | | | |
| **Cheese Tortellini** | National Liquid, Whole, Wtd. Avg. | USDA / Egg Market News Report / Weekly | 52-week period | 52-week period |
| | | | | |
| **Chicken with Dumplings** | Heavy Type Hens, S.E. Heavy Live Hen Report, At Farm Buyer Loading, Wtd. Avg. | USDA / Broiler Market New Report (Monday Edition) / Weekly | 52-week period | 52-week period |
| | | | | |
| **Chicken Fajita** | Breasts, B/S, Georgia FOB Dock, Wtd. Avg. Price | USDA / Broiler Market New Report (Monday Edition) / Weekly | 52-week period | 52-week period |
| | | | | |
| **Chicken with Noodles** | Heavy Type Hens, S.E. Heavy Live Hen Report, At Farm Buyer Loading, Wtd. Avg. | USDA / Broiler Market New Report (Monday Edition) / Weekly | 52-week period | 52-week period |
| | | | | |
| **Chicken Pesto and Pasta** | Breasts, B/S,Georgia FOB Dock, Wtd. Avg. Price | USDA / Broiler Market New Report (Monday Edition) / Weekly | 52-week period | 52-week period |
| | | | | |
| **Chicken with Tomato/Feta** | Breasts, B/S, Georgia FOB Dock, Wtd. Avg. Price | USDA / Broiler Market New Report (Monday Edition) / Weekly | 52-week period | 52-week period |
| | | | | |
| **Buffalo Chicken** | Breasts, B/S, Georgia FOB Dock, Wtd. Avg. Price | USDA / Broiler Market New Report (Monday Edition) / Weekly | 52-week period | 52-week period |
| | | | | |
| **Chili with Beans** | Boneless Processing Beef/Beef Trimmings, FOB National, Wtd. Avg. 85% fr (BPN U-24) | USDA / Weekly National Carlot Meat Report / Weekly | 52-week period | 52-week period |
| | | | | |
| **Chili and Macaroni** | Boneless Processing Beef/Beef Trimmings, FOB National, Wtd. Avg. 85% fr (BPN U-24) | USDA / Weekly National Carlot Meat Report / Weekly | 52-week period | 52-week period |
| | | | | |
| **Meatballs/ Marinara** | Boneless Processing Beef/Beef Trimmings, FOB National, Wtd. Avg. 85% fr (BPN U-24) | USDA / Weekly National Carlot Meat Report / Weekly | 52-week period | 52-week period |
| | | | | |
| **Penne w/ Vegetable Sausage** | Loins, Bone-In, Fresh, 1/4"Trim 13-19#, C4, Wtd. Avg.(BPN U-40) | USDA / Weekly National Carlot Meat Report / Weekly | 52-week period | 52-week period |
| | | | | |

| ITEM | ECONOMIC INDICATOR | PUBLISHER / PUBLICATION / FREQUENCY PUBLISHED | BASE UNIT PRICE | ADJ. UNIT PRICE |
|---|---|---|---|---|
| **Pork Sausage w/ Gravy** | Loins, Bone-In, Fresh, 1/4"Trim 13-19#, C4, Wtd. Avg.(BPN U-40) | USDA / Weekly National Carlot Meat Report / Weekly | 52-week period | 52-week period |
| | | | | |
| **Boneless Pork Rib** | Loins, Bone-In, Fresh, 1/4"Trim 13-19#, C4, Wtd.Avg.(BPN U-40) | USDA / Weekly National Carlot Meat Report / Weekly | 52-week period | 52-week period |
| | | | | |
| **Pot Roast w/ Vegetables** | Boneless Processing Beef/Beef Trimmings, FOB National, Wtd. Avg. 85% fr (BPN U-24) | USDA / Weekly National Carlot Meat Report / Weekly | 52-week period | 52-week period |
| | | | | |
| **Sloppy Joe** | Boneless Processing Beef/Beef Trimmings, FOB National, Wtd. Avg. 85% fr (BPN U-24) | USDA / Weekly National Carlot Meat Report / Weekly | 52-week period | 52-week period |
| | | | | |
| **Spaghetti w/ Meat Sauce** | Boneless Processing Beef/Beef Trimmings, FOB National, Wtd. Avg. 85% fr (BPN U-24) | USDA / Weekly National Carlot Meat Report / Weekly | 52-week period | 52-week period |
| | | | | |
| **Beef Snacks** | IMPS 171B Round, Outside Round, Wtd. Avg.(BPN U-31) | USDA / Weekly National Carlot Meat Report / Weekly | 52-week period | 52-week period |
| | | | | |
| **Packaging Materials** | Linerboard (42-lb) Unbleached kraft, East, Sh. Ton | Miller Freeman, Inc. / Pulp & Paper Week / Weekly but Prices are Published Monthly | Semi-annual | Semi-annual |
| | | | | |
| **Packaging Materials** | LDPE Resins, Large Buyer Price Film Liner Grade | Chemical Data / Monthly Petrochemical & Plastic Analysis / Monthly | 12 month period | 12 month period |

In addition to the components shown above, the following are also included:

| ITEM | ECONOMIC INDICATOR | PUBLISHER / PUBLICATION / FREQUENCY PUBLISHED | BASE UNIT PRICE | ADJ. UNIT PRICE |
|---|---|---|---|---|

(To be completed as required)

(c) The adjusting unit prices shall be the arithmetic average of the weekly or monthly prices of each applicable economic indicator only for the period specified under the "Adjusting Unit Price" column shown in paragraph (b) immediately preceding the effective date the option term is exercised.

(d) An established market price is a price that is established in the course of ordinary and usual trade between buyers and sellers free to bargain and that can be substantiated by data from sources independent of the offeror(s); and the net price after applying any standard trade discounts offered by the Contractor. The established market price under this clause may reflect industry-wide and/or geographically based market price fluctuations for commodity groups or specific supplies. The established market price that shall be used for the MRE items subject to price adjustments under this clause, and the economic indicators and publications to be used are listed in paragraph (b) of this clause.

(1) The base unit prices for the purpose of the adjustment calculations under this clause shall be the arithmetic average of the weekly or monthly prices of each applicable economic indicator only for the period specified under the "Base Unit Price" column in paragraph (b) immediately preceding (i) the closing date for proposals, if no discussions are held, (ii) the due date for final proposal revisions, if discussions are held, or (iii) the opening date, if sealed bidding is used.

(2) The adjusting unit prices shall be the arithmetic average of the weekly or monthly prices of each applicable economic indicator for the period specified under the "Adjusting Unit Price" column in paragraph (b) immediately preceding the effective date the option term is exercised, except for linerboard which shall require one additional adjustment six months after each option term is exercised.

(e) With respect to increases or decreases under this clause, no adjustment shall be made to the base term contract unit prices. One adjustment calculation shall be made annually to determine the unit prices applicable to the forthcoming option term (if exercised), except linerboard which will be adjusted on a semi-annual basis.

(f) EPA allowance factor: For the purpose of price adjustment pursuant to this clause, it shall be conclusively presumed that the amount shown under "Portion Subject to EPA" represents the cost of each item that is subject to adjustment. The portion subject to EPA refers to the element of cost for each item that is outside the control of the vendor and in "Schedule B" the offerors will be required to fill in this amount. This is the only portion of the cost that will be subject to the EPA provision. The EPA provisions based on changes in market prices for product material costs such as beef, chicken, and pork are subject to the EPA, because there is serious doubt concerning the stability of market conditions. The balance of product costs for items such as labor, overhead, General and Administrative (G&A), transportation, and profit are those contingencies that can be included in the contract price and can be identified and covered separately through firm fixed prices. The EPA allowance factor remains fixed throughout the life of the contract unless a Government authorized change is made to the contract which affects this allowance.

(g) Performance requirements: The United States Army Research, Development and Engineering Command (RDECOM) Natick Soldier Center (NSC) who prepares the specifications has moved from Military Specifications to Performance Requirements. The Government no longer states the specific amount of product (meat, potatoes, gravy, etc.) that goes into a MRE, only an overall amount with a protein and carbohydrate requirement. Meeting the protein requirement indicates that the Contractor has put in sufficient (meat) quantities in the MRE to satisfy the requirement. (Different Contractors will put in differing quantities of beef, pork, chicken breast, etc. to meet the protein performance requirements). This is why specific weights or quantities cannot be specified in advance in this EPA as would be used in a Military Specification and the cost for the items subject to adjustment will be entered by the Contractor in Section B. The Government performs oversight to ensure that the performance requirements are met or exceeded.

(h) Adjustments shall be calculated as follows: (Round to four decimal places)

(1) Compute the Adjusting Unit Price and the Base Unit Price.

(2) (Adjusting Unit Price – Base Unit Price)/Base Unit Price = Market Price Change (+ or -).

(3) Market Price Change X Allowance Factor = Contract Unit Price Adjustment (+ or -) for each item subject to EPA adjustment.

(4) The original option unit price(s) for each option will be the sum of the firm fixed price portion and the portion subject to the EPA (Allowance Factor). The adjusted unit price(s) for each option shall be determined by increasing or decreasing (as appropriate) the Allowance Factor by the Contract Unit Price Adjustment and adding that to the firm fixed price portion agreed to at the time of award for the option period being adjusted.

(5) Determine the Contract Price Adjustment by computing the sum total of the price adjustment of all items subject to EPA.

(i) Price adjustments pursuant to this clause shall be made by contract modification showing the calculations used to derive the adjusted contract unit price.

(j) Payments: Payment for items pending adjustment under this clause shall be at the existing unadjusted contract unit price until an adjustment modification has been issued. Following issuance of an adjusting contract modification, the Government shall pay the Contractor, upon submission of proper invoices or vouchers, the adjusted price stated in the contract modification for the applicable option period. The Contractor represents by submitting its final invoice that the total amount billed under this contract reflects all increases or decreases required or authorized by this clause.

(k) Any pricing actions pursuant to the Changes Clause or other provisions of the contract will be priced as though there were no provisions for economic price adjustment.

(l) No adjustment will be made under this clause unless the total change in the contract amount is $500.00 or more.

(m) Upward ceiling on economic price adjustment: The total increase in any contract unit price shall not exceed 10% per annum of the original option unit prices agreed to at time of award. There is no percentage limit on downward adjustments under this clause.

(n) Revision of market price indicator: In the event (i) any applicable market price indicator is discontinued or its method of derivation is altered substantially or (ii) the Contracting Officer determines that a particular market price indicator consistently and substantially no longer reflects market conditions, the parties shall mutually agree upon an appropriate and comparable substitute and the contract shall be modified to reflect such substitute effective on the date the indicator was discontinued, altered, or began to consistently and substantially fail to reflect market conditions.

(o) Disputes: If the parties fail to agree on an appropriate substitute market price indicator or implementation of other matters addressed by this EPA clause then the matter shall be resolved in accordance with the Disputes clause of the contract.

(p) Authority to add additional items to this clause: Paragraph (b) of this clause identifies 24 unique components contained in the MRE Assembly. These components are selected based on historical data and may not be included in every assembly. Refer elsewhere in the solicitation/contract for listing of the exact component makeup. Due to customer requirements, the Contracting Officer may add additional

components to the assembly. The Contracting Officer will show within paragraph (b) the additional components(s).

(q) Examination of records: The Contractor agrees that the Contracting Officer or designated representative shall have the right to examine the Contractor's books, records, documents, or other data the Contracting Officer deems necessary to verify Contractor adherence to the provisions of the clause.

(r) In the event any applicable market price indicator is not published for any week(s), that week will not be included in calculating the base unit price or the adjusting unit price as applicable. For instance, if within a 52 week period an indicator is not published 4 times, the average of the 48 published prices only will be calculated. When a range of prices is provided, for the purposes of the calculations the arithmetic average of the high and low number will be calculated to determine the indicator for that period.

(End of Clause)

**52.216-9061 Economic Price Adjustment – Table Spreads.**
As prescribed at 16.203-4-90(l)(2) and FAR 16.203-1(a)(1), insert the following clause:

ECONOMIC PRICE ADJUSTMENT (EPA) – TABLE SPREADS (SEP 2015)

(a) Warranties: For the portion of the schedule that is covered by this EPA clause, the Contractor warrants that the unit prices included in the Schedule do not include allowances for any portion of the contingency covered by this clause.

(b) The base unit prices for the purpose of the adjustment calculations under this clause shall be the arithmetic average of the weekly or monthly prices of each applicable economic indicator only (e.g. an average of cheese and butter indices for cheese products, and an average of peanut indices for peanut products) for the period specified under the "Base Unit Price" below immediately preceding either the solicitation closing date for proposals (if no discussions are held), the due date for final proposal revisions (if discussions are held) or the solicitation opening date (if sealed bidding is used).

| ITEM | EPA FACTOR/ COMPONENT | ECONOMIC INDICATOR | PUBLISHER / PUBLICATION / FREQUENCY PUBLISHED | BASE UNIT PRICE | ADJ. UNIT PRICE |
|---|---|---|---|---|---|
| | | | | | |
| **Plain Cheese Spread** | Cheese & Butter | Cheese Barrels - 40# Blocks & Grade AA Butter | Chicago Mercantile Exchange Cash Trading / USDA Dairy Market News / Weekly | 52 week period | 52 week period |
| | | | | | |
| **Jalapeno Cheese Spread** | Cheese & Butter | Cheese Barrels - 40# Blocks & Grade AA Butter | Chicago Mercantile Exchange Cash Trading / USDA Dairy Market News / Weekly | 52 week period | 52 week period |
| | | | | | |
| **Bacon Cheese Spread** | Cheese & Butter | Cheese Barrels - 40# Blocks & Grade AA Butter | Chicago Mercantile Exchange Cash Trading / USDA Dairy Market News / Weekly | 52 week period | 52 week period |
| | | | | | |
| **Plain Peanut Butter** | Peanut Butter | PPI Table # WPU01830111 For Peanut Butter & Roasted Peanuts | Bureau Of Labor Statistics – Producer Price Index (PPI) / Monthly | 12 month period | 12 month period |
| | | | | | |

| ITEM | EPA FACTOR/ COMPONENT | ECONOMIC INDICATOR | PUBLISHER / PUBLICATION / FREQUENCY PUBLISHED | BASE UNIT PRICE | ADJ. UNIT PRICE |
|---|---|---|---|---|---|
| **Chocolate Peanut Butter** | Peanut Butter | PPI Table # WPU01830111 For Peanut Butter & Roasted Peanuts | Bureau Of Labor Statistics / Producer Price Index (PPI) / Monthly | 12 month period | 12 month period |
| | | | | | |
| **Chunky Peanut Butter** | Peanut Butter | PPI Table # WPU01830111 For Peanut Butter & Roasted Peanuts | Bureau Of Labor Statistics / Producer Price Index (PPI) / Monthly | 12 month period | 12 month period |

In addition to the components shown above, the following are also included:

| ITEM | EPA FACTOR/ COMPONENT | ECONOMIC INDICATOR | PUBLISHER / PUBLICATION / FREQUENCY PUBLISHED | BASE UNIT PRICE | ADJ. UNIT PRICE |
|---|---|---|---|---|---|

(To be completed as required)

(c) The adjusting unit prices shall be the arithmetic average of the weekly or monthly prices of each applicable economic indicator only for the period specified under the "Adjusting Unit Price" column shown in paragraph (b) immediately preceding the effective date the option term is exercised.

(d) An established market price is a price that is established in the course of ordinary and usual trade between buyers and sellers free to bargain and that can be substantiated by data from sources independent of the offeror(s); and the net price after applying any standard trade discounts offered by the Contractor. The established market price under this clause may reflect industry-wide and/or geographically based market price fluctuations for commodity groups or specific supplies. The established market price that shall be used for the EPA factors subject to price adjustments under this clause, and the economic indicators and publications to be used are listed in paragraph (b) of this clause.

(1) The base unit prices for the purpose of the adjustment calculations under this clause shall be the arithmetic average of the weekly or monthly prices of each applicable economic indicator only for the period specified under the "Base Unit Price" column in paragraph (b) immediately preceding (i) the closing date for proposals, if no discussions are held, (ii) the due date for final proposal revisions, if discussions are held, or (iii) the opening date, if sealed bidding is used.

(2) The adjusting unit prices shall be the arithmetic average of the weekly or monthly prices of each applicable economic indicator for the period specified under the "Adjusting Unit Price" column in paragraph (b) immediately preceding the effective date the option term is exercised.

(e) With respect to increases or decreases under this clause, no adjustment shall be made to the base term contract unit prices. One adjustment calculation shall be made annually to determine the unit prices applicable to the forthcoming option term (if exercised).

(f) EPA allowance factor: For the purpose of price adjustment pursuant to this clause, it shall be conclusively presumed that the amount shown under "Portion Subject to EPA" represents the cost of each item that is subject to adjustment. The portion subject to EPA refers to the element of cost for each item that is outside the control of the vendor and in "Schedule B" the offerors will be required to fill in this

amount. This is the only portion of the cost that will be subject to the EPA provision. The EPA provisions based on changes in market prices for product material costs such as cheese, butter, and peanuts, are subject to the EPA, because there is serious doubt concerning the stability of market conditions. The balance of product costs for items such as labor, overhead, General and Administrative (G&A), transportation, and profit are those contingencies that can be included in the contract price and can be identified and covered separately through firm fixed prices. The EPA allowance factor remains fixed throughout the life of the contract unless a Government authorized change is made to the contract which affects this allowance.

(g) Performance requirements: The United States Army Research, Development and Engineering Command (RDECOM) Natick Soldier Center (NSC) who prepares the specifications has moved from Military Specifications to Performance Requirements. The Government no longer states the specific amount of product (cheese, butter, peanuts, etc.) that goes into a table spread, only an overall amount with a protein and carbohydrate requirement. (Different Contractors will put in differing quantities of cheese, butter, peanuts, etc. to meet the performance requirements). This is why specific weights or quantities cannot be specified in advance in this EPA as would be used in a Military Specification and the cost for the items subject to adjustment will be entered by the Contractor in Section B. The Government performs oversight to ensure that the performance requirements are met or exceeded.

(h) Adjustments shall be calculated as follows: (Round to four decimal places)

(1) Compute the adjusting unit price and the base unit price.

(2) (Adjusting unit price – base unit price)/base unit price = market price change (+ or -).

(3) Market price Change X Allowance Factor = Contract Unit Price Adjustment (+ or -) for each item subject to EPA adjustment.

(4) The original option unit price(s) for each option will be the sum of the firm fixed price portion and the portion subject to the EPA (allowance factor). The adjusted unit price(s) for each option shall be determined by increasing or decreasing (as appropriate) the allowance factor by the contract unit price adjustment and adding that to the firm fixed price portion agreed to at the time of award for the option period being adjusted.

(5) Determine the contract price adjustment by computing the sum total of the price adjustments of all items subject to EPA.

(i) Price adjustments pursuant to this clause shall be made by contract modification showing the calculations used to derive the adjusted contract unit price.

(j) Payments: Payment for items pending adjustment under this clause shall be at the existing unadjusted contract unit price until an adjustment modification has been issued. Following issuance of an adjusting contract modification, the Government shall pay the Contractor, upon submission of proper invoices or vouchers, the adjusted price stated in the contract modification for the applicable option period. The Contractor represents by submitting its final invoice that the total amount billed under this contract reflects all increases or decreases required or authorized by this clause.

(k) Any pricing actions pursuant to the "CHANGES" clause or other provisions of the contract will be priced as though there were no provisions for economic price adjustment.

(l) No adjustment will be made under this clause unless the total change in the contract amount is $500.00 or more.

(m) Upward ceiling on economic price adjustment: The total increase in any contract unit price shall not exceed 10% per annum of the original option unit prices agreed to at time of award. There is no percentage limit on downward adjustments under this clause.

(n) Revision of market price indicator: In the event (i) any applicable market price indicator is discontinued or its method of derivation is altered substantially or (ii) the Contracting Officer determines that a particular market price indicator consistently and substantially no longer reflects market conditions, the parties shall mutually agree upon an appropriate and comparable substitute and the contract shall be modified to reflect such substitute effective on the date the indicator was discontinued, altered, or began to consistently and substantially fail to reflect market conditions.

(o) Disputes: If the parties fail to agree on an appropriate substitute market price indicator or implementation of other matters addressed by this EPA clause then the matter shall be resolved in accordance with the Disputes clause of the contract.

(p) Authority to add additional items to this clause: Paragraph (b) of this clause identifies 6 unique components contained in the ration. These components are selected based on historical data and may not be included in every ration. Refer elsewhere in the solicitation/contract for listing of the exact component makeup. Due to customer requirements, the Contracting Officer may add additional components to the ration. The Contracting Officer will show within paragraph (b) the additional components(s).

(q) Examination of records: The Contractor agrees that the Contracting Officer or designated representative shall have the right to examine the Contractor's books, records, documents, or other data the Contracting Officer deems necessary to verify Contractor adherence to the provisions of the clause.

(r) In the event any applicable market price indicator is not published for any week(s), that week will not be included in calculating the base unit price or the adjusting unit price as applicable. For instance, if within a 52 week period an indicator is not published 4 times, the average of the 48 published prices only will be calculated. When a range of prices is provided, for the purposes of the calculations the arithmetic average of the high and low number will be calculated to determine the indicator for that period.

(End of Clause)

**52.216-9062 Economic Price Adjustment - Unitized Group Ration.**
As prescribed at 16.203-4-90(l)(3) and FAR 16.203-1(a)(1), insert the following clause:

ECONOMIC PRICE ADJUSTMENT (EPA) – UNITIZED GROUP RATION (UGR) (SEP 2015)

(a) Warranties: For the portion of the schedule that is covered by this EPA clause, the Contractor warrants that the unit prices included in the Schedule does not include allowances for any portion of the contingency covered by this clause.

(b) Base unit price: The base unit prices for the purpose of the adjustment calculations under this clause shall be the arithmetic average of the weekly or monthly prices of each applicable economic indicator only (e.g. an average of egg indices for egg products, pork belly indices for pork products, and skim milk and butterfat indices for milk products) only for the period specified under the "BASE Unit Price" column in paragraph (b) immediately preceding (i) the closing date for proposals, (if no discussions are held), (ii) the due date for final proposal revisions, (if discussions are held), or (iii) the opening date, (if sealed bidding is used).

| ITEM | EPA FACTOR/ COMPONENT | ECONOMIC INDICATOR | PUBLISHER / PUBLICATION / FREQUENCY PUBLISHED | BASE UNIT PRICE | ADJ. UNIT PRICE |
|---|---|---|---|---|---|
| | | | | | |
| **Boil-In-Bag Dehy Egg Mix** | Egg | National Liquid Egg, Whole, Weighted Average | USDA / Egg Market News Report / Weekly | 52 week period | 52 week period |
| | | | | | |
| **Bacon, precooked, sliced, cured** | Pork Belly | Pork Belly, Seedless, Fresh, Skin on , Trimmed 14-16#, Weighted, U49 | USDA / Weekly National Carlot Meat Report / Weekly | 52-week period | 52 week period |
| | | | | | |
| **UHT Milk** | Skim Milk and Butterfat Fluid Milk products (Class I Milk) | Base Skim Milk Price for Class I time 0.965 plus Advanced Butterfat Pricing Factor times 0.035 | USDA / USDA, AMS, Dairy Programs / Announcement of Advanced Prices and Pricing Factors / Monthly | 12 month period | 12 month period |

In addition to the components shown above, the following are also included:

| ITEM | EPA FACTOR/ COMPONENT | ECONOMIC INDICATOR | PUBLISHER / PUBLICATION / FREQUENCY PUBLISHED | BASE UNIT PRICE | ADJ. UNIT PRICE |
|---|---|---|---|---|---|

(To be completed as required)

(c) Adjusting unit price: The adjusting unit prices shall be the arithmetic average of the weekly or monthly prices of each applicable economic indicator only for the period specified under the "Adjusting Unit Price" column shown in paragraph (b) immediately preceding the effective date the option term is exercised.

(d) An established market price is a price that is established in the course of ordinary and usual trade between buyers and sellers free to bargain and that can be substantiated by data from sources independent of the offeror(s); and the net price after applying any standard trade discounts offered by the Contractor. The established market price under this clause may reflect industry-wide and/or geographically based market price fluctuations for commodity groups or specific supplies. The established market price that shall be used for the EPA factors subject to price adjustments under this clause, and the economic indicators and publications to be used are listed in paragraph (b) of this clause.

(e) With respect to increases or decreases under this clause, no adjustment shall be made to the base term contract unit prices. One adjustment calculation shall be made annually to determine the unit prices applicable to the forthcoming option term (if exercised).

(f) EPA allowance factor: For the purpose of price adjustment pursuant to this clause, it shall be conclusively presumed that the amount shown under "Portion Subject to EPA" represents the cost of each item that is subject to adjustment. The portion subject to EPA refers to the element of cost for each item that is outside the control of the vendor and in "Schedule B" the offerors will be required to fill in this amount. This is the only portion of the cost that will be subject to the EPA provision. The EPA provisions based on changes in market prices for product material costs such as egg, pork belly, skim milk, and buttermilk, are subject to the EPA, because there is serious doubt concerning the stability of market conditions. The balance of product costs for items such as labor, overhead, General and Administrative (G&A), transportation, and profit are those contingencies that can be included in the contract price and can be identified and covered separately through firm fixed prices. The EPA allowance factor remains fixed throughout the life of the contract unless a Government authorized change is made to the contract which affects this allowance.

(g) Performance requirement: The United States Army Research, Development and Engineering Command (RDECOM) Natick Soldier Center (NSC) who prepares the specifications has moved from Military Specifications to Performance Requirements. The Government no longer states the specific amount of product (egg, pork belly, skim milk, buttermilk etc.) (a unitized group ration item) that goes into a Unitized Group Ration, only an overall amount with a protein and carbohydrate requirement. Meeting the protein and carbohydrate requirement indicates that the Contractor has put in sufficient quantities of required ingredients in the Unitized Group Ration to satisfy the requirement. (Different Contractors will put in differing quantities of egg, pork belly, skim milk, buttermilk etc. to meet the protein and carbohydrate performance requirements). This is why specific weights or quantities cannot be specified in advance in this EPA as would be used in a Military Specification and the cost for the items subject to adjustment will be entered by the Contractor in Section B. The Government performs oversight to ensure that the performance requirements are met or exceeded.

(h) Adjustments shall be calculated as follows: (Round to four decimal places)

(1) Compute the Adjusting Unit Price and the Base Unit Price.

(2) (Adjusting Unit Price – Base Unit Price)/Base Unit Price = Market Price Change (+ or -).

(3) Market Price Change X Allowance Factor = Contract Unit Price Adjustment (+ or -) for each item subject to EPA adjustment.

(4) The original option unit price(s) for each option will be the sum of the firm fixed price portion and the portion subject to the EPA (Allowance Factor). The adjusted unit price(s) for each option shall be determined by increasing or decreasing (as appropriate) the Allowance Factor by the Contract Unit Price Adjustment and adding that to the firm fixed price portion agreed to at the time of award for the option period being adjusted.

(5) Determine the Contract Price Adjustment by computing the sum total of the price Adjustment of all items subject to EPA.

(i) Price adjustments pursuant to this clause shall be made by contract modification showing the calculations used to derive the adjusted contract unit price.

(j) Payments: Payment for items pending adjustment under this clause shall be at the existing unadjusted current unit price until an adjustment modification has been issued. Following issuance of an adjusting contract modification, the Government shall pay the Contractor, upon submission of proper invoices or vouchers, the adjusted price stated in the contract modification for the applicable option period. The Contractor represents by submitting its final invoice that the total amount billed under this contract reflects all increases or decreases required or authorized by this clause.

(k) Any pricing actions pursuant to the "Changes" clause or other provisions of the contract will be priced as though there were no provisions for economic price adjustment.

(l) No adjustment will be made under this clause unless the total change in the contract amount is $500.00 or more.

(m) Upward ceiling on economic price adjustment: The total increase in any contract unit price shall not exceed 10% per annum of the original option unit prices agreed to at time of award. There is no percentage limit on downward adjustments under this clause.

(n) Revision of market price indicator: In the event (i) any applicable market price indicator is discontinued or its method of derivation is altered substantially or (ii) the Contracting Officer determines that a particular market price indicator consistently and substantially no longer reflects market conditions, the parties shall mutually agree upon an appropriate and comparable substitute and the contract shall be modified to reflect such substitute effective on the date the indicator was discontinued, altered, or began to consistently and substantially fail to reflect market conditions.

(o) Disputes: If the parties fail to agree on an appropriate substitute market price indicator or implementation of other matters addressed by this EPA clause then the matter shall be resolved in accordance with the Disputes clause of the contract.

(p) Authority to add additional items to this clause: Paragraph (b) of this clause identifies 3 unique components contained in the ration. These components are selected based on historical data and may not be included in every ration. Refer elsewhere in the solicitation/contract for listing of the exact component makeup. Due to customer requirements, the Contracting Officer may add additional components to the ration. The Contracting Officer will show within paragraph (b) the additional components(s).

(q) Examination of records: The Contractor agrees that the Contracting Officer or designated representative shall have the right to examine the Contractor's books, records, documents, or other data the Contracting Officer deems necessary to verify Contractor adherence to the provisions of the clause.

(r) In the event any applicable market price indicator is not published for any week(s), that week will not be included in calculating the base unit price or the adjusting unit price as applicable. For instance, if within a 52 week period an indicator is not published 4 times, the average of the 48 published prices only will be calculated. When a range of prices is provided, for the purposes of the calculations the arithmetic average of the high and low number will be calculated to determine the indicator for that period.

(End of Clause)

**52.216-9063 Economic Price Adjustment (EPA) Tailored Operational Training Meal (TOTM).** As prescribed at 16.203-4-90(l)(5) and FAR 16.203-1(a)(1), insert the following clause:

ECONOMIC PRICE ADJUSTMENT (EPA) – TAILORED OPERATIONAL TRAINING MEAL (TOTM) (SEP 2015)

(a) Warranties: For the portion of the schedule that is covered by this EPA clause, the Contractor warrants that the unit prices included in the Schedule do not include allowances for any portion of the contingency covered by this clause.

(b) The base unit prices for the purpose of the adjustment calculations under this clause shall be the arithmetic average of the weekly or monthly prices of each applicable economic indicator only (e.g. an average of beef indices for beef products, an average of poultry indices for poultry products, etc.) for the period specified under the "Base Unit Price" below immediately preceding either the solicitation closing date for proposals (if no discussions are held), the due date for final proposal revisions (if discussions are held) or the solicitation opening date (if sealed bidding is used).

| ITEM | EPA FACTOR/ COMPONENT | ECONOMIC INDICATOR | PUBLISHER / PUBLICATION / FREQUENCY PUBLISHED | BASE UNIT PRICE | ADJ. UNIT PRICE |
|---|---|---|---|---|---|
| | | | | | |
| **Beef Enchiladas** | Beef | IMPS 167A Round Knuckle, Trimmed, Wtd. Avg. (BPN U-12) | USDA / Weekly National Carlot Meat Report / Weekly | 52 week period | 52 week period |
| | | | | | |
| **Beef Ravioli** | Beef | Boneless Processing Beef/Beef Trimmings, FOB National, Wtd. Avg. 85% fr (BPN U-24) | USDA / Weekly National Carlot Meat Report / Weekly | 52 week period | 52 week period |
| | | | | | |
| **Beef Stew** | Beef | IMPS 167A Round Knuckle, Trimmed, Wtd. Avg. (BPN U-12) | USDA / Weekly National Carlot Meat Report / Weekly | 52 week period | 52 week period |
| | | | | | |
| **Boneless Pork Rib** | Pork | Loins, Bone-In, Fresh, ¼" Trim 13-19#, C4, Wtd. Avg. (BPN U-40) | USDA / Weekly National Carlot Meat Report / Weekly | 52 week period | 52 week period |
| | | | | | |
| **Chicken Fajita** | Chicken | Breasts, B/S, Georgia F.O.B. Dock, Wtd. Avg. Price | USDA / USDA Broiler Market News Report / Weekly | 52 week period | 52 week period |
| | | | | | |
| **Chicken /Dumpling** | Chicken | Breasts, B/S, Georgia F.O.B. Dock, Wtd. Avg. Price | USDA / USDA Broiler Market News Report / Weekly | 52 week period | 52 week period |
| | | | | | |
| **Chicken w/Noodles** | Chicken | Heavy Type Hens, S.E. Heavy Live Hen Report, At Farm Buyer Loading, Wtd. Avg. | USDA / USDA Broiler Market News Report / Weekly | 52 week period | 52 week period |
| | | | | | |
| **Chicken** | Chicken | Breasts, B/S, Georgia | USDA / USDA Broiler | 52 week | 52 |

| ITEM | EPA FACTOR/ COMPONENT | ECONOMIC INDICATOR | PUBLISHER / PUBLICATION / FREQUENCY PUBLISHED | BASE UNIT PRICE | ADJ. UNIT PRICE |
|---|---|---|---|---|---|
| **w/Salsa** | | F.O.B. Dock, Wtd. Avg. Price | Market News Report / Weekly | period | week period |
| | | | | | |
| **Chili & Macaroni** | Beef | Boneless Processing Beef/Beef Trimmings, FOB National, Wtd. Avg. 85% fr (BPN U-24) | USDA / Weekly National Carlot Meat Report / Weekly | 52 week period | 52 week period |
| | | | | | |
| **Chili w/Beans** | Beef | Boneless Processing Beef/Beef Trimmings, FOB National, Wtd. Avg. 85% fr (BPN U-24) | USDA / Weekly National Carlot Meat Report / Weekly | 52 week period | 52 week period |
| | | | | | |
| **Sloppy Joe Filling** | Beef | Boneless Processing Beef/Beef Trimmings, FOB National, Wtd. Avg. 85% fr (BPN U-24) | USDA / Weekly National Carlot Meat Report / Weekly | 52 week period | 52 week period |
| | | | | | |
| **Spaghetti w/Meat Sauce** | Beef | Boneless Processing Beef/Beef Trimmings, FOB National, Wtd. Avg. 85% fr (BPN U-24) | USDA / Weekly National Carlot Meat Report / Weekly | 52 week period | 52 week period |
| | | | | | |
| **Packaging Materials** | Linerboard | Linerboard (42-lb) Unbleached Kraft, East, Sh. Ton, Semi-Annual | Miller Freeman, Inc. / Pulp & Paper Week / Weekly/Prices are Published Monthly | Semi-annual | Semi-annual |
| | | | | | |
| **Packaging Materials** | Resins | LDPE Resins, Large Buyer Price Film Liner Grade | Chemical Data / Monthly Petrochemical & Plastic Analysis / Monthly | 12 month period | 12 month period |

In addition to the components shown above, the following are also included:

| ITEM | EPA FACTOR/ COMPONENT | ECONOMIC INDICATOR | PUBLISHER / PUBLICATION / FREQUENCY PUBLISHED | BASE UNIT PRICE | ADJ. UNIT PRICE |
|---|---|---|---|---|---|

(To be completed as required)

(c) The adjusting unit prices shall be the arithmetic average of the weekly or monthly prices of each applicable economic indicator only for the period specified under the "Adjusting Unit Price" column shown in paragraph (b) immediately preceding the effective date the option term is exercised.

(d) An established market price is a price that is established in the course of ordinary and usual trade between buyers and sellers free to bargain and that can be substantiated by data from sources independent of the offeror(s); and the net price after applying any standard trade discounts offered by the Contractor. The established market price under this clause may reflect industry-wide and/or geographically based market price fluctuations for commodity groups or specific supplies. The established market price that

shall be used for the EPA factors subject to price adjustments under this clause, and the economic indicators and publications to be used are listed in paragraph (b) of this clause.

(1) The base unit prices for the purpose of the adjustment calculations under this clause shall be the arithmetic average of the weekly or monthly prices of each applicable economic indicator only for the period specified under the "Base Unit Price" column in paragraph (b) immediately preceding (i) the closing date for proposals, if no discussions are held, (ii) the due date for final proposal revisions, if discussions are held, or (iii) the opening date, if sealed bidding is used.

(2) The adjusting unit prices shall be the arithmetic average of the weekly or monthly prices of each applicable economic indicator for the period specified under the Adjusting Unit Price column in paragraph (b) immediately preceding the effective date the option term is exercised, except for linerboard which shall require one additional adjustment six months after each option term is exercised.

(e) With respect to increases or decreases under this clause, no adjustment shall be made to the base term contract unit prices. One adjustment calculation shall be made annually to determine the unit prices applicable to the forthcoming option term (if exercised), except linerboard which will be adjusted on a semi-annual basis.

(f) EPA allowance factor: For the purpose of price adjustment pursuant to this clause, it shall be conclusively presumed that the amount shown under "Portion Subject to EPA" represents the cost of each item that is subject to adjustment. The portion subject to EPA refers to the element of cost for each item that is outside the control of the vendor and in "Schedule B" the offerors will be required to fill in this amount. This is the only portion of the cost that will be subject to the EPA provision. The EPA provisions based on changes in market prices for product material costs such as beef, pork, chicken, and linerboard are subject to the EPA, because there is serious doubt concerning the stability of market conditions. The balance of product costs for items such as labor, overhead, General and Administrative (G&A), transportation, and profit are those contingencies that can be included in the contract price and can be identified and covered separately through firm fixed prices. The EPA allowance factor remains fixed throughout the life of the contract unless a Government authorized change is made to the contract which affects this allowance.

(g) Performance requirements: The United States Army Research, Development and Engineering Command (RDECOM) Natick Soldier Center (NSC) who prepares the specifications has moved from Military Specifications to Performance Requirements. The Government no longer states the specific amount of product (meat, potatoes, gravy, etc.) that goes into a Tailored Operational Training Meal (TOTM), only an overall amount with a protein and carbohydrate requirement. Meeting the protein requirement indicates that the Contractor has put in sufficient (meat) quantities in the TOTM to satisfy the requirement. (Different Contractors will put in differing quantities of beef, pork, chicken breast, etc. to meet the protein performance requirements). This is why specific weights or quantities cannot be specified in advance in this EPA as would be used in a Military Specification and the cost for the items subject to adjustment will be entered by the Contractor in Section B. The Government performs oversight to ensure that the performance requirements are met or exceeded.

(h) Adjustments shall be calculated as follows: (Round to four decimal places)

(1) Compute the adjusting unit price and the base unit price.

(2) (Adjusting unit price – base unit price)/base unit price = market price change (+ or -).

(3) Market price change x allowance factor = contract unit price adjustment (+ or -) for each item subject to EPA adjustment.

(4) The original option unit price(s) for each option will be the sum of the firm fixed price portion and the portion subject to the EPA (allowance factor). The adjusted unit price(s) for each option shall be determined by increasing or decreasing (as appropriate) the Allowance Factor by the Contract Unit Price Adjustment and adding that to the firm fixed price portion agreed to at the time of award for the option period being adjusted.

(5) Determine the contract price adjustment by computing the sum total of the price adjustment of all items subject to EPA.

(i) Price adjustments pursuant to this clause shall be made by contract modification showing the calculations used to derive the adjusted contract unit price.

(j) Payments: Payment for items pending adjustment under this clause shall be at the existing unadjusted contract unit price until an adjustment modification has been issued. Following issuance of an adjusting contract modification, the Government shall pay the Contractor, upon submission of proper invoices or vouchers, the adjusted price stated in the contract modification for the applicable option period. The Contractor represents by submitting its final invoice that the total amount billed under this contract reflects all increases or decreases required or authorized by this clause.

(k) Any pricing actions pursuant to the "CHANGES" clause or other provisions of the contract will be priced as though there were no provisions for economic price adjustment.

(l) No adjustment will be made under this clause unless the total change in the contract amount is $500.00 or more.

(m) Upward ceiling on economic price adjustment: The total increase in any contract unit price shall not exceed 10% per annum of the original option unit prices agreed to at time of award. There is no percentage limit on downward adjustments under this clause.

(n) Revision of market price indicator: In the event (i) any applicable market price indicator is discontinued or its method of derivation is altered substantially or (ii) the Contracting Officer determines that a particular market price indicator consistently and substantially no longer reflects market conditions, the parties shall mutually agree upon an appropriate and comparable substitute and the contract shall be modified to reflect such substitute effective on the date the indicator was discontinued, altered, or began to consistently and substantially fail to reflect market conditions.

(o) Disputes: If the parties fail to agree on an appropriate substitute market price indicator or implementation of other matters addressed by this EPA clause then the matter shall be resolved in accordance with the Disputes clause of the contract.

(p) Authority to add additional items to this clause: Paragraph (b) of this clause identifies 14 unique components contained in the ration. These components are selected based on historical data and may not be included in every ration. Refer elsewhere in the solicitation/contract for listing of the exact component

makeup. Due to customer requirements, the Contracting Officer may add additional components to the ration. The Contracting Officer will show within paragraph (b) the additional components(s).

(q) Examination of records: The Contractor agrees that the Contracting Officer or designated representative shall have the right to examine the Contractor's books, records, documents, or other data the Contracting Officer deems necessary to verify Contractor adherence to the provisions of the clause.

(r) In the event any applicable market price indicator is not published for any week(s), that week will not be included in calculating the base unit price or the adjusting unit price as applicable. For instance, if within a 52 week period an indicator is not published 4 times, the average of the 48 published prices only will be calculated. When a range of prices is provided, for the purposes of the calculations the arithmetic average of the high and low number will be calculated to determine the indicator for that period.

(End of Clause)

**52.216-9064 Economic Price Adjustment (EPA) – Actual Material Costs for Subsistence Delivered Price Business Model Economic Price Adjustment (EPA) - DLA Troop Support Subsistence Prime Vendor (SPV) Contiguous United States (CONUS), Alaska, and Hawaii.**
As prescribed in 16.203-4(d)(2)(S-95), insert the following clause:

ECONOMIC PRICE ADJUSTMENT (EPA) – ACTUAL MATERIAL COSTS FOR SUBSISTENCE DELIVERED PRICE BUSINESS MODEL – DLA TROOP SUPPORT SUBSISTENCE PRIME VENDOR (SPV) CONTIGUOUS UNITED STATES (CONUS), ALASKA, AND HAWAII
(APR 2014)

(a) Warranties. For the portion of the schedule that is covered by this EPA clause, the Contractor warrants that—

(1) Contract unit prices covered by this contract do not include allowances for any portion of the contingency covered by this clause; and

(2) Price adjustments invoiced under this contract shall be computed in accordance with the provisions of this clause.

(b) Definitions. As used throughout this clause, the term:

(1) "Private label holder" means:

(i) A manufacturer or grower with whom the contractor holds an ownership and/or financial interest, or ownership and/or financial interest in a specific item(s) produced by a manufacturer or grower; or

(ii) An entity holding an intellectual property interest, whether by ownership or license, in the label under which product is being sold in the commercial marketplace; or

(iii) An entity holding exclusive marketing and/or sales authority of a product, or one holding property rights in a proprietary product formula.

(2) "Redistributor" means an entity independent of the contractor from which the contractor purchases product for purposes of consolidating quantities and/or obtaining a competitive delivered price.

(3) "Standard Freight" means the published list price or prevailing market rate for transportation of subsistence and food service operating supplies, i.e. the transportation charge for delivery from the manufacturer/grower/private label holder or redistributor to the SPV Contractor. This may include inter-division transfers between the SPV Contractor's warehouses provided the delivered price (inclusive of standard freight) of a product at a given time is identical to the delivered price of the same product at the same time to other commercial customers in the SPV Contractor's electronic purchasing system.

(i) In the event the SPV Contractor picks up product free on board (f.o.b.) origin from a manufacturer/grower/ private label holder, or arranges for delivery transportation from a third party source other than the manufacturer/grower/private label holder, the standard freight charge shall be based on market tariffs/conditions and shall not exceed the lesser of:

(A) The manufacturer/grower/private label holder's or manufacturer/grower/private label holder's carrier's freight price normally payable by the SPV Contractor for inbound shipments of such products and quantities to the Contractor's distribution point; or

(B) An average price based on market conditions for freight in the same market for the same type of freight service for like products, shipping methods and quantities.

(ii) In rare circumstances, and only with the Contracting Officer's written approval, the SPV Contractor may use drop shipments, i.e. the product is shipped directly from the manufacturer/grower / private label holder to the customer without the SPV Contractor taking possession. This may involve transportation charges using non-standard freight such as FedEx, United Parcel Service (UPS), or the United States (U.S.) Postal Service. In such instances the Contracting Officer will determine price reasonableness on the unit price inclusive of freight.

(4) "Contract unit price" means the total price per unit charged to DLA Troop Support for a product delivered to DLA Troop Support's customers. The Contract unit price consists of three components: delivered price plus distribution price less Government rebates and discounts. The unit price sum of the three component prices shall be rounded up or down as applicable, to the nearest cent to determine the final Contract unit price.

(5) Delivered price.

(i) Delivered price" means the most recent manufacturer, grower, or private label holder commercial price per unit to the Contractor, inclusive of all standard freight, that is input in the contractor's purchasing system as the starting basis for its pricing to customers prior to the application of any specific distribution fees, rebates, discounts, limited discounts, or other financial agreements with the Contractor's customers. The delivered price shall be based on f.o.b. destination delivered using standard freight. The delivered price shall exclude all costs that are to be covered in the distribution price. The SPV Contractor warrants that the delivered price to its delivering warehouse of a product sold at any given time by the SPV Contractor to DLA Troop Support customers is identical to the delivered price of such product sold at the same time to its other customers.

(A) Exception: For mandatory source items, the delivered price shall be limited to the nonprofit agency's price for product as set in accordance with applicable law, plus standard freight.

(B) Exception: A redistributor's price for a specific manufacturer/grower/private label holder's product (or stock keeping unit (SKU)) may be used as long as the redistributor's price for the quantity ordered is equal to or lower than the manufacturer's/ grower's/ private label holder's current price inclusive of Government rebates and discounts (as defined below). Supporting documentation (published price list, manufacturer letter/email, or similar proof of price comparison) may be required. The determination that the supporting documentation is sufficient to establish the manufacturer's/ grower's/ private label holder's current price rests solely with the Contracting Officer.

(C) Exception: Standard freight may not apply to drop shipments and f.o.b. origin pickups.

(ii) The Contractor shall utilize best commercial practices in purchasing its food items under this contract, to include seeking and using competition to the maximum extent practicable for all purchases and purchasing in the most economical order quantities and terms and conditions.

(6) "Distribution Price(s)" means the firm fixed price portion of the Contract Unit price, offered as a dollar amount per unit of issue, rounded up or down to the nearest cent. The distribution price is the only method for the Contractor to bill the Government for all aspects of contract performance other than delivered price; including but not limited to, the performance requirements of the statement of work (SOW) for the applicable SPV solicitation and resulting contract. As detailed above in paragraph (5), delivered price is distinct from and not to be included in the distribution price. For both drop shipments and Government pick-ups, the Contracting Officer may negotiate a reduced distribution price with the Contractor since the Contractor is not handling the product.

(7) "Government rebates and discounts" means all rebates, discounts, and limited discounts designated for the Government, including National Allowance Pricing Agreements (NAPA) discounts, food show discounts, early payment discounts (other than qualifying early payment discounts as defined in the Rebates, Discounts and Price Related Provisions section of the solicitation), and any other rebates, discounts, or similar arrangements designated by the manufacturer/grower/ private label holder or redistributor to be passed to the Government or passed to all customers without specific designation. In accordance with other provisions of the contract (and subject to any applicable exceptions in those provisions), all Government rebates and discounts shall be passed to the Government via a reduced catalog price (i.e. "off invoice"). Any Government rebates and discounts that must be passed to the Government and which cannot be applied as an up-front price reduction must be submitted via check payable to the U.S. Treasury, with an attached itemized listing of all customer purchases by line item to include contract number, call number, purchase order number and contract line item number (CLIN).

(8) "Ordering catalog" means the electronic listing of items and their corresponding Contract unit prices available for ordering under this contract.

(9) "Ordering Week" means from Sunday at 12:01 AM through the following Saturday until midnight (Eastern Time ET, standard or daylight as applicable).

(c) Price adjustments.

(1) General.

(i) All Contract unit prices shall be fixed and remain unchanged until changed pursuant to this clause or other applicable provision of the contract. Only the delivered price component of the Contract unit price is subject to adjustment under this clause. After the first ordering week, if the Contractor's delivered price changes for any or all Contract unit prices, the Contract unit price shall be changed in the next week's ordering catalog upon the Contractor's request, submitted in accordance with paragraph (iii) below, by the same dollar amount of the change in the delivered price, subject to the limitations in paragraph (d). The price change shall be effective at the beginning of the next ordering week. All ordering catalog unit prices computed in accordance with this clause and in effect when an order is placed shall remain in effect for that order through delivery. DLA Troop Support will be charged the Contract unit price in effect at the time of each order regardless of any changes in the unit price occurring in any subsequent ordering week.

(ii) Catalog delivered prices must be reflective of the prime vendor's last receipt price (the price of the stock most recently received into SPV contractor's inventory).

(iii) Updates to the delivered price: All notices and requests for new item delivered prices and price changes shall be submitted weekly, no later than [buyer fill in time] Eastern Time on [buyer fill in day], to be effective in the following ordering week's ordering catalog prices. The delivered price shall have any and all Government rebates and discounts subtractions made prior to presenting the delivered price to DLA Troop Support. The Contractor shall notify the Contracting Officer of its notice/request in the form of an electronic data interchange (EDI) 832 transaction set. The change notice shall include the Contractor's adjustment in the delivered price component of the applicable Contract unit price. Upon the Contracting Officer's acceptance of such EDI 832 price changes in accordance with paragraph (v) below, the price change transaction sets will post in the next week's ordering catalog and each Contract unit price shall be changed by the same dollar amount of the change in the delivered price in the next week's ordering catalog.

(iv) All price changes, and catalog contract prices, are subject to review by the Government. The Contracting Officer may at any time require the submission of supporting data to substantiate any requested price change or the requested continuation of the pre-existing price for any item, including prices applicable to prior ordering weeks. Upon notice from the Contracting Officer that supporting data is required, the Contractor shall promptly furnish to the Government all supporting data, including but not limited to, invoices, quotes, price lists, manufacturer/grower/private label holder documentation regarding Government rebates and discounts, and any other substantiating information requested by the Contracting Officer.

(v) Price change requests that the Contracting Officer questions or finds to be inconsistent with the requirements of this clause shall not be posted until the Contracting Officer specifically authorizes the posting. If the Contracting Officer does not notify the Contractor by close of business Eastern Time each [buyer fill in day] that a price or a price change request is being questioned or has been found to be erroneous, the price change(s) will post to the ordering catalog effective the beginning of the following ordering week. The posting of updated prices in the ordering catalog, calculated in accordance with this clause, constitutes a modification to this contract. No further contract modification is required to effect this change. Any changes that post to the ordering catalog do not constitute a waiver of any of the rights delineated elsewhere in the contract.

(vi) Should the Contracting Officer determine that, or question whether a price change request contained an erroneous unit price or price change, or cannot otherwise determine the changed price(s) to be fair and reasonable, such as when the changed price(s) is(are) higher than lower delivered prices for items of comparable quality which are reasonably available to the Government or Contractor from other sources, the Contracting Officer will so advise the Contractor, prior to close of business Eastern Time on [buyer fill in day]. If the Contracting Officer cannot determine a price fair and reasonable, and the Contracting Officer and the Contractor cannot negotiate a fair and reasonable price, the Contracting Officer may reject any price change and direct in writing that the item in question be removed from the Contractor's ordering catalog, without Government liability. The Contracting Officer may subsequently remove any such item from the ordering catalog if the Contractor fails to remove it. The Government has the right to procure such removed items from any alternate source of supply, and the failure of the Contractor to supply such item may be considered negatively in any evaluation of performance.

(vii) In the event of a price change not posting or an ordering catalog contract unit price not computed in accordance with this clause, resulting in an incorrectly increased or decreased Contract unit price, upon discovery of such event the Contractor shall promptly notify the Contracting Officer in writing and promptly thereafter correct its ordering catalog and submit a refund including interest for any amounts paid to the Contractor resulting from the erroneous price. In the event of an erroneous price decrease in the ordering catalog, if the contractor can demonstrate to the satisfaction of the Contracting Officer that the error did not result from the fault or negligence of the Contractor, the Contractor may submit a request for equitable adjustment for consideration by the Contracting Officer.

(2) Limitations. All adjustments under this clause shall be limited to the effect on contract unit prices of actual increases or decreases in the delivered prices for material. There shall be no upward adjustment for—

(i) Supplies for which the delivered price is not affected by such changes;

(ii) Changes in the quantities of materials; and

(iii) Increases in unit prices that the Contracting Officer determines are computed incorrectly (i.e. not adhering to the Contract unit price definition in this clause) and/or increases in unit prices that the Contracting Officer determines are not fair and reasonable.

(3) If the Contracting Officer rejects a proposed adjustment for an item because the adjusted unit price cannot be determined fair and reasonable, the Contractor shall have no obligation to fill future orders for such item as of the effective date of the proposed adjustment unless such item is subsequently added to the contract at a Unit Price that is determined fair and reasonable. Alternately, the item may be retained on the catalog at the prior (unadjusted) price for as long as both parties agree to do so.

(d) Upward ceiling on economic price adjustment. The aggregate of contract delivered price increases for each item under this clause during the contract period inclusive of any option period(s) shall not exceed [buyer fill in percentage] percent (%) for all items except fresh fruits and vegetables (FF&V) and [buyer fill in percentage] percent (%) for fresh fruits and vegetables (FF&V) of the initial contract delivered price, except as provided below:

(1) If at any time the Contractor has reason to believe that within the near future a price adjustment under the provisions of this clause will be required that will exceed the current contract ceiling price for

any item, the Contractor shall promptly notify the Contracting Officer in writing of the expected increase. In the event the latest actual market price for an item would result in a contract unit price that will exceed the allowable ceiling price under the contract, then the Contractor shall immediately notify the Contracting Officer in writing or via its EDI 832 price change request and separate email no later than the time specified in paragraph (c)(1)(iii) above. With either such notification the Contractor shall include a revised ceiling the Contractor believes is sufficient to permit completion of remaining contract performance, along with appropriate explanation and documentation as required by the Contracting Officer.

