

|   |  |                 |  |  |   |                              |            |
|---|--|-----------------|--|--|---|------------------------------|------------|
| <b>SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS<br/>OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, &amp; 30</b>   |  |                 |  | 1. REQUISITION NUMBER  | PAGE 1 OF<br>20   |                              |            |
| 2. CONTRACT NO.<br>SPM300-12-D-S110   | 3. AWARD/EFFECTIVE DATE<br>11/22/2011  | 4. ORDER NUMBER | 5. SOLICITATION NUMBER<br>SPM300-11-R-0048   | 6. SOLICITATION ISSUE DATE<br>05/19/2011   |   |                              |            |
| 7. FOR SOLICITATION INFORMATION CALL<br>Candice Campbell  |  |                 | b. TELEPHONE NUMBER (No collect calls)<br>215-737-7721   | 8. OFFER DUE DATE/ LOCAL TIME<br>06/24/2011  |   |                              |            |
| 9. ISSUED BY<br>Defense Logistics Agency-Troop Support<br>Directorate of Subsistence, Bldg 6<br>700 Robbins Avenue<br>Philadelphia, PA 19111-5092   |  |                 | CODE SPM300  | 10. THIS ACQUISITION IS <input type="checkbox"/> UNRESTRICTED OR <input checked="" type="checkbox"/> SET ASIDE: 100 % FOR:<br><input checked="" type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> WOMEN-OWNED SMALL BUSINESS (WOSB)<br><input type="checkbox"/> HUBZONE SMALL BUSINESS <input type="checkbox"/> ECONOMICALLY DISADVANTAGED WOMEN-OWNED SMALL BUSINESS (EDWOSB)<br><input type="checkbox"/> SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS <input type="checkbox"/> 8 (A)<br>NAICS: 311991<br>SIZE STANDARD: 500 |   |                              |            |
| 11. DELIVERY FOR FOR DESTINATION UNLESS BLOCK IS MARKED<br><input type="checkbox"/> SEE SCHEDULE  | 12. DISCOUNT TERMS   |                 | 13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)  |  | 13b. RATING   |                              |            |
| 15. DELIVER TO<br>See Attachment 3 of Solicitation  |  |                 | CODE   | 18. ADMINISTERED BY<br>Same as Block 9   |   |                              |            |
| 17a. CONTRACTOR/ OFFEROR<br>Senn Brothers Produce<br>327 Wholesale Lane<br>West Columbia, SC 29172<br>TELEPHONE NO. (803) 799-0500  |  |                 | CODE 9P312   | FACILITY CODE  | 18a. PAYMENT WILL BE MADE BY<br>DFAS Columbus Center<br>DFAS BVDP<br>PO Box 369031<br>Columbus, OH 43236-9031 |                              |            |
| 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER<br><input type="checkbox"/>   |  |                 | 18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED <input type="checkbox"/> SEE ADDENDUM |  |   |                              |            |
| 19. ITEM NO.  | 20. SCHEDULE OF SUPPLIES/SERVICES  |                 |  | 21. QUANTITY   | 22. UNIT  | 23. UNIT PRICE               | 24. AMOUNT |
|   | Full line of Fresh Fruit and Vegetables for Non-DoD customers in the State of South Carolina |                 |  |  |   |                              |            |
| (Use Reverse and/or Attach Additional Sheets as Necessary)  |  |                 |  |  |   |                              |            |
| 25. ACCOUNTING AND APPROPRIATION DATA   |  |                 |  | 26. TOTAL AWARD AMOUNT (For Govt. Use Only)<br>\$17,100,000.00 (Contract Max)  |   |                              |            |
| <input type="checkbox"/> 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 62.212-1, 62.212-4. FAR 62.212-3 AND 62.212-5 ARE ATTACHED. ADDENDA  |  |                 |  | <input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED   |   |                              |            |
| <input checked="" type="checkbox"/> 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 62.212-4. FAR 62.212-5 IS ATTACHED. ADDENDA  |  |                 |  | <input checked="" type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED  |   |                              |            |
| <input checked="" type="checkbox"/> 28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN 1 COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED |  |                 |  | <input checked="" type="checkbox"/> 29. AWARD OF CONTRACT: REF. Senn Brothers OFFER DATED 06/24/2011. YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:  |   |                              |            |
| 30a. SIGNATURE OF OFFEROR/CONTRACTOR<br>  |  |                 |  | 31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)<br>   |   |                              |            |
| 30b. NAME AND TITLE OF SIGNER (Type or print)<br>Greg Senn Co-owner   |  |                 | 30c. DATE SIGNED<br>11/3/11  | 31b. NAME OF CONTRACTING OFFICER (Type or print)<br>Susan Williams   |   | 31c. DATE SIGNED<br>11/04/11 |            |

AUTHORIZED FOR LOCAL REPRODUCTION  
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STANDARD FORM 1449 (REV. 3/2011)  
Prescribed by GSA - FAR (48 CFR) 63.212

**SOLICITATION/CONTRACT FORM**

The terms and conditions set forth in solicitation SPM300-11-R-0048 are incorporated into subject contract.

