# DEFENSE LOGISTICS ACQUISITION DIRECTIVE

**Revision 5**
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**This revision replaces Revision 4**

## GENERAL STRUCTURE

*(Revised September 24, 2012 through PROCLTR 2012-51)*

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## SUBPART 1.1 – PURPOSE, AUTHORITY, ISSUANCE

*(Revised September 15, 2011 through PROCLTR 2011-44)*

**1.101 Purpose.**
The Defense Logistics Acquisition Directive (DLAD) is issued by the Director, DLA Acquisition (J7), by authority of the Director, Defense Logistics Agency (DLA). It implements and supplements the Federal Acquisition Regulation (FAR), the Defense FAR Supplement (DFARS), the DFARS Procedures, Guidance and Information (PGI) and other Department of Defense publications and, pursuant to FAR 1.304, establishes DLA procedures relating to the acquisition of supplies and services under the authority of Chapter 137, Title 10 of the United States Code, or other statutory authority. The DLAD is not a stand-alone document and shall be read in conjunction with the FAR, DFARS, DFARS PGI, and the DLA Issuances.

**1.104 Applicability.**
This directive is applicable to the contracting function at all DLA activities.

**1.105 Issuance.**

**1.105-1** (Reserved.)

**1.105-2 Arrangement of regulations.**

(c) References and citations.

(2) The Defense Logistics Acquisition Directive 5025.30 shall be referred to as the DLAD.

**1.105-3 Copies.**

1.105-90 The DLAD and its companion resource, DLAD Procedures, Guidance and Information (PGI), are available on the Internet directly from the public DLA Acquisition Website at http://www.dla.mil/Acquisition.

**1.108 FAR conventions.**

(c) The estimated contract value for an award action is to be calculated using the guidance at FAR 1.108(c).

**1.170 Peer reviews.**

(a) Defense Procurement and Acquisition policy (DPAP) peer reviews.

(1) The peer review program has two levels. The first is the DPAP level and the second is the Agency level. DPAP peer reviews are required for pre and post-award actions as follows – all acquisitions for supplies and/or services valued at $1 billion and greater (including options and surge) and all contracts for services valued at $1 billion and greater (including options and surge). See mandatory procedures for DPAP peer reviews at PGI 1.170.

(2) DPAP rolling forecast requirement. In order to plan for peer reviews at the DPAP level, each activity shall provide information regarding acquisitions that meet the $1 billion threshold. The prescribed format, found in PGI subsection 1.170 (a)(2), is mandatory and shall be used to provide this information to J72 by the 15th of September, December, March, and June every year. The report will be updated every quarter - add a new quarter to and delete the oldest quarter from the forecast each period so it always forecasts a year out.

(90) Defense Logistics Agency (DLA) peer reviews.

(1) The primary purpose of the DLA peer review is to identify best practices and lessons learned. The reviews also ensure that field contracting offices are implementing regulatory requirements in a consistent and appropriate manner across DLA and to improve quality and effectiveness of the DLA contracting process. The peer review program has two levels of review, the first is the DPAP level and the second is the Agency level. This section covers the Agency level peer reviews, which are required for certain pre and post award actions as detailed below.

(2) Candidates for pre-award DLA peer reviews. Each field activity will nominate a pre-award program that will be reviewed by a peer review team after Milestone A IARB and prior to milestone B IARB by August 1st of every year. The information will be provided to the DLA HQ J72 peer review program manager. (Field activities are defined for purposes of the DLA peer review program as the following: DLA Land and Maritime, DLA Mechanicsburg, DLA Warren, DLA Aberdeen, DLA Albany, DLA Aviation, DLA Huntsville, DLA Philadelphia, DLA Warner Robins, DLA Oklahoma City, DLA Ogden, DLA Troop Support, DLA Contracting Services Office, DLA Energy, DLA Distribution, DLA Document Services, DLA Disposition Services, and DLA Strategic Materials. The peer review will take place prior to soliciting but after Milestone A IARB and prior to the Milestone B IARB. Based on the number of field activities the expectation is that DLA will conduct approximately 18 Milestone A peer reviews and 18 Milestone B peer reviews annually.

(3) Candidates for post-award DLA peer reviews. Each field activity (as defined above) will nominate one post-award service contract (unless they do not have any active service contracts) to be reviewed at IARB Milestone C by August 1st of every year. The information will be provided to the DLA HQ J72 peer review program manager. If the only service contract is for an insignificant dollar amount and there are no plans to continue awarding service contracts by the activity, a decision will be made by the DLA peer review program manager if a peer review is worth pursuing. The peer review will take place prior to the IARB at Milestone C. Based on the anticipated activities with service contracts, the expectation is that DLA will conduct approximately 8 Milestone C peer reviews.

(4) Procedures for DLA peer reviews are at PGI 1.170-90.

## SUBPART 1.2 – ADMINISTRATION

### 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 DLA HQ, attention: J71. Submittals shall be in the form of a memorandum (without signature block) to the Director, DAR Council and be formatted in accordance with the DAR case guidance provided at 90.7. Recommendations for

amending the DLAD shall be submitted in the form of a letter signed by the chief of the contracting office and be in the format of I. Problem; II. Recommendation; and III. Discussion.

**1.201-92 DLAD changes.**
Numbered changes are issued periodically by the Director, DLA Acquisition (J7), to revise and update the DLAD.

**1.201-93 Dissemination and effective date of the regulation (including appendices, revisions, supplements, and manuals).**

(a) Chiefs of the contracting office shall ensure that the FAR, DFARS, DFARS PGI, DLAD, and DLA Issuances including revisions, are accessible by all interested individuals..

(b) Compliance with the DLAD, including any revision to the DLAD, shall be permissive on the date of the revision and shall be mandatory 30 days after issuance, unless otherwise provided in the revision.