(2) If an actual increase in the delivered price would raise a contract unit price for an item above the current ceiling, the Contractor shall have no obligation under this contract to fill future orders for such items, as of the effective date of the increase, unless the Contracting Officer issues a contract modification to raise the ceiling. If the contract ceiling will not be raised, the Contracting Officer shall so promptly notify the Contractor in writing. After evaluation of a requested actual price increase, if the Contracting Officer authorizes the change in the Contract unit price, the Contractor shall submit an EDI 832 price change. The price change shall be posted for the following week's ordering catalog.

(e) Downward limitation on economic price adjustments. There is no downward limitation on the aggregated percentage of decreases that may be made under this clause.

(f) Examination of records. The Contracting Officer or designated representative shall have the right to examine the Contractor's books, records, documents and other data, to include commercial sales data, that the Contracting Officer deems necessary to verify Contractor adherence to the provisions of this clause. Such examination may occur up to twice a year (except as provided for below) until the end of 3 years after the date of final payment under this contract or the time periods specified in Subpart 4.7 of the Federal Acquisition Regulation (FAR), whichever is earlier. These will normally involve Government selection of a statistically significant sample size of invoices/records to examine based on the number of line items on the specific contract catalog. If an examination of records reveals irregularities, further examinations and/or a larger sample size may be required. In addition to normal examination, the Government may conduct additional examinations at the Contracting Officer's discretion.

(g) Final invoice. The Contractor shall include a statement on the final invoice that the amounts invoiced hereunder have applied all decreases required or authorized by this clause.

(h) Disputes. Any dispute arising under this clause shall be determined in accordance with the "Disputes" clause of the contract.

(End of Clause)

**52.216-9065 Economic Price Adjustment – Actual Material Costs For Subsistence Product Price Business Model.**
As prescribed at 16.203-4(d)(2)(S-96), insert the following clause:

ECONOMIC PRICE ADJUSTMENT – ACTUAL MATERIAL COSTS FOR DLA TROOP SUPPORT - SUBSISTENCE PRODUCT PRICE BUSINESS MODEL (OCT 2015)

(a) Warranties: For the portion of the schedule that is covered by this economic price adjustment (EPA) clause, the Contractor warrants that --

(1) Contract unit prices covered by this contract do not include allowances for any portion of the contingency covered by this clause; and

(2) All price adjustments invoiced under this contract shall be computed in accordance with the provisions of this clause.

(b) Definitions: As used throughout this clause, the term

(1) "Contract unit price" means the total price per unit charged to DLA Troop Support for a product delivered to DLA Troop Support's customers. The Contract unit price consists of two components: Product price and distribution price as identified in the schedule of items. The sum of the two component prices shall be rounded to the nearest cent to determine the final Contract unit price.

(2) DLA Troop Support "Manufacturer's Price Agreement" (MPA) means an agreement between DLA Troop Support and manufacturers which identifies a fixed product price for specific items that will be cataloged by the prime vendor.

(3) "Product price" is the most recent DLA Troop Support MP~~)~~ price or the most recent manufacturer, grower or private label holder commercial price per unit to the Contractor, exclusive of standard freight.

(i) Exceptions:

(A) Fresh fruits and vegetables (FF&V):

*(1)* The product is listed in the distribution category for prime vendor fresh fruits and vegetables (FF&V)){buyer fill in}; and

*(2)* It is necessary for the product to be transported into the local market of the importer, as otherwise approved under the contract, from a foreign country because local supply does not exist or it is insufficient to meet demand requirements; and

*(3)* The importer that establishes the product price is the firm that actually performs the FF&V import service, including, but not limited to: procurement, storage, consolidation, pallets, and palletizing as it applies to the importer's normal commercial sales, and the importer has comparable commercial sales in the market that is the point of import.

(B) A contiguous United States (CONUS) based manufacturer, grower or private label holder's product pricing which is a national price inclusive of transportation costs to a Distribution Point shall be supported by documentation and may be considered by the Government on a case by case basis, upon concurrence of the Contracting Officer.

(C) Mandatory source items: The product price shall be limited to the nonprofit agency's price for product as set in accordance with applicable law. The product price shall be based on f.o.b. origin/nonprofit agency. (Prices set in accordance with applicable law (f.o.b. origin/nonprofit agency.)

(D) Prime vendor table displays/decorations only: For products listed in category [*buyer fill-in category number*] prime vendor table displays/decorations only, the product price shall be based on f.o.b. origin/point of the manufacturer's distributor because the manufacturer will not sell directly to the prime vendor. This exception must be approved by the Contracting Officer on a case by case basis. Support documentation is required.

(E) A CONUS-based redistributor's price for a specific manufacturer's product (also known as a stock keeping unit (SKU)) may be considered by the Government as long as the redistributor's price for the quantity ordered is equal to or lower than the manufacturer's published price inclusive of discounts/allowances. This exception must be approved by the Contracting officer on a case by case basis. Support documentation may be required.

(4) "Product allowance" is discounts, rebates, and allowances to be passed on to the Government. In accordance with other provisions of the contract, all discounts, rebates, or allowances on particular items which are reflected in the amounts shown on the face of the manufacture's, grower's or private label holder's invoice (referred to as "off-invoice allowances") or otherwise given to the Contractor by the manufacturer, grower or private label holder, shall be passed by the Contractor to the Government, in the form of an up-front price reduction. The total of these discounts, rebates, and allowances (or product allowance), shall be reflected via a reduced subsistence total order and receipt electronic system (STORES) price, resulting in a lower invoice price to the customer. Any rebates that must be passed to the Government and which cannot be applied as an up-front price reduction must be submitted via check made to the United States (U.S.) Treasury, attached with itemized listing of all customer purchases by line item to include contract number, call number, purchase order number and contract line-item number (CLIN).

(5) "Distribution price(s)" means the firm fixed price portion of the Contract unit price, offered as a dollar amount per unit of measure, rounded up or down to the nearest cent. The distribution price is the only method for the Contractor to bill the Government for all aspects of contract performance other than product price, including but not limited to, the performance requirements of this Statement of Work (SOW). Product price is distinct from and not to be included in the distribution price. The distribution price may be further segregated into pricing segments covering discrete, solicitation-specific performance requirements.

(6) "Ordering catalog" means the electronic listing of items and their corresponding contract unit prices available for ordering under this contract.

(7) "Ordering month" means from Sunday 12:01 AM of the first full week in a calendar month through the last Saturday 11:59 PM that precedes the Sunday of the first full week in the next calendar month (eastern time (ET), standard or daylight as applicable).

(8) "United States Defense Transportation System (DTS) Ocean Shipping Costs:" DTS ocean transportation costs (for shipping the product from the Prime Vendor's CONUS facility(s) to the prime vendor's OCONUS facility(s), aka "point to point" delivery via DTS), shall be excluded from the distribution price. The Defense Transportation System is responsible for point-to-point delivery.

(c) Price adjustments:

(1) General:

(i) All contract unit prices shall be fixed and remain unchanged until changed pursuant to this clause or other applicable provision of the contract. Only the product price component of the Contract unit price is subject to adjustment under this clause. After the first ordering month, if the Contractor's product price changes for any or all contract unit prices, the Contract unit price shall be changed in the next month's ordering catalog upon the Contractor's request, submitted in accordance with paragraph iii below, by the same dollar amount of the change in the Product price, subject to the limitations in paragraph (d). The price change shall be effective at the beginning of the next ordering month. All ordering catalog unit prices computed in accordance with this clause and in effect when an order is placed shall remain in effect for that order through delivery. DLA Troop Support will be charged the Contract unit price in effect at the time of each order regardless of any changes in the unit price occurring in any subsequent ordering month.

(ii) Catalog product prices must be reflective of the prime vendor's last receipt price (the price of the stock most recently received into the OCONUS inventory). For all distribution categories, when multiple sources are being utilized and more than one manufacturer's product is receipted prior to a catalog update, the Contractor shall establish the product price based on the mix of invoices received after the previous changes period. The product price would be derived as follows:

Supplier A – {Buyer fill-in percentage and price}
Supplier B – {Buyer fill-in percentage and price}
Supplier C – {Buyer fill-in percentage and price}
Product price = {Buyer fill-in dollar amount}

(iii) Updates to the product price: All notices and requests for new item product prices and price changes shall be submitted monthly, no later than {buyer fill-in time} local Philadelphia, Pennsylvania, United States (U.S.) time one week prior to the first day of the next ordering month, to be effective in the next ordering month's catalog prices. The product price shall have any and all product allowance subtractions made prior to presenting the product price to DLA Troop Support. The Contractor shall notify the Contracting Officer of its notice/request in the form of an electronic data interchange (EDI) 832 transaction set. The change notice shall include the Contractor's adjustment in the product price component of the applicable Contract unit price. Upon the Contracting Officer's acceptance of such electronic data interchange (EDI) 832 price changes in accordance with (v) below, the price change transaction sets will post in the next month's ordering catalog and each Contract unit price shall be changed by the same dollar amount of the change in the product price in the next month's ordering catalog.

(iv) All price changes, and catalog contract prices, are subject to review by the Government. The Contracting Officer may at any time require the submission of supporting data to substantiate any requested price change or the requested continuation of the pre-existing price for any item, including prices applicable to prior ordering months. Upon notice from the Contracting Officer that supporting data is required, the Contractor shall promptly furnish to the Government all supporting data, including but not limited to, invoices, quotes, price lists, supplier documentation regarding rebates/allowances, and any other substantiating information requested by the Contracting Officer.

(v) Price change requests that the Contracting Officer questions or finds to be inconsistent with the requirements of this clause shall not be posted until the Contracting Officer specifically authorizes the posting. If the Contracting Officer does not notify the Contractor by close of business local Philadelphia, Pennsylvania, U.S. time on the{buyer fill-in day} day immediately following the{buyer fill-in day} that a

price or a price change request is being questioned or has been found to be erroneous, the price change(s) will post to the ordering catalog effective the beginning of the following ordering month. The posting of updated prices in the ordering catalog, calculated in accordance with this clause, constitutes a modification to this contract. No further contract modification is required to effect this change.

(vi) Should the Contracting Officer determine that, or question whether, a price change request contained an erroneous unit price or price change, or cannot otherwise determine the changed price(s) to be fair and reasonable, such as when the changed price(s) is (are) higher than lower product prices for items of comparable quality which are reasonably available to the Government or Contractor from other sources, the Contracting Officer will so advise the Contractor, prior to close of business local Philadelphia, Pennsylvania, U.S. time on the {buyer fill-in day} immediately following the{buyer fill-in day}. If the Contracting Officer cannot determine a price fair and reasonable, and the Contracting Officer and the Contractor cannot negotiate a fair and reasonable price, the Contracting Officer may reject any price change and direct in writing that the item in question be removed from the Contractor's ordering catalog, without Government liability. The Contracting Officer may subsequently remove any such item from the ordering catalog if the Contractor fails to remove it. The Government has the right to procure such removed items from any alternate source of supply, and the failure of the Contractor to supply such item will be considered a negative instance of performance.

(vii) In the event of a price change not posting or an ordering catalog contract unit price not computed in accordance with this clause, resulting in an incorrectly increased or decreased Contract unit price, the prime vendor shall immediately notify the Contracting Officer in writing and promptly thereafter correct its ordering catalog and submit a refund for any amounts paid to the Contractor resulting from the erroneous price. In the event of an erroneous price decrease in the ordering catalog, if the Contractor can demonstrate to the satisfaction of the Contracting Officer that the error did not result from the fault or negligence of the Contractor, the Contractor may submit a request for equitable adjustment for consideration by the Contracting Officer.

(2) Limitations: All adjustments under this clause shall be limited to the effect on contract unit prices of actual increases or decreases in the product prices for material. There shall be no upward adjustment for --

(i) Supplies for which the product price is not affected by such changes;

(ii) Changes in the quantities of material; and

(iii) Increases in unit prices that the Contracting Officer determines are computed incorrectly (i.e. not adhering to the Contract unit price definition in this clause) and/or increases in unit prices that the Contracting Officer determines are not fair and reasonable.

(d) Upward ceiling on economic price adjustment: The aggregate of contract product price increases for each item under this clause during the contract period inclusive of any option period(s) or tiered pricing period(s) shall not exceed {buyer fill-in percentage} (%) (buyer fill-in percentage} (%) for fresh fruits and vegetables (FF&V)) of the initial Contract product price, except as provided below:

(1) If at any time the Contractor has reason to believe that within the near future a price adjustment under the provisions of this clause will be required that will exceed the current contract ceiling price for any item, the Contractor shall promptly notify the Contracting Officer in writing of the expected increase.

In the event the latest actual market price for an item would result in a Contract unit price that will exceed the allowable ceiling price under the contract, then the Contractor shall immediately notify the Contracting Officer in writing or via its EDI price change request and separate email no later than the time specified in paragraph (c)(1)(iii) above. With either such notification the Contractor shall include a revised ceiling the Contractor believes is sufficient to permit completion of remaining contract performance, along with appropriate explanation and documentation as required by the Contracting Officer.

(2) If an actual increase in the reference price would raise a contract unit price for an item above the current ceiling, the Contractor shall have no obligation under this contract to fill future orders for such items, as of the effective date of the increase, unless the Contracting Officer issues a contract modification to raise the ceiling. If the contract ceiling will not be raised, the Contracting Officer shall so promptly notify the Contractor in writing. After evaluation of a requested actual price increase, if the Contracting Officer authorizes the change in the Contract unit price, the Contractor shall submit the EDI 832 price change. The price change shall be posted for the following month's ordering catalog.

(e) Downward limitation on economic price adjustments: There is no downward limitation on the aggregated percentage of decreases that may be made under this clause.

(f) Examination of record: The Contracting Officer or designated representative shall have the right to examine the Contractor's books, records, documents and other data, to include commercial sales data, the Contracting Officer deems necessary to verify Contractor adherence to the provisions of this clause. Such examination may occur during all reasonable times until the end of 3 years after the date of final payment under this contract or the time periods specified in Subpart 4.7 of the Federal Acquisition Regulation (FAR), whichever is earlier.

(g) Final invoice: The Contractor shall include a statement on the final invoice that the amounts invoiced hereunder have applied all decreases required or authorized by this clause.

(h) Disputes: Any dispute arising under this clause shall be determined in accordance with the "Disputes" clause of the contract.

(End of Clause)

**52.216-9066 Economic Price Adjustment – Market Prices – DLA Distribution.**
When used: This clause may be included in solicitations and resulting contracts for fiberboard boxes, liners and/or other items identified therein, when: (1) unpredictable increases or decreases in the cost of the items are expected; (2) the changes can be tracked by published market prices to be used for price adjustment purposes; (3) the Contracting Officer considers the use of this clause appropriate; and (4) the requirements of 16.203-2, -3, and -4 are met. This clause is approved for use by DLA Distribution only. See 16.203-4-90(l).

Notes:

1. Paragraphs (b)(1): The Contracting Officer shall insert identification of where the market prices can be found, e.g.: "the "Price Watch: Paperboard/Packaging" table contained in the PPI Pulp & Paper Week Price Watch (an RISI Inc. publication of Pulp & Paper Market News for North America)."

2. Paragraph (b)(1): Contracting Officer shall insert identification of the market price(s) to be used, e.g. :

Linerboard (42-pound (lb.)) Unbleached kraft, East (list $### - $###)
Linerboard (42-lb) Unbleached kraft, West (list $### - $###)
Corrugating medium Semichemical, East (list $### - $###)
Corrugating medium Semichemical, West (list $### - $###)"

(Note: The Contracting Officer shall modify subparagraphs (b)(1)(i), (b)(1)(ii), (b)(4) and (b)(4)(i) if separate regional prices are not applicable.

3. Paragraph (d)(1): Contracting Officer shall fill-in the overall percentage, or the percentage of each contract item price, that is deemed to represent the ordered price of the item(s) as applicable, e.g., "70" percent.

4. Paragraph (d)(4): Contracting Officer shall fill-in the percentage of the increase/decrease threshold for triggering a price increase or decrease band, e.g., "4" percent.

5. Paragraph (e)(1): The Contracting Officer shall fill-in the aggregate annual percentage limitation. This percentage is subject to 10% per annum aggregate limit, unless a higher limit is approved by the Chief of the Contracting Office or designee (see 16.203-3(94)). Such rationale and approval for any ceiling over the 10% per annum limit must be documented in the contract file**.**

ECONOMIC PRICE ADJUSTMENT – MARKET PRICES – DLA DISTRIBUTION (NOV 2011)

(a) Warranties. The Contractor warrants that:

(1) The unit prices set forth in the Schedule do not include allowances for any portion of the contingencies covered by this clause.

(2) The prices to be invoiced hereunder shall be computed in accordance with the provisions of this clause.

(b) Definitions. The terms used in this clause are defined below.

(1) The "market prices" specified hereunder are, as a satisfactory measure of price changes in the marketplace, used for price adjustments under this clause. The prices appear in
_____(Note 1)_____
_____(Note 2)_____

(i) The above applicable "East" market prices shall be used to adjust prices under this clause for items delivered to Defense Distribution Center Anniston, Alabama; Defense Distribution Depot Europe; Defense Distribution Center Susquehanna, Pennsylvania; Defense Distribution Center Norfolk, Virginia; Defense Distribution Center New Cumberland, Pennsylvania; and any other required delivery points east of the Mississippi River.

(ii) The above applicable 'West" market prices shall be used to adjust prices under this clause for items delivered to Defense Distribution Center Hill, Utah, Defense Distribution Center San Joaquin,

California; Defense Distribution Center Pearl Harbor, Hawaii; Defense Distribution Center Red River, Texarkana, Texas; and any other required delivery points west of the Mississippi River.

(2) Base market price – The average of the minimum and maximum list prices in United States (U.S.) dollar prices published the week of the contract effective date. If the contract effective date falls in a week when the prices are not published, then the average of the applicable minimum and maximum prices from the preceding week of publication shall be used.

(3) Adjusting market price – The average of the list price ranges specified above for the week in which the unit price(s) are being adjusted. Note: The adjusting market price becomes the base market price for the subsequent adjustment period, if any.

(4) Contract unit price – The contract unit price(s) to be invoiced for product(s) delivered to East and West locations is the sum of the "ordered price" and the "distribution price":

(i) Ordered Price – The Contractor's purchase cost for materials delivered to East or West locations. No amount shall be included in the ordered price(s) for any other element of cost or for profit. The ordered price component is subject to increases or decreases in accordance with this clause.

(ii) Distribution Price – The price that represents all the elements of the contract unit price other than the "ordered price". The distribution price typically consists of the Contractor's projected labor, general and administrative overhead, packaging costs, transportation costs from the prime vendor's distribution point to destination, any other projected expenses or overhead associated with prime vendor function, and profit. Profit includes all profit relevant to both the materials costs and distribution costs. The distribution price reflects the difference between the ordered price and the contract unit price.

(5) Base Price – The unit price(s) offered for the item(s) included in the contract award schedule.

(6) Contract Price – means:

(i) The base year total prices and all option year prices shown on the contract schedule page(s) at time of award, or:

(ii) The base year total prices and all option year prices adjusted pursuant to this clause. (Note: price adjustments made to each ordered price component will be applied concurrently to any remaining option year prices.)

(7) Contract effective date – Means the effective date of award of the contract resulting from this solicitation.

(8) Option Year – A one (1) calendar year period consisting of twelve (12) calendar months. The first contract calendar year (base year) shall commence on the contract effective date and shall end 365 days (366 days for a leap year) thereafter. Each succeeding contract calendar year shall commence on the day immediately following the last day of the preceding contract calendar year.

(c) Price Change Notification. Within five calendar days following publication of a market price sufficient to require a price change under this clause, the Contractor shall notify the Contracting Officer in

writing of the change and market price upon which the current contract price is based and attach a copy of the market price publication containing such price change.

(d) Limitations. All price adjustments are subject to the limitations set forth in this clause including:

(1) Price adjustments shall be applied only to the ordered price component, which is deemed to represent ___(Note 3)___ percent of the contract unit price for each item.

(2) Contract prices shall be adjusted by the same percentage that the Adjusting market price bears to the Base market price.

(3) When any unit price adjustments under this clause coincide with the exercise of an option period, such adjustments will be authorized separately from the exercise of the option.

(4) Price adjustments under this clause will be made only if the change to the price of a contract item would increase or decrease by (Note 4) percent or more of the current price of a contract line item.

(5) Increased contract unit prices shall not apply to quantities scheduled for delivery prior to the effective date of the increased unit price. The effective date of the increased unit price is the effective date on the contract modification (Standard Form (SF) 30, block 3).

All price adjustments shall be calculated as shown in the following example:

| | Unit Prices | Baseline Ordered Price (Compute using % of Unit Price from (d)(1) above) | Baseline Distribution Price | Baseline Market Price | Current Market Price | % Change Between Baseline And Current Market Price | $ Increase / Decrease To Ordered Price | Adjusted Ordered Price | Adjusted Unit Price |
|---|---|---|---|---|---|---|---|---|---|
| Sample Increase | $5.90 = | $4.13 | $1.77 | 140.2 | 151.7 | (+) 8.2% | (+) $0.34 | $4.47 | $6.24 |
| Sample Decrease | $5.90 = | $4.13 | $1.77 | 140.2 | 124.6 | (-) 11.13% | (-) $0.46 | $3.67 | $5.44 |

Sample Increase
Latest Market Price: 151.7
Previous Market Price: 140.2
(+) 11.5

Sample Decrease
Latest Market Price: 124.6
Previous Market Price: 140.2
(-) 15.60

% Change: 11.5 / 140.2 = **(+)** 8.2%

% Change: 15.6 / 140.2 = **(-)** 11.13%

(e) Upward Ceiling On Economic Price Adjustment.

(1) The Contractor agrees that the total increase in any contract item's unit price pursuant to the provisions of this clause shall not exceed (Note 5) percent per annum of the item's unit price at the inception of each contract year, except as provided under paragraph (e)(3).

(2) If at any time, the Contractor has reason to believe that within the near future a price adjustment under the provisions of this clause will be required that will exceed the current contract ceiling price for any item, the Contractor shall promptly notify the Contracting Officer in writing of the expected increase. The notification shall include a revised ceiling the Contractor believes is sufficient to permit completion of remaining contract performance, along with appropriate explanation and documentation as required by the Contracting Officer.

(3) If an actual increase in a market price would raise a contract unit price for an item above the current ceiling, the Contracting Officer may issue a contract modification to raise the ceiling. If the contract ceiling will not be raised, the Contracting Officer shall so promptly notify the Contractor in writing.

(4) There is no percentage limit on downward adjustments under this clause.

(f) Revision of the market price. In the event---

(1) any applicable market price indicator is discontinued or its method of derivation is altered substantially, or

(2) the Contracting Officer determines that the market price indicator consistently and substantially fails to reflect market conditions the parties shall mutually agree upon an appropriate substitute and the contract shall be modified to reflect such substitute effective on the date the indicator was discontinued, altered, or began to consistently and substantially fail to reflect market conditions.

(g) Contract Modifications. Price adjustment(s) pursuant to this clause shall be incorporated by a modification signed by the Contractor and the Contracting Officer. The modification shall be issued:

(1) within thirty (30) calendar days of the date of request by the Contractor and shall set forth the unit price(s) as adjusted in accordance with this clause to establish the new contract price(s),

(2) shall adjust the unit prices of any delivery orders issued during and following this 30 day period, and

(3) if the adjustment results in a decrease to the unit price(s) of any delivery orders issued during this 30 day period, the Contractor shall submit a credit memorandum in the amount of the decrease within 30 days of the date of the Modification. The credit will be applied to subsequent invoices.

(h) Final invoice. The Contractor shall include a statement on the final invoice for each contract year that amounts invoiced under this contract reflect all decreases required by this clause.

(i) Disputes. Any disagreement arising under this clause shall be resolved in accordance with the "Disputes" clause of the contract.

(End of Clause)

**52.216-9067 Economic Price Adjustment - Liquid Propane Gas – DLA Distribution.**
As prescribed in 16.203-4-90(l)(8), use the clause in contracts for procurement of liquid propane gas (LPG) by DLA Distribution only.

ECONOMIC PRICE ADJUSTMENT LIQUID PROPANE GAS – DLA DISTRIBUTION
(JAN 2013)

(a) Warranties. The Contractor warrants that –

(1) The unit prices set forth in the schedule do not include allowances for any portion of the contingency covered by this clause; and

(2) The prices to be invoiced hereunder shall be computed in accordance with the provision of this clause.

(b) Definitions. As used throughout this clause-

(1) The term "base price" means-

(i) The unit price offered for an item and included in the contract award schedule at time of award

(2) Market price means a price determined by an independent trade association, governmental body, or other third party and reported or made available in a consistent manner in a publication, electronic data base, or other form. This price may be either a single market price or a combination of market prices for price adjustment for individual items by product, market area, and publication as specified in paragraph (f) below.

(3) The term "base market price" means the preselected market price for an item as published on [Note 1] in the publication specified in paragraph (f).

(4) The adjusting market price means the average price listed in the publication specified in paragraph (f) immediately preceding the date of adjustment.

(c) Adjustments. The Contracting Officer shall issue a modification to the contract to reflect any price change pursuant to this clause. The Contract price shall be adjusted at the initial date of performance only if the change between the market price at the start of performance and the base market price equals 5% (positive or negative) or more of the contract price. Price changes thereafter shall be no more frequent than every two weeks. Therefore, after the initial date of performance, the difference between the current market price and the base market price will be determined on a weekly basis, providing there has not been a price adjustment in the prior week (in which case no adjustment would be applicable). The Contract price will be changed by this difference, (positive or negative), at any time the adjustment from the current price to the newly adjusted price (positive or negative) is determined to equal 5% or more of the base price. Price changes will be formally issued in a contract modification which will be effective on the fourth business day immediately following the date of the publication used for the adjusting market price. For example, if the adjusting market price was published on a Monday, the effective date of the price change would be the Friday of that same week.

(1) Calculations. The prices payable under this clause shall be determined by adjusting the award price by the same number of cents, or fraction thereof that the market price increases or decreases, per like unit of measure, no more than every two weeks, providing that such an adjustment would result in a

5% or more change between the base price and the adjusted contract price. All arithmetical calculations, including the final adjusted unit price shall be rounded to the nearest thousandth of a cent. For example, if performance started January 1, the contract award price is $2.00 and if the base market price on the base reference date is 150.000 cents, and the adjusting market priceimmediately preceding the performance period is 160.000 cents, the contract price shall increase by 10.000 cents $2.10 at the start of the performance period. If the adjusting market price was 155.000 cents instead of 160.000, there would be no adjustment, since the difference between the adjusting market price and the base market price is less than 5% of the base price. All calculations in this example are purely hypothetical, and not based on any actual dates or prices.

(2) Revision of published market price indicator. In the event--

(i) Any applicable market price is discontinued or its method of derivation is altered substantially; or

(ii) The Contracting Officer determines that the market price indicator consistently and substantially failed to reflect market conditions,-
the parties shall mutually agree upon an appropriate and comparable substitute for determining the price adjustments hereunder. The contract shall be modified to reflect such substitute effective on the date the indicator was discontinued, altered, or began to consistently and substantially fail to reflect market conditions. If the parties fail to agree on an appropriate substitute, the matter shall be resolved in accordance with the Disputes clause of the contract.

(3) Failure to deliver. Notwithstanding any other provisions of this clause, no upward adjustment shall apply to product scheduled under the contract to be delivered before the effective date of the adjustment, unless the Contractor's failure to deliver according to the delivery schedule results from causes beyond the Contractor's control and without its fault or negligence, within the meaning of the Default clause of this contract, in which case the Contract shall be amended to make an equitable extension of the delivery schedule.

(4) Upward ceiling on economic price adjustment. The Contractor agrees that the total increase in any Contract unit price pursuant to these economic price adjustment provisions shall not exceed [Note 2] percent of the award price in any applicable program year (whether a single year or a multiyear program), except as provided hereafter. This [Note 2] percent is not cumulative for each program year, and instead is applied to the price in effect at the beginning of each program year, through the end of that program year.

(i) If at any time the Contractor has reason to believe that within the near future a price adjustment under the provisions of this clause will be required that will exceed the current contract ceiling price for any item, the Contractor shall promptly notify the Contracting Officer in writing of the expected increase. The notification shall include a revised ceiling the Contractor believes is sufficient to permit completion of remaining contract performance, along with appropriate explanation and documentation as required by the Contracting Officer.

(ii) If an actual increase in the market price would raise a contract unit price for an item above the current ceiling, the Contractor shall have no obligation under this contract to fill pending or future orders for such item, as of the effective date of the increase, unless the Contracting Officer issues a

contract modification to raise the ceiling. If the contract ceiling will not be raised, the Contracting Officer shall so promptly notify the Contractor in writing.

(d) Examination of records. The Contractor agrees that the Contracting Officer or designated representatives shall have the right to examine the Contractor's books, records, documents, or other data the Contracting Officer deems necessary to verify Contractor adherence to the provisions of this clause.

(e) Final invoice. The Contractor shall include a statement on the final invoice that the amounts invoiced hereunder have applied all decreases required by this clause.

(f) Publication, product, and location. The average of the high and low in Butane Propane News' (BPN's) Weekly Propane Newsletter, Propane Prices Update, Spot Prices for Natural Gas Liquids, at Mont Belvieu (not LDH) shall be used to calculate each four week average specified above. These prices measure the general rate and direction of price movement for this commodity within a market. This does not indicate a mandatory source of supply or area where bidders must obtain supplies.

(End of Clause)

Note 1: Requires buyer to fill in the appropriate base market price date in paragraph (b)(3). This date should be no later than the date of final proposal revisions.

Note 2: The buyer must also fill in the percentage applicable in (c)(4), as determined in accordance with 16.203-3-90 and local procedures.

**52.216-9068 Economic Price Adjustment – Published Market Price -Electricity – Heat Rate.**
As prescribed at 16.203-4(a)(2)(99), insert the following clause:

ECONOMIC PRICE ADJUSTMENT – PUBLISHED MARKET PRICE - ELECTRICITY – HEAT RATE (NOV 2011)

(a) Warranties. The Contractor warrants that--

(1) The award price set forth in the Schedule does not include allowances for any portion of the contingency covered by this clause; and

(2) The prices to be invoiced shall be computed in accordance with the provisions of this clause.

(b) Definitions. As used throughout this clause, the term--

(1) Adjusting market price means the market price to be used in calculating an economic price adjustment to arrive at the updated contract price for a given delivery month. Adjusting market prices are established two possible ways:

(i) In the fixed price trigger schedule attachment, there are trigger floors and trigger ceilings for specified volumes within each delivery month. If the [buyer fill-in applicable market index] natural gas price reaches either the trigger floor or the trigger ceiling for a specified volume, the adjusting market price is the trigger floor or trigger ceiling for that volume.

(ii) If neither the Trigger floor nor trigger ceiling prices are met for a given trigger volume, the adjusting market price of natural gas for all remaining volumes contained in the fixed price trigger schedule for the delivery month will be the [buyer fill-in applicable market index] final settlement price for that delivery month.

(2) Award price means the sum of the block energy adder and the product of the heat rate and the initial market price expressed in dollars per megawatt hour.

(3) Base (7X24) block energy means a block of electricity that covers electricity usage 7 days a week, 24 hours a day.

(4) Block energy adder is a fixed service fee, expressed in dollars per megawatt hour, that should cover all overhead and costs not included in the heat rate/market index component of the Contractor's price. At a minimum, the adder is expected to cover the Contractor's wholesale transmission, losses, ancillaries, intra- and inter-zonal congestion, and scheduling.

(5) Delivery month means the period between meter readings, as set forth in the statement of work.

(6) Heat rate means the measurement of the efficiency with which heat can be used to produce electricity. Specifically, it is the number of British thermal units required to produce one kilowatt hour of electricity. Under this solicitation, the heat rate for base (7x24) block energy is [buyer fill-in applicable heat rate] and the heat rate for on-peak (5x16) block energy is [buyer fill-in applicable heat rate].

(7) Initial Market Price means the market price for [buyer fill-in applicable market index] natural gas at time of award, expressed in dollars per British thermal units, as published by [buyer fill-in applicable publication].

(8) Market index is [buyer fill-in applicable publication and market index] natural gas.

(9) Market Price is the price for [buyer fill-in applicable market index] natural gas, expressed in dollars per British thermal units, as published by [buyer fill-in applicable publication].

(10) On-peak (5X16) Block Energy means a block of electricity that covers a customer's electricity usage Monday through Friday, 5 days a week, 16 hours a day. Peak hours are [buyer fill-in applicable peak hours], as defined by the [buyer fill-in applicable ISO/RTO].

(11) Settlement Price for a given delivery Month means the [buyer fill-in applicable market index] natural gas contract price as of three business days prior to the first calendar day of that delivery month. Where a delivery month begins in one month (Month 1) and ends in the subsequent month (Month 2), the [buyer fill-in applicable market index] natural gas contract price as of three business days prior to the first calendar day of Month 2 will be used.

(12) Trigger means a pre-established floor or ceiling natural gas market price for a given volume of natural gas for a specified delivery month. (See the fixed price trigger schedule attachment).

(13) Trigger ceiling means the highest price for a specified volume contained in the fixed price trigger schedule. Where a ceiling is triggered for a given volume, the adjusting market price for that volume is locked in at the ceiling price, unless an exception specified in the statement of work applies.

(14) Trigger floor means the lowest price for a specified volume contained in the fixed price trigger schedule. Where a floor is triggered for a given volume, the adjusting market price for that volume is locked in at the floor price, unless an exception specified in the statement of work applies.

(15) Updated contract price means the sum of the block energy adder and the product of the heat rate and weighted adjusting market price expressed in dollars per megawatt hour.

(16) Upward ceiling means the highest allowable differential between the award price and an updated contract price.

(17) Weighted adjusting market price (WAMP) means the average of all triggered and/or settled adjusting market prices weighted by British Thermal units, for each delivery month expressed in dollars per MMBTU.

(c) Adjustments. The contract prices for electricity delivered in a given delivery month will be updated by inserting the WAMP for that month utilizing the formulas below.

Updated Contract $\text{Price}_B$ = (Heat $\text{Rate}_B$ * Weighted Adjusting Market Price) + Block Energy $\text{Adder}_B$
Updated Contract $\text{Price}_P$ = (Heat $\text{Rate}_P$ * Weighted Adjusting Market Price) + Block Energy $\text{Adder}_P$

Where the subscript B denotes Base (7X24) Block Energy and the subscript P denotes On-peak (5X16) Block Energy.

The heat rates and block energy adders are fixed for the contract term, while the WAMP component varies with the market based upon either the pre-established triggers set forth in the fixed price trigger schedule or the published [buyer fill-in applicable publication and market index] settlement price, as defined above.

(d) Calculations. All calculations shall be rounded to five decimal places.

(e) Failure to deliver. Notwithstanding any other provisions of this clause, no upward adjustment shall apply to product scheduled under the contract to be delivered before the effective date of the adjustment, unless the Contractor's failure to deliver according to the delivery schedule results from causes beyond the Contractor's control and without its fault or negligence, within the meaning of paragraphs (f), Excusable Delays, and (m), Termination for Cause, of the Contract Terms And Conditions – Commercial Items clause of this contract, in which case the contract shall be amended to make an equitable extension of the delivery schedule.

(f) Upward ceiling on economic price adjustment. The Contractor agrees that in any delivery month of the contract term, the total increase in any base or on-peak updated contract price, pursuant to these economic price adjustment provisions, shall not exceed [buyer fill-in applicable upward ceiling] of the value of the award price.

Except as provided hereafter--

(1) If at any time the Contractor has reason to believe that within the near future a price adjustment under the provisions of this clause will be required that will exceed the current contract upward ceiling

price for any item, the Contractor shall promptly notify the Contracting Officer in writing of the expected increase. The notification shall include a revised upward ceiling which the Contractor believes is sufficient to permit completion of remaining contract performance, along with appropriate explanation and documentation as required by the Contracting Officer.

(2) If an actual increase in the established Market price would raise an updated contract price for an item above the current upward ceiling, the Contractor shall have no obligation under this contract to fill pending or future orders for such item, as of the effective date of the increase, unless the Contracting Officer issues a contract modification to raise the Upward Ceiling. If the contract Upward Ceiling will not be raised, the Contracting Officer shall so promptly notify the Contractor in writing.

(g) Revision of market index indicator. In the event that--

(1) Any applicable market index indicator is discontinued or its method of derivation is altered substantially; or

(2) The Contracting Officer determines that the market index indicator consistently and substantially fails to reflect market conditions,-the parties shall mutually agree upon an appropriate and comparable substitute and the contract shall be modified to reflect such substitute effective on the date the indicator was discontinued, altered, or began to consistently and substantially fail to reflect market conditions. If the parties fail to agree on an appropriate substitute, the matter shall be resolved in accordance with paragraph (d), Disputes, of the Contract Terms And Conditions – Commercial Items clause of this contract.

(h) Examination of records. The Contractor agrees that the Contracting Officer or designated representative shall have the right to examine the Contractor's books, records, documents, or other data the Contracting Officer deems necessary to verify Contractor adherence to the provisions of this clause.

(End of Clause)

**52.216-9069 Economic Price Adjustment – Published Market Price – DLA Energy Domestic Bulk.** As prescribed at 16.203-4(a)(2)(98), insert the following clause:

ECONOMIC PRICE ADJUSTMENT -- PUBLISHED MARKET PRICE - DLA ENERGY DOMESTIC BULK (NOV 2011)

(a) Warranties. The Contractor warrants that—

(1) The base unit prices set forth in the Schedule do not include allowances for any portion of the contingency covered by this clause; and

(2) The prices to be invoiced shall be computed in accordance with the provisions of this clause.

(b) Definitions. As used throughout this clause, the term—

(1) Base unit price means the unit price set forth opposite the item in the Schedule.

(2) Market price means the price to be used in determining an economic price adjustment of the base unit price of an individual product for the market area and time period specified in this clause. The market price is derived from quotes, assessments, or sales prices in the market place for one or several items or commodity groups as reported in a consistent manner in a publication, electronic data base, or other form, as determined by an independent trade association, governmental body, or other third party independent of the Contractor.

(i) Base market price means the price as shown in Column V of the table below, which is the market price from which economic price adjustments are calculated pursuant to this clause.

(ii) Adjusting market price means the market price for deliveries during the most recent period, as defined in the table below.

(3) Date of delivery is defined as follows:

(i) For tanker or barge deliveries.

(A) Free on board (f.o.b.) origin. The date and time vessel commences loading.

(B) F.o.b. destination. The date and time vessel commences discharging.

(ii) For pipeline deliveries. The date and time product commences to move past the specified f.o.b. point.

(iii) For all other types of deliveries. The date product is received.

(c) Adjustments.

(1) Subject to the provisions of this clause, the price payable shall be the base unit price in effect on the date of delivery increased or decreased by the same number of cents, or fraction thereof, that the adjusting market price applicable at date of delivery increases or decreases, per like unit of measure, from the base market price.

(2) Calculations. All calculations shall be rounded to six decimal places.

(3) Modifications. Any resultant price changes to the base market price and base unit price shall be executed by the Contracting Officer through a weekly price adjustment modification effective each Tuesday.

(4) Failure to deliver. Notwithstanding any other provisions of this clause, no upward adjustment shall apply to product scheduled under the contract to be delivered before the effective date of the adjustment, unless the Contractor's failure to deliver according to the delivery schedule results from causes beyond the Contractor's control and without its fault or negligence, within the meaning of paragraphs (f), Excusable Delays, and (m), Termination for Cause, of the Contract Terms And Conditions - Commercial Items clause of this contract, in which case the contract shall be amended to make an equitable extension of the delivery schedule.

(5) Upward ceiling on economic price adjustment. The Contractor agrees that the total increase in any contract unit price, pursuant to these economic price adjustment provisions shall not exceed (Note 1) percent of the original base unit price in any applicable program year (whether a single year or multiyear program), except as provided hereafter.

(i) If at any time the Contractor has reason to believe that within the near future a price adjustment under the provisions of this clause will be required that will exceed the current contract ceiling price for any item, the Contractor shall promptly notify the Contracting Officer in writing of the expected increase. The notification shall include a revised ceiling which the Contractor believes is sufficient to permit completion of remaining contract performance, along with appropriate explanation and documentation as required by the Contracting Officer.

(ii) If an actual increase in the established market price would raise a contract unit price for an item above the current ceiling, the Contractor shall have no obligation under this contract to fill pending or future orders for such item, as of the effective date of the increase, unless the Contracting Officer issues a contract modification to raise the ceiling. If the contract ceiling will not be raised, the Contracting Officer shall so promptly notify the Contractor in writing.

(6) Revision of market price indicator. In the event—

(i) Any applicable market price indicator is discontinued or its method of derivation is altered substantially; or

(ii) The Contracting Officer determines that the market price indicator consistently and substantially fails to reflect market conditions,-the parties shall mutually agree upon an appropriate and comparable substitute and the contract shall be modified to reflect such substitute effective on the date the indicator was discontinued, altered, or began to consistently and substantially fail to reflect market conditions. If the parties fail to agree on an appropriate substitute, the matter shall be resolved in accordance with paragraph (d), Disputes, of the Contract Terms And Conditions - Commercial Items clause of this contract.

(d) Conversion factors. If this clause requires quantity conversions for economic price adjustment purposes, the conversion factors for applicable products, as specified in the DLA Energy conversion factor instruction, apply unless otherwise specified in the Schedule.

(e) Examination of records. The Contractor agrees that the Contracting Officer or designated representative shall have the right to examine the Contractor's books, records, documents, or other data the Contracting Officer deems necessary to verify Contractor adherence to the provisions of this clause.

(f) Final invoice. The Contractor shall include a statement on the final invoice that the amounts invoiced hereunder have applied all decreases required by this clause.

(g) Table.

I. Heading under which market indicator is published
II. Base market price
III. Location where market price is applicable (excludes all taxes)
IV. Item number/ Name of product

V. Name of Publication

(see note(s) below)

(Notes - fill-in)

(End of Clause)

Note 1: The Contracting Officer shall complete the percentage as required in 16.203-4(a)(2)(XX)

Note 2: The Contracting Officer shall complete the table after coordinating with the Market Research Division.

Note 3: Method(s), and time period(s) for calculating the market price(s), as exemplified below:

For Platts Oilgram: "Note: The East/Gulf Coast adjusting market price will be firm for weekly periods and is defined as the average of the applicable daily Platts spot assessment quotations effective for the prior week. The simple average of the daily average highs and lows of the prices effective Monday through Friday (excluding any days prices that are not published) shall be the adjusting market price effective for the following Tuesday through Monday."

For Oil Price Information Service: "Note: The Rocky Mountain adjusting market price will be firm for weekly periods and is defined as the Oil Price Information Service Publication applicable weekly quotations effective for the prior week. The simple average of the highs and lows of the prices effective the prior week shall be the adjusting market price effective for Tuesday through Monday."

(End of Clause)

**52.216-9070 Economic Price Adjustment – Daily Market Price Indicators (Ships' Bunkers).**
As prescribed at 16.203-4(a)(2)(103), insert the following clause:

ECONOMIC PRICE ADJUSTMENT – DAILY MARKET PRICE INDICATORS (SHIPS' BUNKERS)
(JUL 2010)

(a) Warranties: The Contractor warrants that--

(1) The unit prices set forth in the Schedule do not include allowances for any portion of the contingency covered by this clause; and

(2) The prices to be invoiced hereunder shall be computed in accordance with the provisions of this clause.

(b) Definitions: As used throughout this clause, the term--

(1) Award price means the original contract price.

(2) Reference price means the market price indicator set forth in the Table in (f) below with which the award price is to fluctuate.

(i) Base reference price means the market price indicator shown in the Table in (f) below and is the reference price from which economic price adjustments are calculated pursuant to this clause. This price will be expressed as Base Ref. Price in any price adjustment notification issued through contract modifications and/or postings to the web page under the heading Vendor Resources and then Product Price Adjustments. The base reference date annotated in the Table shall remain unchanged throughout the life of the contract.

(ii) Adjusting reference price means the market price indicator in effect on the date of delivery, used to determine the change in reference price. In the event one or more applicable reference prices are not (or were not) published, then the term adjusting reference price means the market price indicator for an item as published on the date nearest in time on or prior to the effective calendar date as expressed in (4) below. It is annotated as New Ref. Price in any Price Adjustment (PA) modification issued.

(3) Current unit price means the price in effect for the day that the price adjustment provisions discussed in paragraph (c) below begin. This price, expressed as Latest Unit Price in any price adjustment notification issued through contract modifications and/or postings to the web page under the heading Vendor Resources and then Product Price Adjustments, shall be the unit price charged to the Government for supplies delivered under the contract.

(4) Date of delivery means the date and time product is received by the requesting activity/ vessel. This is shown by signature of receipt by the Government representative for the entire delivery. A single delivery that began on one date and ended on another date shall be considered as received on the date of completion annotated by the Government on the bunker delivery document. Excusable delays in delivery shall be handled on a case-by-case basis by the Contracting Officer.

(5) Calendar week means a consecutive seven-day period, beginning with Monday, unless otherwise specified in (c)(1) below.

(6) Published means issued in either print or electronic format by the service designated to be employed as an escalator, unless otherwise specifically stated. In the event of a conflict between the prices set forth in the print version and those set forth in the electronic version for the same date, the electronic version shall prevail, unless otherwise specified in (c)(1) below.

(c) Adjustments: The prices payable under this contract shall be the award price increased or decreased by the amount that the reference price shall have increased or decreased as of the date of delivery. The amount of increase or decrease in the award price shall be based on the same number of cents, or fraction thereof, that the reference price increases or decreases per like unit of measure.

(1) Day of publication: The adjusting reference price in effect on the date of delivery shall be that item's reference price effective (and normally published) on the date in which the delivery is made, or, in the event there is no publication on that day, it shall be the item's reference price as last previously published prior to that date.

Note: Platts issues corrections to its published prices on a regular basis. Platts posts corrections to its website (http://www.platts.com) for its subscribers. If a correction to a reference price is found on the Platts website, all of the items that use that reference price will be corrected. will correct any other reference prices, as notice of the correction is received. will work with the pricing services to determine

the appropriate price, whenever an offeror or Contractor can show that the price referenced should be reviewed.

(2) Calculations:

(i) If averages are published within a given publication, then these averages will be used.

(ii) For prices in U.S. gallons, if averages are not available within a given publication, calculated averages, carried to six decimal places, rounded, will be used. For prices in metric tons, if averages are not available within a given publication, calculated averages, carried to two decimal places, rounded, will be used. For domestic contract line items, conversions from metric tons to gallons shall be utilized through the conversion factors clause for the applicable publication reference product. Barrels shall be converted using the conversion factors instruction for barrels to gallons. If this clause requires quantity conversion for economic price adjustment purposes, the conversion factors for applicable products, as specified in the Conversion Factor Instruction, apply unless otherwise specified in the Schedule in the Table (f) below. Details on the specific products covered and the method of conversion can be found in Instruction M55 ( MAR 2007), which is included in solicitations and resulting contracts when conversion factors are required.

(iii) For domestic contract line items, the final calculated reference price, as well as any intermediary arithmetical calculations, will consist of a number including six decimal places, rounded. For overseas contract line items, the final calculated reference price, as well as any intermediary arithmetical calculations, will consist of a number including two decimal places, rounded.

(iv) For domestic contract line items, the final adjusted unit price will always consist of a number including six decimal places, rounded. For overseas contract line items, the final adjusted unit price will always consist of a number including two decimal places, rounded.

(3) Failure to deliver: Notwithstanding any other provisions of this clause, no upward adjustment shall apply to product scheduled under the contract to be delivered before the effective date of the adjustment unless the Contractor's failure to deliver according to the delivery schedule results from causes beyond the Contractor's control and without its fault or negligence, within the meaning of paragraphs (f), Excusable Delays, and (m), Termination for Cause, of the Contract Terms And Conditions – Commercial Items clause of this contract in which case the contract shall be amended to make an equitable extension of the delivery schedule.

(4) Upward ceiling on economic price adjustments: The Contractor agrees that the total increase in any contract unit price shall not exceed {buyer fill-in applicable upward ceiling}_____ percent (%) of the award price, except as provided hereafter:

(i) If, at any time, the Contractor has reason to believe that within the near future a price adjustment under the provisions of this clause will be required that will exceed the current contract ceiling price for any item, the Contractor shall promptly notify the Contracting Officer in writing of the expected increase. The notification shall include a revised ceiling the Contractor believes is sufficient to permit completion of remaining contract performance, along with an appropriate explanation and documentation as required by the Contracting Officer.

(ii) If an actual increase in the reference price would raise a contract unit price for an item above the current ceiling, the Contractor shall have no obligation under this contract to fill pending or future orders for such item, as of the effective date of the increase, unless the Contracting Officer issues a contract modification to raise the ceiling. If the contract ceiling will not be raised, the Contracting Officer shall so promptly notify the Contractor in writing.

(5) Revision of reference price: In the event--

(i) Any applicable reference price (market price indicator) is discontinued or its method of derivation is altered substantially; or

(ii) The Contracting Officer determines that the reference price consistently and substantially failed to reflect market conditions, the parties shall mutually agree upon an appropriate and comparable substitute for determining the price adjustments hereunder. The contract shall be modified to reflect such substitute effective on or just prior to the date the indicator was discontinued, altered, or began to consistently and substantially fail to reflect market conditions. Failure to agree on an appropriate substitute shall be considered a "dispute" within the meaning of paragraph (d), Disputes, of the Contract Terms And Conditions -- Commercial Items clause of the contract.

(d) Examination of records: The Contractor agrees that the Contracting Officer or designated representatives shall have the right to examine the Contractor's books, records, documents, and other data the Contracting Officer deems necessary to verify Contractor adherence to the provisions of this clause.

(e) Final invoice: The Contractor shall include a statement on the final invoice that the amounts invoiced hereunder have applied all decreases required by this clause.

(f) Table: The following publication(s)/date(s) apply: {buyer fill-in of applicable information}.

Note to buyer: - select one of the following choices:

(1) Insert the following table when the solicitation does not contain numerous items:

| Base reference Item no. | Base reference publication | Base reference heading | Base reference date | Base reference price |
|---|---|---|---|---|

or

(2) (at Contracting Officer's discretion) Insert for Ships' Bunker programs when the solicitation is for a major program buy:

"See the continuation pages to this clause at Attachment C for a listing of each line item, the applicable publications for each line item, as well as the applicable reference heading, base reference date and base reference price."

The Contracting Officer shall insert the appropriate table at Attachment C.

(End of Clause)

**52.216-9071 Economic Price Adjustment – Market Price – Posts, Camps, and Stations (PC&S) – Korea/Guam/Japan.**
As prescribed at 16.203-4(a)(2)(100), insert the following clause:

ECONOMIC PRICE ADJUSTMENT - MARKET PRICE - POSTS, CAMPS, AND STATIONS (PC&S) KOREA/GUAM/JAPAN (NOV 2011)

(a) Warranties. The Contractor warrants that—

(1) The unit prices set forth in the Schedule do not include allowances for any portion of the contingency covered by this clause; and

(2) The prices to be invoiced hereunder shall be computed in accordance with the provisions of this clause.

(b) Definitions. As used throughout this clause, the term—

(1) Base unit price means the unit price set forth opposite the item in Section B of the Schedule.

(2) Market price means a price determined by an independent trade association, governmental body, or other third party and reported or made available in a consistent manner in a publication, electronic data base, or other form. This price may be either a single market price or a combination of market prices for price adjustment for individual items by product, market area, and publication as specified in the Table in (g) below. For purposes of this procurement, the market price is the average of the prices published in Platt's Oilgram Price Report. The applicable market price is identified by product following the Table in (g) below.

(i) Base market price means the price as shown in column IV of the Table in (g) below and is the market price from which economic price adjustments are calculated pursuant to this clause.

(ii) Adjusting market price means the market price in effect on the date of delivery and that will be used to determine the change in market price as defined in (c)(1) below.

(3) Date of delivery is defined as follows:

(i) For free on board (f.o.b.) destination truck deliveries. The date product is received, on a truck-by-truck basis.

(ii) For all other types of deliveries. The date and time product commences moving past the specified f.o.b. point.

(c) See Note 1.

(1) Subject to the provisions of this clause, the prices payable hereunder shall be determined by adding to the base unit price the same number of cents, or fraction thereof, that the adjusting market price increases or decreases, per like unit of measure, subsequent to the date on which the base market price is established (see column IV of the Table). The prices payable shall be issued through semimonthly contract notifications effective the first and third Monday of each month.

(2) Contract price adjustments shall be provided via notification through contract modifications and/or posting to the web page under the heading Vendor Resources and then Product Price Adjustments.

(3) All arithmetical calculations, including the final adjusted unit price, shall be rounded to four decimal places.

(4) Failure to deliver. Notwithstanding any other provisions of this clause, no upward adjustment shall apply to product scheduled under the contract to be delivered before the effective date of the adjustment, unless the Contractor's failure to deliver according to the delivery schedule results from causes beyond the Contractor's control and without its fault or negligence, within the meaning of paragraphs (f), Excusable Delays, and (m), Termination for Cause, of the Contract Terms And Conditions - Commercial Items clause of this contract, in which case the contract shall be amended to make an equitable extension of the delivery schedule.

(5) Upward ceiling on economic price adjustment. The Contractor agrees that the total increase in any contract unit price, pursuant to these economic price adjustment provisions, shall not exceed See Note 2____ percent of the base unit price in any applicable program year (whether a single year or a multiyear program), except as provided hereafter.

(i) If at any time the Contractor has reason to believe that within the near future a price adjustment under the provisions of this clause will be required that will exceed the current contract ceiling price for any item, the Contractor shall promptly notify the Contracting Officer in writing of the expected increase. The notification shall include a revised ceiling the Contractor believes is sufficient to permit completion of remaining contract performance, along with an appropriate explanation and documentation as required by the Contracting Officer.

(ii) If an actual increase in the market price would raise a contract unit price for an item above the current ceiling, the Contractor shall have no obligation under this contract to fill pending or future orders for such item, as of the effective date of the increase, unless the Contracting Officer issues a contract modification to raise the ceiling. If the contract ceiling will not be raised, the Contracting Officer shall so promptly notify the Contractor in writing.