The following documents are incorporated into the subject contract. Solicitation SPM300-11-R-0048, date 19 May 2011, and all amendments issued there under as follows:

- Amendment 0001, dated 20 June 2011
- Amendment 0002, dated 31 August 2011

**PERFORMANCE PERIOD:**

**A. Effective Period of the Contract:**

- Base Period – November 22, 2011 through May 21, 2013.
- Option Period 1 – May 22, 2013 through November 21, 2014.
- Option Period 2 – November 22, 2014 through May 21, 2016.

**ESTIMATED DOLLAR VALUE/GUARANTEED MINIMUM/MAXIMUM**

- A. The following chart includes the 18 month estimated dollar value and the 4.5 year estimated dollar value, along with the guaranteed 10% minimum and 200% maximum, in the event of additional Non-DoD customers, increases in annual school year funding allocations, or emergencies. The guaranteed minimum is a firm dollar amount that constitutes the Government’s legal ordering obligation under the contract. The total dollar maximum of this contract will be \$17,100,000.00 which includes the 200% maximum for Non-DoD customers.

| <b>South Carolina Schools</b>  | <b>18- Month Estimate (Base Period)</b> | <b>4.5 Year Estimate (Total incl. Options)</b> | <b>10% MIN</b>      | <b>200% MAX (4.5 Years)</b> |
|--------------------------------|---|--|---------------------|-----------------------------|
| <b><i>Group I NON- DOD</i></b> | <b>\$2,850,000.00</b>                   | <b>\$8,550,000.00</b>                          | <b>\$285,000.00</b> | <b>\$17,100,000.00</b>      |

The term “18 Month Estimate” refers to the Government’s good faith estimate of the requirement for the base period.

- The minimum contract dollar value is \$285,000.00.
- The maximum contract dollar value is \$17,100,000.00.

## **SPM300-12-D-S110**

### **I. START-UP PERIOD**

The Contractor's startup period will take place prior to the first order. The Contractor shall submit a proposed implementation schedule to the Contracting Officer within fifteen (15) days after award highlighting the steps that will be taken to implement a fully functional distribution account, including all EDI transactions, for all customers covered by this solicitation. An additional 30 days will be granted for actual implementation. No more than forty-five (45) days after award will be permitted for each contractor to have fully functional distribution accounts in place for all customers.

### **II. ORDERING CATALOGS**

The following form a part of Senn Brothers Produce Inc.'s offer and are hereby incorporated as part of subject contract:

- Final offered delivered price to be utilized for first week of ordering. The Final Proposal Revision spreadsheet was submitted on September 22, 2011.

### **SUPPLIES OF SERVICES AND PRICES**

**ITEMS:** Full-Line Fresh Fruit and Vegetables

**CUSTOMERS:** Non-DoD USDA School customers in the South Carolina Zone. Listed in Attachment 3 of solicitation.

**FOB TERMS:** FOB Destination for all items.

**CATALOG #:** Non-DoD USDA School customers will order under SPM300-12-D-S110 from November 22, 2011 through September 30, 2012. Senn Brothers Produce Inc. will invoice in accordance with the customer's orders.

**As of 10/01/2012:**

SPM300-12-D-S110 is hereby changed to SPM300-13-D-S110.

All orders placed on or before 30 September 2012 are to be invoiced under SPM300-12-D-S110 regardless of delivery date.

## **SPM300-12-D-S110**

### **As of 10/01/2013:**

SPM300-13-D-S110 is hereby changed to SPM300-14-D-S110.

All orders placed on or before 30 September 2013 are to be invoiced under SPM300-13-D-S110 regardless of delivery date.

### **As of 10/01/2014:**

SPM300-14-D-S110 is hereby changed to SPM300-15-D-S110.

All orders placed on or before 30 September 2014 are to be invoiced under SPM300-14-D-S110 regardless of delivery date.

### **As of 10/01/2015:**

SPM300-15-D-S110 is hereby changed to SPM300-16-D-S110.

All orders placed on or before 30 September 2015 are to be invoiced under SPM300-15-D-S110 regardless of delivery date.