## SUBPART 1.3 – AGENCY ACQUISITION REGULATIONS

*(Revised September 27, 2011 through PROCLTR 2011-45)*

**1.301 Policy.**

(a)(1) DLA implementation and supplementation of the FAR, DFARS, and DFARS PGI are contained in the DLAD under the authorization and subject to the authority of the Director, DLA Acquisition (J7). The DLAD contains —

(i) Clear requirements and procedures of law;

(ii) Mandatory DLA-wide policy;

(iii) Deviations from higher level regulations; and

(iv) Designations or delegations of contracting authority.

(2)(i) Relevant procedures, guidance, and information that do not meet the criteria in paragraph (a)(1) of this section are issued in the PGI. The DLAD and its companion resource, the PGI, contain all enterprise-wide policies and procedures relating to the acquisition of supplies and services within DLA, except those that may otherwise reside in other DLA directives, instructions, manuals, handbooks, or other similar documents.

**1.301-90 Procurement letters (PROCLTRs).**
PROCLTRs are numbered and issued by DLA Acquisition (J7) to provide agency-specific information and procedural guidance to DLA contracting personnel, to emphasize existing policy, to transmit new or changed policy promulgated by the Office of the Secretary of Defense (OSD) or other higher authority, or to make editorial or administrative revisions. PROCLTRs shall expire upon incorporation into the DLAD. PROCLTRs can be accessed and downloaded, by year, from the internet via the common access card (CAC) – enabled DLA Acquisition (J7) section of EWorkplace. See PGI 1.301-90 for procedural guidance on preparation, review coordinations, and issuance of PROCLTRs.

**1.301-91 Contracting office guidance.**

(a) Procedural guidance relative to the FAR, DFARS, and/or DLAD may be issued by heads of contracting activities consistent with FAR 1.304 and DFARS 201.304. This authority is delegable to the chief of the contracting office without power of redelegation. In addition, the Director, DLA Acquisition (J7), has delegated this authority to the Commander, DLA Disposition Services. Requests for approval of any regulatory document meeting the criteria prescribed in DFARS 201.304(1) and (3) shall be submitted to J71 for submission by the Director, DLA Acquisition (J7), to the DAR council director for approval by the Director, Defense Procurement and Acquisition Policy. The format, general plan, and numbering system of procedural guidance shall be the same as FAR, DFARS, and DLAD.

(b) Defense supply centers and DLA Disposition Services shall furnish DLA HQ, attention: J71, one copy of each procedural instruction for review after publication. Contracting offices need not separately request approval under DFARS 201.304(1) and will, based on the copy of the procedures provided, be advised by letter if the procedure is disapproved.

**1.301-92 Contracting office provisions and clauses.**
The authority and procedural requirements addressed in (a) through (d) of this paragraph do not apply to either the development or use of a new economic price adjustment (EPA) clause or a revision to an existing EPA clause, which require DLA HQ approval in accordance with 16.203-3(93):

(a) Provisions and clauses that are developed as a result of negotiations or which fulfill a specific and unique requirement of the acquisition, that do not constitute a deviation from higher level regulations or from DLAD, and that do not require the approval of the Director of Defense Procurement and Acquisition Policy (DPAP), shall be approved by the Chief of the Contracting Office (CCO) for essentiality, appropriateness, and sufficiency, and reviewed by cognizant Office of Counsel prior to incorporation into a solicitation or contract. The CCO may delegate this authority to a level no lower than the policy chief. These provisions and clauses can be approved for one time use only, i.e., for use 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 organization that developed them. Upon approval, a copy shall be forwarded to DLA HQ, attention: J7.

(b) Requests for proposed repetitive use or "substantially the same as" provisions and clauses shall be signed by the cognizant CCO, accompanied by prescriptive language for their use on either an enterprise or non-enterprise basis, and forwarded to DLA HQ, attention: J71, for review and approval prior to implementation. This authority may be delegated to a level no lower than the Policy Chief. The provision or clause shall have been reviewed for legal sufficiency prior to forwarding to DLA HQ. These are provisions and clauses that are not deviations and do not otherwise require approval by DPAP. J71 shall review these provisions and clauses for essentiality, appropriateness, and sufficiency, and shall obtain the concurrence of General Counsel as part of the approval process. The provision or clause will be assigned DLAD numbers when approved for use, and incorporated into the DLAD by numbered procurement letter (PROCLTR).

(c) Requests for substantive changes to existing provisions and clauses shall be signed by the cognizant CCO and forwarded to DLA HQ, attention: J71, for review and approval prior to implementation. CCOs may delegate this authority to a level no lower than the policy chief. They shall have been reviewed for legal sufficiency prior to forwarding to HQ. These are provisions and clauses that are not deviations and do not otherwise require approval by DPAP. J71 shall obtain the concurrence of

General Counsel as part of the approval process. These provisions and clauses shall be incorporated into DLAD by numbered PROCLTR.

(d) Requests for minor changes do not require signature by the cognizant CCO or approval by the cognizant Office of Counsel; email requests will be accepted. Such minor changes may include, but are not limited to, changes to addresses, dates, position titles, spelling errors, and typographical mistakes that do not result in any substantive change to policy. These changes may be considered technical edits and may not require approval of General Counsel or incorporation into DLAD by numbered PROCLTR.

(e) DLA clauses codified in the Code of Federal Regulations shall be numbered using the prefix of 54.

**1.304 Agency control and compliance procedures.**

(4) The plan required by DFARS 201.304(4) is comprised of 1.301-91, 1.403, 1.404, 1.491 and this section.

(5) Requests for the Secretary of Defense, USD(AT&L), and OUSD(AT&L) DPAP approvals required by DFARS 201.304, shall be signed by the cognizant CCO, reviewed for legal sufficiency, and submitted to DLA HQ, attention: J71, for approval and processing through the Director of the DAR Council. J71 shall obtain the concurrence of General Counsel as part of the approval process. Once the required approvals are obtained, the changes shall be incorporated into DLAD by numbered PROCLTR.