(6) Revision of market price indicator. In the event—

(i) Any applicable market price indicator is discontinued or its method of derivation is altered substantially; or

(ii) The Contracting Officer determines that the market price indicator consistently and substantially fails to reflect market conditions,-the parties shall mutually agree upon an appropriate and comparable substitute for determining the price adjustments hereunder. The contract shall be modified to reflect such substitute effective on the date the indicator was discontinued, altered, or began to consistently and substantially fail to reflect market conditions. If the parties fail to agree on an appropriate substitute, the matter shall be resolved in accordance with paragraph (d), disputes, of the Contract Terms And Conditions - Commercial Items clause of this contract.

(d) Conversion factors. If this clause requires quantity conversion for economic price adjustment purposes, the conversion factors for applicable products, as specified in the Conversion Factor Instruction, apply unless otherwise specified in the Schedule.

(e) Examination of records. The Contractor agrees that the Contracting Officer or designated representatives shall have the right to examine the Contractor's books, records, documents, and other data the Contracting Officer deems necessary to verify Contractor adherence to the provisions of this clause.

(f) Final invoice. The Contractor shall include a statement on the final invoice that the amounts invoiced hereunder have applied all decreases required by this clause.

(g) Table.

I II III IV

Heading under which market price is published and
Base market price
Name of publication
as of _____
Item no. (see (b)(2) above) name of product (date of publication)

(see note 3)

(End of Clause)

Note 1: The Contracting Officer shall insert the following:

(For Korea and Guam only):

(c) Adjustments.

(For Japan only):

(c) Adjustments. For products delivered by barge or tanker, the Contractor shall notify the Contracting Officer of any delivery and associated change in the adjusting market price within 15 days from the date thereof. For products delivered via other modes (TT, TW, etc.), price adjustments shall be semimonthly and shall occur on the first and third Monday of each month. No increase in a contract unit price for barge or tanker deliveries shall be executed pursuant to this provision until the increase in the applicable adjusting market price has been verified by the Contracting Officer.

Note 2: The Contracting Officer shall insert the appropriate ceiling percentage in paragraph (c)(4) as determined by the Chief of the Contracting Office or designee (reference note 2 of the clause). Explicit approval must be obtained for any ceiling exceeding ten (10) percent in accordance with DLAD 16.203-3 (94).

Note 3: The Contracting Officer shall coordinate with the Market Research Section (DESC-RN) before completion of fill in the blank information sections of the clause such as base market, and publication dates, to ensure the accuracy of the information and the correct selection of the market price.

**52.216-9072 Economic Price Adjustment - Petroleum Product Price , Post, Camp, and Station (PC&S).**
As prescribed at 16.203-4(a)(2)(101), insert the following clause:

ECONOMIC PRICE ADJUSTMENT – PETROLEUM PRODUCT PRICE, POST, CAMP AND STATION (PC&S) (NOV 2011)

(a) Warranties: The Contractor warrants that—

(1) The unit prices set forth in the Schedule do not include allowances for any portion of the contingency covered by this clause; and

(2) The prices to be invoiced hereunder shall be computed daily in accordance with the provisions of this clause.

(b) Definitions: As used throughout this clause, the term--

(1) Base price means—

(i) The unit price offered for an item and included in the contract award schedule; or

(ii) During any subsequent program year, either the effective contract price as of the start of the subsequent program year, or the price agreed upon as of the start of the subsequent program year.

(2) Base reference price means the reference price for an item as published on_____. In the event one or more applicable reference prices are not (or were not) published on the date shown, then the term base reference price means the reference price for an item as published on the date nearest in time prior to the date shown.

(3) Reference price means that published reference price or combination of published reference prices for price adjustment of individual items by product, market area, and publication as specified in (f) below.

(4) Date of delivery means—

(i) For tanker or barge deliveries.

(A) Free on board (f.o.b.) origin: The date and time vessel commences loading.

(B) F.o.b. destination: The date and time vessel commences discharging.

(ii) For all other types of deliveries: The date product is received on a truck-by-truck basis.

(5) Published means issued in either printed or electronic format by the service designated to be employed as an escalator, unless otherwise specifically stated. In the event of a conflict between the price set forth in the print version and those set forth in the electronic version for the same date, the electronic version shall prevail unless otherwise specified in (c) below.

(c) Adjustments: Contract price adjustments shall be provided via notification through contract modifications and/or posting to the web page under the heading Vendor Resources and then Product Price Adjustments to reflect any price change pursuant to this clause.

(1) Calculations: The prices payable hereunder shall be determined by adjusting the award price by the same number of cents, or fraction thereof, that the daily reference price increases or decreases, per like unit of measure. All arithmetical calculations, including the final adjusted unit price, shall be carried to six decimal places.

Oil price information service (OPIS): For all items employing OPIS, the reference price in effect on the date of delivery shall be the end of day OPIS rack average effective (6:00 p.m. timestamp) that day. In the event there is no price published for date of delivery, then it shall be the item's reference price that was last in effect.

Other publications: Except for items employing OPIS, the reference price in effect on the date of delivery shall be that item's preselected reference price that is in effect the date of delivery. In the event there is no price published for date of delivery, then it shall be the item's reference price that was last in effect.

(2) Revision of published reference price: In the event—

(i) Any applicable reference price is discontinued or its method of derivation is altered substantially; or

(ii) The Contracting Officer determines that the reference price consistently and substantially failed to reflect market conditions—

the parties shall mutually agree upon an appropriate and comparable substitute for determining the price adjustments hereunder. The contract shall be modified to reflect such substitute effective on the date the reference price was discontinued, altered, or began to consistently and substantially fail to reflect market conditions. If the parties fail to agree on an appropriate substitute, the matter shall be resolved in accordance with paragraph (d), Disputes, of the Contract Terms And Conditions - Commercial Items clause of this contract.

(3) Failure to deliver: Notwithstanding any other provisions of this clause, no upward adjustment shall apply to product scheduled under the contract to be delivered before the effective date of the adjustment, unless the Contractor's failure to deliver according to the delivery schedule results from causes beyond the Contractor's control and without its fault or negligence within the meaning of paragraphs (f), Excusable Delays, and (m), Termination for Cause, of the Contract Terms And Conditions - Commercial Items clause of this contract in which case the contract shall be amended to make an equitable extension of the delivery schedule.

(4) Upward ceiling on economic price adjustment: The Contractor agrees that the total increase in any contract unit price pursuant to these economic price adjustment provisions shall not exceed _____ percent (%) of the of the base price in any applicable program year, except as provided below.

If at any time the Contractor has reason to believe that within the near future a price adjustment under the provisions of this clause will be required that will exceed the current contract ceiling price for any item, the Contractor shall promptly notify the Contracting Officer in writing of the expected increase. The notification shall include a revised ceiling the Contractor believes is sufficient to permit completion of remaining contract performance, along with an appropriate explanation and documentation as required by the Contracting Officer.

If an actual increase in the reference price would raise a contract unit price for an item above the current ceiling, the Contractor shall have no obligation under this contract to fill pending or future orders for such item, as of the effective date of the increase, unless the Contracting Officer issues a contract modification to raise the ceiling. If the contract ceiling will not be raised, the Contracting Officer shall so promptly notify the Contractor in writing.

(d) Examination of records: The Contractor agrees that the Contracting Officer or designated representatives shall have the right to examine the Contractor's books, records, documents, or other data the Contracting Officer deems necessary to verify Contractor adherence to the provisions of this clause.

(e) Final invoice: The Contractor shall include a statement on the final invoice that the amounts invoiced hereunder have applied all decreases required by this clause.

(f) Publications. The following publication(s) is (are) used:

(End of Clause)

**52.216-9073 Economic Price Adjustment – Petroleum Product Market Price, Post, Camp, and Station (PC&S) Belgium**.
As prescribed at 16.203-4(a)(2)(102), insert the following clause:

ECONOMIC PRICE ADJUSTMENT – PETROLEUM PRODUCT MARKET PRICE, POST, CAMP, AND STATION (PC&S) BELGIUM (JUN 2010)

(a) Warranties: The Contractor warrants that—

The unit prices set forth in the Schedule do not include allowances for any portion of the contingency covered by this clause; and

The prices to be invoiced hereunder shall be computed in accordance with the provisions of this clause.

(b) Definitions: As used throughout this clause, the term—

Award price means the unit price set forth opposite the item in the Schedule. The award price consists of the market price (the official posted Belgium government product price (see (2) below) less applicable taxes and duties (as specified in the Tax Relief clause), and the firm rebate.

Market price for all products (including fuel oils, gasoline, and diesel products) means the current applicable official Belgium Government price as published in “Officieel tarief van de aardolieprodukten.” The current applicable official Belgium Government price as published in “Officieel tarief van de aardolieprodukten” sets the maximum price that can be charged for the specified petroleum products

referenced in this clause. For deliveries of Fuel Oils at and over 2,000 liters, the official Belgium Government price will be the gasoil chauffage camion (a partir de 2000 L) (excluding all applicable duties/taxes, e.g., Excise Duties/Fuel Oil/U.S. Government NATO Exemption taxes) and a firm fixed rebate that is deducted from the official Belgium Government price. For deliveries of Fuel Oils under 2,000 liters, the official Belgium Government price will be the gasoil chauffage (moins de 2000 L) (excluding all applicable duties/taxes, e.g., Excise Duties/Fuel Oil/U.S. Government NATO Exemption taxes) and a firm fixed rebate that is deducted from the official Belgium Government price. For deliveries of Gasoline, the official Belgium Government price will be the PRIX A LA POMPE Essence Super 95 RON - 10S (excluding all applicable duties/taxes, e.g., Excise Duties/Fuel Oil/U.S. Government NATO Exemption taxes) and a firm fixed rebate that is deducted from the official Belgium Government price. For deliveries of Diesel the official Belgium Government price will be the PRIX A LA POMPE Diesel 10S (excluding all applicable duties/taxes, e.g., Excise Duties/Fuel Oil/U.S. Government NATO Exemption taxes) and a firm fixed rebate that is deducted from the official Belgium Government price.

Date of delivery means the date and time of product delivery completion via the method of delivery specified in the Schedule.

(c ) Adjustments:

Notification: The Contractor shall notify by facsimile or letter within five calendar days of any official price change issued by the Belgium Government in the "Officieel tarief van de aardolieprodukten." The notification shall be accompanied by a copy of the document showing the new market price.

Subject to the provisions of this clause, the prices payable hereunder shall be the market price incorporated into the contract less applicable taxes and duties, and the firm rebate.

The Contracting Officer shall, pursuant to the provisions of this clause, issue a contract notification to incorporate the new market price, effective on the publication date of such market price.

Contract price adjustments shall be provided via notification through contract modifications and/or posting to the web page under the heading Vendor Resources and then Product Price Adjustments.

(d) Upward ceiling on economic price adjustment:

The Contractor agrees that the total increase in any contract unit price shall not exceed ___ percent (%) of the award price during the first program year or of the unit price in effect as of the start of any subsequent program year (if this is a long-term or multiyear program), except as provided hereafter:

(1) If at any time the Contractor has reason to believe that within the near future a price adjustment under the provisions of this clause will be required that will exceed the current contract ceiling price for the item(s), the Contractor shall promptly notify the Contracting Officer in writing of the estimated effective date and the amount of the expected increase. The notification shall include a revised ceiling sufficient to permit completion of remaining contract performance, along with appropriate explanation and documentation as required by the Contracting Officer.

(2) If an actual increase in the market price would raise a contract unit price for an item above the current ceiling, the Contractor shall have no obligation under this contract to fill pending or future orders for such item, as of the effective date of the increase, unless the Contracting Officer issues a contract

modification to raise the ceiling. If the contract will not be modified, the Contracting Officer shall promptly notify the Contractor in writing that the ceiling will not be raised.

(e) Revision of market price indicator: In the event—

(1) Any applicable market price is discontinued or its method of derivation is altered substantially; or

(2) The Contracting Officer determines that the market price indicator consistently and substantially failed to reflect market conditions. The parties shall mutually agree upon an appropriate and comparable substitute for determining the price adjustments hereunder. The contract shall be modified to reflect such substitute effective on the date the indicator was discontinued, altered, or began to consistently and substantially fail to reflect market conditions. If the parties fail to agree on an appropriate substitute, the matter shall be resolved in accordance with paragraph (d), Disputes, of the Contract Terms And Conditions - Commercial Items clause of this contract.

(f) Failure to deliver: Notwithstanding any other provisions of this clause, no upward adjustment shall apply to product scheduled under the contract to be delivered before the effective date of the adjustment, unless the Contractor's failure to deliver according to the delivery schedule results from causes beyond the Contractor's control and without its fault or negligence, within the meaning of paragraphs (f), Excusable Delays, and (m), Termination for Cause, of the Contract Terms And Conditions -- Commercial Items clause of this contract, or is the result of an allocation made in accordance with the terms of the Allocation clause of this contract, in which case the contract shall be amended to make an equitable extension of the delivery schedule.

(g) Examination of records: The Contractor agrees that the Contracting Officer or designated representatives shall have the right to examine the Contractor's books, records, documents, and other data the Contracting Officer deems necessary to verify Contractor adherence to the provisions of this clause.

(h) Final invoice: The Contractor shall include a statement on the final invoice that the amounts invoiced hereunder have applied all decreases required by this clause.

(End of Clause)

**52.216-9074 Economic Price Adjustment - Market Price And Actual Transportation Cost (Natural Gas) Alaska.**
As prescribed at 16.203-4(a)(2)(104), insert the following clause:

ECONOMIC PRICE ADJUSTMENT -- MARKET PRICE AND ACTUAL TRANSPORTATION COST - NATURAL GAS - ALASKA (JUN 2010)

(a) Warranties. The Contractor warrants that—

(1) The unit prices set forth in the Schedule do not include allowances for any portion of the contingency covered by this clause; and

(2) The prices to be invoiced hereunder shall be computed in accordance with the provisions of this clause.

(b) DEFINITIONS. As used in this clause, the term—

(1) Contract unit price is the market price based on a fixed percentage of the ENSTAR Natural Gas Company's current approved and published Enstar natural gas cost adjustment tariff rate on file with the regulatory commission of Alaska, expressed in dollars per thousand cubic feet (MCF). All other Enstar applicable tariff components (transportation, regulatory fees, company use gas, etc.) will be passed through at cost. Customer service charges and meter fees imposed by Enstar Natural Gas Company, as permitted by the tariff, will be considered pass-through utility charges.

(2) Local Distribution Company (LDC) means the local public utility operating in a franchised area without competition that transports gas over its own distribution lines from its interconnection points with an interstate or intrastate pipeline to customers.

(3) Market price indicator is the Enstar natural gas cost adjustment tariff rate on file with the regulatory commission of Alaska.

(c) Price adjustments. The contract unit price will be changed only as a result of a revision of the Enstar Natural Gas Cost Adjustment tariff rate. If the ENSTAR Natural Gas Cost Adjustment is revised, the fixed percentage stated in the contract schedule page shall be applied to the revised Gas Cost Adjustment to obtain the new contract unit price.

(1) Calculations. All numbers used in or derived through calculations prescribed by this clause shall be rounded to four decimal places.

(2) Upward ceiling on economic price adjustments.

(i) The Contractor agrees that any increase in the contract unit price pursuant to this clause shall not exceed __(Contracting Officer fill-in see Note 1)_percent of the contract unit price effective at time of award. If market conditions warrant, the Government may institute a contract ceiling increase.

(ii) If, at any time, the Contractor has reason to believe that within the near future an increase in the ENSTAR Natural Gas Company's Adjustment tariff rate would raise the contract unit price above the current ceiling, the Contractor shall notify the Contracting Officer of the expected increase. At the same time, the Contractor shall propose a revised ceiling sufficient to permit completion of remaining contract performance. The Contractor's proposal shall be supported by appropriate explanations and documentation as required by the Contracting Officer.

(iii) If an actual increase in the market price would raise the contract unit price above the current ceiling, the Contractor shall have no obligation under this contract to fill pending or future orders, as of the effective date of the increase, until the Contracting Officer notifies the Contractor that the ceiling will or will not be raised. In the case where the Contractor receives confirmation that the ceiling will be raised, the Contractor is required to continue performance.

(3) Revision of market price indicator. If the applicable market price indicator is discontinued, its method of derivation is altered substantially, or the Contracting Officer determines that the market price indicator consistently and substantially failed to reflect market conditions, the parties shall mutually agree upon an appropriate and comparable substitute and the contract shall be modified to reflect such substitute

effective on the date the indicator was discontinued, altered, or began to consistently and substantially fail to reflect market conditions. If the parties fail to agree on an appropriate substitute, the matter shall be resolved in accordance with paragraph (d), Disputes, of the Contract Terms And Conditions -- Commercial Items (Natural Gas) clause.

(d) Examination of records. The Contractor agrees that the Contracting Officer or designated representative shall have the right to examine the Contractor's books, records, documents, and other data the Contracting Officer deems necessary to verify Contractor adherence to the provisions of this clause.

(End of Clause)

Note 1: The Contracting Officer is required to fill-in the applicable ceiling in paragraph (c)(2)(i)

**52.216-9075 Economic Price Adjustment – Published Market Price –Ships Bunkers.**
As prescribed at 16.203-4(a)(2)(105), insert the following clause:

ECONOMIC PRICE ADJUSTMENT – MARKET PRICE INDICATORS - SHIPS BUNKERS
(NOV 2011)

(a) Warranties. The Contractor warrants that –

(1) The unit prices set forth in the Schedule do not include allowances for any portion of the contingency covered by this clause; and

(2) The prices to be invoiced hereunder shall be computed in accordance with the provisions of this clause.

(b) Definitions. As used throughout this clause, the term-

(1) Award price means the original contract price.

(2) Reference price means the market price indicator set forth in the Table in (f) below with which the award price is to fluctuate.

(i) Base reference price means the market price indicator shown in the Table in (f) below and is the reference price from which economic price adjustments are calculated pursuant to this clause. This price will be expressed as base reference price in any price adjustment notification issued through contract modifications and/or postings to the DLA Energy web page under the heading vendor resources and then product price adjustments. The base reference date annotated in the table shall remain unchanged throughout the life of the contract.

(ii) Adjusting reference price means the market price indicator in effect in the calendar week of the date of delivery, used to determine the change in reference price. In the event one or more applicable reference prices are not (or were not) published, then the term adjusting reference price means the market price indicator for an item as published on the date nearest in time on or prior to the effective calendar date as expressed in (4) below. It is annotated as new reference price in any price adjustment notification (PA) modification issued.

(3) Current unit price means the most current price in effect for the week that the price adjustment provisions discussed in paragraph (c) below begin. This price, expressed as latest unit price in any price adjustment notification issued through contract modifications and/or postings to the DLA Energy web page under the heading vendor resources and then product price adjustments shall be the unit price charged to the Government for supplies delivered under the contract.

(4) Date of delivery means the date and time product is received by the requesting activity/vessel. This is shown by signature of receipt by the Government representative for the entire delivery. A single delivery that began on one date and ended on another date shall be considered as received on the date of completion annotated by the Government on the bunker delivery document. Excusable delays in delivery shall be handled on a case-by-case basis by the Contracting Officer.

(5) Calendar week means a consecutive seven-day period, beginning with Monday, unless otherwise specified in (c)(1) below.

(6) Published means issued in either print or electronic format by the service designated to be employed as an escalator, unless otherwise specifically stated. In the event of a conflict between the prices set forth in the print version and those set forth in the electronic version for the same date, the electronic version shall prevail, unless otherwise specified in (c)(1) below.

(c) Adjustments. The prices payable under this contract shall be the award price increased or decreased by the amount that the reference price shall have increased or decreased through the date of delivery. The amount of increase or decrease in the award price shall be based on the same number of cents, or fraction thereof, that the reference price increases or decreases per like unit of measure.

(1) Day of publication.

(i) Platt's bunkerwire and bunkerfuels report. For items employing Platt's Bunkerwire and Bunker Fuels Report, the adjusting reference price in effect on the date of delivery shall be that item's reference price effective (and normally published) on the Tuesday of the calendar week in which the delivery is made, or, in the event there is no publication on Tuesday of that week, it shall be the item's reference price as last previously published prior to that Tuesday.

(ii) Platt’s Oilgram price report. For items employing Platt's Oilgram Price Report, spot price assessment, the adjusting reference price in effect on the date of delivery shall be that item's reference price in effect for the Monday of the calendar week in which the delivery is made, or, in the event there is no price for that Monday, it shall be the item's reference price in effect for the date nearest in time prior to that Monday. For items employing Platt’s Oilgram Price Report, 5 day rolling average, the reference price in effect on the date of delivery shall be the average of that item’s reference price effective for 5 consecutive days ending Friday prior to the calendar week in which the delivery is made. In the event there is no price for any one or more of those 5 days, the reference price shall be calculated by averaging the last 5 days for which prices were in effect on or prior to that Friday.

(iii) AXXIS. For items employing AXXIS, the adjusting reference price shall be that item’s reference price in effect for the Thursday of the calendar week prior to the date that delivery is made. In the event there is no price for that Thursday, it shall be the item’s reference price in effect for the date nearest in time prior to that Thursday.

(iv) Oil price information service (OPIS). For items employing OPIS, the adjusting reference price in effect on the date of delivery shall be that item's reference price published, in print, on the Monday of the calendar week in which delivery is made. In the event there is no publication in that week, it shall be the item's reference price as last previously published in the print edition.

Note: Generally, the Monday print edition of OPIS contains the prices in effect for the prior Thursday. However, the Monday print edition of OPIS may contain prices for a date other than the prior Thursday. In any event, the prices appearing in the Monday print edition shall have control.

(v) When a combination of two different publications is utilized, the applicable reference dates will be stated in paragraph (f) below, unless paragraph (f) references an attachment, in which case the reference dates will be provided in that attachment .

(vi) Platts issues corrections to its published prices on a regular basis. Platts posts corrections to its website (http://www.platts.com) for its subscribers. If a correction to a reference price is found on the Platts website, all of the items that use that reference price will be corrected. DLA Energy will correct any other reference prices, as notice of the correct is received. DLA Energy will work with the pricing services to determine the appropriate price, whenever an offeror or Contractor can show that the price referenced should be reviewed.

(2) Calculations.

(i) If averages are published within a given publication, then these averages will be used.

(ii) For prices in U.S. gallons, if averages are not available within a given publication, DLA Energy calculated averages, carried to six decimal places, rounded, will be used based on the low and high prices. For prices in metric tons, if averages are not available within a given publication, DLA Energy calculated averages, carried to two decimal places, rounded, will be used. For domestic contract line items, DLA Energy conversions from metric tons to gallons shall be calculated based on the conversion factors Instruction for the applicable publication reference product. Barrels shall be converted using the DLA Energy conversion factors Instruction line for barrels to gallons. The above shall apply unless cited differently in the Table in (f) below.

(iii) For domestic contract line items, the final calculated reference price, as well as any intermediary arithmetical calculations, will consist of a number including six decimal places, rounded. For overseas contract line items, the final calculated reference price, as well as any intermediary arithmetical calculations, will consist of a number including two decimal places, rounded.

(iv) For domestic contract line items, the final adjusted unit price will always consist of a number including six decimal places, rounded. For overseas contract line items, the final adjusted unit price will always consist of a number including two decimal places, rounded.

(3) Failure to deliver. Notwithstanding any other provisions of this clause, no upward adjustment shall apply to product scheduled under the contract to be delivered before the effective date of the adjustment unless the Contractor's failure to deliver according to the delivery schedule results from causes beyond the Contractor's control and without its fault or negligence, within the meaning of paragraphs (f), Excusable Delays, and (m), Termination for Cause, of the Contract Terms And Conditions

– Commercial Items clause of this contract in which case the contract shall be amended to make an equitable extension of the delivery schedule.

(4) Upward ceiling on economic price adjustments. The Contractor agrees that the total increase in any contract unit price shall not exceed [buyer fill-in applicable upward ceiling]_ percent of the award price, except as provided hereafter:

(i) If, at any time, the Contractor has reason to believe that within the near future a price adjustment under the provisions of this clause will be required that will exceed the current contract ceiling price for any item, the Contractor shall promptly notify the Contracting Officer in writing of the expected increase. The notification shall include a revised ceiling the Contractor believes is sufficient to permit completion of remaining contract performance, along with an appropriate explanation and documentation as required by the Contracting Officer.

(ii) If an actual increase in the reference price would raise a contract unit price for an item above the current ceiling, the Contractor shall have no obligation under this contract to fill pending or future orders for such item, as of the effective date of the increase, unless the Contracting Officer issues a contract modification to raise the ceiling. If the contract ceiling will not be raised, the Contracting Officer shall so promptly notify the Contractor in writing.

(5) Revision of reference price. In the event—

(i) Any applicable reference price (market price indicator) is discontinued or its method of derivation is altered substantially; or

(ii) The Contracting Officer determines that the reference price consistently and substantially fails to reflect market conditions—

the parties shall mutually agree upon an appropriate and comparable substitute for determining the price adjustments hereunder. The contract shall be modified to reflect such substitute effective on or just prior to the date the indicator was discontinued, altered, or began to consistently and substantially fail to reflect market conditions. If the parties fail to agree on an appropriate substitute, the matter shall be resolved in accordance with paragraph (d), Disputes, of the Contract Terms And Conditions – Commercial Items clause of the contract.

(d) Examination of records. The Contractor agrees that the Contracting Officer or designated representatives shall have the right to examine the Contractor's books, records, documents, and other data the Contracting Officer deems necessary to verify Contractor adherence to the provisions of this clause.

(e) Final invoice. The Contractor shall include a statement on the final invoice that the amounts invoiced hereunder have applied all decreases required by this clause.

(f) Table. The following publication(s)/date(s) apply: [buyer fill-in of applicable information].

Note to buyer: - select one of the following choices:

(1) Insert the following table when the solicitation does not contain numerous items:

| Base reference Item no. | Base reference publication | Base reference heading | Base reference date | Base reference price |
|---|---|---|---|---|

or

(2) (at Contracting Officer's discretion) Insert for Ships' Bunker programs when the solicitation is for a major program buy:

"See the continuation pages to this clause at Attachment C for a listing of each line item, the applicable publications for each line item, as well as the applicable reference heading, base reference date and base reference price."

The Contracting Officer shall insert the appropriate table at Attachment C.

(End of Clause)

**52.216-9083 Restitution.**
As prescribed in 16.506-97, insert the following clause:

RESTITUTION (SEP 2012)

(a) Warranties. The Contractor warrants that the unit prices included in the schedule do not include allowances for any portion of the contingency covered by this clause.

(b) Restitution is an export subsidy given by the governments of European Community member countries to companies for specific products they export to third countries. These subsidies enable foreign companies to charge less for exports.

(1) Restitution also applies to sales to the United States Forces stationed in Europe under the Status of Forces Agreement (SOFA). Accordingly, restitution applies to this contract.

(2) The amount of restitution provided by these Governments changes from time to time and is expected to be reduced and eventually eliminated. Accordingly, the unit prices subject to restitution under this Contract shall be increased or decreased to cover some or all (see paragraph (c)) of these changes in the restitution amount.

(c) Restitution schedule(s):

(1) Restitution applies to the following items/products: _(The contract specialist shall insert the appropriate language based upon the type of product(s) as listed here in the clause):

(The contract specialist shall insert the line item number(s) and product(s) that are subject to the restitution.)

(2) The offeror shall provide a restitution schedule with its offer.

(i) This restitution schedule is a listing of the items subject to adjustment under this clause and shall include the contract line items, product names, unit prices and amount of restitution contained in each.

(ii) This restitution schedule shall be verified by the Contracting Officer and shall be included in the Contract at paragraph (g) to the extent verified by the Contracting Officer.

(3) Restitution adjustments shall be limited to those items listed in the restitution schedule and are authorized to be made [The contract specialist shall insert the frequency of the adjustments to be made during the life of the contract in terms of days, months, or other appropriate period].

(i) Revised restitution schedules shall be required whenever there are changes in restitution authorized by this clause. (See paragraph (d)).

(ii) Whenever a revised restitution schedule becomes effective, it shall be incorporated into paragraph (g) and replace the existing restitution schedule.

(d) Adjustment in restitution:

(1) During the basic Contract year the first adjustment consideration date will be _[The contract specialist shall insert the day and month of the first authorized adjustment period, i.e., 1 January]_. After this date the next adjustment consideration will be _[The contract specialist shall insert the day and months of the subsequent authorized adjustment periods, i.e., 1 April, 1 July, etc.]_.

(2) When an adjustment is authorized by this clause, the Contractor shall notify the Contracting Officer if the rates of restitution for the same item shown in the restitution schedule either increase or decrease. The Contractor shall furnish this notice within _[*The contract specialist shall insert the number of days the contractor has to submit an adjustment request.*]_ days after the restitution amount is increased or decreased, or within any period that the contracting officer may approve in writing.

(3) The notice shall include the Contractor's proposal for an adjustment in the contract unit prices and shall include, in the form required by the Contracting Officer, supporting data explaining the cause, effective date(s) for the new restitution rate(s), amount of the increase or decrease, the amount of the contractor's adjustment proposal, and any other information required by the Contracting Officer to verify the revised restitution amount(s) and the proposed adjustment(s).

(i) This supporting documentation shall also include the calculations used to derive the adjusted unit price(s) and a revised restitution schedule updated to reflect the new proposed contract unit prices and restitution rates.

(A) The revised restitution schedule shall include the same information as the original restitution schedule discussed in paragraph (c) above.

(B) The revised restitution schedule shall cover the current term of the contract. Also, if not all the items on the revised restitution schedule were affected by the current adjustment, those subject to adjustment shall be highlighted.

(ii) Those items not subject to adjustment shall reflect the same restitution amount as contained in the existing restitution schedule in paragraph (g).

(4) Calculation of the revised unit price based upon changes in restitution.

(i) The restitution amounts agreed to at time of award shall serve as the basis for the initial adjustment. Once the adjustment is made, the revised restitution amounts will serve as the basis for the next adjustment. Restitution adjustments shall be calculated using the following formula:

(A) If restitution decreases:

Current restitution amount (per contract item unit price)
- Revised restitution amount (per contract item unit price)
---
= Unit price adjustment

The unit price adjustment shall be added to the unit price to determine the revised unit price.

(B) If restitution increases:

Current restitution amount (per contract item unit price)
- Revised restitution amount (per contract item unit price)
---
= Unit price adjustment

The unit price adjustment shall be subtracted from the unit price to determine the revised unit price.

(e) Promptly after the contracting officer receives the notice and data under paragraph (d) above, the Contracting Officer shall make a price adjustment in the contract unit prices.

(1) The effective date of any price adjustment shall be no later than _(The contract specialist shall insert the number of days the Government has to evaluate and finalize a price adjustment) days after the Government receives the contractor's restitution change proposal.

(2) The Contracting Officer may postpone the adjustment until an accumulation of increases or decreases per item results in an adjustment allowable under sub-paragraph (f)(6) of this clause. The Contracting Officer's price verification analysis shall include using the information contained in ___[The contract specialist shall insert the publication(s) which contain the restitution amount information and will be used in the price verification analysis]____.

(3) The Contracting Officer shall modify this contract (1) to include the price adjustment and its effective date and (2) replace the existing restitution schedule in paragraph (g) with the revised restitution schedule to reflect the increase or decrease resulting from the adjustment. The Contractor shall continue performance pending any adjustment under this clause.

(f) Any price adjustment under this clause is subject to the following limitations:

(1) Decreases in the rate of restitution for products shown in the current restitution schedule in paragraph (g). There shall be no adjustment for --

(i) supplies or services for which the unit price is not affected by such changes, or

(ii) changes in unit price other than for those items shown in the Restitution Schedule.

(2) The aggregate of the increase in any contract unit price shall not exceed 10% of the original contract unit price. There is no percentage limit on downward adjustments under this clause.

(3) No upward adjustment shall apply prior to the effective date of the adjustment as set forth in the contract modification.

(4) The adjusted contract unit prices shall apply only to quantities delivered and accepted on or after the effective date of the adjustment as set forth in the contract modification.

(5) No modification increasing the contract unit price shall be executed until the contracting officer verifies the decrease in the restitution.

(6) There shall be no adjustment unless the value of the adjustment is at least 100 Euro per item, based upon the estimated weekly quantities.

(7) The Contractor shall certify on the final invoice that amounts invoiced under this contract have applied all restitution increases.

(g) The offeror shall attach a restitution schedule with his/her offer. (See paragraph (c). This paragraph shall be revised whenever a new restitution schedule applies).

Restitution schedule:

(The contract specialist shall insert the Contractor's proposed restitution schedule into the resulting contract.)

(End of Clause)

**52.216-9084 Economic Price Adjustment – National Contracts – Subsistence.**

As prescribed at 16.203-4(a)(2)(106), insert the following clause.

ECONOMIC PRICE ADJUSTMENT (EPA) – NATIONAL CONTRACTS – SUBSISTENCE
(OCT 2014)

(a) *Warranties*. For the portion of the Schedule that is covered by this EPA clause, the Contractor warrants that the unit prices included in the Schedule do not include allowances for any portion of the contingency covered by this clause.

(b) The base market price for the purpose of the adjustment calculations under this clause shall be the arithmetic average of the prices for each applicable economic indicator for the period specified under the "Base Market Price Period" column below; for the initial Base Market Price, the specified period shall end with either the solicitation closing date for proposals (if no discussions are held)[,] the due date for final proposal revisions (if discussions are held)**,** or the solicitation opening date (if sealed bidding is used), as applicable.

| ITEM | ECONOMIC INDICATOR | PUBLISHER/ PUBLICATION/FREQUENCY PUBLISHED | BASE MARKET PRICE PERIOD | ADJUSTING MARKET PRICE PERIOD |
|---|---|---|---|---|
| **[*Contracting Officer shall fill in.*]** | | | | |

(c) The adjusting market price shall be the arithmetic average of the prices of each applicable economic indicator published for the period specified under the "Adjusting Market Price Period" column shown in paragraph (b) immediately preceding the effective date of the adjustment period. "Base unit price" is the unit price as awarded for the base contract period and for each pricing tier period or option period for each item subject to adjustment pursuant to this clause, and shall be used in calculating price adjustments. This price is exclusive of any adjustment pursuant to this clause.

(d) An established market price is a price established in the course of ordinary and usual trade between buyers and sellers free to bargain and that can be substantiated by data from sources independent of the offeror(s); and the net price after applying any standard trade discounts offered by the Contractor. The established market price under this clause may reflect industry-wide and/or geographically-based market price fluctuations for commodity groups or specific supplies. The economic indicators and publications to be used in determining the established market prices for purposes of this clause are listed in paragraph (b) of this clause.

(e) "Adjustment period" is the amount of time, measured in months, during which the unit price for each contract line item must remain fixed.

(1) The initial base unit price (see paragraph (c) above) shall be the price for the first adjustment period following contact award.

(2) The length of each adjustment period will be (*Contracting Officer shall insert number*) months;

(3) Unit Prices shall not be adjusted for the first adjustment period following contract award and may only be adjusted for each adjustment period after that first adjustment period; and

(4) There shall be (*Contract Officer shall insert number*) adjustment periods per calendar year.

(f) "Adjusted Unit Price" is the adjusted price for each contract line item applicable at the start of and throughout each new adjustment period, as calculated following the procedure in (g) below.

(g) The Adjusted Unit Price for each item for each adjustment period shall be determined by increasing or decreasing (as appropriate) the Base Unit Price applicable to that adjustment period for each item by the applicable Market Price Change for each item. Each Adjusted Unit Price shall be rounded to two decimal places. Adjustments shall be calculated as follows:

(1) Compute the Adjusting Market Price and the Base Market Price for each item subject to adjustment. (Round to four decimal places)

(2) Adjusting Market Price – Base Market Price = Market Price Change (+ or -). (Round to two decimal places)

(3) Current Base Unit Price (+ or -) Market Price Change = Adjusted Unit Price.

(4) The following calculation example is provided.

EXAMPLE OF ADJUSTMENT CALCULATION

Final Proposal Revision due date: June 28, 2013

*For the purpose of the example adjustment, the base market price will be the economic indicator for the four weeks immediately preceding the due date for Final Proposal Revision.

| ITEM | ECONOMIC INDICATOR | PUBLISHER/ PUBLICATION/ FREQUENCY PUBLISHED | BASE MARKET PRICE PERIOD | ADJUSTING MARKET PRICE PERIOD |
|---|---|---|---|---|
| Chicken Breast Filets | Breasts. B/S, Georgia FOB Dock, Final Wtd. Avg. Price | USDA/Broiler Market News Report/Final Wtd. Avg. Prices are Reported on Mondays* | 4 week weighted average price for end of period preceding adjustment period | 3 months immediately preceding the date of adjustment |

The arithmetic average of the prices listed in the United States Department of Agriculture (USDA) Broiler Market New Report for Chicken Breasts – B/S (Boneless/Skinless) during the four (4) week period immediately preceding the due date for Final Proposal Revisions will be used to calculate the base market price for the Chicken Breasts – B/S

Base Market Price calculation

*Note 1: The numbers used in the following example are hypothetical and are being utilized for illustration purposes only for how the price adjustments will be calculated pursuant to this clause.

*Note 2: The prices reported in the USDA/Broiler Market News are reported in cents per LB. To convert the prices in Dollars per LB, divide by 100. For the purpose of this example and the EPA price adjustment calculations, the prices shall be shown in Dollars per LB.

| Date | Price in Dollars per LB |
|---|---|
| 24 June 2013 | $1.7850 |
| 17 June 2013 | $1.7500 |
| 10 June 2013 | $1.8150 |
| 03 June 2013 | $1.8400 |
| Total Four Weeks | $7.1900 |
| Total/4 = Arithmetic average | $1.7975 |

*Note 3: For some four (4) week periods, the USDA may publish fewer than four (4) issues of the summary due to events such as Federal Holidays. In all such cases, only those issues published for the relevant four week period will be used in the calculations.

Base award date: August 30, 2013 Base Unit Price: $2.39

*Note 4: For the purpose of this example, the initial offered prices will be fixed for three months (August 30, 2013 – November 30, 2013), which would be the first adjustment period following contract award. For this example, the effective modification date for the second adjustment period is November 30, 2013.

The arithmetic average of the prices listed in the United States Department of Agriculture (USDA) Broiler Market New Report for Chicken Breasts – B/S (Boneless/Skinless) during the 3 month period (approximately 13 weekly reports) immediately preceding the effective date of the modification (i.e. November 30, 2013) will be used to calculate the first adjustment period for the Chicken Breasts – B/S

Adjusted Market Price calculation

| Date | Price in Dollars per LB |
|---|---|
| 25 November 2013 | $1.5200 |
| 18 November 2013 | $1.5500 |
| 11 November 2013 | $1.5900 |
| 04 November 2013 | $1.6350 |
| 28 October 2013 | $1.6700 |
| 21 October 2013 | $1.7950 |
| 14 October 2013 | $1.8650 |
| 07 October 2013 | $2.0300 |
| 30 September 2013 | $2.0350 |
| 23 September 2013 | $2.0600 |
| 16 September 2013 | $2.0750 |
| 09 September 2013 | $1.9850 |
| 02 September 2013 | $1.9000 |
| Total 13 Weeks | $23.7100 |
| Total/13 = Arithmetic average | $1.8238 |

1. Calculate the Adjusting Market Price and the Base Market Price. From the example above:
Base Market Price = $1.7975 and Adjusting Market Price = $1.8238 (Round to four decimal places)

2. Calculate Market Price Change (+/-):
Adjusting Market Price – Base Market Price = $1.8238 -$1.7975 = $0.03 (Round to two decimal places)

3. Calculate Adjusted Unit Price: Base Unit Price (+/-) Market Price Change
*Note: Since this is an example of the first price adjustment under this clause, the base unit price would be the price as awarded.

$2.39 + $.03 = $2.42

(h) Price adjustments pursuant to this clause shall be made by contract modification showing the calculations used to derive the adjusted contract unit price. All order pricing will be the contract price in effect at the time the order is placed. No price adjustment under this clause will take effect unless and until a formal modification adjusting the price is made.

(i) Any pricing actions pursuant to the Changes Clause or other provisions of the contract will be priced as though there were no provisions for economic price adjustment.

(j) *Upward ceiling on economic price adjustment*. The total increase in any contract unit price during and at the end of all adjustment periods to which a particular base unit price is applicable shall not exceed *Contracting Officer shall insert percentage* of that base unit price agreed to at time of award. There is no percentage limit on downward adjustments under this clause.

(k) If at any time the Contractor has reason to believe that within the near future a price adjustment under the provisions of this clause will be required that will exceed the adjustment ceiling for any item, the Contractor shall promptly notify the Contracting Officer in writing of the expected increase. The notification shall include a revised ceiling the Contractor believes is sufficient to permit completion of remaining contract performance, along with appropriate explanation and documentation as required by the Contracting Officer.

(l) If an increase in the price index would raise a contract unit price for an item above the current ceiling, the Contracting Officer may issue a contract modification to raise the ceiling. If the contract ceiling will not be raised, the Contracting Officer shall so promptly notify the Contractor in writing.

(m) *Revision of market price indicator*. In the event (i) any applicable market price indicator is discontinued or its method of derivation is altered substantially or (ii) the Contracting Officer determines that a particular market price indicator consistently and substantially no longer reflects market conditions, the parties shall mutually agree upon an appropriate and comparable substitute, and the contract shall be modified to reflect such substitute effective on the date the indicator was discontinued, altered, or began to consistently and substantially fail to reflect market conditions.

(n) *Disputes*. If the parties fail to agree on an appropriate substitute market price indicator or implementation of other matters addressed by this EPA clause, then the matter shall be resolved in accordance with the Disputes clause of the contract.

(o) *Examination of records*. The Contractor agrees that the Contracting Officer or designated representative shall have the right to examine the Contractor's books, records, documents, or other data the Contracting Officer deems necessary to verify Contractor adherence to the provisions of the clause.

(p) In the event any applicable market price indicator is not published for any week, quarter, month, etc., that week, quarter, month, etc., will not be included in calculating the Base Market Price or the Adjusting Market Price, as applicable. For instance, if within a three-month period an indicator was expected to be published 13 times (1 time per week) but was not published 2 times, the average of the 11 published prices only will be calculated. When a range of prices is provided, for the purposes of the calculations the arithmetic average of the high and low number will be calculated to determine the indicator for that period.

(End of clause)

**52.216-9085, Economic Price Adjustment -- DLA Multiple Award Schedule Contracts.**
As prescribed in 16.203-4(a)(1)(S-92), insert the following clause:

ECONOMIC PRICE ADJUSTMENT -- DLA MULTIPLE AWARD SCHEDULE CONTRACTS
(OCT 2015)

(a) The Contractor warrants that the unit price stated in the Schedule for _____ [*Offeror insert catalog part number(s) or state "all line items"*] is not in excess of the Contractor's applicable established price, proposed as the basis for the contract award, in effect on the contract date for like quantities of the same item. The term "unit price" excludes any part of the price directly resulting from requirements for preservation, packaging, or packing beyond standard commercial practice. The term "established price" means a price that --

(1) Is an established catalog or market price for a commercial item sold in substantial quantities to the general public; and

(2) Is the net price after applying any standard trade discounts offered by the Contractor.

(3) The Contractor shall identify the standard trade discount as follows: [*The Contracting Officer is to check a box to indicate whether paragraph (a)(3)(i) or (a)(3)(ii) applies.*]

(i) ☐ The standard trade discount offered is _____. [*Offeror insert discount percentage*] The contractor may offer increased discounts, either temporary or permanent, during the contract ordering period.

(ii) ☐ The standard trade discount including offered discount shall be provided in accordance with _____. [*The Contracting Officer shall insert the applicable clause(s), provision(s), or reference(s) within the solicitation.*]

(b) The Contractor shall promptly notify the Contracting Officer of the amount and effective date of each decrease in any established price that was used as the basis for the contract award. Each corresponding contract unit price shall be decreased by the same percentage that the established price is decreased. The decrease shall apply to those items ordered after the effective date of the decrease in the Contractor's established price and the online catalog price is modified by the contracting officer.

(c) If the Contractor's applicable established price that was used as the basis for the contract award is increased after the contract date, the corresponding contract unit price shall be increased, upon the Contractor's written request to the Contracting Officer, by the same or if requested by the Contractor a lower percentage, that the established price is increased and the online catalog price is modified by the contracting officer, subject to the following limitations:

(1) All prices shall be fixed for the initial 12-month period of the contract, unless otherwise specified at the time of award.

(2) No more than three requests for price increases per Schedule will be considered during each succeeding 12-month period of the contract.

(3) The aggregate of the increases during any 12-month period in any contract unit price under this clause shall not exceed ___ percent of the contract unit price in effect at the end of the preceding 12-month period. The Government may unilaterally change this limitation when market conditions during the contract period support such a change.

(4) An increase in a contract unit price shall not be executed and the online catalog shall not be modified under this paragraph (c) until the Contracting Officer verifies the reasonableness of the increase in the applicable established price. The increase shall apply to those items ordered after the effective date of the decrease in the Contractor's established price and the online catalog price is modified by the contracting officer.

(5) The Contractor will submit for all price increases/decreases.

(i) The commercial catalog/price list with the price change and the effective date for general public.

(ii) Additional information as requested by the Contracting Officer to support the price increase or decrease.

(End of Clause)

**52.217-9002 Conditions for Evaluation and Acceptance of Offers for Part Numbered Items.**
As prescribed in 17.7501(b)(3), insert the following provision:

CONDITIONS FOR EVALUATION AND ACCEPTANCE OF OFFERS FOR PART NUMBERED ITEMS (OCT 2014)

(a) The product described in the purchase order text (POT) or procurement item description (PID)of this solicitation is that product which the Government has determined to be acceptable. All offerors shall indicate below, or through an alternative means in an electronic quoting system, whether they are offering an "exact product," an "alternate product" (which includes a "previously reverse-engineered product"), a "superseding part number," or a "previously-approved product;" and shall furnish the data required for whichever is applicable. (To determine which type of product to indicate, offerors must refer to the criteria in subparagraphs (b)-(e) of this provision, respectively.) Any product offered must be either a product cited in the POT or PID or be physically, mechanically, electrically, and functionally

interchangeable with a product cited in the POT or PID, including additional requirements referred to in the POT or PID, if any.

Exact product – applies to contract line-item(s) (CLIN(s)): . . . . . .
Alternate/previously reverse-engineered product – applies to CLIN(s):
Superseding part number – applies to CLIN(s): . . . . . .
Previously-approved product – applies to CLIN(s): . . . . . .

(b) "Exact product."

(1) "Exact product" means a product described by the name of an approved source and its corresponding part number, as currently cited in the POT or PID ; modified (if necessary) to conform to any additional requirements set forth in the POT or PID ; and manufactured by, or under the direction of, that approved source. If an Offeror indicates that an "exact product" is being offered, the Offeror must meet one of the descriptions in subparagraphs (i)-(iv) below.

(Any Offeror not meeting one of these descriptions is not considered to be offering "exact product;" even though the item may be manufactured in accordance with the drawings and/or specifications of an approved source currently cited in the POT or PID.)

For any Offeror other than the manufacturer cited in the POT or PID, the Contracting Officer may request evidence to demonstrate technical acceptability of the supplies offered. Evidence requested will generally include information tracing the supplies back to the original equipment manufacturer or its authorized distributor. At a minimum, evidence must be sufficient to establish the identity of the product and its manufacturing source. The Contracting Officer determines the acceptability and sufficiency of documentation or other evidence, at his or her sole discretion. If an Offeror fails to provide the requested evidence/information or provides information that the Contracting Officer finds unacceptable, its offer may be rejected without further consideration under this solicitation.

(i) An approved source currently cited in the POT or PID offering its corresponding part number as cited in the POT or PID;

(ii) A dealer/distributor offering the product of an approved source that meets the description in subparagraph (i) above;

(iii) A manufacturer who (A) produces the offered item under the direction of an approved source currently cited in; and (B) has authorization from that approved source to manufacture the item, identify it as that approved source's name and part number, and sell the item directly to the Government. If requested by the Contracting Officer, the Offeror must provide documentation to demonstrate such authorization, or other evidence of technical acceptability such as information that traces the supplies back to the original equipment manufacturer. Such evidence could be documentation obtained directly from the approved source or identification on a Web site maintained by the approved source confirming that the manufacturer is an acceptable source for the item identified by that approved source's name and part number. If evidence cannot be obtained directly from the approved source, this does not necessarily preclude acceptance of the offer, if the Offeror provides adequate documentation or other evidence allowing the Contracting Officer to determine the approved source has oversight of and involvement in the manufacturing process.

(iv) A dealer/distributor offering the product of a manufacturer that meets the description in subparagraph (iii) above. If requested by the Contracting Officer, the Offeror/Contractor must provide documentation that demonstrates such authorization or other evidence of technical acceptability such as information that traces the supplies back to the original equipment manufacturer or its authorized distributor. Such evidence could be documentation obtained directly from the approved source or identification on a web site maintained by the approved source confirming that the item being offered is produced by a manufacturer that is an acceptable source for the item identified by that approved source's name and part number. If evidence cannot be obtained directly from the approved source or manufacturing source, this does not necessarily preclude acceptance of the offer, if the Contracting Officer can adequately document that the approved source has oversight of and involvement in the manufacturing process by other means.

(2) When the POT or PID identifies the item being acquired as a critical safety item (CSI), offers of exact product will be evaluated in accordance with 52.211-9005.

(c) "Alternate product."

(1) The Offeror must indicate that an "alternate product" is being offered if the Offeror is any one of the following:

(i) An Offeror who (A) manufactures the item for an approved source currently cited in the POT or PID; and (B) does not have authorization from that approved source to manufacture the item, identify it as the approved source part number, and sell the item directly to the Government;

(ii) A dealer/distributor offering the product of a manufacturer that meets the description in subparagraph (i) above;

(iii) An Offeror of a previously reverse-engineered product that is not currently cited in the POT or PID; or

(iv) Any other Offeror who does not meet the criteria in subparagraphs (b)(1), (d), or (e) of this provision.

(2) If an alternate product is offered, the Offeror shall furnish with its offer legible copies of all drawings, specifications, or other data necessary to clearly describe the characteristics and features of the alternate product being offered. Data submitted shall cover design, materials, performance, function, interchangeability, inspection and/or testing criteria, and other characteristics of the offered product.

If the offered product is to be manufactured in accordance with data the Offeror has obtained from elsewhere within the Government, the Offeror shall either furnish the detailed data specified in this paragraph, or supply a description of the data package in its possession; i.e., basic data document and revision, the date the data was obtained and from whom (Government agency/activity).

If the Offeror does not furnish the detailed data with its offer, the Contracting Officer will be unable to begin evaluation of the offered product until such time as the detailed data can be obtained from the Government agency/activity possessing the data.

If the alternate product is a previously reverse-engineered product, the Offeror shall provide: traceability documentation to establish that the offered item represents the item specified in the POT or PID (i.e., invoice from an approved source or submission of samples having markings of an approved source); number of samples that were examined; the process/logic used; raw data (measurements, lab reports, test results) used to prepare drawings or specifications for the offered item; any additional evidence that indicates the reverse-engineered item will function properly in the end item; and any evidence that life cycle/reliability considerations have been analyzed.

(3) In addition, the Offeror may be required to furnish data describing the "exact product" cited in the POT or PID. The data required from the Offeror depends on the level of technical data describing the exact product, if any, available to the Government. The possible levels of technical data the Government may have and the corresponding data submission requirements for Offerors are identified in subparagraphs (a)-(d) below.

For the item(s) being acquired under this solicitation, the level of data in the Government's possession and the corresponding requirements for data submission are identified in the POT or PID; or, if not specified in the POT or PID, are as follows: [buyer insert (a), (b), (c), or (d), as applicable, if the POT or PID does not identify]. (If the level of data in the Government's possession and Offeror requirements for data submission are not identified in either the POT or PID or in this subparagraph (c)(3), then subparagraph (i) below applies.)

(i) No data: This Agency has no data available for evaluating the acceptability of alternate products offered. In addition to the data required in subparagraph (c)(2) of this provision, the Offeror must furnish drawings and other data covering the design, materials, etc., of the exact product cited in the POT or PID, sufficient to establish that the Offeror's product is equal to the product cited in the POT or PID.

(ii) Adequate proprietary (i.e., limited rights) data: This Agency possesses adequate drawings and/or specifications for the exact product as cited in the POT or PID, but such data are proprietary (i.e., limited rights) and shall be used only for evaluation purposes. The Offeror must furnish the data required in subparagraph (c)(2) of this provision, but is not required to submit data on the exact product.

(iii) Inadequate data: This Agency does not have adequate data available for evaluating the acceptability of alternate products offered. In addition to the data required in subparagraph (c)(2) of this provision, the Offeror must furnish drawings and other data covering the design, materials, etc., of the exact product cited in the POT or PID, sufficient to establish that the Offeror's product is equal to the product cited in the POT or PID.

(iv) Adequate catalog data: This is a commercial off-the-shelf item. Adequate catalog data are available at the contracting office to evaluate alternate offers. In addition to the data required in subparagraph (c)(2) of this provision, the Offeror must furnish with its offer a commercially-acceptable cross reference list; or legible copies of all drawings, specifications or other data necessary to clearly describe the characteristics and features of the alternate product being offered, sufficient to establish that the Offeror's product is equal to the product cited in the POT or PID. The Offeror is not required to submit data on the exact product.

(4) Except for indefinite delivery purchase orders (IDPOs), if this solicitation is automated, the Contracting Officer will not evaluate offers of alternate product (which includes offers of previously

reverse-engineered product) for the current procurement. Instead, the Offeror shall submit a request to the appropriate location below for evaluation of the alternate product's technical acceptability for future procurements of the same item. The request for evaluation shall cite the national stock number (NSN) of the exact product and, as identified in this provision, include the applicable level of technical data on the alternate and exact products. The level of technical data that the Government has available for use to evaluate the acceptability of an alternate product offered, and the corresponding level of technical data that must be furnished with an offer of alternate product, will be identified either in the POT or PID or in paragraph (c)(2) of the provision at 52.217-9002. If the level of data and submission requirements are not identified in either of these locations in the solicitation, then 52.217-9002(c)(3)(i) applies.