## **CATALOG PRICING:**

All catalog pricing is valid from Sunday thru Saturday. Catalog updates must be received no later than 12:00 P.M. EST the preceding Wednesday.

The USDA School Customers are required to place orders no later than 72 hours before delivery date.

All pricing will be firm at time of order.

Senn Brothers Produce Inc. will not invoke any additional charges for emergency orders (defined as an order that is placed for same day delivery).

## **DELIVERIES AND PERFORMANCE**

The following is the designated plant location for the performance of this contract for all contract line items:

Senn Brothers Produce, Inc.  
327 Wholesale Lane  
West Columbia, SC 29172

**The following Clauses and Provisions are included in this contract:**

**Remove Far Clause 52.212-5 -- Contract Terms and Conditions Required to Implement Statutes or Executive Orders -- Commercial Items. (Apr 2011)**

**Replace with Far Clause 52.212-5 -- Contract Terms and Conditions Required to Implement Statutes or Executive Orders -- Commercial Items (Aug 2011)**

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

(1) 52.222-50, Combating Trafficking in Persons (FEB 2009) (22 U.S.C. 7104(g)).

\_\_\_ Alternate I (AUG 2007) of 52.222-50 (22 U.S.C. 7104(g)).

(2) 52.233-3, Protest After Award (AUG 1996) (31 U.S.C. 3553).

(3) 52.233-4, Applicable Law for Breach of Contract Claim (OCT 2004) (Pub. L. 108-77, 108-78).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the contracting officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

\_\_\_ (1) 52.203-6, Restrictions on Subcontractor Sales to the Government (Sept 2006), with Alternate I (Oct 1995) (41 U.S.C. 253g and 10 U.S.C. 2402).

\_X\_ (2) 52.203-13, Contractor Code of Business Ethics and Conduct (Apr 2010) (Pub. L. 110-252, Title VI, Chapter 1 (41 U.S.C. 251 note)).

\_\_\_ (3) 52.203-15, Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub L. 111-5) (Applies to contracts funded by the American Recovery and Reinvestment Act of 2009).

\_X\_ (4) 52.204-10, Reporting Executive compensation and First-Tier Subcontract Awards (Jul 2010) (Pub. L. 109-282) (31 U.S.C. 6101 note).

\_\_\_ (5) 52.204-11, American Recovery and Reinvestment Act—Reporting Requirements (Jul 2010) (Pub. L. 111-5).

\_X\_ (6) 52.209-6, Protecting the Government' Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (Dec 2010) (31 U.S.C. 6101 note).

(7) 52.209-10, Prohibition on Contracting with Inverted Domestic Corporations (section 740 of Division C of Public Law 111-117, section 743 of Division D of Public Law 111-8, and section 745 of Division D of Public Law 110-161).

(8) 52.219-3, Notice of Total HUBZone Set-Aside or Sole-Source Award (Jan 2011) (15 U.S.C. 657a).

(9) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Jan 2011) (if the offeror elects to waive the preference, it shall so indicate in its offer)(15 U.S.C. 657a).

(10) [Reserved]

(11) (i) 52.219-6, Notice of Total Small Business Aside (June 2003) (15 U.S.C. 644).

(ii) Alternate I (Oct 1995) of 52.219-6.

(iii) Alternate II (Mar 2004) of 52.219-6.

(12) (i) 52.219-7, Notice of Partial Small Business Set-Aside (June 2003) (15 U.S.C. 644).

(ii) Alternate I (Oct 1995) of 52.219-7.

(iii) Alternate II (Mar 2004) of 52.219-7.

(13) 52.219-8, Utilization of Small Business Concerns (Jan 2011) (15 U.S.C. 637(d)(2) and (3)).

(14) (i) 52.219-9, Small Business Subcontracting Plan (Jan 2011) (15 U.S.C. 637 (d)(4).)

(ii) Alternate I (Oct 2001) of 52.219-9.

(iii) Alternate II (Oct 2001) of 52.219-9.

(iv) Alternate III (July 2010) of 52.219-9.

(15) 52.219-14, Limitations on Subcontracting (Dec 1996) (15 U.S.C. 637(a)(14)).

(16) 52.219-16, Liquidated Damages—Subcontracting Plan (Jan 1999) (15 U.S.C. 637(d)(4)(F)(i)).

\_\_\_ (17) (i) 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (Oct 2008) (10 U.S.C. 2323) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).

\_\_\_ (ii) Alternate I (June 2003) of 52.219-23.

\_\_\_ (18) 52.219-25, Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting (Dec 2010) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).

\_\_\_ (19) 52.219-26, Small Disadvantaged Business Participation Program—Incentive Subcontracting (Oct 2000) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).