**1.390 [Reserved.]**

## SUBPART 1.4 – DEVIATIONS FROM THE FAR

**1.403 Individual deviations.**

(a) Except for individual deviations to the coverage listed in DFARS 201.402(1)(i), through (vi), and individual deviations granted in accordance with DFARS 201.403(2), deviations from FAR, DFARS, a Department of Defense Directive, or the DLAD which affect only one contract or transaction, may be made only after approval by the Senior Procurement Executive (SPE).

(b) Requests for deviations to the coverage listed in DFARS 201.402(1)(i) through (vi) shall be submitted to DLA HQ, attention: J71, for submission by the SPE to the DAR council director for approval by the Director, Defense Procurement and Acquisition Policy (DPAP).

**1.404 Class deviations.**

(a) Requests for class deviations shall be submitted to DLA HQ, attention: J71, for submission to the Director, DLA Acquisition (J7), for approval, or to the DAR council director for approval by the Director, DPAP.

(b) Requests for class deviations pursuant to DFARS 201.404(b)(i) and (ii) shall be submitted to DLA HQ, attention: J71, for submission to the DAR council director for approval by the Director, DPAP, or to the SPE for approval, respectively.

(90) All class deviations for the FAR, DFARS, and DLAD which are required for longer than three years will be incorporated in the DLAD.

**1.490 Submission of requests for deviations.**

(a) Requests for authority to deviate from the provisions of the FAR or the DFARS shall be submitted to DLA HQ, attention: J71. Submittals shall be formatted in accordance with the guidance at 90.702. Requests for authority to deviate from the provisions of the DLAD shall be submitted in the form of a letter signed by the supply chain head of the contracting activity (HCA) (unless delegated to the chief of the contracting office and be in the format of I. Problem, II. Recommendation, and III. Discussion. The deviation request shall include a statement that the request has been reviewed and concurred in by local counsel. Pertinent comments by local counsel should be forwarded with the request.

(1) Requests for new deviations which will be needed beyond the normal three year expiration period should be submitted to DLA HQ, attention: J71, as permanent deviations to be incorporated into the DLAD. The deviation request shall also include appropriate DLAD language.

(2) Requests for extension of existing deviations should also be requested as permanent DLAD coverage unless superseding regulatory changes are in process.

(b) Requests for class deviations which have a significant cost or administrative impact upon contractors or offerors must be published in the Federal Register. See 1.501-2.

(1) Class deviations for which publication is required should be submitted to J71 in sufficient time to allow for a 60 day public comment period, resolution of public comments, review of the resolved comments by the DAR Council and approval by the Director, DPAP.

(2) If a paperwork reduction or regulatory flexibility analysis is required, additional time should be allowed for these analyses.

(c) For those class deviations which have originated in a DLA field activity and do not have significant cost or administrative impact upon contractors or offerors, the originator will initiate action for renewal or extension, when appropriate, at least 90 days prior to the expiration date.

**1.491 Control of deviations.**
A register shall be maintained by J71 of the deviations granted to the FAR, DFARS, and DLAD. Each deviation shall be recorded in the register and shall be assigned a control number (i.e., FARS DEV (FAR system deviation) YY-##)). The control number shall be included in the document authorizing the deviation and shall be cited in all references to the deviation.

**1.492 Streamlined solicitation for DLA Energy contracts (Deviation).**
DLA Energy is authorized to either eliminate or modify various clauses and provisions in buying petroleum, petroleum-related services, and coal. FAR and DFARS clauses/provisions eliminated or modified and DLA Energy clauses which have been modified are listed at 90.13.

**1.493 [Reserved]**

## SUBPART 1.5 – AGENCY AND PUBLIC PARTICIPATION

**1.501 Solicitation of agency and public views.**

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

(b)(2) Contracting office comments on proposed rules published for public comment in the Federal Register shall be submitted to DLA HQ, attention: J71. J71 will take appropriate action on such comments. Actions may include consideration in DAR council committee, submission to the DLA DAR council policy member for resolution at the DAR council, or consolidation of comments and submission directly to the FAR secretariat or the DAR council case manager.

(S-90) J71 will be the focal point for any Federal register notices of proposed rules submitted by contracting offices requiring the public comment process. The appropriate contracting office will be responsible for the analysis of public comments and the preparation of a final rule. The final rule will be submitted to J71 for review and submission through the DAR council to the Director, Defense Procurement and Acquisition Policy.

**1.590 Changes in contracting processes, techniques, or methods.**

(a) General. Whenever a contracting office contemplates a significant change in a contracting process, technique, or method which may have a substantial impact on industry and/or the Government, the activity shall promptly notify DLA HQ, attention: J71, of the contemplated change and the reasons for the change. This notification is necessary for DLA HQ to respond to any reactions from industry, the Congress, or the using military departments. In addition, DLA HQ has information which may not be available at the field level and can evaluate the significance of the proposed action to the Agency as a whole. It is essential that DLA HQ know what is contemplated before a significant change is publicized.

(b) Significant changes. Contemplated changes which are significant and which require notification to DLA HQ are (but not limited to) a change in--

(1) A longstanding inspection requirement or procedure;

(2) The method of providing and/or accounting for Government-provided property;

(3) A type of contract which constitutes a significant departure from the acquisition technique previously utilized;

(4) Solicitation techniques and the elements used in evaluation of offers;

(5) The region/area from which acquisition of an item has been previously accomplished;

(6) The location of a contracting office; or

(7) Item specification which prompts a major change in manufacturing and/or processing techniques.