(i) For solicitation numbers beginning with SPM7 or SPE7:

DLA Land and Maritime
Directorate of Procurement
Alternate offer monitor, BPP
Post Office (P.O.) Box 3990
Columbus, Ohio 43218-3990

(ii) For solicitation numbers beginning with SPE4 or SP0:

DLA Aviation
Office of the Competition Advocate
Attention: Small Business Office, DU
8000 Jefferson Davis Highway
Richmond, Virginia 23297-5100

(iii) For solicitation numbers beginning with SPM1, SPM2, SPM3, SPM5, or SPM8:

DLA Troop Support
Attention: (see note below)
700 Robbins Avenue
Philadelphia, Pennsylvania 19111-5096

Note: The address (attention line) will change based on the 5th digit of the PIIN as follows:

SPM1= Clothing and Textile (C&T)
SPM2 = Medical
SPM3 = Subsistence
SPM5 = formerly Aviation or L&M detachments (currently called hardware)
SPM8 = Construction and equipment (C&E)]

(iv) For solicitation numbers beginning with SPRRA1 and SPRRA2 of the PIIN:

Defense Logistics Agency – DLA Aviation
Office of the Competition Advocate
Building 5201
Redstone Arsenal, Alabama 35898

(v) For solicitation numbers beginning with SPRPA1 of the PIIN:

DLA Philadelphia
Competition Advocate Office
700 Robbins Avenue Building 1
Philadelphia, Pennsylvania 19111-5098

(vi) For Tank-Automotive and Armaments Command (TACOM) Depot Level Repairable (DLR) - DLA Land and Maritime solicitations beginning SPRDL1 of the PIIN:

Defense Logistics Agency
DLR Procurement Operations - ZG
6501 East Eleven Mile Road
Warren, Michigan 48397-5000

(vii) For Communications-Electronics Command **(**CECOM**)** DLR-DLA Land and Maritime solicitations beginning SPRBL1 of the PIIN:

Defense Logistics Agency
DLR Procurement Operations - ZL
6001 Combat Dr., Rm. C1-301
Aberdeen Proving Ground, MD 21005-1846

(d) "Superseding part number."

(1) The Offeror must indicate that a "superseding part number" is being offered if the offered item otherwise qualifies as an "exact product," except that the part number cited in the POT or PID has been superseded. The Offeror may be requested to furnish data, or provide confirmation through some other means, sufficient to establish that there are no changes in the configuration of the part. However, if such data are unavailable, the Offeror may be required to furnish technical data as required in paragraph (c) for "alternate products." (If such data indicate there have been changes in the configuration of the part, the offered item must be identified as an "alternate product.")

(2) For solicitation numbers beginning with SPE or SPM, any data to be furnished with an offer of a "superseding part number" should be mailed to the buyer at the procuring activity address on the solicitation. (Uploading the information with the quotation, or including it in the "Remarks" section, will make the offer a "bid with exception," causing it not to be evaluated.)

(e) "Previously-approved product."

(1) If the product offered has previously been furnished to the Government or otherwise previously evaluated and approved, the Offeror shall indicate in the space provided below, or through an alternative means in an electronic quoting system, the contract and/or solicitation number under which the product was furnished or approved.

Contract line item number(s) (CLINS) _____have been previously furnished or evaluated and approved under contract/solicitation number _____.

(2) If the product was furnished or evaluated and approved by a contracting activity different from the one issuing this solicitation, Offerors are advised that the Contracting Officer may not have access to records of another activity or other information sufficient to reasonably determine the offered product's acceptability. Therefore, in order to ensure that adequate data is available for evaluation, Offerors may elect to furnish with their offer the information requested by subparagraph (b) or (c) of this provision, whichever is applicable for the offered product. Offerors are advised that if the additional data is not furnished, the Government may not be able to evaluate the offer. (For solicitation numbers beginning with SPE, the information should be mailed to the buyer at the procuring activity address on the solicitation. Uploading the information with the quotation, or including it in the "Remarks" section, will make the offer a "bid with exception," causing it not to be evaluated.)

(f) For all types of offers ("exact product," "alternate product," "superseding part number," or "previously-approved product"), Offerors shall provide the commercial and Government entity (CAGE) code of the manufacturer and the part number being offered for each item in the solicitation.

(g) Failure to furnish adequate data and/or information as prescribed in subparagraph (b), (c), (d), (e), or (f) of this provision when required for the current procurement within 10 business days or less, or as otherwise required by the Contracting Officer or elsewhere in this solicitation, may preclude consideration of the offer.

For automated procurements, it is the responsibility of the Offeror when offering a "superseding part number" or a "previously-approved part number" to ensure that supporting documentation arrives at the contracting activity within 2 business days after the data is requested, or the offer may not be considered.

The Agency will make every effort to determine, prior to award, the acceptability of the products offered which meet the following dollar savings threshold, and/or which have a reasonable chance to receive an award; generally, the Agency will not evaluate alternate offers not meeting the dollar threshold. The savings potential is based on the cost of evaluation and is $200.00 if only a local technical evaluation is involved, plus an additional $1,500.00 for each required Engineering Support Activity evaluation.

If the time before proposed award does not permit evaluation and delay of award would adversely affect the Government, alternate offers will not be considered for the current procurement. Instead, they will be evaluated for technical acceptability for future procurements of the same item, if adequate data is submitted, as stipulated above.

When an alternate offer will not be considered for the current procurement, the Contracting Officer may request that the offeror, at its discretion, provide a sample product for testing and evaluation in addition to the data required in this provision. Although not mandatory, offerors are encouraged to provide the sample. This may facilitate the post-award evaluation and, if the alternate product is approved, increase the likelihood of its being added to the POT or PID in time for the next acquisition of the item.

The Offeror shall not submit a sample product until requested to do so. The testing of the sample product will be done at a testing facility; therefore, the shipping instructions will be provided with the request. Unless otherwise specified in the solicitation, samples shall be submitted at no expense to the Government, may be damaged or destroyed during testing without liability from the Government to the submitter, and consequently may not be returned to the offeror; samples that are not damaged or destroyed will be returned only at the offeror's request and expense.

For alternate offers not evaluated, the offeror's complete technical data package will be returned.

(h) If offerors desire to restrict the Government's use of data submitted for evaluation, the data must bear the appropriate legends as prescribed by Federal Acquisition Regulation (FAR) clause 52.215-1(e). In the event an award is made to an offeror submitting data without the appropriate legend, the Government will have unlimited rights to its use as defined in Defense Federal Acquisition Regulation Supplement (DFARS) clause 252.227-7013.

(i) It is the Government that determines if the documentation or other evidence furnished by an Offeror is adequate to satisfy the requirements in this provision. The Contracting Officer may at any time, pre-award or post-award, request evidence of the technical acceptability of the supplies offered in response to this solicitation. At a minimum, evidence must be sufficient to establish the identity of the product and its manufacturing source. The Contracting Officer determines the acceptability and sufficiency of documentation or other evidence, at his or her sole discretion. If the Contracting Officer requests evidence from a Contractor who received an award resulting from this solicitation and the Contracting Officer subsequently finds the evidence to be unacceptable, or if the Contractor fails to provide the requested evidence, the award may be cancelled.

(End of Provision)

**52.217-9003 Manufacturing or Production Information.**
As prescribed in 17.7302(f), a provision substantially as follows shall be inserted in negotiated solicitations:

MANUFACTURING OR PRODUCTION INFORMATION (NOV 2011)

If offers are submitted which fail to provide the actual manufacturing/production source(s) for the item(s) offered, or, if such information is provided but restricted from disclosure (by the inclusion of the Federal Acquisition Regulation (FAR) clause 52.215-12 legend or any other proprietary or confidentiality restriction) such offers may be rejected as technically unacceptable. This provision does not apply to commercial items.

(End of Provision)

**52.217-9006 Surge and Sustainment (S&S) Requirements.**
As prescribed in 17.9304(a), insert the following clause.

SURGE AND SUSTAINMENT (S&S) REQUIREMENTS (NOV 2011)

This solicitation includes items that are critical to support the Department of Defense's ability to conduct contingency operations. These items are designated as the S&S requirements, including the Services' go-to-war requirements. S&S requirements are identified in the schedule of supplies as monthly wartime rate (MWR) or D1-D6 schedule in the solicitation, and are in addition to peacetime quantities. The objective of this requirement is to obtain contractual coverage to meet the S&S quantities and sustainable accelerated delivery specified in this solicitation. S&S coverage includes access to production capability as well as vendor owned or managed inventory/safety stocks. Offerors will be evaluated on their ability to meet the terms and conditions of the S&S requirements. S&S requirements are defined as follows:

(a) Surge and sustainment capability means the ability of the supplier to meet the increased quantity and/or accelerated delivery requirements, using production and/or supplier base capabilities, to support increased requirements with accelerated delivery, such as for Department of Defense (DOD) contingencies or emergency peacetime requirements. This capability includes both the ability to ramp-up to meet accelerated delivery and/or increased quantities (i.e., Surge), as well as to sustain an increased production and delivery pace throughout the contingency (i.e., Sustainment). The spectrum of possible contingencies ranges from major theater wars to smaller-scale military operations.

(b) S&S quantity and accelerated delivery schedule are identified on an individual item basis, based on the Services' wartime planning requirements. The surge quantities are identified by Monthly Wartime Rate (MWR) as a percentage or an exact number; however, some items may require different delivery schedule such as D1-D6 schedule. The S&S quantity and delivery requirements are above and beyond the peacetime requirements.

(c) S&S capability assessment plan (CAP), (previously referred to as the "Surge Plan"). The CAP provides the offeror's method of covering S&S requirements, identification of competing priorities for the same resources, and date the Contractor can provide the required S&S capability. If any of the S&S quantity and delivery requirements cannot be met, the offeror must identify the shortfall and provide the best value solutions to include a proposed investment strategy to offset the shortfall. For example, the CAP may include, but is not limited to, one of the following scenarios to address wartime delivery requirements:

(1) The S&S quantity and delivery requirements can be fully covered within the supplier's resources.

(2) The S&S delivery schedule can be fully covered with early deliveries due to unit pack shipping (e.g., S&S quantity and delivery requirements is for 10 feet of wire every 30 days, and the wire is sold to the government in 100 foot rolls. A single delivery of one roll in the first 30 days would meet the requirement for ten 30-day delivery periods).

(3) The total S&S quantity and delivery requirements can be met but at a different delivery rate, and the supplier has no cost-effective investment strategy that would improve the capability to deliver according to the quantity and delivery requirements (e.g., the schedule calls for 20 o-ring seals each 30-day period, but the vendor needs a 30 day ramp-up and could deliver 40 in the second period and 20 each delivery period thereafter).

(4) The total S&S quantity and delivery requirements can be met but at a different delivery rate, and includes an investment strategy that would improve the supplier's capability to deliver according to the MWR or D1-D6 (e.g., the schedule calls for 20 seals each 30-day period, and the vendor can meet the schedule starting in the third ordering period but needs a Government investment to be capable of meeting deliveries in the first two months).

(5) The S&S quantity and delivery requirements can be partially covered (the supplier can only provide a fraction of the total quantities specified); however, the supplier has no cost-effective investment strategy that would improve the capability to deliver at the MWR or D1-D6.

(6) The S&S quantity and delivery requirements can be partially covered (the supplier can only provide a portion of the MWR or D1-D6 quantities specified), and includes an investment strategy that would improve the supplier's capability to deliver at the MWR or D1-D6.

(7) The S&S quantity and delivery requirements cannot be met with existing resources, and there is no cost effective solution to improve the industrial capability to deliver at the MWR or D1-D6.

(d) Stock rotation plan. The CAP must include a stock rotation plan for Government or supplier S&S investments (e.g., lead-time materials that are purchased using Warstopper funding) to ensure the newest materials are available for production. The stock rotation plan must not preclude the supplier from making the surge deliveries.

(e) Exit strategy. The CAP must include a proposed exit strategy describing how to transition and ramp-down S&S assets and/or Government investment. The exit strategy must be designed to conserve protected S&S resources when (1) the contract expires, (2) a follow-on contract transitions to another supplier and/or (3) the requirement is reduced or eliminated by the requiring customer(s). The exit strategy must consider peacetime demand patterns, production run levels, normal lead-times for raw materials used in the production process, and other relevant factors, and address least cost/best-value alternatives that minimize the risk of unused raw materials or the untimely disposition of other serviceable S&S assets before the contract expires.

(f) Government investments. Use of Government investment may be considered to address S&S coverage shortfalls as specified under (c)(3) to (7) above when it is in the Government's best interest. Use of Government investment is limited per clause 52.217-9010. Contracting Officer (CO) approval is required for any Government investment request and any investment costs incurred by the supplier without the explicit written approval of the Contracting Officer are the sole responsibility of the supplier.

(g) S&S validation/test plan. In most cases, the Government will develop a validation/test plan prior to verifying the supplier's capability against the required S&S CAP and the Schedule. Upon request, the supplier shall submit a S&S validation/test plan that defines how the S&S capability can be verified when

(1) complex industrial and manufacturing processes are involved, or

(2) the supplier methodologies for gaining visibility over supplier base capabilities within an existing structure to enable a more cost effective alternative. In any case, a validation/test plan will be developed prior to any validation/testing of the supplier's S&S capability.

(h) Agreement to participate in S&S validation/testing. By submission of an offer, the supplier agrees to participate in S&S validation/testing as required by the Government to verify the S&S capability as described in the approved CAP. Validation/testing may include any methodology that can verify the supplier's S&S capability. Validations will be conducted on randomly selected items by the Industrial Specialist after contract award and may be conducted throughout the contract period. Validation includes, but is not limited to, verification that the supplier and any subcontractor(s) have sufficient equipment, facilities, personnel, stock, pre-positioned raw material, production capabilities, visibility of supplier base resources and agreements, networks and plans for distribution (receiving, storing, packaging and issuing) and transportation services to accommodate the S&S requirements in the contract. This validation includes examination of any in-house work, review of the stock rotation plan (if applicable), and other contracts that impact the production of any added or accelerated quantities. The Government reserves the

right to require validation using other methodologies when deemed appropriate by the Contracting Officer. The language in this clause does not limit the Government's right, at any time after award, to perform inspections or validate the supplier's S&S capability.

(i) Supplier notification of S&S capability changes. The supplier agrees to maintain S&S capability to produce and/or deliver the S&S quantity identified in the Schedule of Supplies in accordance with the approved CAP and S&S terms and conditions throughout the life of the contract. Changes that negatively impact S&S capability must be reported in writing to the Contracting Officer within ten (10) working days after the supplier becomes aware of such an impact. Such notification must include a revised S&S CAP with the supplier's proposed corrective action(s) and date when the supplier can attain the required S&S capability. Refer to 52.217-9007(a) for instructions on submitting changes to the CAP.

(j) Government changes, Additions and Deletions to S&S Coverage. The identification of new S&S items in the peacetime schedule or increases in quantities of items already in the S&S schedule must be done through bilateral contract modifications. Deletion of S&S requirements or decreases in quantities will be made by the Government through unilateral contract modifications. The government reserves the right to obtain S&S requirements from other sources without liability to the supplier. This language does not relieve the supplier of the responsibility to provide, in accordance with the applicable delivery schedule, non-S&S and S&S quantities agreed to in the schedule and CAP during the contingency.

(k) Early or unexpected S&S requirements. The supplier shall support S&S requirements to the maximum extent practical (1) prior to the supplier achieving full S&S capability agreed to in the Schedule and the CAP, and (2) for requirements exceeding those agreed upon in the Schedule and the CAP, if agreed to by the Contractor and not exceeding any applicable contract maximum dollar value or quantity. The Government reserves the right to obtain S&S requirements from other sources without liability to the supplier.

(l) S&S execution. The Government will issue a surge order or series of orders equaling the MWR or D1-D6 each month, when executing S&S requirement. S&S orders are in addition to any other requirements included in the contract and do not excuse the Contractor from compliance with orders for non-S&S requirements. The order limitations clause applicable to peacetime requirements does not apply to the surge quantities if it conflicts with the quantity necessary to support a contingency. The Government reserves the right to order less than the MWR or D1-D6 quantity as specified on each surge order. Multiple orders for the same NSN may be issued to support multiple contingencies. The Government reserves the right to order in excess of the MWR or D1-D6 provided the supplier accepts the order.

(1) When a surge order is issued and Government investment is used to establish the S&S capability, the supplier must use funds generated from the order to refresh or replace S&S material (e.g., inventories of lead-time materials, partially finished units, or finished product) consumed within ninety (90) days to support future S&S requirements.

(2) When a surge order is issued and <u>no</u> Government investment is used to establish the S&S capability, the supplier must replace S&S material (e.g., inventories of lead-time materials, partially finished units, or finished product) consumed within ninety (90) days to support future S&S requirements.

(m) Contract expiration or termination. The Contracting Officer will notify the supplier and exercise the approved S&S exit strategy in accordance with the terms and conditions of the contract. The exit

strategy must conserve protected S&S resources when (1) the contract expires, (2) a follow-on contract transitions to another supplier and/or (3) the requirement is eliminated by the requiring customer(s). When exercising the exit strategy, the supplier must consider peacetime demand patterns, production run levels, normal lead-times for raw materials used in the production process, and other relevant factors, and address least cost/best-value alternatives that minimize the risk of unused raw materials or the untimely disposition of other serviceable S&S assets before the contract expires.

(End of Clause)

**Alternate I. Surge and Sustainment (S&S) requirements – alternate I.**
As prescribed in 17.9304(a), insert the following alternate clause.

SURGE AND SUSTAINMENT (S&S) REQUIREMENTS – ALTERNATE I (NOV 2011)

This solicitation includes items that are critical to support the Department of Defense's ability to conduct contingency operations. These items are designated as the S&S requirements, including the Services' go-to-war requirements. S&S requirements are identified as "Surge Quantity Option" expressed in a percent or exact quantity in this solicitation, and are in addition to peacetime quantities. The objective of this requirement is to obtain contractual coverage to meet the S&S quantities and sustainable accelerated delivery specified in this solicitation. S&S coverage includes access to production capability as well as vendor owned or managed inventory/safety stocks. Offerors will be evaluated on their ability to meet the terms and conditions of the S&S requirements. S&S requirements are defined as follows:

(a) Surge and sustainment capability means the ability of the supplier to meet the increased quantity and/or accelerated delivery requirements, using production and/or supplier base capabilities, in support of Department of Defense (DOD) contingencies and/or emergency peacetime requirements. This capability includes both the ability to ramp-up to meet early delivery or increased requirements (i.e., Surge), as well as to sustain an increased production and delivery pace throughout the contingency (i.e., Sustainment). The spectrum of possible contingencies ranges from major theater wars to smaller-scale military operations.

(b) S&S quantity and accelerated delivery schedule are identified on an individual item basis, based on the Services wartime planning requirements. The surge quantity option is expressed as a percent or an exact number with a sustainable accelerated delivery. The S&S quantity and delivery requirements are above and beyond the peacetime requirements in the schedule of supplies.

(c) S&S capability assessment plan (CAP) (previously known as the "surge plan"). The CAP provides the offeror's method of covering the S&S quantity and delivery requirements, identification of competing priorities for the same resources, and date the Contractor can provide the required S&S capability. If any of the S&S quantity and delivery requirements cannot be met, the offeror must identify the shortfall and provide the best value solutions to include a proposed investment strategy to offset the shortfall. For example, the CAP may include, but is not limited to, one of the following scenarios to address wartime delivery requirements:

(1) The S&S quantity and delivery requirements can be fully covered within the supplier's resources.

(2) The S&S delivery schedule can be fully covered with early deliveries due to unit pack shipping.

(3) The total S&S quantity and delivery requirements can be met but at a different delivery rate, and the supplier has no cost-effective investment strategy that would improve the capability to deliver according to the quantity and delivery requirements.

(4) The total S&S quantity and delivery requirements can be met but at a different delivery rate, and includes an investment strategy that would improve the supplier's capability to deliver according to the surge quantity option (e.g., the surge quantity option calls for 50% of estimated annual demand quantity or an exact quantity of 20 boxes) every 10 days, and the vendor can meet the schedule starting in the third ordering period but needs Government investment to become capable of meeting deliveries in the first two months).

(5) The S&S quantity and delivery requirements can be partially covered (the supplier can only provide a fraction of the total quantities specified); however, the supplier has no cost-effective investment strategy that would improve the capability to deliver at the surge quantity option.

(6) The S&S quantity and delivery requirements can be partially covered (the supplier can only provide a portion of the surge quantity option specified), and includes an investment strategy that would improve the supplier's capability to deliver at the surge quantity option.

(d) Government Investments. Use of Government investment may be considered to address S&S coverage shortfalls as specified under (c)(3) to (7) above <u>only</u> when it is in the Government's best interest. Use of Government investment is limited per clause 52.217-9010. Contracting Officer (CO) approval is required for any Government investment requests and any investment costs incurred by the supplier without the explicit written approval of the Contracting Officer are the sole responsibility of the supplier.

(e) Agreement to participate in S&S validation/testing. By submission of an offer, the supplier agrees to participate in S&S validation/testing as required by the Government to verify the stated S&S capability. Testing/Validation may include any methodology that can validate the supplier's S&S capability. Validations will be conducted on randomly selected items by the Industrial Specialist after contract award and throughout the contract period. Validations include, but are not limited to, verification that the supplier and any subcontractor(s) have sufficient equipment, facilities, personnel, stock, pre-positioned raw material, production capabilities, visibility of supplier base resources and agreements, networks and plans for distribution (receiving, storing, packaging and issuing) and transportation services to accommodate the S&S requirements in the contract. This validation includes examination of any in-house work, review of the stock rotation plan (if applicable), and other contracts that impact the production of any added or accelerated quantities. The Government reserves the right to require validation using other methodologies when deemed appropriate. The language in this clause does not limit the Government's right, at any time after award, to perform inspections or validate the supplier's S&S capability.

(f) Supplier notification of S&S capability changes. The supplier agrees to maintain S&S capability to produce and/or deliver the S&S quantity identified in the Schedule of supplies in accordance with the approved CAP and S&S terms and conditions throughout the life of the contract. Changes that negatively impact S&S capability must be reported in writing to the Contracting Officer within ten (10) working days after the supplier becomes aware of such an impact. Such notification must include a revised S&S

CAP with the supplier's proposed corrective action(s) and date when the supplier can attain the required S&S capability. Refer to 52.217-9007(a) for instructions on submitting changes to the CAP.

(g) Government changes, additions and deletions to S&S requirements. The identification of new S&S items in the peacetime schedule or increases in quantities of items already in the S&S schedule will be done through bilateral contract modifications. Deletion of S&S requirements or decreases in quantities will be made by the Government through unilateral contract modifications. The government reserves the right to obtain S&S requirements from other sources without liability to the supplier. This language does not relieve the supplier of the responsibility to provide, in accordance with the applicable delivery schedule, non-S&S and S&S quantities agreed to in the Schedule and CAP during the contingency.

(h) Early or unexpected S&S requirements. The supplier shall support S&S requirements to the maximum extent practical (1) prior to the supplier achieving full S&S capability agreed to in the Schedule and the CAP, and (2) for requirements exceeding those agreed upon in the Schedule and the CAP, if agreed to by the Contractor and not exceeding any applicable contract maximum dollar value or quantity. The Government reserves the right to obtain S&S requirements from other sources without liability to the supplier.

(End of Clause)

**52.217-9007 Surge and Sustainment (S&S) Instructions to Offerors.**
As prescribed in 17.9304(b), insert the following clause.

SURGE AND SUSTAINMENT (S&S) INSTRUCTIONS TO OFFERORS (JUN 2012)

The offeror must provide a detailed approach for covering S&S requirements in the capability assessment plan (CAP) and, if required, a validation/test plan.

(a) CAP:

Offerors must submit a CAP that describes the method and capability to meet the surge requirements identified as monthly wartime rate (MWR) or D1-D6 in the solicitation. (See 17.9301.) The CAP must also include the supplier's investment plan, stock rotation plan, and a proposed exit strategy to support the S&S requirement.

Offerors shall complete the electronic CAP (eCAP) online using the worldwide web industrial capabilities program (WICAP) website at https://wicap.hq.dla.mil/wicap/. Offerors shall print a copy of the CAP summary and submit it as part of the proposal. Any changes to the CAP before solicitation closing date or after contract award must be done using the website identified above. Instructions, examples and points of contact for the CAP are available on the website. The following are exceptions to the instruction to use eCAP:

(1) For subsistence, use the industrial capability questionnaire tool through the support planning integrated data enterprise readiness system[ (SPIDERS) website at https://spiders.dla.mil/.

(2) For medical items, use the industrial preparedness system (IPSYS) industrial capability survey tool through the DLA Troop Support DMMonline Directorate of Medical Materiel, single sign-on application website at https://www.medical.dla.mil/registration/consent/default.aspx.

(b) Validation/test plan:

Offerors shall submit a validation/test plan upon Government request. The plan must address the most cost effective way and best industry practices for evaluating the stated capability. If required, any cost associated with performing a validation/test including test plan development, testing, and testing report) will be separately priced. When possible, use statistical methods based on simulations, limited production runs, or other methods that do not require full production of the S&S requirements to conduct the validation/test. The following must be included in the validation/test plan: methodology, rating criteria (e.g., how offeror determines the stated coverage in the CAP), labor cost, material cost, and time required to conduct validation/test.

(End of Clause)

**Alternate I. Surge and Sustainment (S&S) Instructions to Offerors – Alternate I.**
As prescribed in 17.9304(b), insert the following alternate clause.

SURGE AND SUSTAINMENT (S&S) INSTRUCTIONS TO OFFERORS – ALTERNATE I
(NOV 2011)

(a) Offerors shall provide a detailed approach for covering S&S requirements in the capability assessment plan (CAP) and, if required, a validation/test plan.

(b) CAP.

(1) Offerors shall submit a CAP that describes the method and capability to meet the surge requirements identified in the solicitation. The CAP must also include the supplier's investment plan, stock rotation plan, and all other information in Section ____ of the solicitation.

(2) Offeror must complete and print the CAP summary for submittal as part of the proposal or the offer. Additionally, any attachments cited in the CAP must be submitted as part of the offer.

(End of Clause)

**52.217-9008 Surge and Sustainment (S&S) Evaluation.**
As prescribed in 17.9304(c), insert the following clause.

SURGE AND SUSTAINMENT (S&S) EVALUATION (NOV 2011)

Surge and sustainment capability is a requirement in this solicitation. The S&S evaluation will be based on the capability assessment plan (CAP), test/validation plan (if required), surge costs/prices, and S&S performance history (see (c) below). The offeror's proposal may be deemed unacceptable for failure to submit the required S&S information in accordance with the solicitation. The Government reserves the right to require additional information if necessary. S&S will be evaluated as follows:

(a) CAP evaluation. The offeror's CAP will be reviewed and assessed for responsiveness, completeness, technical merit, and S&S performance history (see (c) below). The CAP must demonstrate the offeror's ability to provide the full S&S quantity and delivery requirements as specified in the

solicitation; the technical merits of the proposed solutions to any identified shortfalls in S&S quantity and delivery requirements; and the ability to achieve these without Government investment.

(b) Validation/test plan (if required) evaluation. The offeror's validation/test plan will be evaluated to determine the extent to which the plan accurately measures the stated capability in the offeror's CAP. If the offeror requests Government investment to conduct the test, the Contracting Officer will make a unilateral determination to whether Government investment will be provided and, if it is, which phase(s) of the S&S capability testing will be funded (e.g., test plan development, testing and/or test plan report).

(c) S&S performance history evaluation. The quality and extent of the offeror's historical surge support performance will be considered in the evaluation. In the absence of or in addition to historical S&S capability support, the Contracting Officer may consider other relevant performance history where the offeror demonstrated the ability to quickly respond to and sustain higher than normal production rates or faster than normal delivery requirements, or both. This aspect of the offeror's past performance will not be considered in the evaluation of the past performance evaluation factor in this solicitation.

(End of Clause)

**Alternate I. Surge and Sustainment (S&S) Evaluation – Alternate I.**
As prescribed in 17.9304(c), insert the following alternate clause.

SURGE AND SUSTAINMENT (S&S) EVALUATION – ALTERNATE I (NOV 2011)

Surge and sustainment capability is a requirement in this solicitation. The S&S evaluation will be based on the capability assessment plan (CAP) and the quality and extent of the offeror's S&S past performance. The offeror's proposal may be deemed unacceptable for failure to submit the required S&S information in accordance with the solicitation. The Government reserves the right to require additional information if necessary. S&S will be evaluated as follows:

(a) CAP evaluation. The offeror's CAP will be reviewed and assessed for responsiveness, completeness, technical merit, and S&S past performance. The CAP must demonstrate the offeror's ability to provide the full S&S quantity and delivery requirements as specified in the solicitation; the technical merits of the proposed solutions to any identified shortfalls in S&S quantity and delivery requirements; and the ability to achieve these without Government investment.

(b) S&S Performance History Evaluation. The quality and extent of the offeror's previous S&S performance will be considered in the evaluation. In the absence of or in addition to DLA S&S past performance, the Contracting Officer may consider other relevant performance history where the offeror demonstrated the ability to quickly respond to and sustain higher than normal production rates or faster than normal delivery requirements, or both. This aspect of the offeror's past performance will not be considered in the evaluation of the past performance evaluation factor in this solicitation.

(End of Clause)

**52.217-9009 Surge and Sustainment (S&S) Pricing.**
As prescribed in 17.9304(d), insert the following clause.

SURGE AND SUSTAINMENT (S&S) PRICING (NOV 2011)

(a) When pricing S&S items, the offeror will use a six-month period for the purpose of providing the offered prices for S&S requirements. However, the concept of S&S requires the offeror to surge to a delivery rate and sustain that rate throughout contingency operations that may last longer than six months or when the S&S item has a lead-time greater than six months.

(b) The offeror's proposed S&S prices will be evaluated for price reasonableness and cost realism in accordance with Federal Acquisition Regulation (FAR) 15.404-1 and 15.403. If proposed surge prices are higher than the peacetime prices, the Government reserves the right to request information other than cost or pricing data, or, if applicable, certified cost or pricing data to determine price reasonableness and cost realism. A breakdown of the costs attributable specifically to surge may be requested. Information supporting offered surge prices must include sufficient description explaining the causes of the price difference. The information shall be provided as a separate attachment to the proposal and may be submitted in the offeror's own format unless the Contracting Officer requires a specific format described in the solicitation.

(c) In accordance with FAR 15.403-4, the Truth in Negotiation Act (TINA) threshold includes S&S prices. If TINA is applicable, the Contracting Officer must obtain a certified cost or pricing data if none of the exceptions in 15.403-1(b) applies. If the S&S pricing exceeds the peacetime pricing, the additional information referred to in paragraph d. below is subject to certification, as applicable, in accordance with FAR 15.406-2.

(d) The offeror should provide a proposal that contains the offeror's best terms from a price and technical standpoint. When S&S pricing exceeds peacetime pricing, the offeror's proposal must identify the additional costs, if any, for supporting S&S requirements that are above the costs associated with peacetime buys, such as premium pay for overtime and/or additional shift, cost of expedited delivery of materials from sub-tier suppliers, minimum purchase quantities from sub-tier suppliers, the cost of reserving the production capacity and maintaining extra inventory, raw materials, or components to meet the S&S requirements.

(End of Clause)

**52.217-9010 Limitations on Use of Surge and Sustainment (S&S) Government Investment.**
As prescribed in 17.9304(e), insert the following clause.

LIMITATIONS ON USE OF SURGE AND SUSTAINMENT (S&S) GOVERNMENT INVESTMENT
(NOV 2011)

(a) The capability assessment plan (CAP) must include the offeror's investment strategy in accordance with 52.217-9006. In the event the S&S requirement cannot be met with the supplier's resources and there is no cost effective solution to improve the industrial base capability, limited Government investment may be considered, if it is in the best interest of the Government. The supplier shall not incur any expenses before receiving written approval of Government investment from the Contracting Officer, and acts at its own risk in advance of such approval. Any Government investment will only be used for obtaining S&S coverage in accordance with the terms and conditions of the contract. In the event of changes in conditions (e.g. manufacturing, labor market, industry, technology, etc.) that warrant a different investment approach to obtaining the S&S coverage, the supplier shall notify the Contracting Officer immediately upon knowledge of the change and shall submit, within 30 days thereafter, a new

capability assessment plan describing the revised strategy for Contracting Officer's approval. If the initial investment has not been made or completed, the supplier will suspend S&S investment until receipt of written approval from the Contracting Officer.

(b) The Contractor shall not use Government S&S investments for any purpose other than to support S&S delivery orders, unless such use has been authorized by the Contracting Officer in writing. The Contractor shall submit in writing to the Contracting Officer any desired use of the S&S investments and consideration offered to the Government for this use.

(c) The supplier's stock rotation plan must ensure that newest materials are available for production and no material is held beyond its shelf-life expiration date, and use of Government investments (e.g., lead-time materials) is only authorized to support S&S delivery orders. A stock rotation plan must be included as part of the supplier's CAP and shall not preclude the supplier from making the surge deliveries.

(End of Clause)

**52.217-9011 Provisioning.**
As prescribed in 17.7601-92(a), insert the following clause:

PROVISIONING (DEC 2011)

(a) The Government hereby

[ ] (Buyer fill-in) will require

[ ] (Buyer fill-in) reserves the right to require provisioning for the end item specified herein in accordance with the requirements of Military Standard 1552, Provisioning Technical Documentation, Uniform Department of Defense (DoD) Requirements For, and Military Standard 1561, Provisioning Procedures, Uniform DoD, _____ (enter date of current issue in effect on date of contract award or on date of Solicitations). Such provisioning will include: Furnishing of technical documentation necessary to identify and determine the range and quantity of support items that may be required as spares, repair parts, special tools, and test equipment (Support Items) as set forth in paragraph (b) below; furnishing of supplementary provisioning technical documentation, as required; participation in any provisioning conference(s) deemed necessary; and the furnishing of support items in the range and quantity required for adequate end item (equipment) support.

(b) Provisioning technical documentation.

Provisioning technical documentation to be delivered to the Government will be specified on Department of Defense (DD) Form 1949-2, Provisioning Requirements Statement, DD Form 1949-1, Provisioning Technical Documentation Data Selection Sheet and DD Form 1423, Contract Data Requirements List (CDRL). If provided in the solicitation, prices for all provisioning requirements specified on the DD Forms 1949-1, 1949-2, and 1423 should be submitted to the Contracting Officer with the offer and will be included in offer evaluation.

If it is determined after contract award that provisioning is required, DD Form 1949-2, Provisioning Requirements Statement, DD Form 1949-1, Provisioning Technical Documentation Data Selection Sheet and DD Form 1423, Contract Data Requirements List, will be furnished to the Contractor. The

Contractor will have 30 days after receipt of the notice of the proposed modification to return a priced proposal. The final price and delivery applicable to such documentation will be subject to negotiation between the parties.

In addition to the priced proposal indicated above, the Contractor may also submit with the proposal a statement of prior submission, as defined in Military Standard 1561, paragraph 5.3.11.1. Statement of Prior Submission information shall be furnished on DLA procurement clause, Waiver/Reduction of Provisioning Technical Documentation and Supplementary Provisioning Technical Documentation Requirements.

(c) Supplementary provisioning technical documentation.

If the Contracting Officer requires certain supplementary documentation at the time a solicitation is issued (for items on the various lists as indicated in Military Standard 1561, paragraph 5.3.8.), then this amount and the nature of the documentation required to be delivered to and retained by the Government will be specified on DD Form 1423, CDRL. Prices for all provisioning requirements specified on DD Form 1423 should be submitted to the Contracting Officer with the offer and will be included in the offer evaluation. Additional documentation such as Federal item identifications per Military Standard 1561, paragraph 5.3.9, may be ordered at any time prior to final delivery of end items under the contract.

If, after contract award, the Contracting Officer requires certain supplementary documentation for items on the various lists in addition to that required by Military Standard 1561, paragraph 5.3.8. such as Federal Item Identifications, the Contracting Officer will issue a notice of such requirement indicating the amount and nature of the documentation required. The Contractor will have 30 days after receipt of the notice of the proposed modification to return a priced proposal. The final price and delivery applicable thereto will be the subject of negotiation between the parties.

(d) Provisioning conferences.

The Provisioning Requirements Statement, DD Form 1949-2, will advise the Contractor of requirements for provisioning conference(s) provided for in Military Standard 1561. If a decision is reached that such a conference(s) is required, the Contracting Officer will so advise the Contractor. Upon such notification, the Contractor will provide competent personnel, adequate facilities, if requested, and all available pertinent technical information. The Contractor will promptly advise the Contracting Officer of any contemplated increase in costs because of the conference(s) requirement. The time and place of the conference(s) and any equitable adjustment to the contract price will be subject to negotiation between the parties.

(e) Support Items.

As a result of the above actions, the Contracting Officer may, from time to time, issue provisioned item orders for spares, repair parts, tools, and test equipment or components (support items) being purchased under the contract for an initial period of operation. Such order or orders which will be placed prior to final payment under the contract may provide for deliveries concurrently with or subsequent to delivery of the equipment.

If concurrent delivery is required and such delivery necessitates a delay in delivery of the end items or components, an adjustment in the delivery requirements will be considered. Within 60 days after receipt

of the provisioned item order, the Contractor will submit firm prices for the items ordered. The final prices will be subject to negotiation between the parties.

Unless otherwise specified, these prices will include the cost of preparation for delivery (preservation, packaging, packing, and container marking) in accordance with Level A packaging of Military Standard 794, Level A packing for overseas destination and Level B packing for contiguous United States (CONUS) destination.

If the parties are unable to agree under paragraphs (b), (c), (d) and (e) of this clause as to price and/or as to time of performance, the Contracting Officer will unilaterally determine price and/or time of performance. This unilateral determination is subject to the terms of the "Disputes" clause of this contract.

(End of Clause)

**52.217-9012 Warstopper Program Material Buffer Availability.**
As prescribed in 17.9305, insert the following clause:

WARSTOPPER PROGRAM MATERIAL BUFFER AVAILABILITY (MAY 2013)

(a) General. The Warstopper program material buffer ("Buffer") was created to decrease lead times for defense contracts relating to military systems with a wartime requirement. A buffer requirement is established by the Contracting Officer, when a supply contract is awarded, to fulfill a need for warstopper raw material. A list of available buffer material can be found at https://wicap.hq.dla.mil/buffers. If the buffer material is not available or the material is inadequate to complete the requirement, the Contractor shall contact the Contracting Officer Representative (COR) for guidance. Intervention by the Government may occur to prioritize wartime requirements at the discretion of the COR or for additional reasons, but by exception. When a buffer has been established, the following process shall be used to submit requests for buffer material. A valid request by defense Contractors to use the material buffers includes the following:

(1) A defense Contractor or sub-tier Contractor supporting a prime defense Contractor with a current, active defense contract with the U.S. Government;

(2) A contract directly between the defense Contractor and a material supplier listed on the buffer website (https://wicap.hq.dla.mil/buffers);

(3) The following information must be provided:

(i) Requestor's name,

(ii) U.S. Government contract number,

(iii) Defense Priorities and Allocations System (DPAS) rating,

(iv) Material specification,

(v) Quantity required, and

(vi) Required delivery date.

(b) The material supplier provides material from the buffer upon a valid request and notifies the COR in monthly reporting. When requests exceed the buffer's maximum monthly material availability, the material supplier may negotiate phased delivery of material across the material monthly availability; or the Government COR may prioritize the release of the material at the Government's discretion.

(c) Businesses accessing the buffer (manufacturers) are entitled to their contracted pricing with the material supplier if such an arrangement is established or standard (not spot market) pricing if prior arrangements have not been established. Businesses using the buffer are solely responsible for costs of using the buffer, and the Government has no liability either for these costs or for delays or other effects arising from the use of the buffer.

(d) The buffer material provided is not Government-furnished material, but is rather a normal vendor-to-vendor transaction with all applicable warranties and guarantees provided through the commercial transaction.

(e) The current material Buffer suppliers and materials may be reviewed at https://wicap.hq.dla.mil/buffers.

(End of Clause)

**52.217-9017 Tailored Logistics Support Purchasing Reviews.**
As prescribed in 17.9508(a), insert the provision/clause in solicitations/contracts.

TAILORED LOGISTICS SUPPORT PURCHASING REVIEWS (NOV 2011)

(a) From the commencement of performance of this contract until 3 years after the final contract payment, the Contractor shall allow the Contracting Officer, Administrative Contracting Officer, Defense Contract Management Agency (DCMA), Defense Contract Audit Agency (DCAA), and any other duly authorized representative of the Contracting Officer access to all records and information pertaining to those items or services for which the Government is relying on the Contractor's purchasing system to determine that competition was obtained or to justify that prices are fair and reasonable. The Contractor shall maintain records subject to this clause for not less than 3 years after the contract final payment.

(b) The Contracting Officer may conduct reviews of purchased items or services provided under this contract regardless of dollar value that meet the criteria in paragraph 1 of this clause to ascertain whether the Contractor has obtained the best value. The Contractor shall seek competition to the maximum extent practicable for all purchases. Contractor purchases of any supplies or services shall solicit a competitive quotation from at least two independently-competing firms. For other than sole source items, the request for quotations shall, to the extent practical, solicit offers from different manufacturers or producers. If the Contractor is unable to obtain quotes for competing items from two or more such independently-competing firms, the Contractor shall retain supporting documentation for its rationale for selection of the suppliers solicited and chosen to supply the items, and for its determination that the price was fair and reasonable. The Contractor is responsible for maintaining this same documentation for all sole source/non-competitive actions. The following price reasonableness and documentation requirements are applicable to all purchases, regardless of dollar value:

(1) A price is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person in the conduct of competitive business. The Contracting Officer will examine the prices with particular care in connection with buys that may not be subject to effective competition restraints. The Contractor's price will not be presumed to be reasonable. If an initial review of the facts results in a challenge of a specific price by the Contracting Officer or the Contracting Officer's representative, the burden of proof shall be upon the Contractor to establish that the price is reasonable under the standards in Federal Acquisition Regulation (FAR) Subpart 15.4 and FAR 31.201-3.

(2) The Contractor shall keep the documentation to a minimum, but shall retain data supporting the purchases either by paper or electronically. At a minimum, price quotations and invoices shall be retained. Should the Contractor receive an oral price quotation, the Contractor shall document who the supplier or subcontractor is by complete name, address, telephone number, price, terms and other conditions quoted by each vendor. Price quotes for supplies shall be broken down by individual items, shipping costs, and any other included expenses. Price quotes for incidental services which are not pre-priced in the contract shall include labor hours and costs or prices, as applicable, including the total price of the job, individual pricing for the portions of the work if applicable, materials, and all other elements of cost, overhead, and profit. This price breakdown documentation shall be made for each subcontractor performing work on this contract.

(c) When the Contractor is purchasing from subcontractors or other sources and receives a discount or rebates, the Contractor shall immediately pass these savings to the Government in the contract price and invoice for payment. The Contractor is required to use diligence in the selection of the most economical method of delivery of the product or services by selecting a best value method of delivery based on the urgency and nature of the work or product required. When labor hours are involved in the work to be accomplished and the Contractor has not already pre-priced the effort to use its own labor force, the Contractor shall provide the labor at rates required by the contract (for example, Service Contract Act or Davis-Bacon Act rates) or at rates based on competition if mandatory rates are not required by the contract.

(d) If the Contracting Officer determines that the purchased product or service is unreasonably priced, the Contractor shall refund to the Government the amount the Contracting Officer determines is in excess of a reasonable price. The Contracting Officer shall notify the Contractor in writing in accordance with FAR 32.610, giving the basis for the determination and the amount to be refunded. The Contractor shall make the refund payment in accordance with directions from the Contracting Officer, and shall provide proof of the refund payment to the Contracting Officer. The Contracting Officer may collect the amount due using all available means in accordance with FAR Subpart 32.6. FAR 52.232-17, Interest, is applicable to payments not made within 30 days of the demand for payment. Any disputes arising under this provision shall be handled in accordance with the "Disputes" clause of this contract.

(e) At the midpoint of each performance period if the period is a year or less long or annually if the performance period is more than a year, upon receipt of notification from the Contracting Officer of the intent to exercise an option, or if otherwise requested, the Contractor shall provide the Contracting Officer an affirmation in the following form, signed by an authorized representative of the Contractor:

"To the best of my knowledge and belief, during the period beginning _____ (insert date) and ending_____(insert date), _____(insert Contractor's name) furnished all supplies or services called for by Contract number _____ in accordance with all applicable requirements. I further affirm that the supplies or services are of the quality specified and conform in all respects with

the contract requirements, including specifications, drawings, preservation, packaging, packing, marking requirements, and item identification, and are in the quantity required. The items and services were competed or prices are justified as fair and reasonable in accordance with the requirements of _____(name/number of the clause)."

(End of Clause)

**52.217-9018 Supply Assurance Through Multisource Contracting.**
As prescribed in 17.9004, insert the following provision:

SUPPLY ASSURANCE THROUGH MULTISOURCE CONTRACTING (NOV 2011)

(a) The Government reserves the right to make multiple awards to assure the availability of supplies when first article testing is required, if the Contracting Officer determines that the item(s) to be procured is (are) not available in the marketplace for immediate delivery. In such cases, it may be in the Government's best interests to increase the likelihood of supply availability by making awards to both an unproven and a proven source of supply for this item, or by making awards to more than one unproven source of supply, if there are no sources currently waived for the first article test requirement. A proven source is defined as a currently waived for the first article test requirement source that meets the criteria for first article waiver.

(b) When a multisource award basis exists, the Contracting Officer will award the larger portion of the total requirement to the offeror that represents the best value to the Government based on the evaluation scheme included in the solicitation.

(1) If awards will be made to a proven source as well as an unproven source, the source that represents the best value to the Government shall receive not less than 60% of the total requirement.

(2) If awards will be made to two unproven sources, the source that represents the best value to the Government shall receive not less than 60% of the total requirement.

(c) Unless an offeror otherwise qualifies its offer, unit prices submitted for the total requirement will apply to any partial awards.

(d) In the event that an unproven source fails to complete first article testing requirements, the Government may increase the quantity of supplies called for in the schedule of this contract to the proven source (one that has successfully met first article requirements), at the unit prices specified, up to and including 100% of the quantity awarded to the unproven source. This option is separate and distinct from any other option provision included in this contract.

(End of Provision)

**52.217-9020 Corporate Contract Fill Rate and Unfilled Orders.**
As prescribed in 17.9700(a), insert the following clause:

CORPORATE CONTRACT FILL RATE AND UNFILLED ORDERS (AUG 2008)

(a) Definitions. As used in this Clause:

(1) "Fill rate" means the percentage of the total quantity of the items ordered which are shipped within ____ days of receipt of order. For example, if ten orders of ten each are received and eight shipments of 10 each and one shipment of five each are made in response to nine of the orders, a fill rate of 85% has been obtained. The fill rate achieved during each semiannual period will be used to set the authorized markup for the following period.

(2) "Receipt of the order" means the date on which the electronic transmission of the requisition/delivery order is made from the supply chain to the Contractor. Requisitions will be issued for DLA owned stock. Delivery orders will be issued for new material.

(3) "Shipment" means the date on which the item is delivered by the Contractor to the designated carrier.

(b) The Contractor agrees to provide a fill rate of ____% for the items included on this contract. If the agreed upon fill rate of ____% is achieved the markup to the contract price which the Contractor is authorized to charge is _%. If a fill rate lower than ____% but greater than or equal to ____ is realized, the authorized markup is reduced to ____%. If a fill rate less than ____ but greater than or equal to ____ is realized, the authorized markup is reduced to ____%. A fill rate of less than ____% is determined to be an unacceptable level of performance. If the calculated fill rate is less than ____% for two successive contract periods, the Government may terminate the contract for default; however, if the contract is not terminated, the authorized markup for a fill rate less than ____% is reduced to ____%.

(c) Items for which orders are received in the first 6 month period that cannot be filled for any of the following reasons will not be used in the fill rate calculation:

(1) If no Government stock is transferred and the lead time to obtain stock is greater than the time between the inclusion of the item on the contract (i.e. contract award or contract modification) and the time in which the item would normally be included in the fill rate calculation for the next contract period, then the item will not be used in the fill rate calculation.

(2) If the Government due in is not received by the Contractor, then the item will not be used in the fill rate calculation.

(3) If the Contractor receives order(s) for quantities greater than the Government-provided annual demand estimate, then the item will not be used in the fill rate calculation.

(d) The fill rate will be calculated semiannually on a cumulative basis for all orders received in the semiannual contract period. In order to avoid administrative difficulties, the period of time used to calculate the fill rate and the period of time to which a particular authorized markup applies will not coincide. The Contractor will calculate the fill rate for the preceding six months when the tenth month of the contract is completed. The calculated fill rate and the date on which this calculation is based will be provided to the DPRO and the supply chain within 30 days after completion of the tenth month and after the completion of each subsequent six month period for confirmation and concurrence of fill rate.

(e) The percentage of on time shipments will be calculated on a semiannual basis. For purposes of this clause only, dates will be calculated starting with the first complete day after receipt of the order. For example, if the order is received at 4:00 p.m. on Monday, shipment at any time during Tuesday will be

counted as shipping on the first day. For purposes of this clause only, months will be calculated starting with the first complete calendar month after the beginning of the contract. For example, if the contract is issued on Aug 12, 2007, the first month is September, 2007. Complete records of the fill rate will be maintained by the Contractor and made available for Government inspection.

(f) The Government will prepare a modification to the contract adjusting the authorized markup as needed effective the beginning of the thirteenth month of the contract (or other definitive period). The subsequent periods for fill rate calculation and authorized markup adjustment will be every semiannual period. The authorized markup for the initial twelve month contract period is ____%.

(g) A backorder is defined as a requirement for an item which cannot be filled within ___ days of receipt of order. The Contractor agrees to ship ___% of all backordered items within 90 days of receipt of the order. Receipt of the order is defined as the date on which the electronic transmission of the requirement is made from the supply chain to the Contractor. Shipment is defined as the date on which the item is delivered by the Contractor to the designated carrier. The percentage of backorders filled on time will be calculated on a semiannual basis concurrent with the fill rate calculations.

(End of Clause)

**52.217-9023 Restriction of Alternate Offers for Source Controlled Items.**
As prescribed in 17.7502(b)(2)(S-90) insert the following provision:

RESTRICTION OF ALTERNATE OFFERS FOR SOURCE CONTROLLED ITEMS (JUN 2008)

(a) This acquisition is restricted to source(s) specified on the source control drawing applicable to the item in the purchase order text (POT). Only offers which propose to supply the exact product of the approved sources will be considered for award.

(b) DLA will not evaluate and approve alternate offers for this item. Offerors who are interested in qualifying their product for purposes of future acquisitions must contact the cognizant design activity specified on the source control drawing.

(c) Award of this solicitation will not be held pending qualification and approval of any product. If your product has been recently approved but not added to the list of approved sources cited in the source control drawing, a copy of the cognizant design activity's letter of approval must be submitted with your offer.

(End of Provision)

**52.219-9004 Small Business Program Representations.**
As prescribed in 19.307(90), insert the following provision:

SMALL BUSINESS PROGRAM REPRESENTATIONS (NOV 2011)

(a) In order to facilitate the use of electronic commerce/electronic data interchange while fulfilling the requirements of the small business program, certain socioeconomic information must be provided in a coded, rather than a fill-in format. Because electronic commerce/electronic data interchange (EC/EDI) transactions are often reformatted in transmission, the use of these codes will prevent misinterpretation

within the system. The recording of unique codes instead of the traditional "x-in-the-box" form of information entry may also preclude potential mistakes in socioeconomic program reporting.

(b) In order to record the representations and certifications contained in Federal Acquisition Regulation (FAR) provision 52.219-1, Small Business Program Representations, and in accordance with the definitions found therein, the offeror represents and certifies as a part of its offer that it is a _____business type. (The offeror shall select the one code from the following listing which represents the offeror's business type.) The offeror's recording of its business type herein by means of an alpha code replaces the marking of the appropriate boxes in FAR 52.219-1, paragraph (b). The penalties for misrepresentation of business status still apply; see FAR 52.219-1, paragraph (d)(2).

Code B=Small Business. Enter code B if your firm is a small business concern, as defined in FAR 52.219-1, paragraph (c).

Code M=Small Disadvantaged Business. Enter code M if your firm is a small disadvantaged business concern, as defined in FAR 52.219-23, paragraph (a).

Code U=Woman-Owned Small Disadvantaged Business. Enter code U if your firm is a woman-owned business, as defined in FAR 52.219-1, paragraph (c), and a small disadvantaged business, as defined in FAR 52.219-23, paragraph (a).

Code W=Woman-Owned Small Business. Enter Code W if your firm is a woman-owned small business, as defined in FAR 52.219-1, paragraph (c).

Code A=Large business. Enter code A if your firm is not included in any of the above categories.

(End of Provision)

**52.219-9008 Combined HUBZone/Small Business Set-Aside Instructions – Type 1.**
As prescribed in 19.508(90)(a), insert the following clause:

COMBINED HISTORICALLY UNDERUTILIZED BUSINESS ZONE (HUBZONE)/SMALL BUSINESS SET-ASIDE INSTRUCTIONS – TYPE 1 (NOV 2011)

This solicitation is restricted to small business concerns and Federal Prison Industries (FPI). All small businesses are encouraged to submit quotes; however, award will be made in the following order of set-aside precedence: (1) HUBZone small business concerns (Federal Acquisition Regulation (FAR) clause 52.219-3); then, if no qualified quote is received from a HUBZone small business concern at a fair market price, (2) small business concerns (FAR 52.219-6) or FPI (FAR 52.219-6, Alternate II). The FAR clauses contained herein (except paragraph (b) of 52.219-3) apply to the solicitation. Only the FAR clause matching the awardee's Small Business Program and Type representation applies to the award.