\_\_\_ (20) 52.219-27, Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside (May 2004) (15 U.S.C. 657 f).

X (21) 52.219-28, Post Award Small Business Program Rerepresentation (Apr 2009) (15 U.S.C. 632(a)(2)).

\_\_\_ (22) 52.219-29, Notice of Total Set-Aside for Economically Disadvantaged Women-Owned Small Business (EDWOSB) Concerns (Apr 2011).

\_\_\_ (23) 52.219-30, Notice of Total Set-Aside for Women-Owned Small Business (WOSB) Concerns Eligible Under the WOSB Program (Apr 2011).

X (24) 52.222-3, Convict Labor (June 2003) (E.O. 11755).

X (25) 52.222-19, Child Labor—Cooperation with Authorities and Remedies (Jul 2010) (E.O. 13126).

X (26) 52.222-21, Prohibition of Segregated Facilities (Feb 1999).

X (27) 52.222-26, Equal Opportunity (Mar 2007) (E.O. 11246).

X (28) 52.222-35, Equal Opportunity for Veterans (Sep 2010) (38 U.S.C. 4212).

X (29) 52.222-36, Affirmative Action for Workers with Disabilities (Oct 2010) (29 U.S.C. 793).

X (30) 52.222-37, Employment Reports on Veterans (Sep 2010) (38 U.S.C. 4212).

X (31) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496).

\_\_\_ (32) 52.222-54, Employment Eligibility Verification (Jan 2009). (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in 22.1803.)

\_\_\_ (33) (i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Items (May 2008) (42 U.S.C. 6962(c)(3)(A)(ii)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

\_\_\_ (ii) Alternate I (May 2008) of 52.223-9 (42 U.S.C. 6962(i)(2)(C)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

\_\_\_ (34) 52.223-15, Energy Efficiency in Energy-Consuming Products (Dec 2007) (42 U.S.C. 8259b).

\_\_\_ (35) (i) 52.223-16, IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products (Dec 2007) (E.O. 13423).

\_\_\_ (ii) Alternate I (Dec 2007) of 52.223-16.

X (36) 52.223-18, Encouraging Contractor Policies to Ban Text Messaging while Driving (Aug 2011).

\_\_\_ (37) 52.225-1, Buy American Act--Supplies (Feb 2009) (41 U.S.C. 10a-10d).

\_\_\_ (38) (i) 52.225-3, Buy American Act –Free Trade Agreements – Israeli Trade Act (Jun 2009) (41 U.S.C. 10a-10d, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, 19 U.S.C. 3805 note, Pub. L. 108-77, 108-78, 108-286, 108-301, 109-53, 109-169, 109-283, and 110-138).

\_\_\_ (ii) Alternate I (Jan 2004) of 52.225-3.

\_\_\_ (iii) Alternate II (Jan 2004) of 52.225-3.

\_\_\_ (39) 52.225-5, Trade Agreements (Aug 2009) (19 U.S.C. 2501, *et seq.*, 19 U.S.C. 3301 note).

X (40) 52.225-13, Restrictions on Certain Foreign Purchases (Jun 2008) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

\_\_\_ (41) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (Nov 2007) (42 U.S.C. 5150).

\_\_\_ (42) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov 2007) (42 U.S.C. 5150).

\_\_\_ (43) 52.232-29, Terms for Financing of Purchases of Commercial Items (Feb 2002) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).

\_\_\_ (44) 52.232-30, Installment Payments for Commercial Items (Oct 1995) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).

X (45) 52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration (Oct. 2003) (31 U.S.C. 3332).

\_\_\_ (46) 52.232-34, Payment by Electronic Funds Transfer—Other Than Central Contractor Registration (May 1999) (31 U.S.C. 3332).

X (47) 52.232-36, Payment by Third Party (Feb 2010) (31 U.S.C. 3332).

\_\_\_ (48) 52.239-1, Privacy or Security Safeguards (Aug 1996) (5 U.S.C. 552a).

\_\_\_ (49) (i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx 1241(b) and 10 U.S.C. 2631).

\_\_\_ (ii) Alternate I (Apr 2003) of 52.247-64.

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or executive orders applicable to acquisitions of commercial items:

\_\_\_ (1) 52.222-41, Service Contract Act of 1965 (Nov 2007) (41 U.S.C. 351, *et seq.*).

\_\_\_ (2) 52.222-42, Statement of Equivalent Rates for Federal Hires (May 1989) (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).

\_\_\_ (3) 52.222-43, Fair Labor Standards Act and Service Contract Act -- Price Adjustment (Multiple Year and Option Contracts) (Sep 2009) (29 U.S.C.206 and 41 U.S.C. 351, *et seq.*).