(c) Data to support request. To determine the impact of a contemplated change in contracting method, requests for approval of a proposed change in a contracting method should contain the following information:

(1) A description of the present and proposed contracting methods;

(2) A statement of the difficulties encountered in the use of the present method and/or the improvements foreseen as the result of a change;

(3) A statement as to the degree of impact of the change expected on industry and/or the Government; and

(4) A statement as to the net benefits accruing to the Government as a result of the change.

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

*(Revised September 19, 2012 through PROCLTR 2012-49)*

**1.601 General.**

Authority conferred upon the heads of contracting activities (HCA) or the chief of the contracting office (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 provisions of the pertinent DLAD paragraph. The CCO will maintain a list of all delegations and promptly notify DLA HQ, attention: J71, of any changes. Commanders or Directors may serve as the acting supply chain HCA when the supply chain HCA is unavailable. Deputy Commanders or Directors may also serve as the acting supply chain HCA when the Commander or Director and supply chain HCA are both unavailable, by signing as "Acting Commander/Director". Supply chain HCAs exist in DLA Land and Maritime, DLA Troop Support, DLA Aviation, and DLA Energy.

**1.601-90 Critical acquisition responsibilities.**

(a) For those supply chains designated as contracting activities (see DFARS 202.101, definition of "contracting activity"), the functions in (b) below are to be performed by the HCA, with further delegation of one or more of the functions in (b) below authorized to no lower than the CCO, at the supply chain HCA's discretion. For those DLA organizations with the Director, DLA Acquisition (J7) serving as the HCA (see 2.101, definition of "contracting activity"), the functions in (b) below (with the exception of (b)(2)) are delegated to the CCO:

(b) Responsibilities. The HCA is responsible for maintaining oversight of the activity's procurement function and ensuring the fundamental integrity of the activity's procurement system. Key functions are to:

(1) Have responsibility for the contract policy, pricing, and clearance and oversight functions.

(2) Serve as the Defense supply center's clearance authority (see 1.690-3(a)).

(3) Ensure adequate oversight of simplified acquisitions via monthly reviews and internal procurement management reviews (PMRs). (These monthly reviews are separate from the DLA automated procurement systems internal controls (APSIC) process reviews required at mandatory PGI 1.601-90(b).) The HCA shall ---

(i) Ensure that—

(A) Monthly reviews include a representative sample of acquisitions solicited, evaluated and awarded through the automated procurement system;

(B) The sample size is sufficient to achieve a 90% confidence level with a 10% error rate; and

(C) A statistical program such as EZ-Quant is used to compile the sample of acquisitions;

(ii) Require feedback from monthly reviews, and implement corrective actions and training as necessary;

(iii) Expeditiously report issues with regard to any problems with system logic or operations, including known or potential noncompliance with applicable law or regulation, to the DLA Acquisition Policy and Systems Division (J71); and

(iv) Ensure that the APSIC process is supported by appropriate supply chain personnel (see mandatory PGI 1.601-90(b)(3)(iv).)

(4) Ensure that a review and approval channel consisting of DAWIA certified or certifiable 1102s or 1101s in the contracting career path, matrixed if necessary, is in place to provide review and approval of contracting actions specified by regulation. This review and approval channel shall also assist in the resolution of complex contracting issues that are elevated by contracting officers.

(5) Select, appoint, and terminate the appointment of contracting officers when such authority has been delegated to the chief of the contracting office in accordance with 1.603-1.

(6) Manage the activity's contracting officer warrant program (see 1.603-1(91)). The objective of this program is to ensure that only those officials who fully meet appropriate selection criteria are appointed and retained as contracting officers when an organizational need occurs.

(7) Manage the activity's contracting officer review program (see 1.603-92).

(8) Ensure compliance with the requirements for evaluations of contracting officers and others in the contracting career field as specified in 1.603.93.

(9) Ensure that contracting personnel, including those in developmental programs, obtain the mandatory training, education, and experience required by DoD Directive 5000.52 to become certified at the appropriate levels as specified in DoD Instruction 5000.66.

(10) Assure that Defense Acquisition University (DAU) course quotas are requested in sufficient numbers to meet training requirements and that these quotas are used or returned in time for the Army training requirements and resources system (ATRRS) to reallocate the spaces.

(11) Ensure that contracting personnel, including supply chain depot level repairable (DLR) and supply, storage, and distribution (SS&D) employees, complete required, approved contract administration

and contracting officer representative (COR) training as specified in mandatory PGI 1.601-90(b)(8) and mandatory PGI 1.602-2-90, as applicable for their position(s).

(12) Ensure that all DLA field activities develop a method to track continuous learning points (CLPs) for contracting personnel. Local training coordinators are responsible for monitoring compliance with contract administration training requirements.

(13) Ensure that critical acquisition positions (CAPs) (as designated by the Component Acquisition Executive (CAE)) are filled only by Acquisition Corps members.

(14) Ensure that requests for waiver of CAP requirements are processed through the HCA to the CAE in accordance with DoD Instruction 5000.66, which specifies when the requirement may be waived.

(15) Provide opportunities for both civilian and military members of the AT&L workforce to acquire the education, training, and experience necessary to qualify for senior positions, as required in DoD Instruction 5000.66.

(16) Implement a contract quality management plan that describes how integrity is preserved within the contracting function (see 1.601-91).

(17) Develop and implement a contracting officer representative tracking (CORT) tool deployment plan and strategy with business rules and training as directed in the Under Secretary of Defense, Acquisition Technology and Logistics memorandum dated March 21, 2011, Subject: Deployment of the Department of Defense (DoD) Contracting Officer Representative Tracking (CORT) Tool. Guidance and registration procedures are found at http://www.acq.osd.mil/dpap/pdi/eb/cor.html.

(18) Ensure robust and timely contract management and administration is performed for contingency support contracts, particularly those with performance in the Central Command Area of Responsibility (CENTCOM AOR).