(End of Clause)

**52.219-9009 Combined HUBZone/Small Business Set-Aside Instructions – Type 2.**
As prescribed in 19.508(90)(b), insert the following clause:

COMBINED HISTORICALLY UNDERUTILIZED BUSINESS ZONE (HUBZONE)/SMALL BUSINESS SET-ASIDE INSTRUCTIONS – TYPE 2 (FEB 2006)

This solicitation is restricted to small business concerns and Federal Prison Industries (FPI). All small businesses are encouraged to submit quotes; however, award will be made in the following order of set-aside precedence: (1) HUBZone small business concerns (Federal Acquisition Regulation (FAR) clause 52.219-3); then, if no qualified quote is received from a HUBZone small business concern at a fair market price, (2) small business concerns (FAR 52.219-6 Alternate I) or FPI (FAR 52.219-6, Alternate II). The FAR clauses contained herein (except paragraph (b) of 52.219-3) apply to the solicitation. Only the FAR clause matching the awardee's Small Business Program and Type representation applies to the award.

(End of Clause)

**52.219-9013 Combined Set-Aside Instructions – Type 1.**
As prescribed in 19.508(c), insert the following clause:

COMBINED SET-ASIDE INSTRUCTIONS – TYPE 1 (NOV 2011)

(a) This solicitation is restricted to small business concerns and Federal Prison Industries (FPI). All small businesses are encouraged to submit quotes; however, award will be made in the following order of set-aside precedence:

(1) Service-disabled veteran-owned small business (SDVOSB) concerns (Federal Acquisition Regulation (FAR) clause 52.219-27); then, if no qualified quote is received from an SDVOSB concern at a fair market price,

(2) Historically underutilized business zone (HUBZone) small business concerns (FAR 52.219-3); then, if no qualified quote is received from a HUBZone small business concern at a fair market price,

(3) small business concerns (FAR 52.219-6) or FPI (FAR 52.219-6, Alternate II).

(b) The FAR clauses contained herein (except paragraphs (b) of 52.219-3 and 52.219-27) apply to the solicitation. Only the FAR clause matching the awardee's Small Business Program and Type representation applies to the award.

(End of Clause)

**52.219-9014 Combined Set-Aside Instructions – Type 2.**
As prescribed in 19.508(90)(d), insert the following clause:

COMBINED SET-ASIDE INSTRUCTIONS – TYPE 2 (NOV 2011)

(a) This solicitation is restricted to small business concerns and Federal Prison Industries (FPI). All small businesses are encouraged to submit quotes; however, award will be made in the following order of set-aside precedence:

(1) Service-Disabled Veteran-Owned Small Business (SDVOSB) concerns (Federal Acquisition Regulation (FAR) clause 52.219-27); then, if no qualified quote is received from a SDVOSB concern at a fair market price,

(2) Historically Underutilized Business Zone (HUBZone) small business concerns (FAR 52.219-3); then, if no qualified quote is received from a HUBZone small business concern at a fair market price,

(3) Small business concerns (FAR 52.219-6, Alternate I) or FPI (FAR 52.219-6, Alternate II).

(b) The FAR clauses contained herein (except paragraphs (b) of 52.219-3 and 52.219-27) apply to the solicitation. Only the FAR clause matching the awardee's Small Business Program and Type representation applies to the award.

(End of Clause)

**52.219-9015 Combined Service-Disabled Veteran-Owned Small Business/Small Business Set-Aside Instructions – Type 1.**
As prescribed in 19.508(e), insert the following clause:

COMBINED SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS/SMALL BUSINESS SET-ASIDE INSTRUCTIONS – TYPE 1 (NOV 2011)

(a) This solicitation is restricted to small business concerns and Federal Prison Industries (FPI). All small businesses are encouraged to submit quotes; however, award will be made in the following order of set-aside precedence:

(1) Service-disabled veteran-owned small business (SDVOSB) concerns (Federal Acquisition Regulation (FAR) clause 52.219-27); then, if no qualified quote is received from a SDVOSB concern at a fair market price,

(2) Small business concerns (FAR 52.219-6) or FPI (FAR 52.219-6, Alternate II).

(b) The FAR clauses contained herein (except paragraph (b) of 52.219-27) apply to the solicitation. Only the FAR clause matching the awardee's Small Business Program and Type representation applies to the award.

(End of Clause)

**52.219-9016 Combined Service-Disabled Veteran-Owned Small Business/Small Business Set-Aside Instructions – Type 2.**
As prescribed in 19.508(f), insert the following clause:

COMBINED SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS/SMALL BUSINESS SET-ASIDE INSTRUCTIONS – TYPE 2 (NOV 2011)

(a) This solicitation is restricted to small business concerns and Federal Prison Industries (FPI). All small businesses are encouraged to submit quotes; however, award will be made in the following order of set-aside precedence:

(1) Service-disabled veteran-owned small business (SDVOSB) concerns (Federal Acquisition Regulation (FAR) clause 52.219-27); then, if no qualified quote is received from a SDVOSB concern at a fair market price,

(2) small business concerns (FAR 52.219-6, Alternate I) or FPI (FAR 52.219-6, Alternate II).

(b) The FAR clauses contained herein (except paragraph (b) of 52.219-27) apply to the solicitation. Only the FAR clause matching the awardee's Small Business Program and Type representation applies to the award.

(End of Clause)

**52.223-9003 Marking Dangerous Goods or Hazardous Materials.**
As prescribed in 23.303-91, insert the following clause:

MARKING DANGEROUS GOODS OR HAZARDOUS MATERIALS (NOV 2011)

(a) In the shipment of dangerous goods or hazardous materials, the Contractor shall mark outer containers and furnish information as requested by the government transportation office responsible for cargo movement. By shipping the materials, the Contractor warrants that the materials are properly classified, described, packaged, marked and labeled, and are in proper condition for transportation, according to the applicable regulations of the Department of Transportation (DOT).

(b) The Contractor shall identify hazardous materials as established in:

(1) DOT Hazardous Materials Regulations, Tariff Number BOE-6000, Parts 171-177.

(2) American National Standard for the Precautionary Labeling of Hazardous Industrial Chemicals, 2129.1-1976.

(c) The Contractor shall place all required markings, on outer shipping containers of hazardous materials in accordance with Code of Federal Regulations (CFR) 49, Subpart D, of Part 172 and military standard (MIL-STD) 129P (also see Part 178, 49 CFR for DOT shipping containers and packaging specifications).

(d) The Contractor will insure that the following data is shown on shipping papers:

(1) Description of the dangerous goods article by the true shipping name as shown in the commodity list in 49 CFR 172.101. For export by water only, if shipping is named in a not otherwise specified (N.O.S.) entry, further identification by clear text chemical name is required to be shown in parentheses.

(2) Classification of the item as prescribed in 49 CFR 172.101.

(3) Total quantity by weight, volume, or as otherwise appropriate. For transportation by water, see 49 CFR 172.203(i).

(4) For water shipments only, show name of shipper.

(5) DOT hazard identification numbers (UN or NA) on appropriate shipping documents and Government Bill of Lading. The UN or NA numbers can be found in Sections 172.101, Column 3A or Section 172.102, Column 4 of 49 CFR Parts 100-177. For tank shipments having a capacity of more than 110 gallons, on panels or placards as specified in Section 172.332 of 49 CFR Parts 100-177.

(e) Air Shipments:

(1) For commercial air shipments, the Contractor shall complete the "International Air Transport Association Shipper's Declaration for Dangerous Goods" form and present it with the shipment to the carrier.

(2) For military air shipments (including military contract airlift), the Contractor shall use a Shipper's Declaration for Dangerous Goods (MISC PUB 55-3) or local form to certify dangerous goods or hazardous material moving and affix it to outer shipping containers in accordance with military standard (MIL-STD) 129P and Air Force Manual 24-204I (Latest Revision).

(End of Clause)

**52.223-9004 Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).**
As prescribed in 23.303-92, insert the following provision:

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT (FIFRA) (SEP 2008)

The Contractor warrants that all pesticidal, insecticidal, fungicidal, etc., chemicals delivered or, utilized in the production of the finished supplies or, utilized in the delivery of services under this contract comply with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Regulations for the Enforcement of the Federal Insecticide, Fungicide and Rodenticide Act. The Contractor specifically warrants that all such pesticidal chemicals utilized were properly labeled for use as applied in the production of the supplies or delivery of the services and that the label of the pesticide utilized was, at the time of production of the supplies or delivery of the services, registered with the Registration Division, Environmental Protection Agency (EPA).

When a pesticidal chemical is required by an applicable specification which, at the time of the bid offering, is not available with an EPA approved label authorizing the use as required in the specification, the FIFRA shall take precedence. In such cases, the Contractor shall request that the Government authorize a deviation from the specification and designate a substitute pesticidal chemical which is, at that time, produced with an EPA approved label designating the use as required by the specification.

The Contractor should indicate registration number(s) for the aforementioned chemicals in the space provided below:

*EPA Registration Number*

(End of Provision)

**52.223-9007 Permission for Mercury (DLA Maritime Norfolk).**
As prescribed in 23.303-93, insert the following clause in full text:

PERMISSION FOR MERCURY (DLA MARITIME-NORFOLK) (JUN 2011)

(a) Supplies furnished under this contract will contain mercury or mercury compounds. Each item of such supplies shall be provided with appropriate identification as specified herein. In addition to the shipping container labeling required by the U.S. Department of Transportation, identification shall be applied to unit containers, intermediate containers, and shipping containers. Individual unit identification is not required for individual repair or replacement parts when the size of such parts causes labeling to be impractical.

(b) Supplies furnished under this contract shall be in compliance with the following unless otherwise approved by the Government:

(1) All mercury or mercury compounds shall be potted or otherwise sealed and secured to prevent contamination of the atmosphere or other material or equipment.

(2) Mercury-bearing devices must be contained within a double boundary of confinement; i.e., primary and secondary seals or barriers, the secondary to prevent contamination in event of rupture of the primary.

(c) External surfaces of supplies furnished under this contract shall not be contaminated by mercury or mercury compounds.

(d) The requirements of this clause shall be included in all subcontracts hereunder.

(e) Technical questions pertaining to the requirements of this clause shall be referred to the Contracting Officer via the Government inspector or representative.

(End of Clause)

**52.225-9003 Customs Clearance Procedures for United States (U.S.) Subsistence in the European Union.**
As prescribed in 25.902, insert the following clause:

CUSTOMS CLEARANCE PROCEDURES FOR UNITED STATES (U.S.) SUBSISTENCE IN THE EUROPEAN UNION (NOV 2011)

(a) The Contractor will obtain from the appropriate customs clearance officer an Import/Export Declaration (AE Form 302-1). The customs clearance document will be utilized for goods which are the property of, or destined to be the property of the United States (U.S.) Armed Forces for every shipment to the U.S. Government in Europe which enters, leaves, or transits Benelux, Denmark, France, Italy, Spain, Yugoslavia, Macedonia, Turkey and German irrespective of the mode of transportation and point of delivery. The AE Form 302-1 will be processed and distributed as follows:

(1) AE Form 302-1 consists of 1 original and 5 copies, numbered 1 through 6. Contractor will receive from the issuing customs clearance officer of the appropriate Defense Subsistence Office, copies number 1, 2, 3, 5, and 6 plus insert copies of AE Form 302-A as required. Copy number 4 is retained by the issuing customs clearance officer. The Contractor is required to complete columns a, b, and d of all

copies when exact quantities are known. When completed, copy number 6 will be returned to the issuing customs clearance officer. The Contractor will use copies number 1, 2, 3, 5 and insert copies to move supplies across applicable border crossings as follows:

(2) Copy number 1 will be used at border point of exit.

(3) Insert copies (AE Form 320-A) will be used to transit multiple countries. One copy will be presented at border entry point and one copy at border exit point. Additional copies may be required for consignees in some countries.

(4) Copy numbers l, 2, and 3 will be presented to the customs office at the border entry point of the consignees country for processing. Copy number 3 will be retained at the border. Copies number 1 and 2 will be returned to the transporter to be delivered to the consignee with the cargo.

(b) The transporter will surrender all copies of customs documents to the consignee upon delivery. Upon receipt and acceptance of the cargo the consignee will complete the certificate of receipt on copies number 1 and 2. The consignee will return copy number 1 to the issuing customs clearance officer. Copy number 2 will be returned to the border entry point to close customs files and release appropriate commercial documents. The transporter may request the completed number 2 copy to hand carry back to the border entry point. This procedure is at the discretion of the consignee since it remains the consignee's responsibility to return the number 2 copy to the border entry point.

(c) When cargo is rejected the consignee will annotate the rejection on copies number 1 and 2. The transporter will be given a copy (photocopy) of the AE Form 302-1 with rejections annotated and will be instructed to present that copy to customs when returning with the rejected product. Rejected product entering a country through customs on AE Form 302-1 may not be disposed of without proper customs authorization.

(End of Clause)

**52.227-9000 Commercial Manuals for Naval Shipboard Use Items.**
As prescribed in 27.7102-3(a)(91) insert the following clause:

COMMERCIAL MANUALS FOR NAVAL SHIPBOARD USE ITEMS (NOV 2011)

CAUTION: Do not submit sample commercial manuals with contract offers. Such samples will not be evaluated prior to award.

(a) Sample commercial manual(s).

(1) Submission of samples.

(i) Unless the requirement for submission of sample commercial manuals is waived under paragraph (a)(2) below, the Contractor, at no cost to the Government, shall submit five (5) sample copies of his commercial manual, not later than 90 calendar days prior to the initial scheduled delivery of equipment under this contract, to the appropriate address below for review and approval:

DLA Aviation

Attention: _____
8000 Jefferson Davis Highway
Richmond, Virginia 23297-5370

DLA Troop Support
Attention: _____
700 Robbins Avenue
Philadelphia., Pennsylvania 19111-5096

(ii) Manuals are to be prepared in accordance with requirements of the attached DD Form 1423. Sample manuals may be sent via regular mail. The Contracting Officer or the Contracting Officer's Representative (COR) will notify the Contractor of the acceptance of, or the required corrections to, the sample commercial manual within 60 calendar days after date of receipt.

(iii) In the event corrections are required, the Contracting Officer will furnish the Contractor a notice of required corrections. The Contractor shall submit five (5) copies of the corrected commercial manual for approval within the period specified in the notice of required corrections, but this period shall not be less than 10 working days after the receipt of notice. When the commercial manual can be corrected by the addition of supplemental sheets, the Contractor will be so advised. The Contracting Officer or COR will furnish the Contractor with the notice of approval of the manual and the numbers assigned to the commercial manual. To facilitate preparation of an acceptable commercial manual, the Contractor may communicate directly with the technical representative to secure assistance on problems relating to the manual.

(2) Waiver of samples.

(i) The Government reserves the right to waive the requirement for submission of sample commercial manuals from those offerors offering manuals that have been previously furnished by the offeror and accepted by the Government. Offerors offering previously approved manuals should furnish with the offer evidence of prior Government acceptance in writing in the following format:

Prior Government acceptance
Government agency
Special contract requirements
Previous commercial manual control number
Date
Contract number
Model number
National stock number
Manual [ ] has, [ ] has not been revised since the manuals last approval.

Equipment [ ] has, [ ] has not been altered, changed, modified or redesigned since last manual approval.

Note: If the equipment or manual has been changed since last manual approval or government procurement, then sample manual submission is required.

(ii) The Contractor shall also furnish to the Government with his request for waiver, five (5) copies of any changes to the previously approved commercial manual.

(iii) If the Contracting Officer determines that a waiver is appropriate, the offered price will be reduced by the value of the number of manuals required on the commercial manual distribution manual form and evaluated on that basis.

(b) Manual distribution.

(1) The Contractor shall furnish with each end item two (2) copies of the approved commercial manual prepared in accordance with the attached Department of Defense (DD) Form 1423.

(2) Unless submission of the sample manuals is waived, the Contractor shall furnish, on or before initial shipment of production items, copies of the approved commercial manual specified herein to the addresses checked on the attached commercial manual distribution form in the quantity indicated.

(3) If approval of the manual has not been obtained by the time the end item is ready for shipment, the Contractor shall request permission from the Contracting Officer to pack a copy of his proposed manual for shipment with each unit. Upon receipt of approval of manual, the Contractor will forward one copy of such approved manual to the ultimate consignee of the end item. Shipping address for approved manual will be furnished by Defense Contract Management Agency or the Contracting Officer.

(c) Option for Additional Commercials Manuals.

(1) The Government may order by written notice any time after award, but not later than 30 calendar days before final scheduled delivery of end items, additional copies of such manuals, f.o.b. origin, in the quantities and at the unit price set below:

| QUANTITY | UNIT PRICE |
|---|---|
| 1 - 5 | $ |
| 6 - 25 | $ |
| over 25 | $ |

(2) Failure of an offeror to quote unit price for the option quantities of manuals will be considered an offer to furnish the option quantities at the unit price for the basic quantity of such manuals.

(3) Delivery of additional copies of manuals ordered shall be not later than 60 calendar days after written notice, unless the parties otherwise agree.

(4) The offeror may, without affecting the responsiveness of his offer, refuse to give the Government the right to purchases additional commercial manuals, provided that such refusal is set forth in this offer.

(End of Clause)

**52.227-9004 Demilitarization – Small Arm Weapons and Parts and Accessories (Category I – Munitions List Items).**
As prescribed in 27.409-92, insert the following clause:

DEMILITARIZATION – SMALL ARMS WEAPONS AND PARTS, AND ACCESSORIES (CATEGORY I – MUNITIONS LIST ITEMS) (NOV 2011)

(a) Definitions:

(1) "Excess property" means property of the type covered by this contract for which the Contractor does not claim or is refused payment including, but not limited to, rejects or overruns. Excess property (whether title to the property is in the Government or not) includes completed or partially completed parts, components, subassemblies and assemblies, end items, and all associated packaging and marking.

(2) "Significant Military Equipment" means those articles for which special controls are warranted because of their capacity for military utility or capability.

(3) "Munitions List Items (MLI)" means those items listed on the United States (U.S.) Munitions List. The U.S. Munitions List delineates the articles, services and related technical data designated as defense articles and defense services pursuant to the Arms Export Control Act.

(b) This contract requires the manufacture, assembly, test, maintenance, repair and/or delivery of military/defense items. This clause sets forth the requirements for the demilitarization, and corresponding certification, of excess property under this contract. These requirements are applicable to any Contractor/subcontractor who performs work on this contract.

(c) Contract completion and Contractor certification.

(1) Upon completion of production of this contract, the Contractor shall notify the Administrative Contracting Officer (ACO), or his designated representative, in a timely manner so that a Government representative can physically witness the demilitarization of material under this contract. Demilitarization shall be accomplished as prescribed in subparagraph (d) below. The Contractor and the Government representative are both required to sign and date the demilitarization certificate (provided below). The certificate shall state that demilitarization has been accomplished, and identify the quantity and items which were demilitarized.

Certificate

I, _____ (name and title of Contractor's employee) am the officer or employee of _____ (name of company) responsible for assuring demilitarization requirements have been accomplished.

I certify that ** (identify items and quantities) ** were demilitarized in accordance with instructions provided in contract _____ (contract number).

End of Certificate

(2) This certificate, along with the final Department of Defense (DD) Form 250, will be forwarded by the Government Quality Assurance Representative (QAR) to the ACO so that final payment can be made. The ACO will not release the final DD Form 250 for payment to the Contractor unless the Demilitarization Certificate has been received. The Demilitarization Certificate received will become part of the contract file.

Warning: Signing a false certificate constitutes a felony and may subject the individual to criminal prosecution.

(3) To accomplish the certification requirements for subcontractor demilitarization, the Contractor is required to follow all procedures of subparagraph (c)(1) above. The subcontractor is responsible for all of the Contractor requirements specified, and the Contractor is responsible for all of the Government requirements specified. Therefore, the prime Contractor must witness the actual demilitarization of material under this contract by the subcontractor, and so certify.

(d) Excess property shall be completely destroyed or mutilated (whichever is prescribed) prior to final payment, as set forth below. Demilitarization is necessary in order that the property will be unusable or nonreclaimable for its original purpose, and to preclude the possibility of reconditioning the property to make saleable as implements of destruction.

(1) The following items are considered to be significant military equipment and require total destruction worldwide:

(i) All nonautomatic, semiautomatic, and automatic firearms and other weapons up to and including .50 caliber and all components and parts;

(ii) Shotguns and all components and parts;

(iii) Shoulder fired grenade launchers and all components and parts;

(iv) Man portable rocket launchers and all components and parts;

(v) Individually operated weapons which are portable and/or can be fired without special mounts or firing devices and which have potential use in civil disturbances and are vulnerable to theft and all components and parts;

(vi) Pyrotechnic pistols and other ground signal projectors and all components and parts;

(vii) Rifle grenade launchers and all components and parts;

(viii) Magazines and ammunition clips for items in this category.

(ix) Insurgency or counter-insurgency type firearms or other weapons having a special military application (i.e., close assault weapons systems), regardless of caliber, and all components and parts;

(x) Technical data related to the manufacture or production of any defense article enumerated above.

(2) The following items are considered to be significant military equipment accessories and require key point demilitarization worldwide:

(i) Gun mounts (including bipods and tripods). Key points are all attachment points/fittings and moveable joints.

(3) The following items are considered to be MLI accessories and require total or key point destruction worldwide, or as indicated:

(i) Silencers, suppressors and mufflers (total destruction).

(ii) Rifle scopes and all types of telescopic and optical sights including those designated for night sighting and viewing (key point destruction). Key points are attachment points/fittings, lenses, infrared source and as otherwise indicated by the ICA.

(4) The following items are considered to be MLI and do not require demilitarization:

(i) All other technical data (not in subparagraph (d)(1) above) and defense services directly related to any defense article enumerated in this category.

(e) Method and degree of demilitarizations.

(1) For items listed in subparagraph (d)(1) above, the preferred normal method of demilitarization is by torch cutting utilizing a cutting tip that displaces at least ½ inch of metal. All cuts will completely sever the item and be made in accordance with instructions applicable to the items being demilitarized as depicted in appropriate figures in Appendix 7 of Department of Defense (DoD) 4160.21-M-1, Defense Demilitarization and Trade Security Control Manual. Shearing, crushing, deep water dumping or melting may be utilized when such methods of demilitarization are deemed more cost effective and/or practicable and are authorized by appropriate authority.

(2) Machine guns will be demilitarized by torch cutting utilizing a cutting tip that displaces at least 1/2 inch of metal or shearing the receiver in a minimum of two places or by crushing in a hydraulic or similar type press. The barrel will be torch cut, sheared or crushed in the chamber area and in two or more places to the extent necessary to prevent restoration. If the shearing or crushing method is used, the trunnion block and side frame must be completely cut through, broken or distorted to preclude restoration to a usable condition.

(3) Receivers shall be demilitarized by torch cutting in a minimum of two places utilizing a cutting tip that displaces at least 1/2 inch of metal or crushed to the extent necessary to preclude restoration to a usable condition.

(4) Bolts and barrels will be demilitarized by torch cutting utilizing a cutting tip that displaces at least 1/2 inch of metal or crushed to the extent necessary to preclude restoration to a usable condition.

(5) Accessories, i.e., silencers and mufflers, rifle grenade launchers, riflescopes and all types of telescopic and optical sights including those designed for night sighting and viewing, and gunmounts (including bipods and tripods) will be demilitarized by breaking, crushing or cutting in a manner which precludes restoration to a usable condition in accordance with instructions applicable to the items being demilitarized as depicted in appropriate figures contained in Appendix 7 of Department of Defense (DoD) 4160.21-M-1.

(6) Other metallic parts, will be demilitarized by cutting, crushing or melting.

(7) Technical Data, to include any reproduced copies, additional drawings and working papers, will be demilitarized by burning, shredding or pulping.

(f) If demilitarization by melting is authorized and the Contractor does not possess the capability to perform this operation, this melting could be accomplished at Contractor expense by Rock Island Arsenal. If you desire to use this method, contact Armament and Chemical Acquisition and Logistics Activity, Attention: AMSTA-AC-PCW-C, Rock Island, Illinois 61299-7630, for a copy of "Attachment - Demilitarization by Melting/Demilitarization of Surplus Small Arms Weapons and Parts".

(g) The requirements of this clause shall apply to any packaging of Government property and excess property containing nonremovable markings required exclusively by this contract. Removable markings shall be removed before any nondemilitarized disposition.

(h) The Contractor/subcontractor agrees that no items demilitarized, as stated above, will be disposed of by the Contractor/subcontractor other than as scrap.

(i) Any excess property which arises out of this contract, but for which no demilitarization order was included in the contract, shall not be released, retained, sold, or disposed of in any manner without instructions from the ACO.

(j) Any requests for exceptions or waivers to this clause must be made in writing to the Procuring Contracting Officer.

(k) The Contractor further agrees that this clause, including this subparagraph (k), will be included in any subcontracts for the aforesaid items.

(End of Clause)

**52.227-9005 Restrictions on Use of Boeing Rights Guard Technical Data.**
As prescribed in 27.402-90(c), insert the following clause:

RESTRICTIONS ON USE OF BOEING RIGHTS GUARD TECHNICAL DATA (NOV 2011)

(a) Technical data furnished herewith (hereinafter Rights Guard technical data) is proprietary to The Boeing Company which has licensed the Government to use same for the procurement of replenishment spare parts for United States (U.S.) Government owned aircraft (E-3, E-8 and/or -135 series aircraft) and for no other purpose. Rights Guard technical data shall not be disclosed, in whole or in part, to any other person or entity other than to supplier's bidder's offeror's employees, having a need to know and who are under an obligation to preserve and protect such data under terms and conditions no less restrictive than those imposed herein, and then only for the purposes if responding to this solicitation or performing any resulting contract.

(b) The suppliers/bidders/offerors hereunder are prohibited from

(1) reproducing, in whole or in part, Rights Guard technical data;

(2) incorporating any information contained in such Rights Guard technical data into other documentation; or

(3) otherwise utilizing such Rights Guard technical data, except for responding to this solicitation or performing any resulting contract.

Each supplier/bidder/offeror shall include the authorized Defense Federal Acquisition Regulation Supplement (DFARS) limited rights legend of 252.227-7013, Rights in Technical Data - Noncommercial Items, identifying the Boeing Company as the owner, on all Rights Guard technical data that is incorporated, in whole or in part, into any technical data delivered by such supplier/bidder/offeror to the Government in response to this solicitation or as part of the performance of any resulting contract. In the case of the limited rights legend, the Contractor shall indicate such Rights Guard technical data as not being subject to an expiration date, if such date is required by the limited rights legend authorized under its contract.

(c) Rights Guard technical data provided by Defense Logistics Agency (DLA), including any copies thereof, is to be destroyed according to the following schedule:

(1) Immediately upon decision to "no bid" the solicitation for which the data was received.

(2) Within 30 calendar days of being advised your company was not the successful bidder for the solicitation for which the data was requested and received.

(3) If the contract awardee, within 30 calendar days of contract completion.

Note: The DLA annual certificate of destruction does not in any way imply or provide authority for your company to retain the data beyond the timeframes established above. Suspected and actual instances of data retention provided by DLA beyond these timeframes will be reported to the Boeing Company for remedy. Furthermore, failure to comply with this obligation shall be grounds for your removal from the list of qualified bidders for any other solicitation involving Boeing technical data.

(d) The Government and/or the Boeing Company shall have the right to audit supplier's/ bidder's/ offeror's records to ensure the destruction of Boeing proprietary data. The reviews may be conducted after giving fifteen (15) days written notice in advance of such reviews.

(e) All suppliers shall comply with military standard (MIL-STD) 130 for the purpose of distinguishing any spare parts made using Boeing Rights Guard technical data.

(f) Prior to requesting the Rights Guard data, an Annual Certification for the Use of Rights Guard Technical Data must be on file at the DLA Aviation, Attention: Rights Guard Program, Richmond, Virginia 23297-5604. An annual rights guard destruction certification must also be on file if your company has received Rights Guard Data and the time of destruction has passed. Forms are available by downloading at https://pcf1.bsm.dla.mil/cfolders/, (select “License Agreements”, then ’01 Boeing Rights Guard”).

(End of Clause)

**52.227-9006 Use of Colt Industries Restricted Technical Data.**
As prescribed in 27.402-90(e), insert the following clause:

USE OF COLT INDUSTRIES RESTRICTED TECHNICAL DATA (NOV 2011)

(a) This data can only be transmitted and/or used by Contractors within the United States, its territories and possessions. Canadian and Mexican manufacturers and those in other foreign countries are not allowed to receive the data at all. These data cannot be used for purposes of Foreign Military Sales (FMS) or for export.

(b) Data released pursuant to this procurement was furnished under a limited use license agreement with Colt Industries for Government use in the manufacture of M16 items. Any use contrary to Defense Federal Regulation Supplement (DFARS) 252.227-7025 will give rise to third party beneficiary rights to Colt Industries. Bidders/offerors must retain the Colt's markings on the drawing intact.

(c) All Contractors, immediately upon decision to "no bid" the solicitation for which the data was received, shall destroy all solicitation technical data, and provide written notice of destruction to the following:

DLA Land and Maritime
Post Office (P.O.) Box 3990
Attention: VTS
Columbus, Ohio 43218-3990

All unsuccessful bidders/offerors (those firms not receiving an award) shall destroy all solicitation technical data within 30 calendar days from the date of notification of award, and provide written notice of destruction. Upon completion of contract performance, the successful supplier/bidder/offeror shall destroy all solicitation technical data, including any copies thereof and shall provide to the Government a written notification to that effect. Failure to destroy the solicitation technical data and send written notification to the Government within the specified time, may result in disqualification from participation in future acquisitions involving Colt Industries restricted technical data requirements.

(d) Prior to obtaining technical data, a certification regarding the use of limited rights technical data form must be on file at the DLA Land and Maritime, Attention: VTS, P.O. Box 3990, Columbus, Ohio, 43218-3990. Forms are available for download at https://pcf1.bsm.dla.mil/cfolders/ (select "License Agreements", then "05 Colt Industries").

(End of Clause)

**52.227-9007 Restrictions on Use of OTO Melara-Limited Rights Technical Data.**
As prescribed in 27-402-90(d), insert the following clause:

RESTRICTIONS ON USE OF OTO MELARA LIMITED RIGHTS TECHNICAL DATA (NOV 2011)

(a) The United States Government requires that each bidder/offeror/Contractor receiving a copy of this solicitation followed by technical data (drawings, specifications, and any data contained therein) shall use such technical data solely for the purpose of submitting an offer for the manufacture of the supplies described in the solicitation. In the event a contract is awarded as a result of this solicitation, the Contractor shall agree to make no disclosure of the solicitation technical data except as may be necessary to its suppliers for the furnishing of the supplies specified in the contract. To the extent that any such

disclosure is made to the Contractor's suppliers, the same nondisclosure agreement terms relative to the solicitation technical data also shall be applicable to the suppliers.

(b) This data is available only for competitive procurements and manufacture in the United States by U.S. firms. It shall not be released to foreign firms.

(c) The signature of the person(s) authorized to sign the solicitation and resultant contract shall constitute agreement to the nondisclosure requirement.

(d) All unsuccessful bidders/offerors (those firms not receiving an award) shall return all solicitation technical data via certified mail within 30 calendar days from the date of notification of award to:

DLA Land and Maritime
Attention: VTS
Post Office (P.O.) Box 3990
Columbus, Ohio 43218-3990

(e) All unsuccessful bidders/offerors shall agree to make no disclosure of the solicitation technical data except as may be necessary to their suppliers for the furnishing of prices for the supplies specified in the solicitation. To the extent that any such disclosure is made to the unsuccessful offerors' suppliers, the same nondisclosure agreement relative to the solicitation technical data also shall be applicable to those suppliers.

(f) Successful bidders/offerors may retain the technical data for future United States Government procurements, unless otherwise notified.

(g) Failure to return the solicitation's technical data within the specified time may result in disqualification from participation in future MK-75 Gun acquisitions.

(h) Prior to obtaining technical data, a certification regarding the use of limited rights technical data form must be on file at the DLA Land and Maritime, Attention: VTS, P.O. Box 3990, Columbus, Ohio, 43218-3990. Forms are available for down load at https://pcf1.bsm.dla.mil/cfolders/ (select "License Agreements", then "16 OTO Melara").

(End of Clause)

**52.227-9008 Restriction on Use of Fabrique National (FN) Herstal Technical Data.**
As prescribed in 27-402-90(b), insert the following clause:

RESTRICTION ON USE OF FABRIQUE NATIONAL (FN) HERSTAL TECHNICAL DATA
(NOV 2011)

(a) The United States (U.S.) Government requires that each bidder/offeror/Contractor receiving a copy of this solicitation and accompanying technical data (drawings, specifications, and any data contained therein) shall use such technical data solely for the purpose of submitting an offer for the manufacture of the supplies and/or services described in the solicitation. In the event a contract is awarded as a result of this solicitation, the Contractor shall agree to make no disclosure of the solicitation technical data except as may be necessary to its suppliers for the furnishing of the supplies or services specified in the contract.

To the extent that any such disclosure is made to the Contractor's suppliers, the same nondisclosure agreement relative to the solicitation technical data shall be applicable.

(b) This data is available only for competitive procurements and manufacture in the United States and Canada by U.S and Canadian firms. It shall not be released to foreign firms.

(c) The signature of the person(s) authorized to sign the solicitation and resultant contract shall constitute agreement to the non-disclosure and non-use requirement.

(d) All unsuccessful bidders/offerors (those firms not receiving an award) shall destroy all solicitation technical data within 30 calendar days from the date of notification of award, and provide written notice of destruction to the following:

DLA Land and Maritime
Post Office (P.O.) Box 3990
Attention: VTS
Columbus, Ohio 43218-3990

(e) Upon the completion of contract performance, the successful supplier/bidders/offerors shall destroy all FN Herstal technical data, including any copies thereof and shall provide to the Government a written notification to that effect.

(f) Failure to destroy the solicitation's technical data and send written notification to the Government within the specified time, may result in disqualification from participation in future MAG-58 automatic weapon acquisitions.

(g) Prior to obtaining technical data, a certification regarding the use of limited rights technical data form must be on file at the DLA Land and Maritime, Attention: VTS, P.O. Box 3990, Columbus, Ohio, 43218-3990. Forms are available for download at https://pcf1.bsm.dla.mil/cfolders/ (select "License Agreements", then "06 Fabrique Nationale Herstal").

(End of Clause)

**52.232-9006 Transporter proof of delivery (TPD).**
As prescribed in 32.908-94, insert the following clause:

TRANSPORTER PROOF OF DELIVERY (TPD) (APR 2013)

(a) Definition. As used in this clause, transporter proof of delivery (TPD) means a commercial document that is generated by the Contractor and/or the Contractor's transporter of supplies and that is signed by the Government customer in order to document delivery of supplies under this contract/order. Examples of TPD are United Parcel Service (UPS) or Federal Express (FEDEX) delivery tracking reports. TPD documentation must include a customer signature, or visibility of the name of the customer who signed.

(b) When this clause is included in the contract or order, the Government may use TPD, in combination with adequate Contractor documentation cross-referencing the TPD to the specific supplies provided, as a basis for accepting the supplies. TPD with adequate supporting documentation satisfies the receipt report

requirement and, coupled with acceptance, allows the Government to initiate the payment process, if all other applicable payment conditions are satisfied.

(c) To facilitate the payment process, the Government will initiate a request for the Contractor to provide TPD when the customer has not provided receipt acknowledgement to the buying activity. If TPD is requested and the Contractor agrees to provide it, the documentation must include the customer signature, or visibility of the name of the customer who signed, and as much of the following information as possible:

(1) Contract number or order number;

(2) Contract line item number (CLIN);

(3) Unit price;

(4) Quantity of items;

(5) Extended price;

(6) National stock number (NSN);

(7) Delivery date;

(8) Recipient organization's name and address;

(9) Receiving activity Department of Defense activity address code (DoDAAC);

(10) Requisition document number (and suffix, when applicable);

(11) Shipment number;

(12) Invoice number; and

(13) Location where the carrier made delivery (activity name, building number, city, state).

(d) Process for submitting TPD documentation.

(1) Enter wide area workflow (WAWF) using the ``history folder," enter the appropriate contract data, and recall the receiving report (RR);

(2) Click on “attachment.” Browse and upload the TPD and any additional Contractor documentation required to provide the information identified in paragraph (c) of this clause. (Attachments created in any Microsoft Office product or in PDF format are acceptable.); and

(3) Click on “submit.”

(e) Responsibility for supplies.

(1) Title to the supplies passes to the Government after delivery to the point of first receipt by the Government and subsequent acceptance.

(2) Notwithstanding any other provision of the contract, order, or blanket purchase agreement, the Contractor shall:

(i) Assume all responsibility and risk of loss for supplies not received at destination, damaged in transit, or not conforming to purchase requirements; and

(ii) Replace, repair, or correct those supplies promptly at the Contractor's expense, if instructed to do so by the Contracting Officer within 180 days from the date title to the supplies vests in the Government.

(End of Clause)

**52.233-9000 Agency Protests.**
As prescribed in 33.106 (90) a provision substantially as follows shall be inserted in all solicitations:

AGENCY PROTESTS (NOV 2011)

(a) Companies protesting this procurement may file a protest

(1) With the Contracting Officer,

(2) With the Government Accountability Office (GAO), or

(3) Pursuant to Executive Order Number 12979, with the Agency for a decision by the Activity's Chief of the Contracting Office.

(b) Protests filed with the agency should clearly state that they are an "Agency Level Protest under Executive Order Number 12979."

(c) Defense Logistics Agency (DLA) procedures for Agency Level Protests filed under Executive Order Number 12979 allow for a higher level decision on the initial protest than would occur with a protest to the Contracting Officer; this process is not an appellate review of a Contracting Officer's decision on a protest previously filed with the Contracting Officer. Absent a clear indication of the intent to file an agency level protest, protests will be presumed to be protests to the Contracting Officer.

(End of Provision)

**52.233-9001 Disputes Agreement to Use Alternative Dispute Resolution (ADR).**
As prescribed in 33.214, insert the following provision:

DISPUTES - AGREEMENT TO USE ALTERNATIVE DISPUTE RESOLUTION (NOV 2011)

(a) The parties agree to negotiate with each other to try to resolve any disputes that may arise. If unassisted negotiations are unsuccessful, the parties will use alternative dispute resolution (ADR) techniques to try to resolve the dispute. Litigation will only be considered as a last resort when ADR is

unsuccessful or has been documented by the party rejecting ADR to be inappropriate for resolving the dispute.

(b) Before either party determines ADR inappropriate, that party must discuss the use of ADR with the other party. The documentation rejecting ADR must be signed by an official authorized to bind the Contractor (see Federal Acquisition Regulation (FAR) clause 52.233-1), or, for the Agency, by the Contracting Officer, and approved at a level above the Contracting Officer after consultation with the ADR Specialist and with legal. Contractor personnel are also encouraged to include the ADR Specialist in their discussions with the Contracting Officer before determining ADR to be inappropriate.

(c) The offeror should check here to opt out of this clause:

[ ] Alternate wording may be negotiated with the Contracting Officer.

(End of Provision)

**52.237-9002 Key Personnel – Fixed-Price Service Contracts.**
As prescribed in 37.110-90(c)(2), insert the following provision:

KEY PERSONNEL - FIXED-PRICE SERVICE CONTRACTS (APR 2008)

(a) Certain skilled, experienced, professional and/or technical personnel are essential for successful accomplishment of the work to be performed under this contract. These are defined as "Key Personnel" and are those persons whose resumes were submitted as part of the technical/business proposal for evaluation. The Contractor agrees to use said key personnel during the performance of this contract and that they shall not be removed from the contract work or replaced unless authorized in accordance with this clause.

(b) The Contractor shall not substitute key personnel assigned to perform work under this contract without the prior approval of the Contracting Officer. Requests for approval of substitutions shall be in writing and shall provide a detailed explanation of the circumstances necessitating the proposed substitutions. The request must contain a complete resume for the proposed substitute, and any other information requested or needed by the Contracting Officer to approve or disapprove the request. Proposed substitutes must have qualifications that are equal to or higher than the key personnel being replaced. The Contracting Officer or his/her authorized representative shall evaluate such requests and promptly notify the Contractor in writing whether the proposed substitution is acceptable.

(c) If the Contracting Officer determines that suitable and timely replacement of key personnel who have been reassigned, terminated or have otherwise become unavailable for the contract work is not reasonably forthcoming, or the resultant substitution would be so substantial as to impair the successful completion of the contract or the delivery order in accordance with the proposal accepted by the Government at time of contract award, the Contracting Officer may

(1) terminate the contract for default or for the convenience of the Government, as appropriate, or

(2) if the Contracting Officer finds the Contractor at fault for the condition, equitably adjust the contract price downward to compensate the Government for any resultant delay, loss or damage.

(d) The provisions of this clause shall be fully applicable to any subcontract which may be entered into.

(End of Provision)

**52.237-9003 Site Visit Coordinator.**
As prescribed in 37.110-90(a), insert the following provision:

SITE VISIT COORDINATOR (APR 2008)

(a) Interested prospective offerors may make an appointment to visit the site of installation by contacting the site visit coordinator or his or her alternate, during normal work hours/local time at the site. Contact information for the site visit coordinator and his or her alternate is as follows:

| | |
|---|---|
| Primary Name: | Phone Number |
| Alternate Name: | Phone Number |

(b) Prospective offerors are notified that remarks or explanations provided during a site visit shall not qualify the terms of this solicitation. Unless and until this solicitation is amended in writing, terms of the solicitation and specifications remain unchanged.

(c) Site visitors requiring interpretation or clarification of technical or contractual requirements included in this solicitation are encouraged to submit their questions and any information obtained during the site visit to the Contracting Officer, by contacting the individual identified on the face of the solicitation.

(End of Provision)

**52.242-9005 Report of Shipment (Repship) of Perishable Medical Items.**
As prescribed in 42.1107 insert the following clause:

REPORT OF SHIPMENT (REPSHIP) OF PERISHABLE MEDICAL ITEMS – DLA TROOP SUPPORT – MEDICAL (NOV 2011)

(a) Unless otherwise directed by the Contracting Officer, the Contractor shall send a prepaid notice of shipment to the consignee transportation officer (T.O.) for all shipments of perishable medical items when given to a commercial carrier (common, contract or private) for shipment within the United States (U.S.). The notice shall be transmitted by rapid means (telephone or teletype) to be received by the consignee transportation officer at least 24 hours prior to the arrival of the shipment. It shall contain all information listed below and be prominently identified as being a "Report of Shipment of Perishable Medical Items" or, "Repship for T.O. perishable medical items".

(b) Refrigerated items which are restricted as to length of time during which they can be without temperature control shall not be entered into the postal system, even though they otherwise qualify for this service.

(c) The following information will be included in the Repship:

(1) Repship for T.O. perishable medical items (and date of message).

(2) Transportation Officer.

(3) Consignee name and address.

(4) Bill of Lading (BL) number.

(5) Document identification, requisition number, and contract or purchase order number.

(6) Item identification and protective requirements.

(7) Route (all participating carriers).

(8) Carrier identification number if other than BL number, such as air bill or air express receipt number.

(9) Flight number (when appropriate).

(10) Departure time (date/hour).

(11) Estimated delivery time, indicated on the BL as DDD.

(12) Deadline delivery time (date/hour, a.m. or p.m., that item must be returned to refrigerator/freezer or re-iced).

(13) A request for the consignee to contact the local carrier to trace and expedite delivery if not received by the estimated delivery time (11) above).

(14) Name and address of Contractor.

(End of Clause)

**52.245-9023 Firm and Flexible Sizes.**
As prescribed in 45.106(107), insert the following clause:

FIRM AND FLEXIBLE SIZES (JUL 2008)

(a) The sizes set forth in Section F hereof for the first three delivery increments are firm; however, the Contractor may not proceed to cut and fabricate for such increments until following the expiration of 3 working days from the date of award during which time the Government reserves the right to make one change to these firm sizes.

(b) Except as provided below:

(1) The size for the remaining delivery increments are flexible;

(2) The flexible sizes are furnished for the purposes of formulation and evaluation of offers;

(3) The Contractor may not proceed to cut and fabricate the flexible portion.

(c) Firm sizes for the flexible portion will be furnished by the Contracting Officer not later than 120 days prior to the end of each applicable delivery period. If notice of change for the flexible portion is not given by such time, the Contractor may cut sizes and quantities set forth in the flexible schedule for the applicable delivery period. Once the Contractor has been furnished the firm sizes for the flexible portions of the schedule, it will be considered a firm schedule for the applicable delivery increment.

(d) Notwithstanding the above, sizes and/or quantities of each size are further subject to change by the Contracting Officer; any such change shall be deemed to be a change within the purview of the article entitled "Changes." All changes made under the provisions of this clause shall be made in accordance with clause 52.245-9022, Sized Items.

(End of Clause)

**52.245-9024 Special Measurements.**
As prescribed in 45.106(108), insert the following clause:

SPECIAL MEASUREMENTS (NOV 2011)

(a) In addition to the Government's rights under the provisions of Defense Logistics Acquisition Directive (DLAD) clause 52.245-9022, Sized Items, the Government reserves the right to make size changes to include special measurement items. Special measurement items may be outside the range of the normal size tariff for that item. The Contractor will be responsible for adjustments to the Government-furnished patterns made necessary by the addition of special measurement items.

(b) Delivery of the special measurement items shall be to the location designated in the contract modification formalizing the change. The special measurement items shall arrive at the designated location within twelve (12) calendar days after the effective date of the contract modification.

(c) Any increased costs incurred by the Contractor as a result of a special measurement size change will be definitized by the Administrative Contracting Officer (ACO). Definitization shall be based on the following:

(1) Any increased costs for labor shall be limited to charges for special pattern grading and special cutting.

(2) Any adjustment (increase or decrease) for material usage will be based upon the Contractor's actual material usage.

(d) The total claim for an equitable adjustment under this clause shall not exceed 25% of the highest unit price for the corresponding item under this contract, exclusive of transportation costs. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(End of Clause)

**52.245-9027 Government-Furnished Property (GFP) Mechanical Gauges (Loaned) (Includes FSCs 5995 and 6150).**
As prescribed in 45.106(111), insert the following clause:

GOVERNMENT-FURNISHED PROPERTY (GFP) MECHANICAL GAUGES (LOANED)
(INCLUDES FEDERAL SUPPLY CLASSES (FSCS) 5995 AND 6150) (NOV 2011)

(a) Purpose and Use of GFP Mechanical Gauges:

(1) Gauges shall be subject to the requirements of:

(i) International Organization for Standardization (ISO) / American National Standards Institute (ANSI)/American Society for Quality (ASQ) Q9001 or Q9002, or equivalents as applicable; and

(ii) ISO 10012-1 or ANSI/NCSL Z540-1-1994, or equivalents.

(2) The Contractor shall thoroughly check the gauge drawings against the Government-furnished equipment drawings. Discrepancies shall be reported in writing to the Contracting Officer. Negative reports are required.

(3) Gauges shall be used only for quality conformance inspection in accordance with specification and/or drawing(s).

(4) The Contractor shall make gauges available to Government quality assurance representative in accordance with inspection requirements applicable to this contract.

(b) Return of GFP Mechanical Gauges to the Government:

(1) When the GFP mechanical gauges are no longer required for use by the Contractor or Government Quality Assurance Representative, but no longer than completion of the delivery of end items or termination of this contract, the Contractor shall deliver to the Government all of said GFP gauges, unless directed otherwise by the Contracting Officer.

(2) The Contractor shall notify the cognizant Government quality assurance activity to arrange for inspection by the Government quality assurance representative of the condition of the gauges before they are packed for return to the Government.

(3) The Contractor shall prepare, package and pack such gauges for shipment in accordance with Level B of MIL-G10944 and deliver for return or disposition free on board (f.o.b.) carrier's equipment, wharf or freight station, at the Government's option, in the city and state of the plant identified in 52.245-9003. The packages shall be marked for the consignee as follows:

United States (U. S.) Army District TMDE Support Center
Attention: AMXPM-GA-T
11 Hap Arnold Blvd, Building 12
Tobyhanna, Pennsylvania 18466-5104

(End of Clause)

**52.246-9000 Certificate of Quality Compliance.**
As prescribed in 46.390, insert the following clause:

CERTIFICATE OF QUALITY COMPLIANCE (DEC 1994)

The Contractor shall prepare and furnish a certificate of quality compliance (COQC) for all supplies delivered under this contract. If the supplies delivered under this contract are from more than one manufacturing lot, a separate COQC shall be prepared and furnished for each manufacturing lot represented by, manufactured or produced under a product specification, original equipment manufacturer (OEM)/manufacturer's part number, commercial, industry or military standard, or drawings, or other technical data.

(a) This certificate shall contain the following:

(1) The Contractor's name, address, and commercial and Government entity (CAGE) code number (if assigned), the contract/order number, the applicable specification, drawing, or standard (including revision/amendment and date), identification of the specific supplies manufactured or produced (including National Stock Number, nomenclature, type, grade, and class, if applicable); for metal products, the COQC shall include the alloy designation and condition (finish and temper), if applicable. If the Contractor is not a manufacturer, the Certificate shall include the name, address and CAGE Code (if assigned) for each of the entities through which the supplies or materials, components, subassemblies, assemblies or parts passed, so that traceability to the manufacturer will be readily discernible therefrom.

(2) The identification of each parameter for which the contract, specification, drawing, or standard required inspection or testing;

(3) The identification of the specific requirement for each of the parameters in (2), above, for the particular material being produced and covered by the certificate;

(4) The actual results of inspections or tests conducted by the Contractor to demonstrate conformance with each of the specific requirements of (3), above;

(5) The marking requirement for the material and the source of this requirement (contract and specification or standard); and

(6) A statement, signed by an authorized Contractor representative responsible for quality assurance, that (i) the lot has been produced, sampled, tested, and inspected, and marked in accordance with all contract and specification requirements; and (ii) the material complies with all of the contract and specification requirements.

(b) For contracts assigned for Government inspection at source, the Contractor shall have the completed certificate available for review by the Government representative when the material is presented for acceptance by the Government. In the case of destination-inspected material, the Contractor shall attach a copy of the completed certificate to the packing list sent with each shipment to each shipping point designated in the contract. For source inspected material, a copy may (but need not) accompany the shipment. If the Contractor offering the material to the Government is not the manufacturer of the material, the Contractor is responsible for obtaining a certified test report from the manufacturer, including it as part of this COQC, and for demonstrating that the specific material being offered under this certificate is covered by the certified test report.

(c) Unless otherwise specified by the contract, the Contractor shall be responsible for retaining the certificate for a period of 4 years. When requested by the Contracting Officer, the Contractor shall make the certificate available for review by the Government at any time during the period the certificate is required to be retained.

(End of Clause)

**52.246-9002 Product Certification and Test Report(s) (Metals).**
As prescribed in 46.396, insert the following clause:

PRODUCT CERTIFICATION AND TEST REPORT(S) (METALS) (JUL 2008)

(a) Definitions. For purposes of this clause, the following definitions apply:

(1) Primary mill. A manufacturing facility which produces a basic product, denoted herein as a primary mill product, by the smelting of raw materials or scrap metal by electric furnace or other conversion process authorized by the applicable specification.

(2) Primary mill product. A basic product which is manufactured or produced at a primary mill by electric furnace or other authorized conversion process and cast in metal molds.

(3) Derivative product. A product which is manufactured or produced from a primary mill product, or a product which is manufactured or produced from another derivative product.

(4) Heat, melt or die lot number. The designation of the single manufacturing process of smelting by which specific metal mill products have been identified.

(5) Manufacturing Lot. All products of the same thickness or diameter, class, condition or temper, rolled or forged from the same heat, and heat-treated at the same time or by the same continuous process.

(b) With each tender of supplies under this contract, the Contractor shall secure a copy of the order and the product certification and test report(s) to the packing slip so as to withstand air, rail or ocean shipment to each consignee specified in the order. If the supplies to be delivered under this contract are the product(s) of more than one (1) manufacturing lot, a separate certificate shall be furnished for each manufacturing lot. This requirement shall apply whether the supplies are/were manufactured or produced under a product specification, the part number or die number of a particular manufacturer or other entity, a commercial, industry or military standard or specification, drawings or any other form of technical data.

(c) Each certificate prepared in accordance with this clause shall include the following:

(1) The Contractor's name, address, and commercial and Government entity (CAGE) code; the Contract/order number, the applicable specification, drawing or standard, or part number (including revision/amendment and date); identification of the specific supplies delivered under the order, including the national stock number (NSN), the nomenclature, the class, type and grade, and unified numbering system (UNS) code, if applicable; and for metal products, include the alloy designation, and condition (finish and temper). If the Contractor is not the manufacturer of the supplies furnished under the order, the certificate will include the name, address, and CAGE code (if applicable) for each of the entities through which the supplies passed, whether as complete products, or as products upon which further

manufacturing, production, or fabrication was required, so that traceability to the manufacturer of the primary mill product will be readily discernible there from.

(2) The identification of each parameter for which the contract, specification, standard, drawing or other data, required for inspection or testing.

(3) The identification of the specific requirement for each of the parameters in (c)(2) above, for the particular supplies being produced and covered by the Certificate.

(4) The actual results of inspection and/or tests conducted by the Contractor to demonstrate conformance with each of the specific requirements of (c) (3) above.

(5) The marking requirement for the material and the source of this requirement, i.e., the contract schedule, specifications, standards or other requirement(s).

(6) A statement, signed by an authorized representative of the Contractor who is responsible for quality assurance, certifying that the lot has been produced, inspected, sampled and tested, and marked in accordance with all contract and specification requirements, and that the supplies comply with all applicable contract and specification requirements.

(d) If the supplies to be delivered under this contract are primary mill products, or are/were produced or fabricated from products which were derived from primary mill products, the Contractor shall attach to each certificate for supplies delivered under this contract, a true copy of the certification and test report (CERT) of the primary mill which manufactured or produced the primary mill product(s). The producing mill CERT for the primary mill product(s) shall identify each manufacturing lot by heat, melt or die lot number. If the supplies to be delivered under this contract are derived from primary mill product of more than one heat, melt or die lot, a separate CERT shall be attached to the Contractor's Certification for each such heat, melt or die lot. If the supplies to be delivered under this contract are derivative products, produced from primary mill products, or from other derivative products, then, in addition to each primary mill CERT required by this clause, the Contractor shall attach to its certification a true copy of the CERT of each derivative product manufacturer or producer for each manufacturing lot represented by the supplies delivered under the contract.