\_\_\_ (4) 52.222-44, Fair Labor Standards Act and Service Contract Act -- Price Adjustment (Sep 2009) (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).

\_\_\_ (5) 52.222-51, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment--Requirements (Nov 2007) (41 U.S.C. 351, *et seq.*).

\_\_\_ (6) 52.222-53, Exemption from Application of the Service Contract Act to Contracts for Certain Services--Requirements (Feb 2009) (41 U.S.C. 351, *et seq.*).

\_\_\_ (7) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations. (Mar 2009) (Pub. L. 110-247).

\_\_\_ (8) 52.237-11, Accepting and Dispensing of \$1 Coin (Sep 2008) (31 U.S.C. 5112(p)(1)).

(d) *Comptroller General Examination of Record* The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, Audit and Records -- Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

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(e)

(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c) and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in this paragraph (e)(1) in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (Apr 2010) (Pub. L. 110-252, Title VI, Chapter 1 (41 U.S.C. 251 note)).

(ii) 52.219-8, Utilization of Small Business Concerns (Dec 2010) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$650,000 (\$1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(iii) [Reserved]

(iv) 52.222-26, Equal Opportunity (Mar 2007) (E.O. 11246).

(v) 52.222-35, Equal Opportunity for Veterans (Sep 2010) (38 U.S.C. 4212).

(vi) 52.222-36, Affirmative Action for Workers with Disabilities (Oct 2010) (29 U.S.C. 793).

(vii) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause 52.222-40.

(viii) 52.222-41, Service Contract Act of 1965, (Nov 2007), (41 U.S.C. 351, *et seq.*)

(ix) 52.222-50, Combating Trafficking in Persons (Feb 2009) (22 U.S.C. 7104(g)).

\_\_\_ Alternate I (Aug 2007) of 52.222-50 (22 U.S.C. 7104(g)).

(x) 52.222-51, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment--Requirements (Nov 2007) (41 U.S.C. 351, *et seq.*)

(xi) 52.222-53, Exemption from Application of the Service Contract Act to Contracts for Certain Services--Requirements (Feb 2009) (41 U.S.C. 351, *et seq.*)

(xii) 52.222-54, Employment Eligibility Verification (Jan 2009).

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(xiii) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations. (Mar 2009) (Pub. L. 110-247). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6.

(xiv) 52.247-64, Preference for Privately-Owned U.S. Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx 1241(b) and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the contractor may include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of Clause)

*Alternate I (Feb 2000).* As prescribed in [12.301\(b\)\(4\)\(i\)](#), delete paragraph (d) from the basic clause, redesignate paragraph (e) as paragraph (d), and revise the reference to “paragraphs (a), (b), (c), or (d) of this clause” in the redesignated paragraph (d) to read “paragraphs (a), (b), and (c) of this clause”.

*Alternate II (Dec 2010).* As prescribed in [12.301\(b\)\(4\)\(ii\)](#), substitute the following paragraphs (d)(1) and (e)(1) for paragraphs (d)(1) and (e)(1) of the basic clause as follows:

(d)

(1) The Comptroller General of the United States, an appropriate Inspector General appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), or an authorized representative of either of the foregoing officials shall have access to and right to—

(i) Examine any of the Contractor’s or any subcontractors’ records that pertain to, and involve transactions relating to, this contract; and

(ii) Interview any officer or employee regarding such transactions.

(e)

(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), and (c), of this clause, the Contractor is not required to flow down any FAR clause in a subcontract for commercial items, other than—

(i) *Paragraph (d) of this clause.* This paragraph flows down to all subcontracts, except the authority of the Inspector General under paragraph (d)(1)(ii) does not flow down; and

(ii) *Those clauses listed in this paragraph (e)(1).* Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—

(A) 52.203–13, Contractor Code of Business Ethics and Conduct (Apr 2010) (Pub. L. 110–252, Title VI, Chapter 1 (41 U.S.C. 251 note)).

(B) 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub. L. 111-5).

(C) 52.219–8, Utilization of Small Business Concerns (Dec 2010) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$650,000 (\$1.5 million for construction of any public facility), the subcontractor must include 52.219–8 in lower tier subcontracts that offer subcontracting opportunities.

(D) 52.222–26, Equal Opportunity (Mar 2007) (E.O. 11246).

(E) 52.222–35, Equal Opportunity for Veterans (Sept 2010) (38 U.S.C. 4212).

(F) 52.222–36, Affirmative Action for Workers with Disabilities (Oct 2010) (29 U.S.C. 793).

(G) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause 52.222-40.