(i) This management and administration shall include training and designating highly qualified contracting officer representatives (CORs) in-theater as well as monitoring their performance.

(ii) Coordinate with the DLA support team (DST) commander on logistical and contractual issues as needed for theater support contracts, since the DST commander has responsibility for all in-theater DLA personnel assets in that DST, to include CORs.

(19) Ensure continuous and adequate oversight of any contractors performing close to inherently Governmental functions, such as inspecting or receiving goods and/or services. Include this oversight as part of the general monitoring of contractor performance. Report and resolve all instances of contractors appearing to perform an inherently Governmental function for a DLA contract to the director or commander of the contracting activity or office.

**1.601-91 Contract quality management plan.**

(a) Each HCA shall be responsible for a contract quality management plan (CQMP). J73 has developed and maintains the CQMP for DLA Aviation, DLA Land and Maritime, and DLA Troop Support Construction and Equipment. The purpose of the plan is to assure that each HCA has in place an effective management control plan for assuring contracting system controls and integrity and for

continuous improvement of contract quality in all phases of the procurement process. The CCO shall develop the plan for and on behalf of the HCA. (See 1.601-90.)

(b) The CQMP shall address the following elements:

(1) A description of the procedures in place assuring that the center senior procurement official (CSPO) has been assigned responsibility for the contract policy, pricing, and clearance and oversight functions (see 1.601-90(b)(1)).

(2) A description of how continuous contract quality improvement will be achieved utilizing the eight contract clearance standards at 1.690-4.

(3) A description of the contracting review and approval channel within the activity. This review and approval channel shall consist of DAWIA certified or certifiable GS-1102s or 1101s in the contracting career path.

(4) A description of the activity's contracting officer warrant program (see 1.603-1(91)).

(5) A description of the activity's contracting officer review program (see 1.603-91).

(6) How the contracting activity complies with the requirements for evaluations of contracting officers and others in the contracting career field as specified in 1.603.94.

(7) A description of how the CCO ensures that activity contracting personnel, including those in a developmental program, attend mandatory DAWIA training courses and that they obtain the required education and experience.

(8) A description of how the activity's DAWIA certification process is managed.

(9) A description of how the activity's critical acquisition positions are determined and the procedures for processing a waiver request.

(10) A description of how the activity's program for developing a pool of talent for filling multi-functional supervisory vacancies is managed. (See AQP/MMS letter dated July 14, 1994, subject: Supervisory Development Programs in Commodity Business Units, Commodity Management Groups, and Like Organizations.)

(c) The CQMP and substantial revisions thereto shall be submitted by the HCA for approval by the Director, DLA Acquisition (J7). The plan shall be kept current.

**1.602 Contracting officers.**

**1.602-1 Authority.**

(a) Each appointing authority shall prepare and maintain a current listing of all of the activity's contracting officers and the limits of their authority. This list shall also include the name and location of any contracting officer assigned to an activity but physically located at other than the central activity. The listing shall be in the sample format at (b) below. A copy of this listing will be provided to DLA HQ, attention: J73, annually at the beginning of each fiscal year.

(b) Sample format for listing of contracting officers:

| Name | Grade | Date of Current Warrant | Dollar Level | Candidate Selection | Meets Criteria | Interim Appointment |
|---|---|---|---|---|---|---|
| | | | | | (Yes or No) | (Yes or No) |

(c) Contracting officer warrants lists shall be reviewed by J73. The review will include the following considerations: a contracting office's needs for the number and dollar values of warrants relative to the office's size and mission; whether warrants should be limited or unlimited; whether warrants are rescinded when appropriate; whether contracting officers meet the FAR, DFARS, and DLAD selection criteria; the number and duration of waivers to selection criteria; and whether a periodic review of contracting officers warrants by the contracting office has been accomplished.

**1.602-2 Responsibilities.**

**1.602-2-90 Selection, appointment, evaluation, and termination of appointment of contracting officers' representatives (CORs).**

(a) Applicability.

(1) This policy applies to all individuals delegated specific duties and responsibilities in writing by the contracting officer regardless of the specific terminology applied to that individual, to include contracting officer's representative (COR), contracting officer's technical representative (COTR), alternate COR (ALTCOR) or assistant COR (ACOR), line item manager (LIM), task order manager (TOM), quality assurance personnel (QAP), quality assurance evaluator (QAE), or technical point of contact (TPOC).

(2) This requirement does not apply to personnel assigned to provide contract administration support under FAR 42.202(a) or quality assurance support under FAR 46.502.

(b) Designation, evaluation, and termination of the designation of the contracting officer’s representative (COR).

(1) The designation, evaluation, and termination of designation of a COR shall be made by the contracting officer after nomination by the requiring activity.

(i) Sample letters of designation and termination with evaluation procedures are found at PGI 1.602-2-90.

(ii) The initial COR designation by the contracting officer shall be made no later than the date of contract award (see DFARS PGI 201.602-2(i)(A)).

(A) The designation shall take into consideration the ability, training, and experience of the COR nominee and shall assure that the nominee is appropriately qualified to act as an authorized representative of the contracting officer.

(B) The individual's program management skills should also be considered when nominating and designating a COR, if the requirement is complex.

(iii) The contracting officer and COR shall conduct an initial orientation session at the time of designation to jointly discuss the customer's objectives, scope of the contract with key performance indicators, and how to track and report the contract's performance metrics.

(2) The COR shall complete approved training prior to being issued a letter of designation. See mandatory PGI 1.602-2-90 for required approved training.

(3) The COR designation shall be in writing by letter from the contracting officer and shall define the scope and limitations of the authorized representative's authority.

(i) Unless the COR's designation contains other provisions for automatic termination, the designation shall be effective, unless sooner revoked, until the COR is reassigned or the individual's employment is terminated.