(e) Unless otherwise specified in this contract, the Contractor shall retain the certificate and supporting documents (CERTS) for a period of four (4) years. Upon the request of the Contracting Officer at any time during the period required for retention, the Contractor shall make the certificate(s) available for review by the Government.

(End of Clause)

**52.246-9003 Measuring and Test Equipment.**
As prescribed in 46.391, insert the following clause:

MEASURING AND TEST EQUIPMENT (JAN 2014)

Notwithstanding any other clause to the contrary, and/or in addition thereto, the Contractor shall ensure that the gauges and other measuring and testing equipment, used in determining whether the supplies presented to the Government for acceptance under this contract fully conform to specified technical

requirements, are calibrated in accordance with International Organization for Standardization (ISO) 10012:2003 or American National Standards Institute (ANSI)/National Conference of Standards Laboratories (NCSL) Z540.3 (R2013).

(End of Clause)

**52.246-9004 Product Verification Testing.**
As prescribed in 46.392, insert the following clause:

PRODUCT VERIFICATION TESTING (MAR 2014)

(a) In accordance with Federal Acquisition Regulation (FAR) clause 52.246-2, "Inspection of Supplies-Fixed Price, and the procedures below, the Government may perform product verification testing (PVT) on some or all items under the contract.

(b) The Contractor is responsible for ensuring that supplies are manufactured, produced, and subjected to all tests required by applicable material specifications/drawings specified in the purchase description of the contract. The Government reserves the right to conduct PVT to ascertain if any or all requirements of the purchase identification description contained elsewhere herein are met prior to final acceptance.

(c) When required, PVT will be performed at a Government-designated testing laboratory at Government expense. When specified by the contracting activity, the cognizant Government quality assurance representative (QAR) is responsible for notifying the Contractor of PVT invocation and execution.

(1) Upon notification to the contractor that PVT is invoked, the Contractor shall not ship and/or deliver any material under this contract unless directed to do so in writing by the Contracting Officer or until notified of acceptable PVT results.

(2) The Government reserves the right to reject the lot or withhold payment if the Contractor ships prior to Government approval of the PVT applicable to that lot.

(3) The Government will normally notify the Contractor of the results of the PVT within 20 working days after receipt of the samples by the Government-designated testing facility; failure to notify the contractor of the results within 20 working days does not affect the respective rights or obligations of the Contractor and the Government except as specifically stated in this clause.

(d) When PVT has been invoked and upon Contractor presentation of a production lot prior to acceptance, the QAR will preliminarily inspect and then select a random sample from such lot(s) for PVT.

(1) The QAR has the authority to reject tendered lots which are not in conformance to contract requirements rather than select a sample for PVT. The QAR shall notify the contractor of such rejection and the Contractor shall propose corrective action, if appropriate.

(2) Under the direction of the QAR, selected PVT samples shall be shipped by the Contractor at Government expense with a copy of the Department of Defense (DD) form 250 and a DD form 1222. The packaging will be marked as follows: "Product Verification Test Samples, Contract number _____, lot/item number _____." Upon shipment of the PVT samples, the QAR shall

submit the original unsigned DD form 250, along with a copy of the DD form 1222, to the procuring contracting officer (PCO).

(e) Samples subjected to PVT are deemed to be part of the contract quantity.

(1) Samples which pass testing and are not destroyed during evaluation will be returned to the Contractor at the Government's expense and will be included as part of the total contract quantity.

(2) Samples which pass testing and are destroyed during evaluation will not be returned to the Contractor. The Government will consider the destroyed samples as part of the contract quantity for payment and delivery. The Contractor will deliver the remaining lot quantity minus the destroyed sample units.

(3) If samples fail testing, such failure will result in rejection of the entire contract lot from which the samples were taken. These samples will not be included as part of the total contract quantity. At the Government’s discretion, parts failing any test criteria may be retained and not be returned to the Contractor without liability from the Government to the Contractor.

(f) These subparagraphs pertain only to contracts and bilateral purchase orders.

(1) The Government will evaluate the test results and the QAR shall notify the contractor of the acceptance or rejection of the lot based upon the PVT results. The Government is not required to accept/reject the supplies tendered until after receipt of the PVT results.

(2) The Government shall have the option to require the Contractor to screen the entire tendered lot or contract quantity for any defects noted during preliminary inspection or by the PVT. Any defects found shall be corrected before re-tendering any lot for acceptance by the Government. Upon retendering a lot, the Government has the right to request documentation establishing that the screening was performed and that all parts conform to contract requirements. Furthermore, the Government may subject any retendered lot to additional PVT.

(3) If the Government rejects a lot tendered for acceptance based upon preliminary inspection or a failure to pass PVT, the Contractor shall be deemed to have failed to make delivery within the meaning of the Default clause of this contract. In such case, the Government reserves all rights and remedies to which it is otherwise entitled by law, regulation, or this contract.

(g) These subparagraphs pertain only to unilateral purchase orders.

(1) The Government will evaluate the test results and the QAR shall notify the contractor of acceptance or rejection of the lot. If the Government fails to act within the period set for notification (see(c)(3) above), the required delivery date will be deemed to have been extended by an amount of time equal to the Government’s delay. The Government is not required to accept/reject the supplies tendered until after receipt of the PVT results.

(2) If a lot is rejected at either preliminary inspection or based upon the results of PVT, the order may be cancelled for delivery of nonconforming goods with no liability from the Government to the unilateral purchase order awardee. The Government has the option to permit the unilateral purchase order awardee to retender the lot after screening for, and correcting, any defects noted by the QAR during the

preliminary inspection or based on the results of the PVT. Upon retendering the lot, the Government has the right to request documentation establishing that the screening was performed and that all items conform to contract requirements. Furthermore, the Government may subject this lot to additional PVT.

Alternate I (MAR 2014) When acquiring heat and die number requirements, identified by the contract description or specification, use the following additional paragraphs (a)(1) and (b)(1).

(a)(1) The QAR will select samples on a random basis from each "heat" or "die number" lot which is included in the production lot or contract lot tendered for acceptance.

(b)(1) If the test results indicate nonconformities in the chemical or mechanical properties, the nonconformities shall be the cause for rejection of the entire "heat" or "die number" lot included in the production or contract lot. Any "heat" or "die number" lot that is rejected may not be re-tendered for Government inspection and acceptance.

Alternate II (MAR 2014) When acquiring instrument bearings, use paragraphs (a)(1) and (b)(1) in addition to the basic clause.

(a)(1) When PVT is a requirement, the Contractor shall notify the PCO and the QAR in writing at least 30 calendar days before anticipated completion of manufacture of the contract quantity or first manufacturing lot. This is to allow for sufficient time for scheduling and PCO coordination with the Government test facility.

(b)(1) The PCO may waive the requirement for PVT where supplies being offered are identical to supplies that were accepted by the Government within a period of two years prior to the date of current solicitation. Offerors offering such products, who wish to rely on such prior acceptance by the Government, must furnish evidence with the offer that prior Government acceptance is presently appropriate for the products to be furnished hereunder by indicating below the information for identical supplies accepted by the Government.

Government agency_____
Contract number _____
Date of Contract_____
National stock number (NSN)_____
Specification/Part Number _____

(2) In all cases, the PCO reserves the right to make final waiver determination.

(3) The contract delivery schedule shall be reduced by 30 calendar days (time allotted for submission and approval of PVT sample(s)) if submission of PVT sample(s) is waived by the Government.

(End of Clause)

**52.246-9006 Place of Performance – Government Inspection, Acceptance and Shipping Point.**
As prescribed in 46.503-90(b)(1), insert the following clause.

PLACE OF PERFORMANCE – GOVERNMENT INSPECTION, ACCEPTANCE AND SHIPPING POINT (MAR 2013)

(a) Place of performance:

[ ] (1) Items will be manufactured at the following locations:

Item number Plant name and address

(To be supplied with the offer by the offeror)

[ ] (2) Items will be furnished from stock. The manufacturer (not the dealer) is as follows:

Item number Name and address of manufacturer

(To be supplied with the offer by the offeror)

(b) Place of packaging, packing and marking:

[ ] (1) Same as shown in (a)(1) above.

[ ] (2) As shown below:

Item number Name and address of packaging plant

(To be supplied with the offer by the offeror)

(c) Place of Government inspection:

(To be supplied with the offer by the offeror)

[ ] (1) Material inspection, except as may be indicated in (c)(2), will be made at the follow locations:

Item number Plant name and address Government inspection office

(To be supplied with the offer by the offeror)

[ ] (2) Packaging, packing and marking inspection (if other than (c)(1) above) will be made at the following location:

Item number Plant name and address Government inspection office

(To be supplied with the offer by the offeror)

[ ] (3) At destination.

(d) Place of acceptance:

[ ] (1) At the plant shown and by the Government inspection office shown in (c)(1) above.

[ ] (2) At the plant shown and by the Government inspection office shown in (c)(2) above.

[ ] (3) At destination by the receiving authority.

(e) Applicable to free on board (f.o.b). origin shipments on Government bill of lading awards only. Shipment will be made from the Contractor's or subcontractor plant(s) identified below. These shipping points were used in the evaluation of Contractor's f.o.b. origin offer. If the Contractor ships from a place other than as identified herein, any increase in transportation costs shall be borne by the Contractor and any savings shall revert to the Government.

[ ] (1) Same as shown in (a)(1) above.

[ ] (2) As shown below:

Item Number Name and Address of Shipping Point

(To be supplied with the offer by the offeror)

(f) The performance of any of the work contracted for in any place other than that named above is prohibited unless approved in writing in advance by the Contracting Officer.

(End of Clause)

**52.246-9008 Inspection and Acceptance at Origin.**
As prescribed in 46.503-90(b)(3), insert the following clause:

INSPECTION AND ACCEPTANCE AT ORIGIN (NOV 2011)

(a) Inspection and acceptance are at origin.

(b) The point of acceptance will be the point of last inspection before shipment unless otherwise indicated by the offeror.

(c) The Offeror shall indicate below the location where supplies will be inspected:
Supplies:
Plant: _____
Commercial and Government entity (CAGE) code:_____
Street: _____
City/State/Zip: _____
Applicable to contract line-item numbers(s) (CLIN(s)): _____

(d) The Offeror shall indicate below the location where packaging will be inspected:

Packaging:

( ) Same as for supplies

or,

Plant: _____ CAGE Code: _____
Street: _____
City/State/Zip: _____
Applicable to CLIN(s): _____

(e) For CLIN(s) described by manufacturer's name/code and part number:

(1) Contractor must present evidence of performance of all quality assurance requirements specified in the contract and ensure that item will serve its intended purpose by performing examinations and tests to determine (A) completeness of item, (B) absence of rust, contamination, or deterioration, (C) correct identification, (D) absence of any damage, and (E) compliance with preparation for delivery. If the Contractor is not the manufacturer of the supplies, evidence must be furnished to establish that the supplies were produced by the manufacturer.

(2) The word "manufacturer" means the actual manufacturer of each CLIN. The Government's Quality Assurance Representative may require that evidence be furnished establishing the name and address of the plant that manufactures each CLIN to ensure that a domestic product is being supplied.

(f) For CLIN(S) designated as former Government surplus (whether described by manufacturer's name/code and part number, or by Military or Federal specification or drawing), the original package markings of each item shall be verified to previous Government contract number and part number (as specified in Defense Logistics Acquisition Directive (DLAD) 52.211-9000, Section I of the award). Any deviation from this number shall be cause for rejection of the item.

(g) Additional inspection requirements may be required, based on the evaluation of the surplus offer, by the procuring activity. Such additional requirements, if necessary, will be identified before the award.

(End of Clause)

Alternate I - Replace paragraph (a) in 9008 with (a) below, for acquisitions above the simplified acquisition threshold (SAT) whenever subsequent shipments, per National Stock Number (NSN), will undergo inspection and acceptance at destination,

Alternate (ALT) I (a) For each national stock number (NSN), inspection and acceptance will take place at:

Origin - first shipment only;
Destination - subsequent shipments

(End of Clause)

**52.246-9012 Preparation for Delivery and Inspection of Fresh Fruits and Vegetables.**
As prescribed in 46.402-91, insert the following clause:

PREPARATION FOR DELIVERY AND INSPECTION OF FRESH FRUITS AND VEGETABLES
(NOV 2011)

(a) To the extent possible the government shall purchase product based on visual best value selection, i.e., that product which best meets customer needs after considering quality and price.

(b) For supplies to be delivered to DLA Troop Support cold storage sites in the contiguous United States, inspection shall be performed at origin by the Government purchasing agent. Inspection at destination for identity, quality, condition, and quantity shall be performed by the Government purchasing agent or by veterinary/medical food inspection personnel services. The Contracting Officer reserves the right to require that inspection be performed by the Agricultural Marketing Service, USDA, or by state inspectors at the expense of the Contractor.

(c) For supplies to be delivered directly to military posts, camps, stations, commissary stores or ports of embarkation for overseas customers, inspection shall be performed at origin by USDA or state inspectors at Contractor's expense. Inspection at destination for identity, quality, condition and quantity shall be performed by veterinary/medical food inspection personnel services.

(d) In preparing for delivery the Contractor shall assure the following:

(1) Include with each shipment when available, a copy of DLA Troop Support Form 1930, signed by the Contracting Officer, stating whether USDA or state inspection was accomplished at origin.

(2) Include a copy of the USDA or state inspection certificate with each shipment which receives such inspection. The certificate shall cite the rail car number or trailer license number. Any shipments received at destination without the required certificate will be inspected by the government at the expense of the Contractor.

(e) In the event deliveries are rejected at destination, the Contractor may request a reinspection from the Contracting Officer. The Contracting Officer may grant reinspections, if valid reasons exist. The reinspection will be conducted by the USDA. In the event results of reinspections confirm nonconformance with contract requirements, the cost of the reinspection shall be borne by the Contractor. If results establish conformance with contract requirements, the cost shall be borne by the government.

(f) A representative portion of each contract line item may be check-weighed at destination to determine that the containers meet the specified minimum weight. No payment will be made for weights in excess of the minimum weight required by the contract. Except for supplies purchased for resale, contract requirements will be considered to be satisfied when the average weight per container meets the specified minimum weight. For supplies purchased for resale, each package must contain, at destination, no less than the marked net weight as shown on the container. (Except that lots in compliance with the USDA individual container weight allowance will be considered to meet contract requirements.)

(g) Fresh fruits and vegetables shall be packed in clean commercial type containers. Used containers are permissible if they are free of inappropriate markings. Containers shall be full, tightly packed, and properly closed or covered.

(h) When delivery is to be made to two or more destinations, the Contractor shall separately brace each delivery segment at origin or otherwise provide for its protection while enroute to the other consignee(s).

(i) When seavans are loaded at origin for overseas shipment, copies of all papers including a copy of the inspection certificate and a consist document or equivalent document must be placed in the van. The

consist document may be your own manifest provided the specified information is included and the copy placed in the van has the word "consist" written or typed on the top of the document.

The following information is to be written on the consist document:

(1) Consignee's requisition number

(2) Item description

(3) Count

(4) Unit price

The consist document along with the inspection certificate, and phyto-sanitary certificate (if applicable) must be attached to one of the containers in the last row prior to sealing the van. (A copy of the phyto-sanitary certificate (if applicable) must also be attached to the outside of the van door). All papers must show the BPA number as well as other pertinent information as to the contents of the van. Vans will be loaded in accordance with guidance provided by the Contracting Officer.

(End of Clause)

**52.246-9013 Contractor and Government Samples at Origin.**
As prescribed in 46.402-92, insert the following clause:

CONTRACTOR AND GOVERNMENT SAMPLES AT ORIGIN (SEP 2007)

When required, the Contractor will select samples of end items or components or both for Contractor examination or testing as required by the item specification or other contract provisions. In addition, the government may select samples of end items or components or both at origin for the purpose of conducting required inspection.

The Government may use, consume, destroy or retain said samples at its option. Notwithstanding any other provision of the contract, the Contractor shall bear the cost of Contractor and Government samples selected at origin, whether the supplies are accepted or rejected.

Furthermore, unless otherwise specified, any sample unit which is altered as a result of the performance of any required examination or test so as to no longer meet the required characteristic of the component or end item, shall not be included as part of the supplies delivered under the contract.

Examples of such alteration include, but are not limited to, cutting an item to remove a slice or observe internal surface characteristics, procedures requiring re-canning/re-cooking of the product, thawing and refreezing.

(End of Clause)

**52.246-9014 Certificate of Conformance.**
As prescribed in 46.504-90(a)(1), insert the following clause:

CERTIFICATE OF CONFORMANCE (NOV 2011)

(a) Unless otherwise specified in the contract, the Contractor shall furnish a certificate of conformance for packaging, packing, labeling, marking and unitization materials and their performance in use in lieu of government sampling and testing. Performance in use applies to joint strength of strapping and tension of unit load strapping. The unitization materials covered by the certificate of conformance shall not include pallets. Examination and testing of pallets shall be performed in accordance with specification requirements unless otherwise stipulated in the contract.

(b) When specified, the Contractor may also furnish a certificate of conformance for certain components/ingredients or end item characteristics. The Contractor may still furnish a certificate covering any of the foregoing even though a subcontractor provided the materials. In such event, the Contractor is responsible for assuring that the materials met all contract requirements. For this reason, the Contractor should request a certificate of conformance from the subcontractor.

(c) The certificate of conformance should be worded substantially as follows:

(1) I certify that all (indicate type of material) called for by the contract conform to applicable contract requirements in every particular. (For meats only, the Contractor must also state that "no distressed, reconditioned meat has been used.")

(2) Such materials consist of the following: (Specify quantity, manufacturer and nomenclature for each item.)

Signature and Title of Certifying Official

Distribution: One copy to origin inspector, when applicable. One copy with shipment when origin USDA/USDC inspection is not required. One copy with invoice for payment when Department of Defense (DD) form 250 is not used.

(d) It is the intent of the Government to be able to rely on the certificate of conformance. To assure that the certificate is reliable, the Government reserves the right to perform verification testing of each component for which specifications are established in the contract. Random samples shall be personally selected by the cognizant Government inspector. Random samples of packaging, labeling, packing and marking materials shall be submitted to the DLA analytical laboratory with a copy of the DD form 1222 furnished to DLA Troop Support HSQ. Food component materials shall be sent to the laboratory servicing the inspector's organization. All costs incident to the sampling and submittal of materials shall be borne by the Contractor. The reliability of the Contractor's certificate of conformance will be determined on the basis of Government verification results.

(1) When it is determined by DLA Troop Support HSQ that the DLA analytical laboratory test samples meet the contract requirements, the certificate of conformance for these materials is considered reliable.

(2) When DLA Troop Support finds the materials do not meet the contract requirements based on recognized statistical methods, the certificate of conformance is considered unreliable. The Contractor shall be so advised and the particular deficiencies which render such certificate unreliable shall be identified. The unreliability status may be continued from contract to contract regardless of the particular

contract on which the verification tests, or submission by Contractor of nonconforming material, has occurred. The Contractor is responsible for all costs incurred by the government in performing tests of future samples submitted for testing after such time as the Government has informed the Contractor of the unreliability status and until reliability is again established to the satisfaction of the Contracting Officer. Testing and administrative costs shall be assessed at the prevailing rate.

(End of Clause)

**52.246-9023 General Inspection Requirements.**
As prescribed in 46.202-3-90(b), insert the following clause:

GENERAL INSPECTION REQUIREMENTS - DLA TROOP SUPPORT - SUBSISTENCE
(NOV 2011)

(a) Inspection.

(1) The Contractor shall employ the services of the United States Department of Agriculture (USDA), Grain Inspection, Packers and Stockyard Administration (GIPSA) or Agricultural Marketing Service (AMS) or U.S. Department of Commerce (USDC), National Marine Fisheries Service (NMFS) to accomplish origin inspection (examination and testing) and sampling as required herein and in the applicable commodity specifications. The Contractor shall bear all expenses incident thereto, including costs of samples and all associated costs for preparation and mailing. Costs shall be assessed in accordance with the Government laboratory testing charges for individual test characteristics and number of tests required by the specification or contract. A list of fees may be obtained from the appropriate inspection activity.

The Contractor shall furnish the Government grader/inspector a copy of the complete contract and supporting contractual documents (i.e., individual solicitation, contract modifications, waivers, and referenced specifications).

Offerors may contact the appropriate Government office to discuss inspection procedures prior to submitting offers; however, nothing provided thereby shall be construed to alter the applicable specification in any manner or to reduce the responsibility of Contractor to comply with such specifications.

(2) The Contractor shall take action to correct or replace nonconforming supplies.

(3) The Government will perform an inspection at destination for identity, condition and quantity. If there is evidence that the supplies do not conform with contract requirements, the inspector shall report the findings of his inspection to the appropriate DLA Troop Support office (operational rations business unit, food services business unit, produce business unit, product services office, etc.). The applicable DLA Troop Support office shall report the findings to the Contracting Officer or the ordering officer, who shall in turn notify the Contractor.

(4) Supplies will be rejected when any evidence of insect activity (live or dead in any stage of development) or rodent activity/contamination is found in or on product, packaging, packing or unitization.

(5) Nonconforming supplies rejected at origin will not normally be accepted by the Government. However, the Contractor may elect to petition the Contracting Officer in writing to grant a waiver of the contract requirements for which supplies have been found nonconforming, and to accept the supplies "as is" with appropriate price consideration.

(6) The Contractor shall furnish all inspection gauges, instruments, scales, tools or other material required by the designated Government inspection activity to complete the necessary inspection. The Government inspector will insure that the Contractor has had such gauges, instruments, scales, tools, or other material required to complete inspection properly calibrated and, if necessary, certified. When required by the contract/solicitation the Government inspector will collect insect specimens from plant production and storage areas and submit the specimens to the nearest military entomological laboratory for identification. When the collection of insects is required, the Contractor shall be responsible for supplying and installing specified insect monitoring devices required to accomplish this task.

(b) Standby test samples. The Government reserves the right to withdraw and hold standby samples of components or finished products or both (the quantity of which shall be not more than twice that required by the specification) for inspection purposes. Samples not used will be returned to the Contractor.

(c) USDA and USDC certificates.

(1) Inspection by USDA, AMS, Fruit and Vegetable Division, Poultry Division or Dairy Division: When DD Form 250, Material Inspection Receiving Report (MIRR), is not used, the Contractor shall obtain official USDA inspection certificate, which shall:

(i) Contain the following statement in the grade section of the certificate:

(A) Supplies listed hereon conform to all quality requirements of the contract.

(B) Container condition meets all requirements of the contract.

(C) Visual examination indicates conformance to packaging, packing, unitization, labeling and marking requirements of the contract.

(ii) Indicate that supplies shipped are those inspected. This may be satisfied by means of one of the following:

(A) Each primary container must be embossed, stamped or stenciled with a code mark prior to inspection, which corresponds with the code marks listed on the USDA grade certificate.

(B) The USDA grade certificate bears a statement that all of the shipping containers comprising the inspection lot have been stamped with the official USDA stamp impression.

(C) The USDA certificate of loading, if issued, bears a cross-reference to the applicable USDA inspection document.

(iii) Indicate that the Contractor has furnished a certificate of conformance for packaging, packing, labeling, marking and unitization materials.

(iv) Indicate the random samples of packaging, packing, labeling, marking and unitization materials, where applicable, have been selected by the inspector for forwarding to DLA Analytical Laboratory, 700 Robbins Avenue, Philadelphia, Pennsylvania 19111 in accordance with DLA Troop Support clause 52.246-9P20.

(v) Indicate the applicable contract or order number.

(2) Inspection by USDA, AMS, livestock, meat, grain and seed division: For all shipments, whether DD Form 250 (MIRR) is required or not, the Contractor shall obtain a USDA agricultural products acceptance certificate (Form LS 5-3), which shall contain the information specified in paragraph (c)(1). The Contractor shall also include the applicable lot number(s).

(3) Inspection by USDA, GIPSA, Field Management Division: When DD Form 250 (MIRR) is not required, the Contractor shall obtain an official USDA inspection or examination certificate, as appropriate. In addition to the entries required by the GIPSA, the certificate shall contain the following certification: "Supplies listed hereon conform to all quality and condition requirements of the contract".

(d) Distribution of Certificates. Copying machine duplicates of USDC certificates and USDA certificates other than USDA Form LS 5-3 are not acceptable. Copying machine duplicates of USDA Form LS 5-3 are acceptable only as provided in paragraph (2) and (3) below. Copying machine duplicates of the original signed DD Form 250 are acceptable. In addition to the prohibited use of copying machine duplicates, USDC certificates must also be embossed with the official seal of the USDC. The Contractor shall distribute certificates as follows:

(1) When DD Form 250 (MIRR) signed by the inspector is provided, a copy of the USDA/USDC inspection certificate need not be furnished to the designated paying office. (Exception: When the contract or specification provides for acceptance of product with a price adjustment to the Contractor'' invoice, e.g., excess fat in ground beef, the original signed USDA/USDC inspection certificate must be attached to the top of the commercial invoice which is submitted to the designated paying office.)

(2) When DD Form 250 (MIRR) is not required, the original signed USDC inspection certificate or USDA inspection certificate other than USDA Form LS 5-3 must be attached to the top of the commercial invoice, which is submitted to the designated paying office. When the services of the USDA, AMS, Livestock, Meat, Grain and Seed Division are employed, the original signed USDA Form LS 5-3 or a copying machine duplicate of the original form LS 5-3 with an original signature must be attached to the top of the commercial invoice which is submitted to the designated paying office.

(3) As appropriate for any shipment, one blue or green signed copy of the original USDA Fruit and Vegetable Division certificate; one green or yellow carbon copy of the original signed USDA, AMS Dairy Division or Poultry Division certificate; one copy of the original signed USDA, GIPSA or USDC certificate; one copy of the original signed USDA Form LS 5-3 or a copying machine duplicate of the original USDA Form LS 5-3 with an original signature shall accompany each shipment to each destination and be marked Attention: Subsistence Inspector.

(4) In the event the Contractor does not include appropriate certificate(s) with each shipment to each destination as required, the Government reserves the right to arrange for government grading/inspection and certification at destination at the Contractor's expense.

(e) Lot identification. The contractor shall code or distinctively mark by embossing, stamping, printing or stenciling each shipping container for every lot of supplies offered for acceptance so as to identify the lot from any other lot produced by the Contractor. Under both in-process (on line) and stationary lot inspections, the maximum lot size, unless otherwise specified in the contract, shall be defined by the assigned inspection agency.

(f) Particular inspection requirements.

(1) Primary containers: Examination of primary containers for external condition and labeling shall be in accordance with the U.S. standards for condition of food containers, except that when requirements are contained in the specification, examination shall be performed in accordance with that specification. When additional requirements are specified in the specification, examination for these requirements shall be in accordance with the specification.

(2) Unit loads: Examination of unit loads shall be in accordance with MIL-L-35078.

(3) All other: Examination shall be in accordance with the specification.

(End of Clause)

**52.246-9024 Alternative Inspection Requirements for Selected Items.**
As prescribed in 46.202-3-90(c), insert the following clause:

ALTERNATIVE INSPECTION REQUIREMENTS FOR SELECTED ITEMS –
DLA TROOP SUPPORT - SUBSISTENCE (NOV 2011)

(a) Optional Contractor testing of Contractor-furnished materials.

To expedite shipment, the Contractor has the option to perform, or have performed by an independent laboratory, contractually-required tests of end items or component material not specified by the U.S. Standards of Grade. The inspector for the Government agency having jurisdiction over ascertaining compliance may permit shipment, provided all other requirements of the contract are met. The designated Government inspector will select random samples of each lot of end items or component material for verification testing until the Contractor's testing system is determined reliable in accordance with paragraph (c) of this clause. It is the intent of the Government to rely on Contractor test results to the maximum extent practicable and minimize Government verification testing.

(b) Compliance of product.

Acceptance of material as complying with required characteristics shall be based on the Contractor's test results; provided that Government verification indicates the Contractor's testing system is reliable, in accordance with paragraph (c) of this clause, as to each of the required characteristics. If the Contractor's test system is determined to be unreliable, product compliance will be determined based solely on Government test results. In the event the Government detects any irregularities in the Contractor's testing system, the designated Government inspector may withhold approval until Government test results indicate products conform to contract requirements. (For Meal, Ready-to-Eat (MRE) items, if Government laboratory test results show that product is nonconforming, the product shall be withheld

from final assembly and subject to return and replacement by the component Contractor, even if previously approved by the Government inspector.)

(c) Reliability conditions.

(1) To be considered reliable, the Contractor's testing system shall produce results comparable to the Government test results; unless the Government agency having jurisdiction has inspected the item produced at the Contractor's plant within the previous 120 days. Unless otherwise specified in this contract, the Government inspector will select samples randomly from the first three lots of end items presented for inspection and will conduct verification testing on a skip-lot basis. Skip-lot verification is done by random selection of samples from not less than one lot in six consecutive lots presented for inspection. The sampling procedure under skip-lot places the succeeding lots not chosen for inspection back into the universe available for subsequent inspection. (For instance, starting with a group of six lots (i.e., 1-6), one lot is randomly selected for inspection. If lot 4 is selected, the next samples will be selected from lots 5, 6, 7, 8, 9, or 10. If lot 8 is selected, the next samples will be selected from lots 9, 10, 11, 12, 13, or 14; and so on.)

(2) Contractor's testing system shall be considered unreliable when (i) the Government verification results indicate product nonconformance to contract requirements; and (ii) a significant disparity exists between Government laboratory results and Contractor test results. When a Contractor's testing system is determined to be unreliable, compliance testing will revert to the Government, and all items shall be inspected by the Government prior to shipment.

(3) Contractor's testing system will be considered doubtful when (i) a significant disparity exists between Government laboratory results and Contractor test results; (ii) the Government test results indicate significantly poorer quality than the Contractor's; and (iii) the Government laboratory test results do not indicate product nonconformance to a statistically significant degree. When the Contractor's testing system is considered doubtful, verification testing will be performed on each lot produced; however, the Government will continue to permit the Contractor to ship based on its own test results.

(4) Contractor testing system reliability will be determined by applying recognized statistical tests to the Contractor's and Government's test results. These determinations shall be accomplished by the DLA Troop Support, Directorate of Subsistence, Product Services Office, 700 Robbins Avenue, Philadelphia, Pennsylvania 19111-5092.

(5) The Contracting Officer will notify the Contractor of any change in reliability status. Notification will include details of the statistical determinations and test results used in reliability studies. Telephonic notification and copies of these determinations will be provided to the Government by DLA Troop Support FTRE.

(d) Procedures. When the Contractor elects to perform testing, the following shall apply:

(1) Reporting of Contractor's results. Test reports for each lot of end item and components shall be submitted in the format contained in this clause by the Contractor in an original and one copy to the designated Government inspector. The inspector will forward one completed copy to DLA Troop Support FTRE.

(2) Verification actions. The Government will perform verification testing for food items and component material required by the contract to assure that the Contractor's testing results are reliable. Verification samples will be accompanied by a Department of Defense (DD) form 1222, Request for and Results of Tests. The Government laboratory that performs the tests will provide copies of the test results to the Government inspector and to DLA Troop Support FTRE. The Government laboratory will telephone the results to DLA Troop Support HS (215-737-4259) when testing identifies nonconformance. The Government reserves the right to (i) increase the rate or amount of verification testing up to and including full lot-by-lot testing, in the event the Contractor does not furnish reliable test results or certificates; or (ii) obtain additional data when significant disparities exist between the Contractor's results and the results of the Government laboratory testing. When any element of the Contractor testing system is determined unreliable, the Government may consider the testing system as a whole unreliable and return to full lot-by-lot verification for every test. Testing by the Government will continue until such time as the Contractor's reliability is again established.

(3) Standby test samples. The Government reserves the right to withdraw and hold standby test samples of component or finished product or both (the quantity of which shall be the next larger available sample size required for unit testing and the same sample size required for composite testing) for inspection purposes. Unused samples will be returned to the Contractor.

(e) Charges applicable to unreliable test status. The prime Contractor shall be charged the costs of lot-by-lot inspection during the period that its testing system is considered unreliable. These charges will be processed and approved by the Contracting Officer.

(f) Format for Contractor/subcontractor test report.

Name and address of Contractor:
Name and address of subcontractor: (if applicable)
Received for testing: (date)
Contract number:
Sample tested: (end item or component, indicate by name)
Quantity tested:
Applicable specification:
Identification of lot: (end item or component lot number, as applicable)
Quantity in lot: (units)
Testing completed: (date)

Test report

(Report test results for each sample unit tested and the sample average, if required by the specification, and identify results obtained from composite samples.)

(Typed name and title of laboratory official and signature)

The following certification shall be affixed to the test report when testing was performed on component items by supplier's laboratory or by subcontractor's laboratory.

Certification

I certify that the above test results were furnished to this firm to cover the testing of samples which are representative of the lot, and to the best of my knowledge and belief, have been found to comply with the analytical requirements of the specification, contract no. _____

Signature:_____
(typed name and title of Contractor's representative who is authorized to sign the certificate, and the date)

The following certification shall be affixed to the test report when testing was performed on component and/or end item by Contractor's laboratory or an independent laboratory.

Certification

I certify that the item presented for acceptance under terms of above referenced contract has been tested, as required by the contract, through the testing of samples that were representative of the lot, and to the best of my knowledge and belief, were found to comply with the analytical requirements of the specification and the contract.

Signature: _____
(typed name and title of Contractor's representative who is authorized to sign the certificate, and the date)

Distribution:

(Original and one (1) copy to Government inspector, who will forward one (1) copy to DLA Troop Support FTRE; and hard copy with each shipment, when DD Form 250 (MIRR) reports are not provided.)

(End of Clause)

**52.246-9025 Reinspection of Nonconforming Supplies.**
As prescribed in 46.407-97, insert the following clause:

REINSPECTION OF NONCONFORMING SUPPLIES – DLA TROOP SUPPORT - SUBSISTENCE
(NOV 2011)

(a) When origin inspection is performed by the U.S. Department of Agriculture (USDA) or U.S. Department of Commerce (USDC) and supplies are found to be nonconforming at origin, the Contractor may request USDA/USDC reinspection/formal review in accordance with the regulations of the respective agency. In such instances, the next larger available sample size will be used. The decision of the USDA/USDC representative as to conformance or nonconformance shall be final. It will be within the discretion of USDA/USDC whether to assess reinspection costs against the Contractor.

(b) When origin inspection is performed by the USDA or USDC and supplies are found to be nonconforming at destination, the Contractor may petition the Contracting Officer to obtain permission for a single reinspection, provided such petition provides valid technical reasons to believe the destination inspection findings were erroneous. The reinspection shall be performed in accordance with the original destination inspection criteria unless otherwise specified by the Contracting Officer.

(1) Reinspection of nonconforming supplies for grading factors, suspicion of fraud or substitution shall be conducted by the applicable origin inspection agency (USDA for meats and poultry, or USDC for

water foods). All costs associated with USDA/USDC reinspection shall be borne by the Contractor; unless the reinspection results establish compliance with contractual requirements, in which case costs shall be borne by the Government.

(2) Reinspection for all other criteria shall be accomplished by the Military Medical/Veterinary Services, as coordinated by the Contracting Officer with the applicable Military Medical/Veterinary Service Headquarters. The Military Medical/Veterinary Service Headquarters will designate the activity assigned to perform the reinspection and advise the Contracting Officer and the designated activity of the reinspection schedule. Reinspection shall be performed by personnel other than those involved in the original destination inspection. Reinspection costs shall be borne by the Contractor when reinspection results substantiate the nonconformance. The Government shall bear the costs of reinspection if the products are determined to be in compliance with contractual requirements.

(c) When inspection by the USDA or USDC is not a contract requirement and supplies are found nonconforming at destination, the Contractor may petition the Contracting Officer one time only to obtain permission for a single reinspection, provided such petition provides valid technical reasons to believe the original inspection findings were erroneous. If the Contracting Officer authorizes a reinspection, the reinspection results shall be final if they differ from the original inspection to such a statistically significant degree that error in the original results is probable. Otherwise, the original inspection results shall prevail. The reinspection/formal review shall be performed in accordance with the original inspection criteria, unless otherwise specified. All costs associated with the reinspection shall be borne by the Contractor; unless the reinspection results establish compliance with the contract requirements, in which case costs shall be assumed by the Government. Reinspection shall not be authorized when original inspection findings show that the supplies are unwholesome or contain a deleterious substance.

(d) The Contractor may elect to petition the Contracting Officer to grant a waiver of those contract requirements for which supplies have been found nonconforming and accept the supplies “as is” with appropriate price consideration. However, if the Contractor intends to exercise any option under (a), (b) or (c) above, the Contractor must do so prior to requesting a waiver. The denial of a waiver by the Contracting Officer will result in final rejection of the nonconforming supplies without recourse to reinspection.

(End of Clause)

**52.246-9030 Shade Evaluation of Contractor Furnished Components.**
As prescribed in 46.395(a), insert the following clause:

SHADE EVALUATION OF CONTRACTOR FURNISHED COMPONENTS (APR 2008)

Contracts awarded under this solicitation shall require shade evaluation of Contractor furnished components in accordance with the following provisions:

(a) Swatches shall be cut by the Contractor from those pieces or rolls selected by the Government representative. For yard goods, the dimensions of each swatch shall be 4" x 12" while for narrow loom material each swatch shall be a full width and 12" in length. The number of pieces or rolls to be sampled shall be in accordance with the following table:

| Lot Size | Pieces to be sampled |
|---|---|

| | |
|---|---|
| 1 to 8 pieces | Each piece |
| 9 to 25 pieces | 8 pieces |
| 26 to 90 pieces | 20 pieces |
| 91 to 160 pieces | 32 pieces |
| over 160 pieces | 1 of 5 pieces |

(b) The swatches shall be submitted to the Government laboratory for shade evaluation. If any swatches are rejected, the end items made from the rejected component lot shall also be rejected. In these instances, the Contractor shall without cost to the Government, cut additional shade swatches from each remaining piece or roll in the rejected sample lot which was not previously sampled and submit these swatches to the Government for shade evaluation.

(c) Swatches submitted in accordance with (a) and (b) above, shall also be evaluated for uniformity of shade when so specified in section 3 of the fabric specification and when the standard sample is referenced for uniformity of shade.

(End of Clause)

**52.246-9031 Shade Evaluation.**
As prescribed in 46.395(b), insert the following clause:

SHADE EVALUATION (APR 2008)

[ ] (a) 100% Swatching: From each piece in the lot, the Contractor shall cut a 4 X 24 inches shade swatch which is representative of the shade of the piece. The Contractor shall cut these swatches into two 4 X 12 inches swatches and identify each swatch with the piece from which it was cut. One set of swatches and a tally list of piece numbers for each roll of the lot shall be forwarded to the DLA Product Testing Center Analytical for evaluation. The remaining set shall be retained at the plant for use by the Quality Assurance Representative (QAR).

or

[ ] (a) Case Swatching: The Contractor shall put in each case only pieces which closely approximate each other in shade. From one piece in each case, the Contractor shall then cut a 4 X 24 inches shade swatch which shall be representative of the shade of the pieces in that case. The Contractor shall cut these swatches into two 4 X 12 inches swatches and identify each swatch with the case number containing the piece from which it was cut. One set of swatches shall be forwarded to the Government laboratory for evaluation, and the other set retained at the plant for use by the Quality Assurance Representative (QAR).

or

[ ] (a) Sampling: Notwithstanding any current provisions of the fabric specification, the following shade evaluation shall apply to this solicitation. A 4 x 12 inches shade swatch will be cut by the Contractor from those pieces or rolls selected by the Government representative, in accordance with the following table:

| Lot Size | Number of Pieces to be Sampled |
|---|---|

| | |
|---|---|
| 1 to 8 pieces | Each piece |
| 9 to 25 pieces | 8 pieces |
| 26 to 90 pieces | 20 pieces |
| 91 to 160 pieces | 32 pieces |
| over 160 pieces | 1 of 5 pieces |

The swatches shall be identified and submitted to the DLA Product Testing Center--Analytical for shade evaluation. If one or more of the shade swatches submitted are found unacceptable, the entire lot shall be rejected. A lot that was rejected for shade shall be screened and all pieces in the lot defective for shade shall be removed before such a lot is resubmitted. Resubmitted lots shall again be subjected to the sampling and shade evaluation prescribed herein. This requirement does not negate the Contractor's responsibility to perform shade evaluation prior to submittal of a lot to the Government.

(b) When Section 3 of the fabric specification contains a specific requirement for uniformity of shade and when the standard sample is referenced for uniformity of shade, the swatches submitted in accordance with (a) above shall also be evaluated for uniformity of shade.

(c) The Contractor shall transmit the swatches to:

DLA Product Testing Center-Analytical
700 Robbins Avenue
Philadelphia, Pennsylvania 19111-5092

The letter shall indicate "For Government shade approval" and contain the following information:

(1) Name of prime Contractor.

(2) Contract number.

(3) Nomenclature.

(4) Government inspection lot number.

(5) Number of swatches being submitted.

(6) QAR's name.

(7) Name and address of the QAR's base plant.

(8) Piece number of standard sample cited in contract.

(9) Tally list with piece numbers (not applicable to case swatching).

(d) If any swatches are rejected by the DLA Product Testing Center-Analytical for shade, those pieces* from which the rejected swatches were cut will be removed from the lot. Each piece acceptable for shade from which a shade swatch has been removed shall be cut by the Contractor from selvage to selvage so

that there will be no evidence of the shade swatch cut-out. The portion removed shall not be included in the yardage indicated on the piece ticket.

(e) If the Contractor reworks and resubmits pieces* originally rejected for shade or finish, it shall not combine the rejected pieces* with normal production or with lots rejected for other causes. Such pieces* shall be combined to form one resubmitted lot. Each piece* shall retain its original piece number, suffixed with an "X". The lot number shall also be suffixed with an "X".

*When the second block (a) above (CASE SWATCHING) is checked, the word "case(s)" is substituted for the word "piece(s)" in paragraphs (d) and (e)

(End of Clause)

**52.246-9039 Removal of Government Identification from Non-Accepted Supplies.**
As prescribed in 46.407(97), insert the following clause:

REMOVAL OF GOVERNMENT IDENTIFICATION FROM NON-ACCEPTED SUPPLIES
(NOV 2011)

(a) The Contractor shall remove or obliterate from a rejected end item and its packing and packaging, any marking, symbol, or other representation that the end item or any part of it has been produced or manufactured for the United States Government. Removal or obliteration shall be accomplished prior to any donation, sale, or disposal in commercial channels. The Contractor, in making disposition in commercial channels of rejected supplies, is responsible for compliance with requirements of the Federal Trade Commission Act (15 United States Code (U.S.C.) 45 et seq.) and the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301 et seq.), as well as other Federal or State laws and regulations promulgated pursuant thereto.

(b) Unless otherwise authorized by the Contracting Officer, the Contractor is responsible for removal or obliteration of government identifications within 72 hours of rejection of nonconforming supplies including supplies manufactured for the Government but not offered or supplies transferred from the Government's account to the cold storage Contractor's account at origin or destination. (For product rejected at destination and returned to the Contractor's plant, the 72 hour period starts with the time of Contractor receipt of returned product). After removal or obliteration is accomplished and prior to disposition, the Contractor must notify the Government inspector.

(End of Clause)

**52.246-9042 Documentation of Traceability - Qualified Products List/Qualified Manufacturers List (QPL/QML) Integrated Circuits, Hybrid Microcircuits, and Semiconductor Devices – DLA Maritime.**
As prescribed in 46.504-90(a)(2), insert the following clause:

DOCUMENTATION OF TRACEABILITY – QUALIFIED PRODUCTS LIST/QUALIFIED MANUFACTURERS LIST (QPL/QML) INTEGRATED CIRCUITS, HYBRID MICROCIRCUITS, AND SEMICONDUCTOR DEVICES – DLA MARITIME (NOV 2011)

(a) This clause is applicable to all contracts for QPL or QML integrated circuits or hybrid microcircuits devices procured in accordance with MIL-M-38510, MIL-PRF-38534 or MIL-PRF-38535, and semiconductor devices procured in accordance with MIL-PRF-19500. This clause applies regardless of the point of inspection designated in the award. This clause applies not only to contracts with suppliers (e.g., dealers or distributors) not listed as approved manufacturers on the applicable QPL/QML, but also to contracts awarded directly to a manufacturer listed on the applicable QPL/QML.

(b) The items supplied must be in strict conformance to the requirements set forth and/or referenced in the item description, including applicable revisions and slash sheets. To ensure this conformance, the Contractor must provide a certificate of conformance and traceability (CoC/T), as required by the applicable military specification. This CoC/T must include the information and documentation required by the applicable military specification. This documentation must reference the contract number and include a certification signed by the approved QPL/QML manufacturer. In addition, if the material is not procured directly from the approved manufacturer, all additional documentation required by the specification must be provided to establish traceability from the QPL/QML manufacturer through delivery to the Government. The CoC/T is required to determine acceptability of the supplies. If the CoC/T is not provided, is incomplete, or is otherwise unacceptable, the supplies will be determined not to meet contract requirements and will be rejected.

(c) If the contract requires inspection and acceptance at origin, the Contractor shall furnish the original and two copies of the CoC/T to the Government quality assurance representative (QAR) with the items offered for acceptance. The CoC/T must clearly reference the applicable contract number. Upon acceptance, the QAR shall sign all copies indicating approval of the certification and acceptance of the supplies. The Contractor shall submit one signed copy to DLA Land and Maritime FMTA. The second copy shall be retained by the QAR. The original shall be maintained by the Contractor.

(d) If the contract requires inspection and acceptance at destination, the Contractor shall mail one copy of the CoC/T to DLA Land and Maritime FMTA upon shipment/delivery. The CoC/T must clearly reference the applicable contract number.

(End of Clause)

**52.246-9043 Higher-Level Contract Quality Requirement (Non-Manufacturers).**
As prescribed in 46.311, insert the following clause:

HIGHER-LEVEL CONTRACT QUALITY REQUIREMENT (NON-MANUFACTURERS)
(NOV 2011)

If a higher-level contract quality requirement applies to this contract and the Contractor is not the actual manufacturer of the item(s) to be furnished, the Contractor represents that it shall:

(a) Furnish items under this contract that were produced at a manufacturing facility conforming to the higher-level contract quality requirement specified in FAR 52.246-11; or

(b) Maintain and provide objective evidence that items furnished under this contract were produced at a manufacturing facility conforming to the specified higher-level contract quality requirement and that the material meets contract requirements. At a minimum, evidence shall be sufficient to establish the identity of the product and its manufacturing source; and

(c) Maintain documentation of its quality assurance program; receiving/verification process; records management system; procurement system; inventory control system; testing results; and any other records identified in this contract.

(End of Clause)

**52.246-9044 Sanitary Conditions.**
As prescribed in 46.311-90, insert the following clause:

SANITARY CONDITIONS (APR 2014 )

(a) Food establishments.

(1) All establishments and distributors furnishing subsistence items under DLA Troop Support contracts are subject to sanitation approval and surveillance as deemed appropriate by the Military Medical Service or by other Federal agencies recognized by the Military Medical Service. The Government does not intend to make any award for, nor accept, any subsistence products manufactured, processed, or stored in a facility which fails to maintain acceptable levels of food safety and food defense, is operating under such unsanitary conditions as may lead to product contamination or adulteration constituting a health hazard, or which has not been listed in an appropriate Government directory as a sanitarily approved establishment when required. Accordingly, the supplier agrees that, except as indicated in paragraphs (2) and (3) below, products furnished as a result of this contract will originate only in establishments listed in the U.S. Army Public Health Command (USAPHC ) Circular 40-1, Worldwide Directory of Sanitarily Approved Food Establishments for Armed Forces Procurement, (Worldwide Directory) (available at: http://phc.amedd.army.mil/topics/foodwater/ca/Pages/DoDApprovedFoodSources.aspx ). Compliance with the current edition of DoD Military Standard 3006A, Sanitation Requirements for Food Establishments, is mandatory for listing of establishments in the Worldwide Directory. Suppliers also agree to inform the Contracting Officer immediately upon notification that a facility is no longer sanitarily approved and/or removed from the Worldwide Directory and/or other Federal agency's listing, as indicated in paragraph (2) below. Suppliers also agree to inform the Contracting Officer when sanitary approval is regained and listing is reinstated.

(2) Establishments furnishing the products listed below and appearing in the publications indicated need not be listed in the worldwide directory. Additional guidance on specific listing requirements for products/plants included in or exempt from listing is provided in Appendix A of the worldwide directory.

(i) Meat and meat products and poultry and poultry products may be supplied from establishments which are currently listed in the "Meat, Poultry and Egg Inspection Directory,] published by the United States Department of Agriculture, Food Safety and Inspection Service (USDA, FSIS), at http://www/fsis/usda/gov/wps/portal/fsis/topics/inspection/mpi-directory . The item, to be acceptable, shall, on delivery, bear on the product, its wrappers or shipping container, as applicable, the USDA shield and applicable establishment number. USDA listed establishments processing products not subject to the Federal Meat and Poultry Products Inspection Acts must be listed in the W]orldwide Directory for those items.

(ii) Intrastate commerce of meat and meat products and poultry and poultry products for direct delivery to military installations within the same state (intrastate) may be supplied when the items are processed in establishments under state inspection programs certified by the USDA as being "at least equal to" the Federal Meat and Poultry Products Inspection Acts. The item, to be acceptable, shall, on delivery, bear on the product, its wrappers or shipping container, as applicable, the official inspection legend or label of the inspection agency and applicable establishment number.

(iii) Shell eggs may be supplied from establishments listed in the "List of Plants Operating under USDA Poultry and Egg Grading Programs" published by the USDA, Agriculture Marketing Service (AMS) at http://www.ams.usda.gov/poultry/grading.htm.

(iv) Egg products (liquid, dehydrated, frozen) may be supplied from establishments listed in the "Meat, Poultry and Egg Product Inspection Directory" published by the USDA FSIS at http://apps.ams.usda.gov/plantbook/Query_Pages/PlantBook_Query.asp . All products, to be acceptable, shall, on delivery, bear on the product, its wrappers or shipping container, as applicable, the official inspection legend or label of the inspection agency and applicable establishment number.

(v) Fish, fishery products, seafood, and seafood products may be supplied from establishments listed under "U.S. Establishments Approved For Sanitation And For Producing USDC Inspected Fishery Products" in the "USDC Participants List for Firms, Facilities, and Products", published electronically by the U.S. Department of Commerce, National Oceanic and Atmospheric Administration Fisheries (USDC, NOAA) (available at: seafood.nmfs.noaa.gov). All products, to be acceptable, shall, on delivery, bear on the product, its wrappers or shipping container, as applicable, the full name and address of the producing facility.

(vi) Pasteurized milk and milk products may be supplied from plants having a pasteurization plant compliance rating of 90 percent or higher, as certified by a state milk sanitation officer and listed in "Sanitation Compliance and Enforcement Ratings of Interstate Milk Shippers" (IMS), published by the U.S. Department of Health and Human Services, Food and Drug Administration (USDHHS, FDA) at http://www.fda.gov/Food/GuidanceRegulation/FederalStateFoodPrograms/ucm2007965.htm. These plants may serve as sources of pasteurized milk and milk products as defined in Section I of the "Grade 'A' Pasteurized Milk Ordinance" (PMO) published by the USDHHS, FDA at http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/Milk/default.htm.

(vii) Manufactured or processed dairy products only from plants listed in Section I of the "Dairy Plants Surveyed and Approved for USDA Grading Service", published electronically by Dairy Grading Branch, AMS, USDA (available at: http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELPRD3651022 ) may serve as sources of manufactured or processed dairy products as listed by the specific USDA product/operation code. Plants producing products not specifically listed by USDA product/operation code must be Worldwide Directory listed (e.g., plant is coded to produce cubed cheddar but not shredded cheddar; or, plant is coded for cubed cheddar but not cubed mozzarella). Plants listed in Section II and denoted as "P" codes (packaging and processing) must be Worldwide Directory listed.

(viii) Oysters, clams and mussels from plants listed in the "Interstate Certified Shellfish Shippers Lists" (ICSSL), published by the USDHHS, FDA at http://www.fda.gov/food/guidanceregulation/federalstatefoodprograms/ucm2006753.htm.

(3) Establishments exempt from Worldwide Directory listing. Refer to AR 40-657/NAVSUPINST 4355.4H/MCO P1010.31H, Veterinary/Medical Food Safety, Quality Assurance, and Laboratory Service, for a list of establishment types that may be exempt from Worldwide Directory listing. (AR 40-657 is available from National Technical Information Service, 5301 Shawnee Road, Alexandria, VA 22312 ; 1-888-584-8332 ; or download from web site: http://www.apd.army.mil/pdffiles/r40_657.pdf ) For the most current listing of exempt plants/products, see the Worldwide Directory (available at: http://phc.amedd.army.mil/topics/foodwater/ca/Pages/DoDApprovedFoodSources.aspx).

(4) Subsistence items other than those exempt from listing in the Worldwide Directory, bearing labels reading "Distributed By", "Manufactured For", etc., are not acceptable unless the source of manufacturing/processing is indicated on the label or on accompanying shipment documentation.

(5) When the Military Medical Service or other Federal agency acceptable to the Military Medical Service determines the levels of food safety and food defense of the establishment or its products have or may lead to product contamination or adulteration, the Contracting Officer will suspend the work until such conditions are remedied to the satisfaction of the appropriate inspection agency. Suspension of the work shall not extend the life of the contract, nor shall it be considered sufficient cause for the Contractor to request an extension of any delivery date. In the event the Contractor fails to correct such objectionable conditions within the time specified by the Contracting Officer, the Government shall have the right to terminate the contract in accordance with the "Default" clause of the contract.

(b) Delivery conveyances.