(H) 52.222–41, Service Contract Act of 1965 (Nov 2007) (41 U.S.C. 351, *et seq.*).

(I) 52.222–50, Combating Trafficking in Persons (Feb 2009) (22 U.S.C. 7104(g)).

(J) 52.222–51, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (Nov 2007) (41 U.S.C. 351, *et seq.*).

(K) 52.222–53, Exemption from Application of the Service Contract Act to Contracts for Certain Services--Requirements (Feb 2009) (41 U.S.C. 351, *et seq.*).

(L) 52.222–54, Employment Eligibility Verification (Jan 2009).

(M) 52.226–6, Promoting Excess Food Donation to Nonprofit Organizations. (Mar 2009) (Pub. L. 110–247). Flow down required in accordance with paragraph (e) of FAR clause 52.226–6.

(N) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx. 1241(b) and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

**Remove DFARS Clause 252.212-7001 Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items. (MAR 2011) from page 36 and replace with the following:**

**Replace with DFARS Clause 252.212-7001 Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items. (SEP 2011)**

As prescribed in [212.301\(f\)\(iii\)](#) and [227.7103-6\(a\)](#) and (e), use the following clauses as applicable:

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES  
OR EXECUTIVE ORDERS APPLICABLE TO DEFENSE ACQUISITIONS OF  
COMMERCIAL ITEMS (SEP 2011)

(a) The Contractor agrees to comply with the following Federal Acquisition Regulation (FAR) clause which, if checked, is included in this contract by reference to implement a provision of law applicable to acquisitions of commercial items or components.

52.203-3, Gratuities (APR 1984) (10 U.S.C. 2207).

(b) The Contractor agrees to comply with any clause that is checked on the following list of Defense FAR Supplement clauses which, if checked, is included in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items or components.

(1)  [252.203-7000](#), Requirements Relating to Compensation of Former DoD Officials (JAN 2009) (Section 847 of Pub. L. 110-181).

(2)  [252.203-7003](#), Agency Office of the Inspector General (SEP 2010)(section 6101 of Pub. L. 110-252, 41 U.S.C. 3509).

(3)  [252.205-7000](#), Provision of Information to Cooperative Agreement

Holders (DEC 1991) (10 U.S.C. 2416).

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(4) \_\_\_\_ [252.219-7003](#), Small Business Subcontracting Plan (DoD Contracts)

(OCT 2010) (15 U.S.C. 637).

(5) \_\_\_\_ [252.219-7004](#), Small Business Subcontracting Plan (Test Program)

(JAN 2011) (15 U.S.C. 637 note).

(6)(i) X [252.225-7001](#), Buy American Act and Balance of Payments Program (JAN 2009) (41 U.S.C. chapter 83, E.O. 10582).

(ii) \_\_\_\_ Alternate I (DEC 2010) of [252.225-7001](#).

(7) \_\_\_\_ [252.225-7008](#),  
Restriction on Acquisition of Specialty Metals (JUL 2009)(10 U.S.C. 2533b).

(8) \_\_\_\_ [252.225-7009](#),  
Restriction on Acquisition of Certain Articles Containing Specialty Metals (JAN 2011) (10 U.S.C. 2533b).

(9) X [252.225-7012](#),  
Preference for Certain Domestic Commodities (JUN 2010) (10 U.S.C. 2533a).

(10) \_\_\_\_ [252.225-7015](#), Restriction on Acquisition of Hand or Measuring Tools

(JUN 2005) (10 U.S.C. 2533a).

(11) \_\_\_\_ [252.225-7016](#), Restriction on Acquisition of Ball and Roller Bearings (JUN 2011) (Section 8065 of Pub. L. 107-117 and the same restriction in subsequent DoD appropriations acts).

(12)(i) \_\_\_\_ [252.225-7021](#), Trade Agreements (JUN 2011) (19 U.S.C. 2501-2518

and 19 U.S.C. 3301 note).

(ii) \_\_\_\_ Alternate I (SEP 2008) of [252.225-7021](#).

(iii) \_\_\_\_ Alternate II (DEC 2010) of [252.225-7021](#).

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(13) \_\_\_\_ [252.225-7027](#), Restriction on Contingent Fees for Foreign Military

Sales (APR 2003) (22 U.S.C. 2779).

(14) X [252.225-7028](#), Exclusionary Policies and Practices of Foreign Governments (APR 2003) (22 U.S.C. 2755).

(15)(i) \_\_\_\_ [252.225-7036](#), Buy American Act—Free Trade Agreements—Balance of Payments Program (DEC 2010) (41 U.S.C. chapter 83 and 19 U.S.C. 3301 note).