(ii) Revocation of a COR's designation may be effected at any time by the designating or higher authority, or any successor to either. Revocation shall be made in writing by letter.

(c) Compliances and requirements.

(1) The COR shall maintain compliance with DoD Directive 5500.7-R, Joint Ethics Regulation and DoD Regulation 5500.07 Standards of Conduct.

(2) For all contracts over the micro-purchase threshold when a COR is assigned, the COR shall register in the DoD contracting officer's representative tracking (CORT) tool and adhere to documentation requirements, as stated in the guidance, instructions, and registration procedures found at http://www.acq.osd.mil/dpap/pdi/eb/cor.html.

(3) Requirements related to the duties of a COR for provisioning are addressed at 17.7601-93.

(4) The COR shall be familiar with and utilize the Department of Defense Contracting Officer Representative Handbook in the performance of his/her duties. The guide, dated March 22, 2012, issued by the Director, Defense Procurement and Acquisition Policy, Office of the Undersecretary of Defense (Acquisition, Technology, and Logistics), is found at http://www.acq.osd.mil/dpap/policy/policyvault/USA001390-12-DPAP.pdf. Further mandatory guidance for CORs is provided in PGI 1.602-2-90.

(5) A COR located in contingency areas of responsibility under the purview of a DLA support team (DST) command shall also be subject to the authority of the DST commander. Mandatory guidance for the contingency CORs is provided in PGI 1.602-2-90(d).

(S-92) For supply chains using any procurement system that utilizes automated solicitation, evaluation, and award processes to execute purchase orders, the CCO shall-

(1) Ensure that any contracting officer whose electronic signature is placed on fully-automated awards and associated acquisition documents has-

(i) Been trained in system logic and the manner in which it is intended to address all regulatory requirements associated with solicitation, evaluation, and award (see mandatory PGI at 1.601-90(b)(3)(iv)); and

(ii) Designated the system in writing as the contracting officer's electronic agent for the purposes of soliciting, evaluating, and awarding purchase orders and consented in writing to the application of his/her electronic signature on fully-automated awards generated by the system (see mandatory PGI at 1.602-2(92));

(2) Maintain records documenting that the requirements at 1.602-2(92) have been met (see mandatory PGI at 1.602-2(92)); and

(3) Ensure when a designated automated systems contracting officer is replaced that the requirements of this section are satisfied with regard to the replacement contracting officer, and that the system is immediately updated to use the electronic signature of the replacement contracting officer.

**1.602-3 Ratification of unauthorized commitments and quantum meruit actions.**

(a) Definitions.

"Unauthorized commitment", see FAR 2.101.

"Quantum meruit," (translated: "as much as deserved") as used in this subsection, is an equitable doctrine premised on the principle that one who benefits from the labor of another should not be unjustly enriched even if there is no agreement or contract between the parties. To establish a right to relief under this theory, first there must be a threshold determination that the goods or services for which payment is sought would have been a permissible procurement, had the proper procedures been followed. Second, the Government must have received and accepted a benefit. Third, the vendor must have acted in good faith. Finally, the amount to be paid must not exceed the reasonable value of the benefit received.

(b) Policy.

(1) Acquisition managers shall proactively schedule and update plans for DLA contract actions needed by DLA requiring officials. Vigilant planning and oversight minimizes unauthorized contract actions by government personnel. Repetitive unauthorized actions by requirements personnel necessitate written elevation to requirements supervisors/managers for disciplinary action.

(2) [Reserved.]

(3) (i) The Director, DLA Acquisition (J7) has delegated the authority to ratify unauthorized commitments valued at or below the simplified acquisition threshold at FAR 2.101 to the Commander or Director of the activities listed in (A) through (D) of this subsection, without power of redelegation:

(A) DLA Disposition Services,

(B) DLA Distribution,

(C) DLA Document Services, and

(D) Defense Media Activity (DMA).

(ii) Supply chain Acquisition Executives are responsible for review coordination and approval of unauthorized commitments of their own supply chains. Heads of Contracting Activities (HCAs) may delegate their ratification authority (FAR 1.602-3(b)(2)) for unauthorized commitments valued at or below the simplified acquisition threshold at FAR 2.101 to the Chief of the Contracting Office. The authority to ratify unauthorized commitments in excess of the simplified acquisition threshold may not be delegated.

(iii) The DLA Contracting Services Office (DCSO), DCSO-D, shall process, but not approve, unauthorized commitments for all DCSO offices and those offices or activities without contracting authority that are not aligned under a supply chain. DCSO-D shall report frequent or repetitive actions in support of other offices to the Director, DLA Acquisition (J7) through DLA Headquarters (HQ), Acquisition Operations Division (J72).

(4) (i) To determine whether a claim is a situation for an unauthorized commitment/ ratification or one for a quantum meruit, consult local counsel.

(ii) Proposed ratification of an unauthorized commitment valued in excess of the simplified acquisition threshold at FAR 2.101 from those activities in paragraphs 1.602-3(b)(3)(i)(A) through (D) of this subsection shall be forwarded by letter signed by the Commander, Director, or the Administrator, to DLA HQ, Acquisition Operations Division (J72), who will coordinate review by DLA HQ and approval by the CAE. Referrals in the D&F shall clearly document: (A) that the authority of FAR 1.602-3 exists and that ratification is within the limitations of FAR 1.602-3(c); (B) the circumstances surrounding the unauthorized commitment; and (C), as appropriate, a description of the corrective action taken to preclude such unauthorized commitments in the future. For guidance on the ratification process, see PGI 1.602-3(b)(4)(ii), ratification checklist.

(iii) If the situation is determined to be one of quantum meruit, see PGI 1.602-3 (b)(4)(iii) for the quantum meruit checklist, which provides guidance for submitting the claim to the CAE, through a letter signed by the Commander, Director, Administrator of the activity, or the DCSO-D to DLA HQ, Acquisition Operations Division (J72). 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.