The supplies delivered under this contract shall be transported in delivery conveyances maintained to prevent tampering with and /or adulteration or contamination of the supplies, and if applicable, equipped to maintain a prescribed temperature. The delivery conveyances shall be subject to inspection by the government at all reasonable times and places. When the sanitary conditions of the delivery conveyance have led, or may lead to product contamination, adulteration, constitute a health hazard, or the delivery conveyance is not equipped to maintain prescribed temperatures, or the transport results in product 'unfit for intended purpose', supplies tendered for acceptance may be rejected without further inspection.

(End of Clause)

**52.246-9045 Federal Food, Drug and Cosmetic Act-Wholesale Meat Act.**
As prescribed in 46.311-91, insert the following clause:

FEDERAL FOOD, DRUG AND COSMETIC ACT-WHOLESALE MEAT ACT (AUG 2008)

(a) The Contractor warrants that the supplies delivered under this contract comply with the Federal Food, Drug and Cosmetic Act and the Wholesome Meat Act and regulations promulgated there under. This warranty will apply regardless of whether or not the supplies have been:

(1) Shipped in interstate commerce,

(2) Seized under either Act or inspected by the Food and Drug Administration or Department of Agriculture.

(3) Inspected, accepted, paid for or consumed, or any or all of these, provided however, that the supplies are not required to comply with requirements of said Acts and regulations promulgated there under when a specific paragraph of the applicable specification directs otherwise and the supplies are being contracted for military rations, not for resale.

(b) The Government shall have six months from the date of delivery of the supplies to the government within which to discover a breach of this warranty. Notwithstanding the time at which such breach is discovered, the Government reserves the right to give notice of breach of this warranty at any time within this six-month period or within 30 days after expiration of such period, and any such notice shall preserve the rights and remedies provided herein.

(c) Within a reasonable time after notice to the Contractor of breach of this warranty, the Government may, at its election:

(1) Retain all or part of the supplies and recover from the Contractor, or deduct from the contract price, a sum the Government determines to be equitable under the circumstances;

(2) Return or offer to return all or part of the supplies to the Contractor in place and recover the contract price and transportation, handling, inspection and storage costs expended therefore; provided, that if the supplies are seized under either Act or regulations promulgated there under, such seizure, at Government option, shall be deemed a return of supplies within the meaning of this clause and thereby allow the government to pursue the remedy provided herein. Failure to agree to any deduction or recovery provided herein shall be a dispute within the meaning of the clause of this contract entitled “Disputes”.

(d) The rights and remedies provided by this clause shall not be exclusive and are in addition to other rights and remedies provided by law or under this contract, nor shall pursuit of a remedy herein or by law either jointly, severally or alternatively, whether simultaneously or at different times, constitute an election of remedies.

(End of Clause)

**52.246-9046 Phytosanitary Certificates for Export Shipments of Produce.**
As prescribed in 46.311-92, insert the following clause:

PHYTOSANITARY CERTIFICATES FOR EXPORT SHIPMENTS OF PRODUCE (NOV 2011)

(a) A federal phytosanitary certificate is required for produce shipped to, and received in, a foreign country. The Contractor is responsible for arranging and paying for required inspections, and obtaining and properly distributing appropriate certificates. Foreign governments will only accept a true copy of a certificate, i.e., a copy containing the original signature of the inspector. Certificates containing photostatic or facsimile copy signatures are not acceptable. The Contracting Officer will specify any additional requirements relating to the authenticity and acceptability of the phytosanitary certificates at time of order placement.

(b) Phytosanitary certificates will be distributed as follows:

(1) A true copy of the certificate (with an original signature) will be placed in a waterproof document protector and affixed by waterproof tape to a product container inside the shipping van. The certificate will be immediately visible upon opening the door of the shipping van.

(2) A second true copy (with original signature) will be placed in a waterproof document protector and affixed by waterproof tape to the door-latching mechanism on the outside of the shipping van.

(3) A third true copy (with original signature) will be express mailed to the overseas facility receiving the produce on behalf of the government. These addresses may vary, and will be specified at time of order placement.

(4) An information copy of the certificate (inspector's signature may be a photostatic reproduction) will be mailed, or transmitted by facsimile to:

DLA Troop Support
Attention: HP
700 Robbins Avenue
Philadelphia, Pennsylvania 19111-5092
Fax Number: 215-737-4502

(c) The Contractor is liable for all losses incurred by the Government resulting from the Contractor's failure to comply with the requirements of this clause.

(End of Clause)

**52.246-9047 Entry into Plant by Government Employees for Meal, Ready-to-Eat (MRE) and Tray Pack Items.**
As prescribed in 46.311-93, insert the following clause:

ENTRY INTO PLANT BY GOVERNMENT EMPLOYEES FOR MEAL, READY-TO-EAT (MRE) AND TRAY PACK ITEMS (AUG 2008)

The Contracting Officer or any Government personnel designated by the contracting office shall be permitted entry into Contractor's and subcontractor's plants during performance of manufacturing and assembly operations. Except for inspection service, the Contracting Officer shall give prior notice of the purpose of the meetings, and shall furnish dates of the visit.

(End of Clause)

**52.246-9049 Storage of Semiperishable Components for Meal, Ready-to-eat (MRE) and Tray Pack.**
As prescribed in 46.311-94, insert the following clause:

STORAGE OF SEMIPERISHABLE COMPONENTS FOR MEAL, READY-TO-EAT (MRE) AND TRAY PACK (AUG 2008)

(a) Components will be stored in such a manner as to protect them from damage due to temperature or humidity changes. Forced ventilation will be provided where it becomes necessary to protect stored components from high temperature or humidity. Candy components (excluding Type V, Class 1, high

unfilled candies) and vacuum packaged cookies and brownies shall be stored in the following manner prior to assembly:

(1) If held in storage more than one but less than four months prior to assembly, they shall not be stored at a temperature higher than 60 degrees F.

(2) If held in storage five to six months prior to assembly, they shall not be stored at a temperature higher than 55 degrees F.

(3) If held in storage greater than six months prior to assembly, special temperature requirements will be established on a case-by-case basis; the Contractor will contact the Contracting Officer 60 days in advance to establish these requirements.

(4) If removed from storage in a frozen condition, they shall not be exposed to high temperatures and/or humidity without first being held for approximately 24 hours at approximately 70 degrees F. and 55% humidity.

(5) Contractor shall comply with provisions of the integrated pest management (IPM) programs requirements for operation rations. Contractor shall be solely responsible for the proper care and storage of GFM. DLA Troop Support may be contacted for assistance concerning individual component storage problems or concerns regarding proper method.

(6) Notwithstanding other requirements concerning stacking of pallets of GFM, pallets will be stacked one high unless the Contractor determines the cases will withstand higher stacking without damaging GFM.

(End of Clause)

**52.246-9051 Repackaging of Hazardous Material.**
As prescribed in 46.407-97, insert the following clause:

REPACKAGING OF HAZARDOUS MATERIAL (SEP 2008)

(a) Supplies to be delivered under this contract are considered hazardous as defined by FED-STD-313 (latest revision) or by the Government's technical representative. Accordingly, notwithstanding inspection at origin, the Inspection of Supplies Clause, or any other provision of this contract, the Government shall have the option to accept at destination supplies damaged in transit and/or nonconforming to the packaging, packing and marking (PP&M) requirements, and by contract or otherwise and without advance notification to the Contractor:

(1) Correct such damage and/or nonconformity; and

(2) Remove hazardous material spills and/or leakage resulting from damage in transit and/or nonconforming PP&M. The Contractor shall be liable for all costs related to such correction and removal.

(b) If this is a purchase order and the vendor furnishes supplies that are not in conformance with the PP&M requirements specified, such action shall not be deemed a counter offer but shall be deemed an acceptance by the vendor of the terms of the Government's offer as set forth in this purchase order.

(c) The rights and remedies provided in this clause are in addition to and do not limit any rights afforded to the Government by any other clause of this contract/purchase order.

(End of Clause)

**52.246-9061 Warranty of Industrial Plant Equipment (IPE) – Federal Supply Group (FSG) 34.**
As prescribed in 46.710-90(d), insert the following clause:

WARRANTY OF INDUSTRIAL PLANT EQUIPMENT (IPE) –
FEDERAL SUPPLY GROUP (FSG) 34 (SEP 2008)

(a) Definitions: "Acceptance," as used in this clause, means the act of an authorized representative of the Government by which the Government assumes for itself, or as an agent of another, ownership of existing and identified supplies, or approves specific services rendered, as partial or complete performance of the contract. "Supplies," as used in this clause, means the end items furnished by the Contractor and related services required under this contract. The word does not include "data."

(b) Contractor's obligations.

(1) The Contractor warrants that for one (1) year all supplies furnished under this contract will be free from defects in material and workmanship and will conform with all requirements of this contract. Warranty period begins from the date of acceptance.

(2) Any supplies or parts thereof corrected or furnished in replacement by the Contractor shall be subject to the conditions of this clause to the same extent as supplies initially delivered. This warranty shall be equal in duration to that set forth in paragraph (b)(1) of this clause and shall run from the date of delivery of the corrected or replaced supplies.

(3) When the machine is inoperable because of a defect, deficiency and/or nonconformance subject to the Contractor's warranty, and after the Contractor has received written notice of the defect, deficiency or nonconformance, the warranty shall be extended for the time period during which the machine was inoperable (i.e., length of time from when Contractor receives notification until machine is operable.)

(4) The Contractor shall not be obligated to correct or replace supplies if the facilities, tooling, drawings, or other equipment or supplies necessary to accomplish the correction or replacement have been made unavailable to the Contractor by action of the Government. In the event that correction or replacement has been directed, the Contractor shall promptly notify the Contracting Officer, in writing, of the non-availability.

(5) The Contractor shall also prepare and furnish to the Government data and reports applicable to any correction required (including revision and updating of all affected data called for under this contract) at no increase in the contract price.

(6) When supplies are returned to the Contractor, the Contractor shall bear the transportation costs from the place of delivery specified in the contract (irrespective of the free on board (f.o.b.) point or the point of acceptance) to the Contractor's plant and return. When defective items are returned to the Contractor from other than the place of delivery specified in the contract, or when the Government exercises alternate remedies, the Contractor's liability for transportation charges incurred shall not exceed an amount equal to the cost of transportation by the usual commercial method of shipment between the place of delivery specified in the contract and the Contractor's plant and subsequent return.

(7) The warranties expressed herein are in lieu of any implied warranties of merchantability and "fitness for a particular purpose".

(c) Remedies available to the Government.

(1) In the event of a breach of the Contractor's warranty in paragraph (b)(1) and (b)(2) of this clause, the Government may, at no increase in contract price-

(i) Require the Contractor, at the place of delivery specified in the contract (irrespective of the f.o.b. point or point of acceptance) or at the Contractor's plant, to repair or replace, at the Contractor's election, defective or nonconforming supplies, or

(ii) Require the Contractor to furnish at the Contractor's plant the materials or parts and installation instructions required to successfully accomplish the correction.

(iii) Where it is impracticable for the Government to pursue remedies at (i) and (ii), the Government may arrange for the repair or replacement of defective or nonconforming supplies by the Government or by another source at the Contractor's expense. Where the Government is to accomplish the repair, the Contractor at the Government's option will furnish the material or parts and the instruction required to successfully accomplish the repair.

(2) If the Contracting Officer does not require correction or replacement of defective or nonconforming supplies or the Contractor is not obligated to correct or replace under paragraph (b)(4) of this clause, the Government shall be entitled to an equitable reduction in the contract price.

(3) The Contracting Officer shall notify the Contractor in writing of any breach of the warranty in paragraph (b) of this clause within a reasonable period, but not later than 45 days after discovery of the defect. The Contractor shall submit to the Contracting Officer a written recommendation within 2 working days as to the corrective action required to remedy the breach. After the notice of breach, but not later than 5 days after receipt of the Contractor's recommendation for corrective action, the Contracting Officer may, in writing, direct correction or replacements in paragraph (c)(1) of this clause, and the Contractor shall, notwithstanding any disagreement regarding the existence of a breach of warranty, comply with this direction within 5 days of receipt. If it is later determined that the Contractor did not breach the warranty in paragraph (b)(1) and (b)(2) of this clause, the contract price will be equitably adjusted.

(4) If supplies are corrected or replaced, the period for notification of a breach of the Contractor's warranty in paragraph (c)(3) of this clause shall be 45 days from the discovery of the defect.

(5) The rights and remedies of the Government provided in this clause are in addition to and do not limit any rights afforded to the Government by any other clause of the contract.

(6) The Contractor shall be liable for the reasonable costs of disassembly and/or reassembly of larger items when it is necessary to remove the supplies to be inspected and/or returned for correction or replacement.

Note: FAR clause 52.246-18 is applicable only if item(s) are placed in use within the land area of the united states contiguous to the 48 states.

(End of Clause)

**52.246-9062 Repackaging to Correct Packaging Deficiencies.**
As prescribed in 46.407-98, insert the following clause:

REPACKAGING TO CORRECT PACKAGING DEFICIENCIES (SEP 2008)

(a) Notwithstanding inspection and acceptance by the Government of supplies furnished under this contract, or any condition of this contract concerning the conclusiveness thereof, the Contractor guarantees that the preservation, packaging, packing and marking (PPP&M), and the preparation of, and method of shipment of such supplies will conform with the requirements of this contract.

(b) The Government may at the option of the Contracting Officer, correct PPP&M deficiencies, without prior Contractor notification, and require an equitable adjustment in the contract price to cover labor and material when the actual corrective costs are less than $300.

(c) If the Contractor furnishes supplies under a simplified acquisition that are not in conformance with the PPP&M requirements of the award, such action shall not be deemed a counter offer but shall be deemed an acceptance by the vendor of the terms of the Government's offer as set forth in the purchase order.

(End of Clause)

**52.246-9063 Warranty of Supplies, Extended (66 Months).**
As prescribed in 46.710-90(e), insert the following clause:

WARRANTY OF SUPPLIES, EXTENDED (66 MONTHS) (NOV 2011)

(a) Warranty.

(1) Notwithstanding inspection and acceptance by the Government of any end item furnished under this contract, or any term or condition of this contract concerning the conclusiveness thereof, the Contractor warrants that at the time of acceptance of each end item and continuing for a period of 66 months after each such acceptance:

(i) Each end item delivered under this contract will be free from defects in material and workmanship and will conform with all of the requirements of this contract; and

(ii) The preservation, packaging, packing and marking, and the preparation for, and method of, shipment of all end items will conform with the requirements of this contract.

(2) The warranties expressed herein are in lieu of any implied warranties of merchantability and fitness for a particular purpose.

(b) Notification.

(1) The Government will be entitled to receive a refund of all or part of the contract price as provided in paragraph (c) for a breach of warranty for an end which is detected within 66 months after acceptance of the end item, provided that an authorized Government official notifies the Contractor of the breach. The period for giving notice shall end 90 days after the expiration of the warranty for each end item. In addition to notifying the Contractor of a breach of warranty, the Government shall return to the Contractor each item for which such notice is given. The Government may return the item either before or after notifying the Contractor of the breach.

(2) The notification shall set forth the date on which the breach of warranty on an end item was detected.

(c) Remedy.

(1) With respect to each end item in which a breach of warranty is detected within 12 months after its acceptance, the Contractor shall refund the full contract price.

(2) With respect to each end item in which a breach of warranty is detected more than 12 months but less than 66 months after its acceptance, the Contractor will refund a portion of the contract equal to the unit price less 1/54th of such unit price for each month beyond 12 months that have passed from the date of acceptance of that end item until the date of detection of the breach of warranty on that end item.

(3) For any refund owed under this clause the Contractor shall send a check, payable to the accounting and finance officer, to DLA Aviation or to another location if so designated by the Contracting Officer, within 30 days after receipt of a notification under paragraph (b) or within 30 days after receipt of the returned item, whichever occurs later. Each such check will be substituted with a statement identifying the Contractor, contract number, item name, national stock number, total amount of the check, and for each end item for which an amount is included:

(i) End item serial number;

(ii) Warranty expiration date;

(iii) Date notification of breach of warranty was received by the Contractor; and

(iv) The amount included in the check for such end item.

(d) Transportation costs. The Government will bear the cost of shipment of each end item returned to the Contractor's plant.

(e) Government rights. The rights and remedies of the Government provided in this clause are in addition to and do not limit any rights afforded to the Government by any other clause of this contract.

(f) Title. Title to a returned end item shall be deemed to be transferred to the Contractor upon receipt by the Government of the refund for that item.

(g) Conditions. With respect to each end item accepted by the Government under this contract, it shall be presumed that there has been a breach of warranty if at any time within 66 months after its acceptance such items fails to operate/perform as required, unless:

(1) The Government fails to return the end item to the Contractor; or

(2) The Contractor establishes that:

(i) The end item is not defective or nonconforming; or

(ii) The defect or nonconformity is attributable solely to improper or negligent installation, operation, handling, or maintenance of that end item by Government personnel; or

(iii) The defect or nonconformity is the result of damage in combat.

(h) Notification by the Contractor.

(1) The Contractor will notify the Contracting Officer within 7 days of the receipt of each end item returned to it by the Government. The notification will include the contract number, serial number, date of receipt, and name of activity returning the item. The Government may inspect any returned item at a time and location agreed on by the parties.

(2) The Contractor will notify the Contracting Officer within 30 days of its receipt of a notice of breach of warranty or the end item to which such notice applies, whichever occurs later, of any disagreement with the governments assertion of a breach of warranty. The Contractor may not thereafter assert in opposition to a claim of breach of warranty by the Government any fact about the condition of the end item that it knew of or could have known of by making a reasonable inspection of the end item within the above thirty day period.

(i) Definitions.

(1) "Acceptance," as used in this clause, means the act of an authorized representative of the Government by which the Government assumes for itself, or as an agent of another, ownership of existing supplies, or approves specific services as partial or complete performance of the contract.

(2) "An authorized Government official," as used in this clause, means the Contracting Officer or a person designated by the Contracting Officer (either by name or by position

(End of Clause)

**52.246-9065 Protection from Degradation due to Electrostatic/Electromagnetic Forces.**
Insert the following clause as prescribed at 46.401-90 (c):

PROTECTION FROM DEGRADATION DUE TO ELECTROSTATIC/ELECTROMAGNETIC FORCES (NOV 2011)

(a) This clause applies when the items being acquired are sensitive electronic devices. All items subject to degradation from electrostatic/electromagnetic (ES/EM) environmental field forces, including those having a military standard (MIL-STD) 2073-1 preservation method code of GX, shall be handled and packaged at an approved field force protective work station.

(b) If the preservation method code in the solicitation does not specify ES/EM protection and the Offeror's proposed item of supply is subject to degradation from ES/EM environmental field forces, Offerors shall provide appropriate technical packaging data with their proposals.

(c) Failure to provide required packaging data for offered items of supply which are subject to degradation from ES/EM environmental field forces may result in the offer not being considered for award.

(End of Clause)

**52.246-9066 Documentation of Traceability.**
As prescribed in 46.490(c), insert the following clause:

DOCUMENTATION OF TRACEABILITY (JAN 2009)

(a) All items furnished under this contract shall be in full compliance with the item description. Items shall be new and unused; unless former Government surplus material was offered in response to the solicitation, and was evaluated and approved in accordance with 52.211-9000. Any offers of "Alternate Product" shall require evaluation in accordance with 52.217-9002.

(b) If the offeror is not identified as an approved source in the item description, the offeror shall submit traceability documentation to the Contracting Officer on or before the date that offers are due. The documentation may be mailed, faxed, or scanned and e-mailed. All traceability documentation shall be legible and unaltered. (If any documentation to be submitted by the Offeror is illegible or has been altered, the Offeror shall also submit written documentation from the approved source, or from the authorized dealer/distributor for the approved source, to verify the illegible or altered information. Documentation from the approved source, or from the authorized dealer/distributor for the approved source, shall include the following: the name and address of the approved source, or of the authorized dealer/distributor for the approved source; the date of the correspondence; and the name and phone number of the representative of the approved source, or authorized dealer/distributor for the approved source, who provided the information.) The Contracting Officer may also require or consider additional evidence prior to award to establish the identity of the item and its manufacturing source. Failure to provide any required documentation within the stated timeframe may result in rejection of the offer.

(c) Traceability documentation shall, at a minimum, include the following:

(1) If the offeror is an authorized dealer/distributor for an approved source for the specific item being procured by the Government, the following requirements apply:

(i) The offeror shall provide one of the following:

(A) A copy of its current dealer/distributorship agreement;

(B) A letter of authorization from the approved source; or

(C) A link to an official web site maintained by the approved source, which shall clearly identify the offeror as an authorized dealer/distributor.

(ii) By submission of documentation described in subparagraph (c)(1)(i) of this clause, the offeror represents that:

(A) The dealer/distributor relationship with the approved source applies to the specific item being procured by the Government; and

(B) If the offeror's dealer/distributor status with the approved source changes, either before or after award, the offeror shall promptly notify the Contracting Officer. Failure to provide such notification may result in rejection of offer or cancellation of award.

(2) If the offeror is not an authorized dealer/distributor for an approved source for the specific item being procured by the Government:

(i) If the offered item is "not in stock/not currently owned by the offeror" or "not yet manufactured," the following requirements apply:

(A) The offeror shall furnish a verifiable quotation from the approved source, or from an authorized dealer/distributor for the approved source.

(B) The quotation shall include the following:

*(1)* The item part number or designation, which shall be provided in sufficient detail to document that the item being quoted is the same as the item being procured by the Government;

*(2)* The quantity, which shall be sufficient to satisfy the solicitation requirement;

*(3)* The unit price quoted by the approved source, or by the authorized dealer/distributor for the approved source;

*(4)* The date of the quotation; and

*(5)* The name and phone number of the representative of the approved source, or of the authorized dealer/distributor for the approved source.

(C) The quotation shall be on the letterhead of the approved source, or of an authorized dealer/distributor for the approved source; or an electronic quotation, which shall be clearly identifiable as coming to the offeror from the approved source, or from an authorized dealer/distributor for the approved source.

(D) If the item will be obtained from an authorized dealer/distributor for the approved source, the offeror shall provide the information described in subparagraph (c)(1)(i) of this clause to document the authorized dealer/distributor arrangement; and the terms in subparagraph (c)(1)(ii) of this clause shall apply.

(ii) If the offered item is "shipped" or "in stock/currently owned by the offeror," the following requirements apply:

(A) The offeror shall furnish one of the following documents:

*(1)* The invoice received by the offeror from the approved source, or from an authorized dealer/distributor for the approved source; or

*(2)* The packing slip that accompanied the shipment to the offeror from the approved source, or from an authorized dealer/distributor for the approved source. The packing slip shall include a packing slip number. (If no packing slip number was provided, the offeror shall obtain written documentation from the approved source, or from the authorized dealer/distributor for the approved source, verifying the packing slip number. Such documentation shall include the name and address of the approved source, or of the authorized dealer/distributor for the approved source; the date of the correspondence; and the name and phone number of the representative of the approved source, or of the authorized dealer/distributor for the approved source, who provided the information.)

(B) The documentation furnished in accordance with subparagraph (c)(2)(ii)(A) of this clause shall include the following:

*(1)* Date;

*(2)* Name and address of the approved source, or of the authorized dealer/distributor for the approved source;

*(3)* Name and phone number of the representative of the approved source, or of the authorized dealer/distributor for the approved source;

*(4)* The item part number or designation, which shall be provided in sufficient detail to document that the item provided to the offeror is the same as the item being procured by the Government;

*(5)* Quantity, which shall be sufficient to satisfy the solicitation requirement;

*(6)* Unit price charged by the approved source, or by the authorized dealer/distributor for the approved source; and

*(7)* Offeror's name and address.

(C) If the item was obtained from an authorized dealer/distributor, the offeror shall provide the information described in subparagraph (c)(1)(i) of this clause to document the authorized dealer/distributor arrangement; and the terms in subparagraph (c)(1)(ii) of this clause shall apply.

(3) If the items to be furnished are not obtained directly from an approved source, or from an authorized dealer/distributor of an approved source, the offeror shall provide documentation, as described in subparagraph (c)(2) of this clause, sufficient to establish the complete line of ownership or distribution from the approved source, or from an authorized dealer/distributor for the approved source, to the offeror.

(d) Notwithstanding any documentation provided by the offeror prior to contract award, the Government reserves the right to require additional documentation attesting to the authenticity of the material at any time before or after contract delivery.

(e) If the solicitation states that inspection and acceptance shall take place at destination, the Government reserves the right to change the place of Inspection and Acceptance to Origin and to incorporate 52.246-9004, Product Verification Testing, at time of award, with no increase in awarded unit price.

(End of Clause)

**52.246-9085 Production Lot Testing (PLT) – Government.**
As prescribed in 46.392(c)(2)(i), insert the following clause:

PRODUCTION LOT TESTING (PLT) – GOVERNMENT (JAN 2015)

(a) For the lots/items specified, the Contractor is required to provide [*Contracting Officer shall insert number of samples identified in Material Master, Classification, Product Assurance tab, Services for Object*] Production Lot Testing (PLT) samples, at no additional charge to the Government. The PLT samples shall conform to all technical requirements in the contract.

(b) The Contractor shall provide written notice to the Contracting Officer and the Government quality assurance representative (QAR) at least fourteen (14) calendar days, or as otherwise specified in the contract, prior to the date when the Contractor will present the first production lot to the cognizant Government QAR for selection of PLT samples. In addition, the QAR may also select the number of samples designated above from later production lots. If first article testing is applicable, production lot testing is to be completed during production but after first article approval. The QAR will select and inspect the PLT samples, and furnish the Contractor a statement that the PLT samples have been inspected and, if they appear acceptable, that they have been preliminarily determined to comply with the contract requirements, subject to further testing by the Government testing facility. If a PLT sample fails QAR preliminary inspection, the entire production lot quantity produced will be rejected. The QAR shall notify the Contracting Officer of rejection and proposed corrective action, if appropriate. Upon receipt of Defense Logistics Agency (DLA) concurrence, the Defense Contract Management Agency will issue a corrective action report (CAR) and have the Contractor resubmit a new production lot quantity. QAR inspection and preliminary approval of the samples is required before the Contractor is authorized to ship PLT samples to the Government testing facility, or to resubmit PLT samples after any disapproval by the Government testing facility.

(c) Following QAR inspection and preliminary approval, the Contractor shall ship the PLT samples to the Government testing facility. The Contractor shall prepare shipping containers for PLT samples to ship to [*Contracting Officer shall insert name and address of testing facility as identified in Material Master, Classification, Product Assurance tab, Services for Object in accordance with the following*]:

(1) Exterior marking and shipping documentation.

(i) Mark packages containing PLT samples in bold capital letter, below and to the left of the address, as follows: "Production lot samples -= do not post to stock: Contract number [Contractor insert] and lot/item number [Contractor insert]."

(ii) Use a paper copy of the Department of Defense (DD) Form 250/wide area work flow (WAWF) Receiving Report as a packing list on the exterior of the shipping container, in accordance with military standard (MIL-STD) 129, Revision P, 5.3, Exterior Container Documentation.

(2) Interior documentation requirements. Include the following with all shipments of PLT samples (electronic media preferred; format should be compatible with Government/industry software, e.g., Adobe PDF):

(i) The statement of inspection and DD Form 250/WAWF receiving report, signed by the QAR;

(ii) Copy of the contract/order;

(iii) Copies of test reports, showing actual results and tolerances specified in the technical data package;

(iv) Material and process certifications;

(v) Process operations and inspection method sheets;

(vi) Copies of drawings used to manufacture the PLT sample (the Contractor is responsible for properly marking technical data if it asserts proprietary or other rights to restrict from public disclosure and/or from Government use other than for evaluation, to the extent consistent with the Government's data rights under this contract);

(vii) Documents required under a contract deliverables requirements list, if applicable;

(viii) A Prepaid shipping label or document with the information required to return PLT samples to the Contractor at no cost to the Government, as follows:

(A) Contractor's complete "ship to" address;

(B) Name of Contractor's point of contact/addressee;

(C) Phone number of Contractor's point of contact; and

(D) Transportation cost codes (e.g., Contractor's FED-EX, DHL, UPS shipping account numbers, etc.); and

(ix) Any other documentation required by the contract.

(3) Additional shipping instructions.

(i) Send all PLT samples by traceable means (e.g., certified or registered mail, United Parcel Service or Federal Express).

(ii) At the time PLT samples are shipped, provide copies of the signed DD Form 250/WAWF Receiving Report and the QAR Statement of Inspection (see subparagraph (c)(2)(i) above), transportation tracking information, and information required to return PLT samples to the Contractor (see (c)(2)(viii) above) to:

(A) The Contracting Officer; and

(B) The applicable FAT/Testing Monitor as identified below (or to the ACO, when no FAT/Testing Monitor is identified):

*(1)* DLA Land and Maritime at Columbus
Government test point of contact
Post office (P.O.) box 3990
Columbus, Ohio 43218-3990

*(2)* DLA Aviation at Richmond
Attention: Testing Program Manager
8000 Jefferson Davis Highway
Richmond, Virginia 23297

*(3)(i)* DLA Aviation (or DLA Land and Maritime) at Philadelphia
Attention: First Article/Testing Monitor
Building 3
700 Robbins Avenue
Philadelphia, Pennsylvania 19111; or

*(ii)* For acquisitions of clothing and textile (C&T) items; medical and subsistence items; and meal, ready-to-eat (MRE) and tray pack items, the Contracting Officer, who acts as FAT/testing monitor.

(4) Required delivery timeframes. The Contractor shall ensure delivery of PLT samples to the testing facility in sufficient time prior to the required delivery date for the production quantity to allow for the following:

(i) Transportation time from the Contractor to the testing facility;

(ii) A Contracting Officer shall insert number of days to test, as shown in material master, classification, product assurance tab calendar day period for the facility to conduct the testing after receipt of the PLT samples;

(iii) At least a [*Contracting Officer insert number of days to review, as shown in Material Master, Classification, Product Assurance tab*] calendar day period for internal review and forwarding of the testing facility results and recommendation of approval or disapproval to the Contractor.

(d) The Contractor is responsible for all transportation charges incurred in the submission and return of any PLT samples, and all costs of manufacturing and retesting additional PLT samples and production quantities; the Contractor shall reimburse the Government for the cost of retesting PLT samples.

(e) Upon completion of the PLT sample testing, the Government test facility will provide the test results to the FAT/Testing Monitor (or ACO) and to the Contracting Officer.

(1) If the PLT sample is disapproved, the Government shall advise the Contractor of the nonconformance, and whether the Contractor will be allowed to produce a new lot to tender for testing. Disapproval of the PLT sample is grounds for rejection of the entire production lot produced. The Contractor shall discard any failed production lot produced and produce a new production lot under the contract terms and conditions. The new lot shall be completed within the time specified by the Government.

(2) The Government reserves the right to require an equitable adjustment of the contract price in favor of the Government for any extension of the delivery schedule or for any additional costs to the Government related to these tests. When notified of disapproval, the Contractor shall respond within 15 calendar days and address the Contracting Officer's disposition recommendation. Final disposition on conditionally approved or disapproved PLT samples is determined at the discretion of the Contracting Officer, and the samples may be destroyed without liability from the Government to the Contractor.

(f) The Contracting Officer and any Government personnel designated by the Contracting Officer shall be permitted entry into the Contractor's plan to observe and consult during manufacturing operations.

(g) Approved PLT samples will be returned to the Contractor for delivery with the production quantity and will be paid for under the production quantity CLIN, unless samples were destroyed in testing.

(1) In the event samples were destroyed in testing, a modification will be issued to decrease the production CLIN quantity by the number of samples destroyed in testing.

(2) The quantity and cost of approved samples consumed in or otherwise rendered unusable by testing will bow added to the additive CLIN for the production lot test, and this will be used to reimburse the Contractor for those samples using the unit price for that production lot under the production CLIN. That is the sole purpose of the PLT Additive CLIN. The Government has no liability to the Contractor for disapproved PLT samples, whether intact or destroyed in testing.

(End of Clause)

**52.246-9086 Production Lot Testing (PLT) – Contractor.**
As prescribed in 46.392(c)(2)(ii), insert the following clause:

PRODUCTION LOT TESTING (PLT) – CONTRACTOR (JAN 2015)

(a) For the lots/items identified in this contract as requiring "production lot testing (PLT) Contractor (including test report)," the Contractor shall –

(1) Produce the production lot quantity. The Government Quality Assurance Representative (QAR) shall select [*Contracting Officer shall insert number of samples identified in Material Master,*

*Classification, Product Assurance tab, Services for Object*] samples at random from the first production lots produced to determine conformance with technical requirements as stated and/or referenced in the solicitation. In addition, the QAR may also select the same number of samples from any successive lot. If First Article Testing is applicable, production lot testing is to be completed during production but after First Article approval. The QAR will select and inspect the PLT samples, and furnish the Contractor a statement that the PLT samples have been inspected and, if they appear acceptable, that they have been preliminarily determined to comply with the contract requirements, subject to further testing in accordance with this clause. If a PLT sample fails QAR preliminary inspection, the entire production lot quantity produced will be rejected. The QAR shall notify the Contracting Officer of rejection and propose corrective action, if appropriate. Upon receiving DLA concurrence, DCMA will issue a corrective action report (CAR) and have the Contractor resubmit a new production lot quantity. QAR inspection and preliminary approval of the samples is required before the Contractor is authorized to conduct testing pursuant to this clause.

(2) Provide all facilities, equipment and personnel required to perform the testing the PLT samples.

(3) Provide written notice to the Contracting Officer and the QAR of the time and location of the testing at least fourteen (14) calendar days, or as otherwise specified in the contract, prior to the production lot testing so the Government may witness the tests. Testing is to be witnessed by the cognizant QAR.

(4) Prepare and disseminate the PLT report as follows:

(i) Mark the test report, "Production Lot Test Report – Contract Number [Contractor insert] and Lot/Item Number [Contractor insert]."

(ii) Present the PLT report to the QAR for review. The QAR will include a report of the QAR's conclusions and recommendations along with the Contractor test report. The Contractor shall forward two (2) copies of the PLT Report and QAR report to the Contracting Officer.

(iii) Include the following with all shipments of PLT Reports (electronic media preferred; format should be compatible with Government/industry software, e.g., Adobe PDF.):

(A) The statement of inspection and DD Form 250, signed by the QAR;

(B) Copy of the contract/order;

(C) Copies of test reports, showing actual results and tolerances specified in the technical data package;

(D) Material and process certifications;

(E) Process operations and inspection method sheets;

(F) Copies of drawings used to manufacture the PLT sample (properly marked by the Contractor if it desires to restrict from public (properly marked by Contractor if it desires to restrict from public disclosure and/or from Government use other than for evaluation, to the extent consistent with the Government's data rights under this contract); and

(G) Documents required under a contract deliverables requirements list, if applicable.

(iv) Submit the PLT report and QAR report to the Government activity specified in the contract in sufficient time prior to the delivery date of the production quantity to allow for at least a [*Contracting Officer shall insert number of days as shown in Material Master, Classification, Product Assurance tab, Services for Object*] calendar day period for review of the PLT report, and for the Contracting Officer to provide written notification of approval/disapproval to the Contractor.

(5) Pay all costs incurred for transportation of PLT and QAR reports under this contract and all costs of manufacturing and retesting additional PLT samples and production quantities, without additional Government liability.

(b) The Contractor may either:

(1) Enter an offered price in the PLT CLIN for PLT and the preparation cost of the PLT report and, if applicable, the costs of any additional testing not normally required for production; or

(2) Not separately price that PLT and preparation of the PLT report and instead include costs relating to PLT and preparation of the PLT Report in its pricing for the production lot CLIN. If the Contractor does not submit a separate price for the PLT CLIN, the Government shall not be liable to the Contractor for any costs relating to PLT and preparation of the PLT report except to the extent these are included in the production lot CLIN price.

(c) The Contractor shall include the approved PLT samples with the shipment of the production articles of the same lot, and the Government will pay for the samples under the applicable production lot CLIN. The Government has no liability to the Contractor for disapproved PLT samples.

Alternate I (JUL 2011) As prescribed in 46.392(b)(2)(ii), insert the following paragraph (a) in addition to paragraphs (a)-(c) of the basic clause, and renumber paragraphs (a)-(c) of the basic clause as (b)-(d), respectively:

(a)(1) Notice to Contractor: The Defense Contract Management Agency (DCMA) Administrative Contracting Officer (ACO) is delegated (in accordance with FAR 42.202(c)) the authority to approve/disapprove the Production Lot Test (PLT) Report submitted in accordance with the requirements in this contract. Any reference to the Contracting Officer as it relates to submission of and approval/disapproval of the PLT Report shall be deemed to include the DCMA ACO.

(2) Notice to ACO: The DCMA ACO shall forward a copy of the PLT report and the DCMA ACO letter of approval/disapproval to the Contract Administrator (see "issued by" block on page 1 of the award document).

(End of Clause)

**52.246-9093 Inspection Standards Wood Products.**
As prescribed in 46.202-4-91, insert the following clause:

INSPECTION STANDARDS WOOD PRODUCTS (DEC 2011)

(a) Inspection and acceptance of softwood lumber:

(1) The inspection standards and all other provisions of the grading rules of the associations and bureaus cited in the purchase description shall govern the inspection and acceptance by the Government of softwood lumber offered for delivery unless otherwise stipulated in the contract.

(2) Each piece of softwood lumber offered for delivery under this contract shall have been inspected, graded and grade stamped with an official grade stamp and registered symbol of the applicable association or bureau or of an inspection agency approved by the board of review, American Lumber Standards Committee (ALSC), at the Contractor's expense, prior to Government inspection.

(3) An official certificate of inspection from an ALSC certified grading association, bureau, or testing agency may be provided at the Contractor's expense for each truck or rail car shipment when no official grade stamp exists or is unavailable for the lumber to be furnished or when it would be impractical to grade stamp any particular item. Authorization, written or oral, to provide a certificate of inspection in lieu of grade-stamping must be obtained from the Contracting Officer prior to shipment. A certificate issued by a mill is not acceptable. Note: Glued stock is not permitted unless otherwise specified in the contract.

(b) Inspection and acceptance of hardwood lumber:

(1) The inspection standards and provisions of the grading rules of one of the following associations shall govern the inspection of hardwood lumber (when specified in the contract):

(i) Maple flooring manufacturers association (MFMA)

(ii) National Hardwood Lumber Association (NHLA)

(iii) National Oak Flooring Manufacturers Association (NOFMA)

(2) The following applies to dimensional hardwood lumber (other than flooring):

When the total quantity of hardwood lumber awarded is 8,000 BF or more, each piece of the NHLA grade of hardwood lumber, except number 3A and 3B commons, furnished under this contract shall be graded and hammer branded by an NHLA National Inspector prior to offering the material to the Government. The national inspector shall complete a certificate for each shipment certifying that the grade and tally of the lumber meet the contract requirements. Unless otherwise specified, the NHLA inspection will be made after kiln drying when kiln drying is required. The Contractor shall bear the cost of the certificate, including incidental expenses of the national inspector. When Government inspection is at origin, the Contractor shall request the NHLA Certificate in triplicate and shall furnish two copies to the Defense Contact Management Agency (DCMA) representative. The DCMA representative shall forward one copy to the consignee and shall retain the other copy in his files. When Government inspection is at destination, the NHLA certificate must be attached to the consignee's copy of the Department of Defense (DD) Form 250, Material Inspection and Receiving Report, or shipping document, mailed to the destination, and marked for the attention of the receiving officer. The certificate may be used by the Government as evidence that the material conforms to the grade requirements of the contract. If the total

quantity of hardwood lumber awarded is less than 8,000 BF, the Contractor must furnish a certificate of conformance per Federal Acquisition Regulation (FAR) clause 52.246-15.

(3) For shipments to overseas activities, material will be inspected and accepted at origin. When an NHLA certificate is not required, a certificate of conformance will be prepared by the Contractor certifying that the moisture content, end-coating and sizes, as well as grade and tally, meet the contract requirements.

(4) Unless otherwise specified in the contract, shipments of material to contiguous United States (CONUS) activities will be inspected and accepted at destination. Government inspection shall be for tally, moisture content, end coating, and sizes, as well as grade if an NHLA certificate is not required.

(5) When kiln dried lumber is furnished, lumber shall be measured after kiln drying and shall be quoted, invoiced, and delivered on the basis of net board footage, with no addition of footage for kiln drying shrinkage. Unless otherwise specified, the NHLA Standard Kiln Dried Rule applies.

(6) Oak wilt disease (oak and chestnut wood): If this solicitation/contract covers hardwood wood products which may consist of red or white oak or chestnut, the following applies:

(i) An embargo is in effect that prohibits the shipment of oak and chestnut wood to Belgium, Denmark, France, Italy, Great Britain, Ireland, Luxembourg, Netherlands, or Germany unless one of the following conditions is satisfied:

(A) The wood is bark free and square-edged so that none of the natural rounded surface tissues remain, or

(B) The wood is bark free and has a moisture content not exceeding 20 percent (%).

(ii) The Contractor is responsible for complying with the above requirements and for performing such inspections as may be necessary to assure compliance. In the event a shipment is frustrated due to noncompliance, the Contractor will be held responsible for the cost incurred to correct violation of this requirement, which will include the cost of sorting out defective material, its disposal, and the cost of replacing defective material with conforming material.

(iii) The rights hereby provided the Government shall not be affected by other provisions concerning the conclusiveness of inspection and acceptance and are in addition to and do not limit any rights of the Government under other provisions of the contract.

(c) Inspection and acceptance of plywood:

(1) Plywood furnished in accordance with Commercial Item Description (CID) A-A-55057 Panels, wood/wood based, and construction and decorative, current version, shall be inspected by the Contractor prior to Government inspection. Each construction or industrial plywood panel shall be graded or trademarked in accordance with United States (U.S.) Product Standard PS 1 and shall bear the stamp of one of the following qualified inspection agencies:

(i) American Plywood Association (APA)

(ii) Timber Engineering Company (TECO)

(iii) Pittsburgh Testing Laboratory (PTL)

(iv) Timber Products Inspection (TP)

(2) Hardwood and decorative plywood shall be in accordance with American National Standards Institute, Hardwood Plywood Manufacturers' Association, and American National Standard for Hardwood and Decorative Plywood, ANSI/HPMA HP-1984. All plywood represented as conforming to ANSI/HPMA HP-1984 shall be identified by the following method:

(i) Each panel shall be marked with the symbol ANSI/HPMA HP-1984 and include: the name or identification of the producer; the species and grade of the face veneer; the type of plywood; the symbol "CP" if container plywood; and the identity of the qualified inspection and testing agency, if applicable.

(d) Inspection and acceptance of treated material:

(1) Material to be treated must be inspected by the Government at the treating plant prior to treatment to determine that the grade, moisture, and other attributes of the purchase description are complied with. Notice of nonconformance by the Government inspector to the Contractor or its subcontractor at the location where inspection is performed shall constitute notice of rejection to the Contractor.

(2) The edition of AWPA Standard M3, Standard Quality Control Procedures for Wood Preserving Plants, in effect on date of contract shall be followed in the treatment of the supplies.

(3) After preservative treatment, the Contractor is responsible for the inspection and tests specified in the edition of Federal Specification TT-W 571 in effect on the date of the contract. In addition, the Contractor must have a qualified, independent, quality control agency accredited by the board of review of the American Lumber Standards Committee (ALSC) for service to treating plants and for the commodity specified in the order, take borings to determine the penetration and retention of the preservative, subject to the following exceptions:

(i) The requirement for an independent agency to take borings is waived if the treating plant is licensed to use the quality mark of such an agency, i.e., is licensed for the type of preservative and commodity specified in the contract.

(ii) For waterborne preservatives only, the Contractor is relieved of the responsibility for on-site assay testing.

(iii) For railroad ties, the independent quality control agency is not required to be accredited by ALSC. Such agency though, shall have demonstrated its competence to the satisfaction of the Government quality assurance representative (QAR).

(4) A copy of all test reports for the supplies tendered for final Government inspection and acceptance must be furnished to the Government QAR for inspection at the treating plant. These reports

and compliance with pertinent AWPA standards will constitute acceptance evidence of quality control by treatment plants.

(5) When fire retardant treated material is required, a certificate of the test results in accordance with the edition of Military Specification MIL-L-19140 in effect on the date of this contract must be forwarded by the Contractor with each shipment and a copy furnished to the Contracting Officer.

(6) The Contractor is responsible for the performance of all inspection and testing requirements. Furthermore, the Contractor is required to maintain records thereof for a period of four years after final payment.

(7) Unless otherwise specified, inspection and acceptance of sawn stock, round stock, and plywood treated in accordance with Federal Specification TT-W 571 for CONUS orders of $1000 or less will be performed at destination.

(e) Inspection and acceptance of other material: (Applicable only when subparagraph (a), (b), (c) or (d) above do not apply.) The Contractor shall inspect and grade each piece of material offered for delivery prior to Government inspection. Tests set forth in the applicable specification will be performed by the Contractor at its expense. When inspection is at origin, copies of test records and data shall be furnished to the Government QAR and, when inspection is at destination, a copy of test data and records must be attached to the consignee's copy of the DD Form 250, Material Inspection and Receiving Report.

(f) Infestation: Material offered for Government inspection which contains live wood boring insects or marine borers, in any state of development at the time of inspection, will be rejected.

(g) Notwithstanding the foregoing, all supplies, as provided by FAR 52.246-2, Inspection of Supplies Fixed Price, shall be subject to inspection and acceptance by the assigned government quality assurance representative or the activity designated in this contract.

(h) The presence of a grade stamp or certificate of inspection, as specified herein, may be accepted as objective evidence of inspection for grade characteristics.

(i) Determination of moisture content may be made in accordance with the provisions of the latest revision of ASTM standards D4442 and/or D4444 in lieu of other referenced documents.

(End of Clause)

**52.246-9094 Level I Material Certification (DLA Maritime-Norfolk).**
As prescribed in 46.504-90(a)(4), insert the following clause in full text:

LEVEL I MATERIAL CERTIFICATION (DLA MARITIME-NORFOLK) (JUN 2011)

(a) Due to the critical application of Level I Material in surface ships and submarines, maximum confidence of material integrity and quality is required. Contractors are required to maintain total and complete traceability for all materials used in Level I items (i.e., assemblies, components, parts designated as Level I). This traceability requires material certifications from the origin of the material (mill) which contain quantitative chemical and mechanical data. Where the mechanical properties of the material have been altered by heat treatment or metal working processes, the mill certification shall be accompanied by a certification, from the heat treatment or metal working facility, which contains

quantitative results of the mechanical test performed to prove that the material supplied complies with the specification to which it was procured. The sole alternative permitted to the mill and heat treatment or metal working certifications is a testing laboratory's quantitative test report, identifiable and traceable to the material it represents.

(b) Transcription of data from the original mill certification, heat treatment or metal working facility certification, and/or testing laboratory test report to a Contractor/supplier/vendor form is prohibited. Certifications provided to the Government will be originals or exact copies thereof and will include signatures, traceability numbers, all other requirements or DI-MISC-81020.

(c) The Contractor shall include the substance of this clause in all subcontracts and purchase orders to their suppliers of Level I material.

(End of Clause)

**52.246-9095 Quality Assurance Provision for Approved Government Surplus Material.**
As prescribed in 46.401-90(f), insert the following clause:

QUALITY ASSURANCE PROVISION FOR APPROVED GOVERNMENT SURPLUS MATERIAL AND QUALITY ASSURANCE PROVISION (NOV 2012)

(a) If award is for approved surplus material, one of the following quality assurance provisions (QAP) will be applicable.

(1) If origin inspection is cited for this award, surplus quality assurance provision (QAP) S01 and any supplemental requirements as specified in the award apply.

(2) If destination inspection is cited for this award, quality assurance provision (QAP) S02 and any supplemental requirements as specified in the award apply.

(b) The applicable quality assurance provision (QAP), if any, will be as cited in the purchase order text (POT) or the continuation page of the award. A copy of surplus quality assurance provision (QAP) S01 and quality assurance provision (QAP) S02 is available on the DLA Aviation acquisition reference list at http://www.aviation.dla.mil/userweb/dscrbat/qaps.htm.

(End of Clause)

**52.247-9001 Port Handling and Ocean Costs in Bid Evaluation.**
As prescribed in 47.305-3(91), insert the following provision:

PORT HANDLING AND OCEAN COSTS IN OFFER EVALUATION (APR 1985)

The above tentative port handling and ocean freight charges are set forth for the information of offerors. In evaluating offers received in response to this solicitation, the Government will utilize those charges which are on file as of the date of bid opening, or closing time specified for receipt of proposals, and effective for the date of expected initial shipment. A list of port handling and ocean freight charges actually used in evaluation, if substituted for any listed above, will be furnished interested offerors upon request.

(End of Provision)

**52.247-9011 Vendor Shipment Module (VSM).**
As prescribed in 47.305-8-90(c), insert the following clause:

VENDOR SHIPMENT MODULE (VSM) (NOV 2011)

(a) The Defense Logistics Agency (DLA) vendor shipment module (VSM), formerly known as the distribution planning and management system (DPMS), is a web-based distribution and transportation system available to DLA vendors for the purpose of obtaining current shipping addresses, two-dimensional bar coded shipping labels in accordance with military standard (MIL-STD) 129P, bills of lading, packing lists, and other shipping documentation. VSM replaces the need for the vendor to contact the DLA transportation office, prior to shipping, when directed in DLA contracts.

(Note: For contracts administered by the Defense Contract Management Agency (DCMA), the vendor must contact the DCMA transportation office in lieu of using VSM, unless otherwise stated in the contract.)

(b) Use of VSM is voluntary and is especially beneficial for DLA administered free on board (f.o.b.) origin contracts and for DLA administered contracts where ultimate destination is a location outside of the United States.

(c) Vendors using VSM must possess the following minimum information technology capability:

(1) Pentium personal computer or equivalent system sufficient to access the Internet.

(2) Compatible laser printer with two megabytes of memory.

(3) Internet Explorer 6.0 or higher.

(4) Adobe Acrobat 8.0 or higher

(5) Minimum 56 Kbps internet connection

(d) For more information about VSM or to register as a VSM user, contact the supply chain transportation office helpdesk at (800) 456-5507 or via email to delivery@dla.mil

(End of Clause)

**52.247-9012 Requirements for Treatment of Wood Packaging Material (WPM).**
As prescribed in 47.303-90(a), insert the following clause:

REQUIREMENTS FOR TREATMENT OF WOOD PACKAGING MATERIAL (WPM) (FEB 2007)

(a) This clause only applies when wood packaging material (WPM) will be used to make shipments under this contract and/or when WPM is being acquired under this contract.

(b) Definition.

Wood packaging material (WPM) means wood pallets, skids, load boards, pallet collars, wooden boxes, reels, dunnage, crates, frame and cleats. The definition excludes materials that have undergone a manufacturing process, such as corrugated fiberboard, plywood, particleboard, veneer, and oriented strand board (OSD).

(c) All wood packaging material (WPM) used to make shipments under Department of Defense (DOD) contracts and/or acquired by DOD must meet requirements of international standards for phytosanitary measures (ISPM) 15, "Guidelines for Regulating Wood Packaging Materials in International Trade." DOD shipments inside and outside of the United States must meet ISPM 15 whenever WPM is used to ship DOD cargo.

(1) All WPM shall comply with the official quality control program for heat treatment (HT) or kiln dried heat treatment (KD HT) in accordance with American Lumber Standard Committee, Incorporated (ALSC) wood packaging material program and WPM enforcement regulations (see http://www.alsc.org/).

(2) All WPM shall include certification/quality markings in accordance with the ALSC standard. Markings shall be placed in an unobstructed area that will be readily visible to inspectors. Pallet markings shall be applied to the stringer or block on diagonally opposite sides of the pallet and be contrasting and clearly visible. All containers shall be marked on a side other than the top or bottom, contrasting and clearly visible. All dunnage used in configuring and/or securing the load shall also comply with ISPM 15 and be marked with an ALSC approved dunnage stamp.

(d) Failure to comply with the requirements of this restriction may result in refusal, destruction, or treatment of materials at the point of entry. The Agency reserves the right to recoup from the Contractor any remediation costs incurred by the Government."

(End of Clause)

**52.247-9036 Shipping Instructions (Export).**
As prescribed in 47.305-10-90(d), insert the following clause:

SHIPPING INSTRUCTIONS (EXPORT) (NOV 2011)

Mail instructions (Army Post Office (APO) or Fleet Post Office (FPO) addresses):

Shipments within mail limitations will be routed to the address cited with each contract line-item (CLIN) in the following manner, based on the TP (Transportation Priority) reflected in the "mark for" data with each CLIN:

(a) U.S. mail is the only mode authorized for shipments to APO or FPO addresses.

(b) Commercial small parcel carrier, (e.g., UPS, RPS or Federal Express) and Commercial Motor Carriers are never an acceptable mode to any APO/FPO address. A small parcel carrier may not be used for any destination in Alaska, Hawaii or Puerto Rico unless the carrier guarantees delivery to that specific consignee.

(c) Parcel post shipments to an APO/FPO address must be addressed to the "Commander" or "Commanding Officer" if there is no title preceding the address. Shipments must be annotated under the return address as follows: "Contents for official use - exempt from customs requirements."

(d) For TP1, TP2, (IPD 01-08), 999, NMCS, regardless of distance from origin to the APO/FPO address, contact the cognizant transportation office prior to shipment. Shipments must be packaged for transportation by Military Air (MILAIR).

(e) For TP3 (IPD 09-15), use surface parcel post (fourth class).

(f) Contact the transportation officer prior to shipping via parcel post when a single CLIN consists of more than one package.

(g) The cost of parcel post insurance will not be paid by the Government.

Freight instructions (to air or water ports and CCPs):

(a) Contractor must comply with the requirements of Federal Acquisition Regulation (FAR) 52.247-52, Clearance and Documentation Requirements - Shipments to DoD Air or Water Terminal Transshipment Points.

(b) Contact the Government Transportation Office for the Contract Administration Office: either Defense Contract Management Agency (DCMA) for DCMA administered awards or Defense Logistics Agency (DLA) Distribution for awards administered by the issuing office, see Block 7 of Department of Defense (DD) form 1155 (page 1 of an order) to obtain shipping instructions at least ten days prior to the FIRM date supplies will be available for release to the carrier.