(ii) \_\_\_\_ Alternate I (JUL 2009) of [252.225-7036](#).

(iii) \_\_\_\_ Alternate II (DEC 2010) of [252.225-7036](#).

(iv) \_\_\_\_ Alternate III (DEC 2010) of [252.225-7036](#)

(16) \_\_\_\_ [252.225-7039](#), Contractors Performing Private Security Functions (AUG 2011) (Section 862 of Pub. L. 110-181, as amended by section 853 of Pub. L. 110-417 and sections 831 and 832 of Pub. L. 111-383).

(17) \_\_\_\_ [252.225-7038](#), Restriction on Acquisition of Air Circuit Breakers (JUN

2005) (10 U.S.C. 2534(a)(3)).

(18) X [252.226-7001](#), Utilization of Indian Organizations, Indian-Owned

Economic Enterprises, and Native Hawaiian Small Business Concerns (SEP 2004) (Section 8021 of Pub. L. 107-248 and similar sections in subsequent DoD appropriations acts).

(19) \_\_\_\_ [252.227-7013](#), Rights in Technical Data—Noncommercial Items (SEP 2011), if applicable (see 227.7103-6(a)).

(20) \_\_\_\_ [252.227-7015](#), Technical Data—Commercial Items (SEP 2011)

(10 U.S.C. 2320).

(21) \_\_\_\_ [252.227-7037](#), Validation of Restrictive Markings on Technical Data

(SEP 2011), if applicable (see [227.7102-4](#)(c)).

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(22)  [252.232-7003](#), Electronic Submission of Payment Requests and

Receiving Reports (MAR 2008) (10 U.S.C. 2227).

(23)  [252.237-7010](#), Prohibition on Interrogation of Detainees by Contractor

Personnel (NOV 2010) (Section 1038 of Pub. L. 111-84)

(24)  [252.237-7019](#), Training for Contractor Personnel Interacting with

Detainees (SEP 2006) (Section 1092 of Pub. L. 108-375).

(25)  [252.243-7002](#), Requests for Equitable Adjustment (MAR 1998) (10

U.S.C. 2410).

(26)  [252.246-7004](#), Safety of Facilities, Infrastructure, and Equipment

For Military Operations (OCT 2010) (Section 807 of Pub. L. 111-84).

(27)  [252.247-7003](#), Pass-Through of Motor Carrier Fuel Surcharge

Adjustment to the Cost Bearer (SEP 2010) (Section 884 of Pub. L. 110-417).

(28)(i)  [252.247-7023](#), Transportation of Supplies by Sea (MAY 2002) (10

U.S.C. 2631).

(ii)  Alternate I (MAR 2000) of [252.247-7023](#).

(iii)  Alternate II (MAR 2000) of [252.247-7023](#).

(iv)  Alternate III (MAY 2002) of [252.247-7023](#).

(29)  [252.247-7024](#), Notification of Transportation of Supplies by Sea (MAR

2000) (10 U.S.C. 2631).

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(c) In addition to the clauses listed in paragraph (e) of the Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items clause of this contract (FAR 52.212-5), the Contractor shall include the terms of the following clauses, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under this contract:

(1) [252.225-7039](#), Contractors Performing Private Security Functions (AUG 2011) (Section 862 of Pub. L. 110-181, as amended by section 853 of Pub. L. 110-417 and sections 831 and 832 of Pub. L. 111-383).

(2) [252.227-7013](#), Rights in Technical Data--Noncommercial Items (SEP 2011), if applicable (see [227.7103-6\(a\)](#)).

(3) [252.227-7015](#), Technical Data—Commercial Items (SEP 2011), if applicable (see [227.7102-4\(a\)](#)).

(4) [252.227-7037](#), Validation of Restrictive Markings on Technical Data (SEP 2011), if applicable (see [227.7102-4\(c\)](#)).

(5) [252.237-7010](#), Prohibition on Interrogation of Detainees by Contractor Personnel (NOV 2010) (Section 1038 of Pub. L. 111-84).

(6) [252.237-7019](#), Training for Contractor Personnel Interacting with Detainees (SEP 2006) (Section 1092 of Pub. L. 108-375).

(7) [252.247-7003](#), Pass-Through of Motor Carrier Fuel Surcharge Adjustment

to the Cost Bearer (SEP 2010) (Section 884 of Pub. L. 110-417).

(8) [252.247-7023](#), Transportation of Supplies by Sea (MAY 2002) (10 U.S.C

2631).

(9) [252.247-7024](#), Notification of Transportation of Supplies by Sea (MAR 2000)

(10 U.S.C. 2631).