**1.602-90 Nonappropriated funds.**
Appropriated fund contracting officers may act in an advisory capacity on nonappropriated fund contractual instruments. Appropriated fund contracting officers, however, shall not perform the duties of a contracting officer on any contractual instrument obligating only nonappropriated funds except when required by AR 215-4, Nonappropriated Fund Contracting. Contracting officers shall be separately warranted for contracting with nonappropriated funds.

**1.603 Selection, appointment, and termination of appointment.**

**1.603-1 General.**
The authority in FAR 1.603-1 for selection, appointment, and termination of appointment of contracting officers has been delegated by the Director, DLA to the DLA Heads of Contracting Activities (HCAs). For the activities not designated as contracting activities (see 2.101), the Director, DLA Acquisition (J7), as HCA, has delegated this authority, to the Directors of those activities. This authority is delegable,

without power of redelegation to the CCO. For the DLA Contracting Services Office and DLA Strategic Materials, the delegation is to the CCO without power of redelegation.

(90) Definitions.

"*Appointing authority*" means any person delegated the authority to appoint contracting officers in accordance with 1.603-1 above.

"*Warrant limitations*" are limitations, in addition to the DLAD, laws, Executive Orders, and other applicable regulations, which are imposed on the authority of contracting officers either by delegation or actions of the appointment authority. These limitations may include, but are not limited to, dollar obligation ceilings, interim appointment period, requirements for prior reviews by higher authority, or other approval requirements.

(91) The DLA contracting officer warrant program.

(a) As prescribed in FAR 1.603-1, DLA has established the DLA contracting officer warrant program for the selection, appointment, and termination of contracting officer warrants.

(b) The objective of this program is to ensure that only those officials who fully meet appropriate selection criteria are appointed and retained as contracting officers when an organizational need occurs. Contracting officers must demonstrate that they possess the required knowledge of contracting officer authority and responsibility, the role of a contracting officer, activity/agency contracting procedures, decision making skills, and expected standards of conduct/ethical behavior.

(c) Contracting officer appointments shall be based on an organizational need (see 1.603-3(a)(1) below).

**1.603-2 Selection.**

(90) Selection criteria for contracting officer appointments are listed in DFARS 201.603-2. Education and training requirements for warrants above the simplified acquisition threshold are also set forth in DoD Instruction 5000.66, Operation of the Defense Acquisition, Technology, and Logistics Workforce Education, Training, and Career Development Program, dated December 21, 2005.

(a) Experience requirements and selection procedures:

(1) Candidates for simplified acquisition contracting officer warrants above the micro-purchase threshold shall have two years of recent experience in Government or commercial contracting, including 6 months experience applicable to the dollar threshold or nature of procurement actions for which the warrant will be issued. See 1.601-90(b)(3)(iv) for additional training 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.

(2) For contracting officer warrants above the simplified acquisition threshold, candidates shall meet the following additional experience requirements:

(i) Warrants for up to a maximum of $500,000: Three years of recent, progressively complex and responsible contracting and/or staff experience in Government or commercial contracting.

(ii) Warrants which exceed $500,000: Four years of recent, progressively complex and responsible contracting and/or staff experience in Government or commercial contracting.

(3) Field buyers and DLA Troop Support subsistence office personnel placing calls against blanket purchase agreements for fresh fruits and vegetables may be exempt from the above requirements. Appointing authorities may establish specialized selection criteria as appropriate for these two categories of warranted personnel.

(4) At the request of the supervisor, the candidate will prepare a contracting officer warrant program selection statement using the following format:

Contracting Officer Warrant Program Selection Statement

This format should be used by each contracting officer candidate when applying for a contracting officer's warrant:

1. Name
2. Title, series, grade
3. Office
4. Relevant experience (Begin with current position and go back for a minimum of two years. Include up to four relevant positions.) Information on each position should include:

A. Name of employer
B. Dates employed
C. Title of position
D. Kind of business/organization
E. Description of work (include quantity, complexity, type, and average dollar amount of documents obligated, if applicable.)

5. Other relevant special qualifications, certifications, or skills
6. Relevant honors, awards or fellowships received
7. Education:

A. Highest level completed _____ Diploma received: ( ) Yes ( ) No

B. Name of college or university

(1) Dates attended
(2) Number of credits completed (indicate whether credits are semester or quarter hours.)
(3) Type and year of degree
(4) Chief undergraduate college subjects
(5) Major field of study at highest level of college work

8. Contracting related training (See 1.603-2 for training requirements):

| Name of course | Name of school | date |
|---|---|---|

| attended | | |
|---|---|---|
| | | |

_____

(5) The supervisor will review this statement to determine the candidate's ability to perform the functions required to meet the organizational need.

**1.603-3 Appointment.**

(a) Request for appointment.

(1) The supervisor will complete a request for appointment of a contracting officer (see sample below), justifying the validity of the organizational need (such as surge in workload, retirement or termination of other personnel, etc.) and verifying the contracting officer candidate's compliance with selection criteria. The supervisor will sign the request and submit it through appropriate organizational channels to the appointing authority.

Request for Appointment of a Contracting Officer

The following findings and determinations are made pursuant to applicable law and regulation.

1. There is a clear and convincing need to appoint a contracting officer with the ability to perform at the _____ ( dollar threshold) warrant level for the following reasons: (Include discussion of quantity, complexity, type, and average dollar amount of documents to be obligated).

2. Request the following contracting officer candidate be appointed a warrant with the above dollar limitation: (Name, title, series and grade).

3. The contracting officer candidate will occupy the following organizational level: (Office/Branch/Division).

4. The candidate's Contracting Officer Warrant Program Selection Statement stating the candidate's background is enclosed. For the limits set forth above: (Check as applicable.)