(c) Shipments to container consolidation points (CCPs):

(1) Shipments directed to a CCP shown with each individual CLIN on Schedule Continuation Sheet(s) will be prepared and shipped in accordance with instructions provided within this contract for Preparation for Delivery.

(2) Contact the Transportation Officer for shipping instructions for the following CCP shipments:

(i) Cargo requiring refrigeration/temperature control.

(ii) Classified or sensitive items requiring signature control.

(iii) When dimensions of an item or package exceed 456 inches (38 feet) long by 89 inches wide by 88 inches high, or weight exceeds 10,000 pounds. Cargo cannot exceed any one of the dimensions or the weight.

(iv) When volume or weight constitutes a full SEAVAN load for each activity (DODAAD) code.

(v) Hazardous Material such as material which is flammable, corrosive, combustible, explosive, toxic, radioactive, unduly magnetic, or which contains oxidizing agents.

(vi) Type 1 shelf life items,

(vii) TP1 and 2 (IPD 01-08) with RDD of 999, 777, or 555.

Note 1: For shipments weighing less than 10,000 pounds which will not be tendered as a carload or truckload, the above data must be furnished only five (5) days prior to scheduled shipment date.
Note 2: Do not ship prior to furnishing required data.
Note 3: Invoices must specify clearly when shipment is made by air.

Advance notice of delivery:

Telephone notice of delivery must be given by the carrier to the consignee transportation officer (transport control/prelodge desk) at least 24 hours prior to delivery of freight shipments (other than small parcels) and bills of lading must be annotated to reflect this requirement.

Freight shipping addresses:

Mail address of the ultimate Consignee and "Mark For" information required as part of the address for parcel post or freight shipments, as applicable, are included with the data cited with each individual CLIN. When shipment is over parcel post limitations, the Contractor will comply with the paragraph above and ship in accordance with instructions furnished by the Transportation officer. Addresses of Aerial terminals will be furnished by the Transportation Officer as required. (Parcel post shipments will not be made to water or air terminals).

(End of Clause)

**52.247-9037 Trans-Shipment of Material Through DLA Containerization and Consolidation Points (CCP)**.
As prescribed in 47.305-10-90(e), insert the following clause:

TRANS-SHIPMENT OF MATERIAL THROUGH DLA CONTAINERIZATION AND CONSOLIDATION POINTS (CCP) (NOV 2011)

(a) Shipping information overview:

(1) For awards not administered by Defense Contract Management Agency (DCMA), contact the DLA Distribution to schedule shipment and obtain export clearance and/or air clearance at:

DLA Distribution
Attention: Transportation Division
Email: delivery@dla.mil
Phone: 1-800-456-5507
Facsimile: 1-717-770-2709

(2) For DCMA administered awards:

(i) The Contractor must provide an electronic Department of Defense (DD) Form 1659 to the contract administration office (CAO) transportation officer. The electronic DD1659 can be secured by accessing the DCMA external web-based (EWAM) shipment instruction request (SIR) at http://www.dcma.mil or by accessing http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd1659.pdf or may be obtained from the responsible CAO.

(ii) The Contractor must contact the CAO transportation office to schedule shipment and coordinate export clearance.

(3) Approved distribution planning and management system (DPMS) Contractors may obtain shipping addresses/labels and clearances via the DPMS website.

(4) All shipments must be packaged in accordance with military standard (MIL STD) 2073 and marked in accordance with MIL STD 129. When authorized, commercial packaging/packing provisions must be in accordance with (ASTM D3951). Shipments of petroleum products, liquid substances, and materials, or any other product defined as hazardous shall be packaged in accordance with United Nations regulations which can be accessed at http://www.unece.org/trans/danger/publi/adr/adr2007/07ContentsE.html .

(b) Shipping documentation.

(1) All shipping documents (bills of lading or other delivery documents) shall be annotated in the description of articles space by the Contractor with:

(i) Transportation control number (TCN);

(ii) Required delivery date (RDD), project (if any), transportation priority (TP);

(iii) Ultimate consignee DODAAC and address (see "added marking for freight shipping").

(2) One copy of the contract shall be placed in a waterproof envelope and attached to the shipping container, or to the #1 shipment container (in a waterproof envelope), marked # 1 of the total number of containers, if a multi-piece shipment.

(c) Eligible shipments: CCP eligible shipments destined for an ultimate OCONUS destination will be shipped to the DLA CCP at San Joaquin, California (DDJC), or New Cumberland, Pennsylvania (DDSP) as directed by the transportation office (see paragraph (a) above).

Defense Distribution Depot San Joaquin, CA (DDJC) accepts:

Routine surface shipments, unless the material meets one of the exclusions listed in Paragraph (4) of this clause, for Army, Air Force, Navy and Marine Corps, and DLA activities located in Hawaii, Japan, Okinawa, Korea, Alaska, and throughout the Pacific.

Air Eligible shipments, unless the material meets one of the exclusions listed in Paragraph (d) of this clause, for Army activities located in Hawaii, Japan, Okinawa, Korea, Alaska, and throughout the Pacific.

Navy shore activities (not including CASREPS for "Mobile" units) throughout the Pacific and Hawaii.

DDJC – San Joaquin, California (Tracy site)
Phone: 209-839-4283
DSN: 462-4283
FAX: 209-982-3790

Receiving/delivery appointments
(209) 839-4307
Call 24 hours in advance to schedule an appointment.

Note: Shipments that have been determined to be Worldwide Express (WWX) eligible are not to be shipped to a CCP. It is the responsibility of the DCMA transportation office personnel to determine if a shipment is eligible for worldwide express (WWX).

Defense Distribution Depot Susquehanna, Pennsylvania (DDSP) accepts:

Routine surface shipments, unless the material meets one of the exclusions listed in Paragraph (d) of this clause, for Army, Air Force, and DLA activities located in northern and southern Europe, Africa, South America, and Central America.

Air eligible shipments, unless the material meets one of the exclusions listed in paragraph (d) of this clause, for Army and DLA activities throughout Northern and Southern Europe, Africa, South America, and Central America and Marine Corps shipments in the CENTCOM AOR.

DDSP – Susquehanna, Pennsylvania (New Cumberland site)
Commercial: 717-770-6393
DSN: 771-5381
FAX: 717-770-8660
Receiving/delivery appointments
1-800-307-8496
Call 24 hours in advance to schedule an appointment.

Note: Shipments that have been determined to be worldwide express (WWX) eligible are not to be shipped to the CCP. It is the responsibility of the DCMA transportation office personnel to determine if a shipment is eligible for worldwide express (WWX).

All high priority/air eligible material not listed above must be routed to the appropriate Air Mobility Command aerial terminal or other CONUS service designated activity as directed by the Transportation Office (see paragraph (1) above).

(d) Exclusions: Materiel not eligible for shipment to a DLA CCP because of exclusions listed below or where the shipment is consigned to an activity not supported by a DLA CCP shall be shipped directly to an appropriate aerial terminal, water port, or a CONUS service designated activity as directed by the Transportation Office (see paragraph (a) above).

(1) Excluded material:

(i) Any material listed in Defense Transportation Regulation (DTR) DOD 4500.9-R, Chapter 203, Tables 203-10 mandatory CCP exclusions), 203-11 (additional CCP exclusions for DDSP and DDJC) and 203-12 (additional mandatory CCP Exclusions for DDSP). The Defense Transportation Regulation (DTR) can be accessed at: http://www.transcom.mil/j5/pt/dtrpart2/dtr_part_ii_203.pdf .

Note: All shipments destined for CENTCOM AOR require application of radio frequency tags (RFID) for in-transit visibility of the material.

(ii) Foreign military sales (FMS)- FMS is shipped via special consolidation locations for the security assistance program (SAP) as listed in the military assistance program address directory (MAPAD) in accordance with the Delivery Term Code (DTC) requirements. Contact the DLA Distribution or DCMA transportation office (paragraph (1) above) for proper shipping instructions.

(End of Clause)

**52.247-9054 Computation of Cube – Wood Products.**
As prescribed in 47.303-90(i), insert the following provision:

COMPUTATION OF CUBE – WOOD PRODUCTS (NOV 2012)

(a) For the purpose of applying the rates specified in paragraph d of Federal Acquisition Regulation (FAR) provision 52.247-51, the total cubic feet for each contract line-item number (CLIN) will be computed as follows:

(1) Softwood lumber: The cube will be computed based on the minimum size specified by the issue of the American Softwood Lumber Standard PS20-70 in effect on the date of the solicitation for nominal size, degree of surfacing and moisture content specified for each CLIN. When a CLIN specification permits any stage of seasoning and offers are submitted based on furnishing dry lumber for specified CLINs the cube of such CLINs will be based on the minimum dry size for the stated nominal size and degree of surfacing.

(2) Hardwood lumber: The cube will be computed based on the minimum size specified by the National Hardwood Lumber Association rules in effect on the date of the solicitation for the nominal size, degree of surfacing and moisture content specified for each CLIN.

(3) Poles, piling and logs: The cube in board foot measure will be calculated using the brereton scale and the minimum butt and tip circumferences and the length specified for each CLIN. Measurement tons are computed using the conversion factor of 480 board foot measure equals one measurement ton or 40 cubic feet.

(4) Plywood: The cube will be computed based on plywood being packaged as required by Federal specification NN-P-530.

(5) Other wood products: The cube will be computed based on the dimensions specified for each CLIN.

(End of Provision)]

**52.247-9058, First Destination Transportation (FDT) Program – Shipments Originating Outside the Contiguous United States (OCONUS).**

As prescribed in 47.305-3(97), insert the following clause:

FIRST DESTINATION TRANSPORTATION (FDT) PROGRAM – SHIPMENTS ORIGINATING FROM OUTSIDE THE CONTIGUOUS UNITED STATES (OCONUS)
(JUL 2013)

(a) Contiguous United States (CONUS) is defined as being the 48 contiguous states and the District of Columbia.

(b) This acquisition is being conducted under the First Destination Transportation (FDT) Initiative. Delivery terms are f.o.b. origin. Inspection and acceptance by the Government will occur at destination unless otherwise specified in the solicitation.

(c) For offerors whose shipments will originate from outside CONUS (OCONUS), the Offeror's f.o.b. origin price shall include transportation to a CONUS location that the Offeror selects based on cost-effectiveness or other variables at the Offeror's discretion. This location shall be deemed the origin point for purposes of the f.o.b. origin terms and conditions of the solicitation/order/contract. The Offeror shall identify this CONUS location as the pick-up point in the Vendor Shipment Module (VSM) at https://vsm.distribution.dla.mil.

(End of Clause)

**52.247-9059 F.o.b. Origin, Government Arranged Transportation**

As prescribed in 47.305-3-98, insert the following clause in solicitations and contracts:

F.O.B. ORIGIN, GOVERNMENT ARRANGED TRANSPORTATION (OCT 2013)

(a) Definitions.

"*Government Arranged Transportation*" means the Government is responsible for transportation costs, providing the carrier, and scheduling the shipment pickup contingent upon correct Contractor notification in VSM.

(2) "*Vendor Shipment Module (VSM),*" formerly known as the Distribution Planning and Management System (DPMS), is a Defense Logistics Agency (DLA) web-based distribution and transportation system available to DLA contractors for the purpose of obtaining current shipping addresses, two-dimensional bar-coded shipping labels in accordance with Military Standard (MIL-STD) 129P, bills of lading, packing lists, and other shipping documentation. VSM replaces the need for the Contractor to contact the DLA transportation office prior to shipping, when directed in DLA contracts. Refer to 47.305-8-90 and clause 52.247-9011 for VSM policy.

(b) The Contractor shall–

(1) Notify the Government when ready to ship material. The Contractor shall use the Vendor Shipment Module (VSM) to notify the Government of the availability of items to ship. The Government can take up to two (2) full business days to schedule the shipment, and pick-up should occur within five(5) business days of the Contractor's notification. The Contractor shall plan for sufficient time for scheduling the shipment and standard ground transportation for its material to arrive at the destination by the CDD.

(2) Address special accommodations—

(i) Order specified carrier equipment when requested by the Government; or

(ii) If not specified, order appropriate carrier equipment not in excess of capacity to accommodate shipment;

(3) Deliver the shipment in good order and condition to the carrier, and load, stow, trim, block, and/or brace carload or truckload shipment (when loaded by the Contractor) on or in the carrier's conveyance as required by carrier rules and regulations.

(c) Responsibility for supplies—

(1) Contractor is responsible for any loss and/or damage to the goods:

(i) Occurring before delivery to the carrier;

(ii) Resulting from improper loading, stowing, trimming, blocking, and/or bracing of the shipment, if loaded by the Contractor on or in the carrier's conveyance.

(2) Per FAR 52.246-16 – Responsibility for Supplies, title to the supplies under this contract shall pass to the Government upon formal acceptance, regardless of when or where the Government takes physical possession, unless the contract specifically provides for earlier passage of title. The Contractor shall not be liable for loss or damage to supplies caused by the negligence of officers, agents, or employees of the Government, including but not limited to the Government's designated carrier, acting within the scope of their employment.

(3) Paragraph (c)(2) above shall not apply to supplies that so fail to conform to contract requirements as to give a right of rejection. The risk of loss of or damage remains with the Contractor for all non-conforming supplies received at the first-destination location until cure or acceptance. If instructed by the Contracting Officer, the Contractor shall replace, repair, or correct those supplies promptly at the Contractor's expense, including but not limited to shipping costs to retrieve the non-conforming supplies and costs to ship conforming supplies.

(End of Clause)

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## SUBPART 53.2 – PRESCRIPTION OF FORMS

*(Revised April 18, 2014 through PROCLTR 2014-64)*

### 53.201 Federal acquisition regulations system.

### 53.201-92 Contract file content list (DLA Form 678).

(a) General. DLA Form 678 shall be used as prescribed in 4.803(S-90).

(b) General instructions for preparation and use of DLA Form 678. The blocks shall be "X'd" and/or filled in as appropriate.

(1) Filing instructions.

(i) Sections A and B shall be filed on the left side of the file folder with section A on the bottom. Sections C and D shall be filed on the right side of the file folder with section C on the bottom.

(ii) The lowest numbered tab within each section shall be placed at the bottom of that section. When multiple documents are present under a numbered tab, e.g., correspondence, memoranda, they shall be filed chronologically with the most recent document on top.

(iii) It is impossible to enumerate all of the factors or conditions which may require specific documentation over and above that normally required. Therefore, as circumstances dictate, contracting officers shall describe, under the appropriate "blank" tab numbers, e.g., numbers 15-17; 30-32, such documentation as may be peculiar to the acquisition involved and file same in the analogous contract file section, e.g., tab 31, Certificate of Competency.

(2) Contract documentation.

(i) The documents identified on DLA Form 678 are those which are normally required to support a sealed bid/negotiated acquisition, other than a small purchase. The file sections provided establish the logical acquisition cycle sequence of documentation. The completed file will constitute a complete chronological history of the transaction and permit ready reconstruction of the actions taken in processing the acquisition.

### 53.213 Small purchase and other simplified purchase procedures.

### 53.213-90 Blanket purchase agreement delivery ticket (DLA Form 470).

This form may be used when supplies or services are acquired by means of a blanket purchase agreement (BPA).

(a) General. The Defense Logistics Agency (DLA) Form 470 is a cut sheet form and is designed to be used by the vendor as an acknowledgment of a call, notice of shipment, packing list, and invoice. This form eliminates the need for preparation, by the Contractor, of separate forms for these purposes. Also, Government personnel requiring information on these forms will receive it on a standard format.

(b) Procedure. A supply of the forms may be provided by the contracting office to each Contractor who has entered into a BPA with the center. Upon the placing of a call, the Contractor may be required to complete the BPA delivery ticket based on information contained in the written or oral call in accordance with detailed instructions to be provided by the contracting office.

(c) General instructions for preparation of DLA Form 470. After the placing of each call, complete the call, complete the form in accordance with the general instructions below, and any specific instructions received with the placing of the call.

(1) Block 11. This is the date the supplies are to reach destination, not the date of shipment. Convert the number of delivery days the Government offered to an actual date. For example, if the Government offered a 30-day delivery and received the oral or written call on 1 October, enter 10/31/YY as the required date.

(2) Block 12. This is the date the supplies are to be shipped, not delivered.

(3) Blocks 13 through 19. Information for these blocks will be furnished by the contracting office at the time of the call. Enter the name and address of the consignee in block 15.

(4) Blocks 21 through 23. Entries in these blocks will be made at the time of shipment. Enter actual date shipped or delivered. No partial shipments to a particular destination may be made. If more than one shipment is made against a call, prepare two copies of this form for shipment. Copies of the shipping documents may be attached as an alternative to completing blocks 21 and 22.

(5) When using the form as an acknowledgment of call. Place a check mark on "*" copies of the form in the box "Acknowledgment of call" (block 9).

(6) When using this form as a notice of shipment. Place a check mark in the box "Packing list" (block 9) on "*" copies of the form in the box "Notice of shipment" (block 9).

(7) When using the form as a packing list. Place a check mark in the box "packing list" (block 9) on "*" copies of the reproduced form for each consignee. Be sure blocks 21 through 23 have been completed, as applicable, on the forms used. Send "*" copies to each consignee by placing copies inside the container or in an envelope attached to the exterior of the container.

(8) When using this form as an invoice. At the end of the billing period, fill in "*" copies of the reproduced form which includes the shipment data for all destinations of that call as follows:

(i) Place a mark in the box marked invoice (block 9) of each copy of the form.

(ii) Sign and date blocks 24 and 25 of the top copy only of the form. If the BPA under which this call was issued does not provide for the fast payment procedure, the top copy must contain the signature and date (blocks 27A and 27B) of the authorized Government representative receiving and/or accepting for the Government.

"*" The number required shall be in accordance with the needs of the contracting office.

**53.213-91 Shipping Instruction (DLA Form 1224).**
This form is used against automated simplified acquisitions.

**53.213-92 Request for Quotation (DLA Form 1231).**
This form is used against automated simplified acquisitions.

**53.219 Small business and small disadvantaged business concerns.**

**53.219-90 Referral of Small Business for Certificate of Competency (CoC) Consideration (DLA Form 1756).**

(a) DLA Form 1756 may be used to provide information for CoC referrals as required by FAR 19.602-1 and DFARS 219.602-1.

(b) General instructions for preparation of DLA Form 1756:

(1) The name, size status, and total dollar value of the next low offeror should be identified, however, referrals shall not urge a conclusion based upon the size status of the second low offeror.

(2) The remaining blocks of the form are self-explanatory.

## SUBPART 53.3 – ILLUSTRATION OF FORMS

*(Revised April 18, 2014 through PROCLTR 2014-64)*

**53.300 General.**
DLA forms are electronically maintained at:

https://eworkplace.dla.mil/sites/org3/des/Shared%20Documents/Forms/AllItems.aspx?RootFolder=%2fsites%2forg3%2fdes%2fShared%20Documents%2fDLA%20Forms%20Library&FolderCTID=&View=%7b72067A37%2d5952%2d4063%2dBB08%2d215F945B34A0%7d

## SUBPART 53.90 - FORMATS AND TEMPLATES

*(Revised October 20, 2015 through PROCLTR 2016-01)*

**53.9006 Template – Justification for Other than Full and Open Competition**
The following format should be used as prescribed in 6.303-2.

**MEMORANDUM FOR RECORD**

**SUBJECT: "Justification for Other than Full and Open Competition for** [item/service to be purchased] **under authority of 10 U.S.C. 2304** [specific exception number]."

1. Summary/introduction: State in a few sentences 1) the field activity/agency, 2) what is being bought, 3) the estimated value and contract duration, and 4) the statutory authority cited for other than full and open competition. (This introductory section should be concise, as these points will be developed in detail later in the document.)

2. Description of agency's need (10 U.S.C. 2304(f)(3)(A)): Include a summary of the origin of the procurement, a description of the supplies/services needed, the specific need or use for the item/service, and any other general information needed to understand the context of the procurement. If this is a lengthy section, additional topic headings may be appropriate, such as "Background," "Current Procurement Efforts," etc.

3. Authority for other than full and open competition (10 U.S.C. 2304(f)(3)(B)): Cite the authority and provide the rationale. If a particular company's unique qualifications are critical, discuss those here. This section should include all facts supporting the use of other than full and open competition. This section should also address why the full quantity to be contracted for needs to be purchased without using competitive procedures.

4. Price/cost considerations (10 U.S.C. 2304(f)(3)(C)): Discuss relevant pricing issues, including the basis

for determining that the anticipated price/cost will be fair and reasonable. Also include here, or elsewhere as appropriate, length of contract, quantity, and other contract particulars bearing on the price/cost.

5. Market research/efforts to obtain competition (10 U.S.C. 2304(f)(3)(D)&(E): Discuss market research, synopsis, and other efforts made to publicize the requirement and generate competition. Also include a listing of sources that expressed, in writing, an interest in the procurement. (Market research may be addressed separately, if appropriate.)

6. Actions Being Taken to Overcome Barriers to Competition (10 U.S.C. 2304(f)(3)(F)): Describe, for example, any efforts to identify and evaluate less restrictive methods of expressing the requirement. Include, when applicable, a description of the action being taken to obtain a data package adequate to acquire the item competitively in future acquisitions. Note: When the J&A will include items coded AMSC A and/or H, see mandatory details at 6.303-2(a)(S-90)(i)(A).

I hereby certify that the information contained in this justification is accurate and complete to the best of my knowledge and belief.

_____ _____
Date Contracting officer signature

Over $85.5 million:

Other signatures as appropriate:

_____ _____
Date Chief Counsel signature

_____ _____
Date Other Signature

I have reviewed and hereby recommend that this justification be approved:

_____ _____
Date DLA Competition Advocate Signature

I have reviewed this Justification:

_____ _____
Date DLA Office of General Counsel Signature

Approval:

_____ _____
Date DLA Senior Procurement Executive Signature

I hereby certify that the information contained in this justification is accurate and complete to the best of my knowledge and belief.

_____ _____
Date Contracting officer signature

Over $85.5 million:

Other signatures as appropriate:

| | |
|---|---|
| Date | Chief Counsel signature |
| Date | Other Signature |

I have reviewed and hereby recommend that this justification be approved:

| | |
|---|---|
| Date | DLA Competition Advocate Signature |

I have reviewed this Justification:

| | |
|---|---|
| Date | DLA Office of General Counsel Signature |

Approval:

| | |
|---|---|
| Date | DLA Senior Procurement Executive Signature |

**53.9007 Acquisition Planning**

**53.9007(a) Template - Streamlined Acquisition Plan (SAP)**
The following format may be used for acquisitions above the SAT up to $10 million as prescribed in 7.102-90(e).

**For Official Use Only**
**Source Selection Information -- See FAR 2.101 and 3.104**

**Streamlined Acquisition Plan (SAP)**
(Complete and select the box that is appropriate for the acquisition situation)

Date:

Contracting office: Buyer name:

Requiring activity: Voice (DSN):

Project title: Fax (DSN):

Supply criticality:

Acquisition specialist's/buyer's e-mail address:

Purchase request (PR) or control number:

☐ Construction ☐ Service ☐ Supply ☐ Research and development (R&D)

a. Product Service Code: (Specify for services)

b. Services Portfolio Category: (Specify for services)

I. Brief description of requirement (FAR 7.105(a)(1)

a. Government estimate: $ (include all options and surge values)

b. Period of performance (include options)

c. Delivery schedule:

II. Proposed acquisition approach

a. Extent of competition:

☐ Full and open competition
☐ Other than full and open competition* * FAR 6.3 authority (Specify):
☐ Full and open after exclusion of sources
☐ Competitive non-DoD
☐ Mandatory use policy, including waivers (e.g., under Part 8)
☐ Limited sources (e.g. under Part 8.405-6):

b. Small business set-aside: (See FAR Part 19)

☐ Competitive small business set-aside (SBSA)
☐ Competitive 8a ☐ Sole source 8a
☐ Service Disabled Veteran Owned Small Business (SDVOSB) Set-Aside
☐ SDVOSB sole source
☐ Historically underutilized business zone (HubZone) Sole Source
☐ HubZone set-aside
☐ Small disadvantaged women owned business (SDWOB)
☐ Economically disadvantaged women owned small business (EDWOSB)
☐ Historically Black colleges and universities / minority institutions (HBCU/MI)
☐ Not applicable (NA) (If acquisition is unrestricted)
☐Other (Specify):

c. Procedures: (Check all that apply)

☐ FAR 8.404 (GSA/Non-DoD Competitive) ☐ FAR 12 Commercial Items
☐ FAR 13 Simplified Acquisition Procedures ☐ FAR 14 Sealed Bidding
☐ FAR 15 Negotiation ☐ FAR 36 Construction and Architect and Engineer (A&E) and design build

d. Contracting method

☐ Invitation for bid (IFB)
☐ Competitive request for proposal (RFP)
☐ Sole source RFP
☐ Other (fill-in)

e. Basis of award:

☐ Sealed bid – Part 14
☐ Negotiation – Part 15
☐ Lowest price technically acceptable
☐ Performance price trade-off without technical factors/proposal
☐ Performance price trade-off with technical factors/proposal

☐ Full trade off source selection (an acquisition plan is highly recommended)
☐ General Services Administration (GSA)/non-DoD competitive
☐ Other (explain):
Identify evaluation factors:

f. Contract type (Check all that apply):

☐ Fixed-price ☐ Time and material/labor hour agreements ☐ Economic price adjustment ☐ Incentive ☐ Award fee ☐ Cost-reimbursement ☐ Redetermination
☐ Indefinite delivery contract (IDC) ☐ Multiply Award
☐ Single Award (Provide rationale why single award)
☐ Other (Specify):

g. Sustainability:

☐ Contains sustainability requirements.
☐ Sustainability exception applies: (Specify)
☐ Sustainability requirements waived, approved by: (Specify)

h. Other considerations (Check all that apply):

☐ Progress payment ☐ Warranty ☐ First article test (FAT)
☐ Government furnished property(GFP) / Government furnished material (GFM) / Government furnished equipment (GFE) involved
☐ Other (specify). Other items/considerations may include, Non-Economy Act or Economy Act assisted acquisitions and use of reverse auction)

III. Prior procurement history: (If applicable)

IV. Market research: (Discuss the purpose, nature, extent, involved personnel/offices and results/status, commerciality, and estimated completion date of any market research initiated/to be initiated in support of the instant purchase request or anticipated future requirements (see also FAR, DFARS, and DLAD Parts 10, 11, )

V. Problems /risk/vulnerabilities (See DLAD 7.105-90)

VI. Projected key milestone dates:

Receive purchase request (PR):
Issue solicitation:
Receive bids/offers:
Complete evaluations:
Award contract:
Contract start:

_____
Acquisition specialist or buyer name and signature, date

_____ ____
Contracting Officer Name and Signature Date

VII. Approvals:

** The following section is to be completed by reviewer/approving official. **

Reviewer's name: Reviewer's DSN/ phone number:
Reviewer's e-mail:

☐ Streamlined acquisition plan (SAP) approved as submitted
☐ SAP conditionally approved subject to comments below
☐ SAP disapproved (reviewers are required to include comments below)
☐ Requirement has been reviewed and validated by (specify):

Reviewer's comments:

Reviewer's signature: _____

** The following section is to be completed by the small business specialist when required**

☐ Small business specialist coordination _____
Small business specialist's comments:

** The following section is to be completed by the competition advocate when required**

☐ Competition Advocate coordination _____
Competition advocate's comments:

## 53.9013 Simplified Acquisition Procedures

## 53.9013(a) Elevation Timeline for Simplified Acquisitions

### ELEVATION TIMELINE FOR SIMPLIFIED ACQUISITIONS

| PR Schedule | Action Officer | Action Item |
|---|---|---|
| 1 Day After Solicitation Closes* | Acquisition Specialist (AS) | Review offers for acceptability and address any technical and/or supply issues. If these issues cannot be resolved within 7 days, alert the AS Supv.<br>If an ESA referral is required, follow "non-procurable" policy.<br>If no quotes, follow non-procurable policy.<br>If pricing or other issues cannot be resolved within 7 days elevate. |
| 7 Days After Solicitation Closes | Acquisition Specialist (AS)<br>Acquisition Specialist Supervisor (AS Supv) | AS: Elevate to Supervisor.<br>AS Supv: If AS Supv is unable to help resolve, elevate to DC by Day 15. (document file) |
| 15 Days After Solicitation Closes | Division Chief (DC) | DC: If AS Supv is unable to resolve, determine and facilitate a resolution by Day 20. (document file) |
| 20 Days After Solicitation Closes | Acquisition Specialist | AS: Document File outlining the actions that were taken then award or follow Non-Procurable Policy by Day 20. |

*For Automated 'T' Solicitations, follow above steps after Auto Evaluation Status (AES) Block converts to 'M' or 'S'.
Above steps should take no longer than 20 business days. The following blocks shall be completed and placed in the purchase order file once all parties complete their actions.

| **Acquisition Specialist Name** | Signature and Date |
|---|---|
| | |

| | |
|---|---|
| **Acquisition Specialist Comments (optional)** | |
| **Acquisition Specialist Supervisor Name** | Signature and Date |
| **Acquisition Specialist Supervisor Comments (optional)** | |
| **Division Chief Name** | Signature and Date |
| **Division Chief Comments (optional)** | |

**Elevation Policy Timeline (No Quote)**

**Follow procedures laid out in the Non-Procurable Policy (CP-13-001)**

## 53.9013(b) Simplified Acquisition Award Documentation

The following format shall be used to document the basis for award and determination of price reasonableness for simplified acquisitions as prescribed in 13.106-3(b).

**Simplified Acquisition Award Documentation**

Buyer: _____ PR#: _____

**Basis for Award – Price Reasonableness Determination – FAR 13.106-3(a): (Check as applicable and explain as needed*)**

[ ] Fair and Reasonable – Adequate Price Competition – Manufacturer Competition
[ ] Fair and Reasonable – Adequate Price Competition – Dealer/OEM Competition
[ ] Fair and Reasonable – No Competition (single quote or noncompetitive price range)
[ ] Fair and Reasonable – Adequate Price Competition Among Providers of Services
[ ] Commercial Item $_____per unit
[ ] Market Research
[ ] Federal Supply Schedule (FSS) Number: _____ FSS Price: $ _____
[ ] Independent Government Estimate
[ ] Comparison of the proposed price with prices found reasonable on previous purchases
Contract:_____ Unit Price: $_____
Price Reasonableness Code (PRC) (if applicable) – DLAD 15.406-3(a)(11):_____
[ ] Comparison of similar items: NSN: _____ Unit Price: $_____
[ ] Contracting Officer's knowledge of the item
[ ] Any other reasonableness basis (i.e. Informal Cost Breakdown, Set by law or regulation, or other FAR Part 15 procedures)

***Narrative:**

**DFARS 217.7505 Sole Source Price Increase Certification:**
Price has increased 25% or more within the past 12 months. [ ] Yes [ ] No. If "Yes", the price has been evaluated and justified. Required notification prior to award has been completed.
**Best Value Determination: (Required if Awarding to Other Than Lowest Price Highest Scored):**

***Narrative:**

**Other Determinations: (Check as applicable and explain as needed*)**
[ ] Procurement is a First Time Buy
[ ] Fast Pay applicable
[ ] PR complies with Fast Pay requirements IAW FAR 13.402(a) through (f)
[ ] FAR DEV at DLAD 13.402 applies. FAR DEV Number:
_____
[ ] First Destination Packaging [ ] No Negotiation/Low Potential Savings (DLAD 15.402(a)(S-90)(3)(ii)(B)(1)
[ ] SAM.gov checked; awardee not proposed for suspension/debarment or debarred IAW FAR 9.105-1(c).
Date SAM Checked: _____

**Contracting Officer's signature on the award document constitutes concurrence with all determinations made above.**

**53.9013(c) Template - Commercial Item Pre-solicitation Documentation**
The following format may be used to document price and award justification as prescribed in 13.500(S-90)(7)(i).

**MEMORANDUM FOR RECORD**

**SUBJECT:** COMMERCIAL ITEM PRE-SOLICITATION DOCUMENTATION IAW FAR 10.002, FAR 2.101, and FAR 13.5

Commercial Test Procedures Under 13.5 are Applicable
Market research has been conducted prior to solicitation:
Solicitation #_____, NSN(s)_____, Item _____

**Part I – Market Research**
Please check the applicable block(s) for techniques utilized to conduct market research and determine commerciality:
( ) Commercial-Off-the-Shelf Field is coded: _(attach supporting documentation to include a review of the Material Master in SAP);
( ) Reviewed the results of recent market research undertaken to meet similar or identical requirements;
( ) Queried the Government-wide database of contracts and other procurement instruments intended for use by multiple agencies available at https://www.fpds.gov and other Government and commercial databases that provide information relevant to agency acquisitions;
( ) Reviewed catalogs and other generally available product literature published by manufacturers, distributors, and dealers or available on-line; or

(  ) Contacted knowledgeable individuals in Government and industry regarding market capabilities to meet requirements

**Part II – Commerciality Determination**
Please check to indicate completion:
(  ) In accordance with FAR 10.002(b) and FAR 2.101, Definitions, a review has been conducted of the item description(s) to determine if commercial items or non-developmental items are available to meet the Government's needs or could be modified to meet the Government's needs. The items are deemed commercial based on the above market research.

**Part III – Contract Type**
Please check to indicate the type of contract
(  ) FFP  (  ) FFP with EPA

**Part IV – Consolidation/Bundling**
Please check to indicate if Consolidation or Bundling is applicable:
(  ) Consolidation (Please see attached report/determination)
(  ) Bundling (Please see attached report/determination)

**Part V – Past Performance Evaluation**
(  ) Past Performance applicable
(  ) Past Performance is not appropriate due to
_____

**CONCLUSION:**
Based on the market research conducted, item(s) to be solicited against subject solicitation are determined to be commercial.

**APPROVALS:**

_____ _____  _____ _____

Acquisition Specialist  Date  Contracting Officer  Date

**53.9013(d) Template - Commercial Evaluation/Award Documentation**
The following format may be used to document the determination of responsibility as prescribed in 13.500(S-90)(7)(ii).

**MEMORANDUM FOR RECORD**

**SUBJECT: COMMERCIAL ITEM AWARD DETERMINATION UNDER TEST PROGRAM 13.5**

**Part I**

Determination of Responsibility: The awardee [*insert CAGE code*] is hereby determined responsible.

**Part II**

The Price is determined fair and reasonable based on:

____ Adequate competition

If only one response was received, the price is determined fair and reasonable based on:

____ Market Research: (insert narrative below);

____ Comparison of proposed price with prices found reasonable on previous purchases (insert narrative below);

____ Current price lists, catalogs, or advertisements. However, inclusion of a price in a price list, catalog, or advertisement does not, in and of itself, establish fairness and reasonableness of the price (insert narrative below);

____ Comparison with similar items in a related industry (insert narrative below);

____The contracting officer's personal knowledge of the item being purchased (insert narrative below);

____ Comparison to an independent Government estimate (insert narrative below); OR

____ Any other reasonable basis (insert narrative below) Additional Remarks:

**Part III**

Award Justification: ***(Insert narrative)***

**APPROVALS:**

_____ _____ _____ _____

Acquisition Specialist Date Contracting Officer Date

**53.9013(e) DOD EMALL waiver form.**
Use the following format as prescribed in 13.301(S-91)(2)(ii):

DOD EMALL Waiver

TRANSACTION NUMBER/CALL NUMBER _____

In accordance with DLAD 13.301(S-91)(2)(ii), the undersigned Billing Official hereby waives the requirement to use DOD EMALL as authorized by undersigned Hierarchy Level 4 (HL4) Agency/Organization Program Coordinator (A/OPC) based on the following circumstance(s): (Check all that apply.)

- ☐ Use of DOD EMALL would not meet the delivery requirements;
- ☐ Use of DOD EMALL would result in unreasonable or excessive cost to the requiring activity;
- ☐ Use of DOD EMALL would violate requirements for use of mandatory sources.

I have validated and attached supporting documentation for this waiver.

_____ _____

Billing Official Printed/Typed Name HL4 A/OPC Printed/Typed Name

_____ _____

Billing Official Signature/Date HL4 A/OPC Signature/Date

**53.9015 Contracting by Negotiation**

**53.9015(a) Price Negotiation Memorandum Checklist Competitive**
The following checklist may be used as prescribed in 15.406-3.

| **PRICE NEGOTIATION MEMORANDUM CHECKLIST COMPETITIVE** | | | |
|---|---|---|---|
| CONTENTS CHECKLIST | YES | NO | N/A |
| "FOR OFFICIAL USE ONLY" (FOUO) is at the top and bottom of the face or cover page, and on the bottom of each page containing FOUO, including the back page or cover. (DODManual 5200.01, Volume 4) | | | |
| **1. SUBJECT** | | | |
| a. Contractor name, division or group and location | | | |
| b. Contract or RFP number | | | |
| c. Item or service acquired | | | |
| **2. INTRODUCTORY SUMMARY** | | | |
| a. Contractor and proposal selected for award and date | | | |
| b. Offerors | | | |
| c. Tabular Summary of: proposed price, government estimate, and final proposal revision | | | |
| Major Price Items and/or CLINS | | | |
| Total | | | |
| Profit/fee % | | | |
| CPAF (base/award fee) ($ and %) | | | |
| Contract type | | | |
| c. Clearance authority | | | |
| (1) Approval authority | | | |

| | | | |
|---|---|---|---|
| (2) Approval date, meeting dates, and participants | | | |
| **3. PARTICULARS** | | | |
| a. Description of item or services being procured | | | |
| b. Explain method used to establish line item or unit prices | | | |
| c. Personnel: List names, title, organization and telephone number of participants in price analysis/cost realism (as applicable) discussions | | | |
| d. Significant dates: | | | |
| (1) Proposal date | | | |
| (2) Discussion(s)/date(s) | | | |
| (3) Final proposal revision date | | | |
| (4) Other significant date(s) (acquisition review board dates, competitive range determination, solicitation amendments, etc.) | | | |
| PNM CONTENTS CHECKLIST (COMPETITIVE) *(Continued)* | YES | NO | N/A |
| **4. ACQUISITION SITUATION** | | | |
| a. Acquisition background | | | |
| b. Discuss period of performance/delivery schedule | | | |
| c. Outside influences/unusual time constraints (i.e., Funding limitations, higher level, Congressional influences) | | | |
| d. Unique features or special pricing provisions (economic price adjustment , incentives, warranties, special progress payments, etc.) | | | |
| **5. EVALUATION SUMMARY** | | | |
| a. Reasonableness, completeness, cost realism, and balance | | | |
| (1) Description of the price analysis technique(s) used, results, and appropriateness in determining price reasonableness and completeness | | | |
| (a) Description of the basis of any escalation rates used for adjusting historical prices and/or for developing option year prices. See DoD Contract Pricing Reference Guide, Volume 2 Quantitative Techniques, Chapter 1 Using Price Index Numbers for potential sources of information, calculating | | | |

| | | | |
|---|---|---|---|
| adjustments, and other relevant topics. Global Insight will be used to develop escalation rates for future years. | | | |
| (b) Description of GSA Schedule prices, if any. Acquisition specialist must check GSA for any relevant price information and document the results | | | |
| (2) Description of the cost realism analysis technique(s) and their result(s) (if accomplished) | | | |
| (3) Description of assessment of balanced pricing and any associated risks | | | |
| (4) Document the decision rationale for having discussions and the date(s) or the decision to award without discussions. | | | |
| (5) Description and listing of major differences between the proposal and the final proposal revision prices | | | |
| b. Adequate price competition determination | | | |
| (1) Determination statement of adequate price competition | | | |
| (a) Statement that the offeror selected for award has the best value to the Government and that cost was a substantial factor in the selection for award; or | | | |
| (b) Statement that offeror selected for award had the lowest evaluated price; or | | | |
| (c) Statement that offeror selected for award was based on adequate price competition | | | |
| (2) Definitive statement that the offered price selected is fair and reasonable based on adequate price competition | | | |
| **6. ADVISORY REPORTS/KEY DOCUMENTS** | | | |
| Listing of Government advisory reports *(pricing, technical, should cost, etc. Include title, report number and date.)* | | | |
| **7. SIGNATURES** | | | |
| Signature block for contracting officer, and any other signatures required | | | |
| **8. Attachments** | | | |
| | | | |

| | | | |
|---|---|---|---|
| Attachments as identified in the document | | | |

**53.9015(b) Price Negotiation Memorandum Checklist Non-Competitive**

The following checklist may be used as prescribed in 15.406-3.

| **PRICE NEGOTIATION MEMORANDUM CHECKLIST NON-COMPETITIVE** | | | | |
|---|---|---|---|---|
| PNM CONTENTS CHECKLIST | PRE PNM | FINAL PNM | NA | SEE NOTES |
| "FOR OFFICIAL USE ONLY" (FOUO) is at the top and bottom of the face or cover page, and on the bottom of each page containing FOUO, including the back page or cover. (DOD Manual 5200.01, Volume 4) | | | | |
| **1. SUBJECT** | | | | |
| a. Contractor name, division or group and location | | | | |
| b. Contract or RFP Number (as applicable include modification number) | | | | |
| c. Item or service acquired | | NA | | |
| d. Delivery and/or Period of Performance | | | | |
| **2. INTRODUCTORY SUMMARY** | | | | |
| a. Date(s) of Negotiation and Agreement | NA | | | |
| b. Type of contractual action (*new contract, supplemental agreement, etc.)* | | NA | | |
| c. Tabular summary of cost, FCCOM, profit/fee and price: | | | | |
| (1) Proposed and objective positions | | NA | | |
| (2) Proposed, objective and considered negotiated positions | NA | | | |
| (3) Separate summaries for options, etc. | | | | |
| (4) Fee or profit rate for each position | | | | |
| (5) Award fee pool for each position (as | | | | |

| | | | | |
|---|---|---|---|---|
| applicable) Ceiling price and percentage for each position (as applicable for cost contracts) | | | | |
| (6) Type of contract for each position (FFP, FP/EPA, CPFF, CPAF, etc.) | | | | |
| d. Approval authority | | | | |
| (1) Approval authority | | | | |
| (2) Approval date, meeting date(s), and participants | | | | |
| (3) Limitations and/or conditions specified by the approving authority | | | | |
| **3. PARTICULARS** | | | | |
| a. Item or service identification: | | | | |
| (1) Types and quantities | | | | |
| (2) Previous buys of the same or similar items | | | | |
| (a) When they were bought | | NA | | |
| (b) Quantity | | NA | | |
| (c) Contract type | | NA | | |
| (d) Prior unit or total prices (*target/finals if applicable and available: document separately recurring and non-recurring costs)* | | NA | | |
| (e) Current unit or CLIN prices (*may be attached)* with name of item, NSN, part number, quantities, etc., as applicable (*document separately recurring non-recurring costs)* | | NA | | |
| (f) Summary explanation of significant differences between the instant buy and most recent historical price(s) | | NA | | |
| (g) Stock Position of Items *(include date stock position obtained, On-Hand Unfilled Orders, Inventory Consumption Rate, Due-In quantities, etc. Discuss any over/under position)* | | NA | | |
| b. Explain method used to establish line item or unit | | | | |

| | | | | |
|---|---|---|---|---|
| prices | | | | |
| c. Fact-finding/negotiation dates, places, names, titles, and office symbols for the government and the Contractor | | | | |
| d. Principal government/Contractor negotiator identities | | | | |
| **4. ACQUISITION SITUATION** | | | | |
| a. Acquisition background (contract type, pricing, etc.) *(address Long Term Contract and why it does/does not apply, surge and sustainment, etc.* | | | | |
| b. Period of performance and/or delivery schedule (*address resolution of differences between required, proposed and negotiated)* | | | | |
| c. Outside influences/unusual time constraints | | | | |
| d. Government furnished facilities, equipment or other support unique to this acquisition | | | | |
| e. Unique features such as should cost, design-to-cost, life cycle cost, special payment procedures, and special provisions (*clauses: savings, EPA, progress payments, performance based payments, validation of critical safety item and date ,incentives,etc.)* | | | | |
| **5. NEGOTIATION SUMMARY** | | | | |
| a. Discussion/explanation of price analysis performed by the contractor and/or the government's price analysis in the following areas or a statement why it was not performed | | | | |
| (1) Price element summary for proposed, objective, and considered negotiated amount. Narrative should discuss the position for proposed, objective and considered negotiated positions by topic. | | | | |
| (2) Basis or estimating technique used to determine price reasonableness *(attach exemption/waiver if in lieu of certified cost or pricing data)* | | NA | | |
| (a) Description GSA Schedule prices, if any. Acquisition specialist must check GSA for any relevant price information and document the results. | | | | |

| | | | | |
|---|---|---|---|---|
| (3) Identify submission of data other than cost or pricing data necessary to determine a reasonable price. Include discussion on rationale and required updates *(attach sales data, catalogues, competitive price list, independent market prices, other data, etc.)* | | | | |
| (4) Identify subcontractors required to provide cost and pricing data where the prime's requirement has been waived | | | | |
| (5) Requirement changes and how the price analysis and objective were adjusted | | | | |
| (6) Significant differences between the objective and negotiated amounts | NA | | | |
| (7) Use of advisory information/report(s) to establish the objective, including significant differences between them, the objective, and the final negotiated agreement. | | | | |
| b. Discussion/explanation of analysis and support for proposed, objective and (for PNM) negotiated position for contract terms and conditions that are | | | | |
| c. Identify proposal of record used to establish objective. | | NA | | |
| d. When certified cost and pricing data is obtained, a statement of the extent to which the contracting officer relied on contractor provided data except where specifically identified *(including agreed to cut-off dates)* | NA | | | |
| e. For contract actions that exceed TINA threshold but less than $10 million, after receipt of offers, but no later than upon receipt of adequate certified cost or pricing data the acquisition specialist will search the Contract Business Analysis Repository (CBAR) for items listed at DLAD 15.404-1(a) and document the file with the results. If DCAA is not providing audit assistance, this requirement applies to all actions that exceed the TINA threshold. | | | | |
| f. If cost analysis is performed, major cost element summary with sub-paragraph index for proposed, objective and considered negotiated amounts *(including direct and indirect costs for labor, materials, etc.)* | | | | |
| g. Discussions/explanations of cost analysis | | | | |

| | | | | |
|---|---|---|---|---|
| performed for each major cost element for contractor proposed, government objective and considered negotiated positions in the following areas: | | | | |
| (1) Summary breakout of the components which make up the major cost element amounts | | | | |
| (a) Labor hours by rate category | | | | |
| (b) Identify and discuss indirect rate(s) | | | | |
| (c) Materials and other costs by category | | | | |
| (d) Subcontractor cost or pricing data | | | | |
| 1. Requirement, availability, adequacy of and reliance on subcontractor cost or pricing data | | NA | | |
| 2. Sole source or competitive | | NA | | |
| 3. Extent and adequacy of the prime's review | | NA | | |
| 4. Why certified cost or pricing data were not obtained when required *(attach waiver/exemption)* | | NA | | |
| 5. Why certified cost or pricing data were obtained when not required | | NA | | |
| (e) Basis or estimating method used | | | | |
| (f) Explanation of contractor data not relied upon and reason for using other than contractor's data, identify data used to develop the government's position | | | | |
| (g) Rationale, sources, and currency of the data used to establish the objective *(include modification change determined to be non-commercial where originally determined commercial)* | | NA | | |
| (h) Significant differences between the objective and negotiated amounts | NA | | | |
| (i) Use of advisory reports/IPT pricing in establishing the objective, including significant differences between them, the objective, and the final negotiated agreement | | | | |
| (j) For undefinitized contract actions: actual | | | | |

| | | | | |
|---|---|---|---|---|
| costs to date, % of completion, trends and, as applicable, the contractor's estimate to complete | | | | |
| PNM CONTENTS CHECKLIST (Non-Competitive) *(Continued)* | PRE PNM | FINAL PNM | N/A | SEE NOTES |
| (2) With incentive arrangements, describe how the share ratio(s) and ceiling price(s) were established | | NA | | |
| (3) Profit (Fee). Explain how the objective was developed | | | | |
| (a) If WGM was used, state assigned weights and provide rationale when weights are below or above normal. *(DD 1547 Attached to the PNM)* | | NA | | |
| (b) If WGM not used, explain why not and how profit objective was developed | | NA | | |
| (c) List profit and /or fee rate(s) negotiated. If WGM profit objectives were not obtained in negotiations, explain why not and support profit and/or fee rate negotiated. | NA | | | |
| g. Summarize and include a definitive statement on why the negotiated price is fair and reasonable. (Address the 25% limitation on price increases (DFARS 217.7505) | NA | | | |
| h. Description of the basis of any escalation rates used for adjusting historical prices and/or for developing option year prices. See DoD Contract Pricing Reference Guide, Volume 2 Quantitative Techniques, Chapter 1 Using Price Index Numbers for potential sources of information, calculating adjustments, and other relevant topics. Global Insight will be used to develop escalation rates for future years. | | | | |
| i. Summarize and include a definitive statement on why the negotiated price is fair and reasonable. (Address the 25% limitation on price increases (DFARS 217.7505) | | | | |
| **6. ADVISORY REPORTS/KEY DOCUMENTS** | | | | |
| a. List government advisory reports *(audit, pricing, technical, should cost, etc. Include title, report number and date.)* | | | | |
| (1) Explain use of informal field assistance in lieu of formal report(s) | | | | |
| (2) Explain basis for any field reports required but not obtained | | NA | | |

| | | | | |
|---|---|---|---|---|
| b. Provide status and explanation/disposition of the deficiencies on the following contractor systems that impact the instant negotiations. | | | | |
| (1) Accounting system (*include adequacy of disclosure statement and compliance with cost accounting standards*) | | NA | | |
| (2) Purchasing system | | NA | | |
| (3) Compensation system | | NA | | |
| (4) Estimating system | | NA | | |
| (5) Any other business systems, as appropriate | | | | |
| c. List/identify contractor-provided data other than cost or pricing data and/or cost or pricing data. Identify certificate of current cost/pricing data, if provided | NA | | | |
| **7. SIGNATURES** | | | | |
| Include signatures of the author of the PNM, Contracting Officer and (as applicable) Approval Authority | | | | |
| **8. ATTACHMENTS** | | | | |
| a. DD Form 1547 - Weighted Guidelines | | | | |
| b. DD Form 1861 - Facilities Capital Cost of Money (*for the objective only)* | | | | |
| c. Other attachments identified in the PNM | | | | |

**53.9019 Small Business Programs**

**53.9019(a) Fair Market Price (FMP) Determination.**
The following format shall be used to document how the FMP was established as prescribed in 19.807-90(d).

Determination for repetitive procurements

1. IFB/RFP_____NSN_____ITEM_____

2. Base of FMP Quanity fob Unit Price Award date

_____

Current requirement: Previous procurement(s):

1)
2)
3)
Base unit price $_____

3. Adjustments (Show all calculations) + or - $

a. Quantity _____
b. EPA index (List index source, #, dates, title and values) _____
c. Transportation (List rate and source) _____
d. Delivery schedule _____
e. Packing and packaging (list rate and source) _____
f. Other (specify differing specs, terms, conditions, etc.) Net _____
adjustment (a through f above) _____

FMP for current requirement (base unit price + or - net adjustment) _____

4. Discussions _____
_____
_____
_____

5. Coordination/approval:

Buyer's signature/date _____

Price analyst signature/date _____

Prepared _____Reviewed _____

Concur _____Nonconcur _____

Approved: Contracting Officer_____Date_____

**DEFENSE LOGISTICS ACQUISITION DIRECTIVE**
**DLAD PROCEDURES, GUIDANCE, AND INFORMATION (DLAD PGI)**
*(Revised October 20, 2015 through PROCLTR 2016-01)*

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## DLAD PGI PART 11 – DESCRIBING AGENCY NEEDS

### PGI SUBPART 11.2 – USING AND MAINTAINING REQUIREMENTS DOCUMENTS

PGI 11.274-2(b)(2)(ii) Determination and findings.
The contracting officer will forward copies of the determination and findings to the DoD item unique identification (IUID) program office at the mailing address at DFARS 211.274-2(b)(ii), and to the DLA Acquisition Policy and Systems Division, J71.

### PGI SUBPART 11.4 – DELIVERY OR PERFORMANCE SCHEDULES

PGI 11.402(a)(S-90) Expedite process.
The expedite process will generally be initiated by the supply planner or customer account specialist, who would typically be the point of receipt for revised "need date" information from the customer. If the acquisition specialist becomes aware of a customer's need for an earlier delivery, he/she can provide this information to the supply planner or customer account specialist. If the supply planner or customer account specialist asks the acquisition specialist to attempt to expedite delivery, the following procedures apply:

(1) If a purchase request (PR) has not yet been solicited, the acquisition specialist may elect to include delivery as an evaluation factor in the solicitation.

(2) If an acquisition is in the solicitation phase, the acquisition specialist may elect to issue a solicitation amendment to consider delivery in the evaluation of quotes/offers. This decision should be based on factors such as whether the estimated acquisition lead time (ALT) makes it practicable to issue a solicitation amendment (e.g., in the case of a long term contract (LTC)). For an acquisition that has been solicited and is a candidate for automated award, the acquisition specialist may elect to withdraw the acquisition from the automated system and award manually. If a solicitation amendment is done, the information will be reflected in the PR prioritization report, which assists acquisition specialists by identifying the week when a PR should be awarded in order to meet the required delivery date (RDD) consistent with attainment to plan (ATP). If the acquisition specialist elects not to issue a solicitation amendment, see PGI 11.402(a)(90)(3).

(3) If a contract has been awarded, the acquisition specialist shall contact the contractor and attempt to negotiate an earlier delivery date.

(i) If the contractor is willing to make a formal commitment to deliver on an earlier date, the acquisition specialist shall execute a contract modification, so the new contract delivery date (CDD) will be reflected in the automated systems.

(ii) If the contractor is only willing to make an informal agreement to attempt to provide an earlier delivery, the acquisition specialist shall e-mail the supply planner or customer account specialist to provide this information. The supply planner or customer account specialist can then advise the customer that there is a possibility of an improved estimated ship date (ESD). No contract modification is required under these circumstances.