**Remove REBATES/DISCOUNTS AND PRICE-RELATED PROVISIONS from Page 11 of the solicitation and replace with the following:**

**Replace with REBATES/DISCOUNTS AND PRICE-RELATED PROVISIONS:**

(a) The contractor shall employ prevailing commercial methods in the pursuit of discounts, rebates, allowances or other similar economic incentives or benefits, for the customers supported under this contract, throughout the period of performance. All NAPA discounts, food show discounts, early payment discounts (except as identified in paragraph (b) herein), and other discounts, rebates, allowances or other similar economic incentives or benefits received by the Contractor at any time during the period of performance shall be passed to the Government via a reduced catalog price. Instructions for identifying discounts, rebates, allowances or other similar economic incentives or benefits that shall be provided to the Government or retained by the contractor are set forth in the submission requirements in the Business Proposal/Pricing and in the Reports section of the Statement of Work.

(b) The contractor may retain Early Payment discounts that meet the following conditions:

(i) the Early Payment discount is an incentive to encourage payment earlier than the normal payment due date;

(ii) the Early Payment discount is consistent with commercial practice;

(iii) the Early Payment discount is routinely given by the manufacturer/growers to customers other than the Prime Vendor/Contractor at the same discount rate and under the same conditions as provided to the Prime Vendor/Contractor;

(iv) the Early Payment discount is not established, requested, or negotiated for the purpose of avoiding giving DLA Troop Support a lower cost or a rebate or in exchange for a higher invoice price;

(v) the Early Payment discount is no more than 2 percent of the manufacturer/grower's invoice and the early payment is required within 10 days to obtain the discount; and

(vi) the contractor actually made the required payment within the time period required to receive the discount.

(c) Upon request the contractor shall provide to the Government any invoices, quotes, or agreements relevant to the delivered price component for existing catalog items, for any new items being added to the catalog, and for requested price changes to existing catalog items. The contractor must include detailed payment terms on each invoice or quote used to substantiate delivered price, including any applicable discounts or rebates. If there are no payment terms associated with the document, the contractor must annotate it with "No payment terms."

(d) The government may require the contractor to submit invoices and other documentation from all subcontractor tiers or any supplier or person in the delivered price supply chain, to substantiate all discounts, rebates, allowances or other similar economic incentives or benefits. If the Contracting Officer determines, after reviewing an invoice or other documentation, that a discount, rebate, allowance or other similar economic incentive or benefit should have been passed on to the Government, or if price verifications reveal any instance of overpricing or underpricing, the Government shall be entitled to a prospective delivered price reduction and a

retroactive refund for the amount of the overcharges or discounts, rebates, allowances or other similar economic incentives or benefits, including interest and the contractor shall be entitled to a credit for any undercharges. The Contracting Officer, or authorized representative, shall have the right to examine and audit all the Contractor's records relevant to the existence of discounts, rebates, allowances or other similar economic incentives or benefits, and commercial customer delivered prices. Failure to exercise this right shall not constitute a defense or alter the Government's entitlement to any other remedies by contract or by law.

## **RAPIDGATE**

"Many bases currently require enrollment in RapidGate and will not allow entry without RapidGate clearance. During the contract implementation period, the Contractor must contact all customer locations to determine whether enrollment in RapidGate or another security program is required for access to each location. If RapidGate or other security enrollment is required, the contractor must take all necessary steps to obtain this in time for the start of performance under this contract. Failure to have RapidGate clearance may result in a vendor being turned away from the base and being unable to complete delivery. The contractor is responsible for the additional cost for RapidGate enrollment and must ensure that a RapidGate enrolled driver is available for all deliveries. We currently estimate that RapidGate enrollment will cost about \$250 per company and \$200 per enrolled employee for 1 year of access to multiple locations, but the cost of RapidGate or other security enrollment may vary, so the contractor should contact RapidGate to determine its own costs. If more than one driver is required, RapidGate enrollment must be obtained for each driver. Note that enrollment can take several weeks, so an awardee that is not already enrolled must begin enrollment at the time of award notification at the latest. If difficulty or delay in enrollment in RapidGate is encountered during the implementation period, the contractor MUST contact RapidGate and/or the Security Officer at the applicable customer locations to resolve any issues with processing RapidGate enrollment so that the contractor will be able to deliver as required. For additional information regarding RapidGate, including enrollment instructions, please visit their website at [www.rapidgate.com](http://www.rapidgate.com).

Please note that RapidGate is currently a requirement for access to some military bases; however, these and other locations may require enrollment in other security programs at some time in the future. In this event, the contractor is responsible for obtaining all required enrollments and clearances for each of their drivers as soon as they receive notice of such a requirement."