

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT			1. CONTRACT ID CODE	PAGE 1 OF 5 PAGES
2. AMENDMENT/MODIFICATION NO. P00005	3. EFFECTIVE DATE See Block 16C	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable)	
6. ISSUED BY CODE SPM300	7. ADMINISTERED BY (If other than Item 6) CODE			
DLA Troop Support Dir of Subsistence, Bldg. 6 700 Robbins Avenue Phila, PA 19111-5092 POC: Tina Frederico Phone: 215-737-4545				
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code) Theodor Wille Intertrade GmbH (TWI) Josef Eicher Strasse 14 60437 Frankfurt-Kalbach, Germany			(X) 9A. AMENDMENT OF SOLICITATION NO.	
			<input type="checkbox"/> 9B. DATED (SEE ITEM 11)	
			(X) 10A. MODIFICATION OF CONTRACT/ORDER NO. SPM300-12-D-3481	
			<input checked="" type="checkbox"/> 10B. DATED (SEE ITEM 13)	1/5/12
CODE DB096	FACILITY CODE			
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS				
<input type="checkbox"/> The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: <input type="checkbox"/> is extended, <input type="checkbox"/> is not extended.				
(a) By completing items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment your desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.				
12. ACCOUNTING AND APPROPRIATION DATA (If required)				
13. THIS ITEM ONLY APPLIES TO MODIFICATION OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.				
CHECK ONE	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.			
<input type="checkbox"/>				
<input type="checkbox"/>	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, date, etc) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103			
<input checked="" type="checkbox"/>	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY 52.212-4 (c) Contract Terms and Conditions-Commercial Items (Jun 2010)			
<input checked="" type="checkbox"/>	D. OTHER (Specify type of modification and authority) 52.208-5 Contractor Use of Mandatory Sources of Supply or Services (Oct 2008)			
E. IMPORTANT: Contractor <input type="checkbox"/> is not, <input checked="" type="checkbox"/> is required to sign this document and return <u>1</u> copies to the issuing office.				
14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)				
See pages 2 thru 5 for details.				
Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.				
15A. NAME AND TITLE OF SIGNER (Type or print) PATRICK MAJOR, CEO			16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) TINA FREDERICO	
15B. CONTRACTOR OFFER NO.  (Signature of person authorized to sign)			15C. DATE SIGNED 8/7/2012	16B. UNITED STATES OF AMERICA  (Signature of Contracting Officer)
			16C. DATE SIGNED 8/8/12	

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1. The following clause is updated:

52.216-9065 Economic Price Adjustment – Actual Material Costs for Subsistence Product Price Business Model (NOV 2011) DLAD.

(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 Manufacturer's Price Agreement (MPA) price or the most recent manufacturer, grower or private label holder commercial price per unit to the Contractor, exclusive of standard freight. The product price shall be based on free on board (f.o.b.) origin/point of manufacture. Product price shall exclude all costs that are to be covered in the distribution price.

(i) Exceptions:

(A) Fresh fruits and vegetables (FF&V): The product price shall be based on f.o.b. origin/point of importer when the following conditions apply;

(1) The product is listed in categories 54 and 76; 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 {N/A} 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 (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.

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"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 manufacturer'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 (product allowance), shall be reflected via a reduced 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 US Treasury, attached with itemized listing of all customer purchases by line item to include contract number, call number, purchase order number and CLIN number.

(5) "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 Product Price, including but not limited to, the performance requirements of this SOW. As detailed above in (3), Product Price is distinct from and not to be included in the distribution price. For use in outside contiguous United States (OCONUS) location(s) that do not use distribution price language in alternates I or II.

(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 the Sunday (12:01 AM) of the First full week in a calendar month through the last Saturday (11:59 PM) in that calendar month (eastern time (ET), standard or daylight as applicable).

(8) "United States Defense Transportation System (DTS) Ocean Shipping Costs:" DTS ocean transportation costs (the cost of 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 ii) 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 received 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 - 40% x \$5.70 = \$2.28
Supplier B - 30% x \$5.90 = \$1.77
Supplier C - 30% x \$6.30 = \$1.89
Product price = \$5.94

(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 12:00 pm local Philadelphia time on the last Monday of each month for submission not later than 12:00 pm local Philadelphia time on the last Monday of each month, to be effective in the following ordering month's ordering 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

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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 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 time on the Thursday immediately following the Monday 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 time on the Friday immediately following the Monday. 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 30%, 30% for fresh fruits and vegetables (FF&V) of the initial Contract product price, except as provided below:

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(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 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 an 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.

2. The Procurement List Addition of the following below items is effective August 9, 2012:

DePaul Industries
2730 N Hayden Island Drive - Bldg. C
Portland, OR 97217
P.O.C. Linda Weaklem (503) 288-6507
Main Phone: (503) 288-6500
Fax: (866) 782-6624
Email #1: lweaklem@depaulindustries.com
#2: orders@depaulindustries.com

<u>STOCK NUMBER</u>	<u>PRODUCT</u>	<u>(\$)</u> PRICE FOB ORGIN
8925-01-E62-1749	Walnuts, English, Shelled, Halves & Pieces, (2.75lb bags)	\$123.42
8925-01-E62-1748	Walnuts, English, Shelled, Halves & Pieces, (2lb bags)	\$ 99.84
8925-01-E62-1747	Almonds, Shelled, Slivered, Blanched (2lb bags)	\$ 71.88
8925-01-E62-1746	Almonds, Shelled, Sliced, Blanched (2lb bags)	\$ 70.44
8925-01-E62-1745	Almonds, Shelled, Sliced, Natural (2lb bags)	\$ 70.44

3. All other terms and conditions remain the same.