_____ The candidate meets the selection criteria.
_____ This candidate does not meet the minimum criteria in (experience, education and/or training), namely; (Indicate deficiency)_____
_____ An interim appointment for the period of _____is requested because_____.

(Include rationale/justification needed to issue warrant despite failure to meet qualification criteria.)

These experience and/or training needs will be identified in the candidate's individual development plan and must be completed by_____.

5. In addition to the limitations imposed by the Defense Logistics Acquisition Directive, the

DoD FAR Supplement, the FAR, laws, executive orders, and other applicable regulations, the following additional warrant limitations are imposed:

Dollar threshold:_____
Other limitations:_____

6. The candidate's current conflict of interest disclosure statement, OGE Form 450, "Executive Branch Confidential Financial Disclosure Report", as required by DLAD 5500.1, Standards of Conduct, is on file with the appropriate standards of conduct counselor. The above findings and determinations are made pursuant to applicable law and regulations:

Supervisor: _____
(Signature of supervisor of the candidate/date)/ (typed name, title, office)

Approved: _____
(Appointing authority/date)/ (typed name, title, office)

(2) The appointing authority will review candidate applications and appoint contracting officers. If additional information is required by the appointing authority, the document will be returned with a request for further explanation or supporting data. The appointing authority shall determine the validity of the need, whether the candidate meets applicable selection criteria, and what warrant limitations should be applied. In the event that the appointing authority determines that there is not an organizational need for a contracting officer, the candidate will be notified of this decision.

(3) The appointing authority may have the candidate appear before a contracting officer review board as described in 1.603-92(b).

(4) The completed request for appointment of a contracting officer is subject to the Privacy Act of 1976 and shall be maintained in a secure location deemed appropriate by the appointing authority.

(5) Personnel shall not ordinarily be appointed as contracting officers if they do not meet the applicable selection criteria (see DFARS 201.603-2). If a candidate does not meet the selection criteria, an interim appointment may be granted. The appointing authority shall consider experience and past performance when making an interim appointment. Interim appointments shall normally be limited to dollar obligations at or below the simplified acquisition threshold in FAR Part 13. The appointing authority will require that all training or experience requirements will be met within 18 months. Failure to successfully fulfill the training requirements within that timeframe will result in loss of the warrant or issuance of another interim warrant, whichever is deemed necessary. If no appointment is granted, the candidate will be provided with a written explanation of the reasons.

(6) Appointments will be documented and copies filed as prescribed at FAR 1.603-3. Each SF 1402, Certificate of Appointment, shall be serially numbered by each DLA appointing authority. The SF 1402 will contain any warrant limitations, including limitations on the period of appointment. The original Certificate of Appointment shall be provided to the appointed contracting officer and retained at the contracting officer's duty station.

(7) Changes, such as increasing or decreasing the warrant limitations of a contracting officer, transfers, name changes, or changes in rank or grade, shall be made solely at the discretion of the

appointing authority. When an appointing authority determines to make such changes, a new Certificate of Appointment shall be issued based upon an updated selection statement and request for appointment.

(8) Contracting officer warrants are effective until terminated in writing. Termination of a warrant may effected by the appointing authority or higher authority when determined necessary.

(b) Pursuant to DFARS 201.603-3(b), Heads of Contracting Activities, or their authorized designees, acting in their capacity as purchase card authorizing officials as delineated in DLA Issuance DLA Government Purchase Card Program, may authorize cardholders to use the purchase card in accordance with the criteria at DFARS 213.301. Cardholder appointment letters shall reflect the appropriate single purchase limit threshold.

**1.603-90 Ordering officers.**

(a) Contracting officers, by virtue of their warrant, are authorized to designate qualified individuals as ordering officers. Such designations must be in writing. Limitations on the authority of the ordering officer shall be stated in the contract or in the letter of appointment. Ordering officers may place orders under contracts such as indefinite delivery contracts or federal supply schedules and calls under blanket purchase agreements. Contracting officers shall assure that ordering officers are familiar with DoD contract reporting requirements and shall comply with the DoD contract reporting requirements for such actions.

(b) Solicitation provisions/contract clauses.
Use 52.201-9001, Ordering Officers Under the Contract, in indefinite delivery contracts when ordering officers will be used to place the delivery orders and/or the Contracting Officer wants to identify the ordering officers in the clause.

**1.603-91 Micro-purchase contracting authority.**

(a) Individuals authorized to make micro-purchases shall be so designated, in writing, and, except for individuals authorized to only make such purchases with the Government commercial purchase card, are required to complete the Defense Small Purchase Course.

(b) Issuance of a Government-wide commercial purchase card constitutes authority to make micro-purchases (see FAR 1.603-3(b)). This procurement authority is issued under the procedures of the DLA credit card instruction, DLAI DLA Government purchase Card Program Issuance and is not subject to the limitation on delegation of authority for selection, appointment, or termination at 1.603-1 or the contracting officer review program at 1.603-92.

**1.603-92 Contracting officer review program.**

(a) Each appointing authority will establish a contracting officer warrant review program consisting of the following:

(1) An annual assessment of the organizational need for contracting officer appointments.

(i) The annual review will include the following considerations: a contracting office's needs for the number and dollar values of warrants relative to the office's size and mission; whether warrants should be limited or unlimited; whether warrants are rescinded when appropriate; whether contracting

officers meet the FAR, DFARS, and/or DLAD selection criteria; the number and duration of waivers to selection criteria; and whether a periodic review of contracting officers warrants by the contracting office has been accomplished. The results of the annual review shall be documented in a report and approved by the chief of the contracting office.

(2) Appointment of a contracting officer review board to accomplish the following:

(i) Review and approve initial contracting officer appointment procedures.

(ii) Once every three years conduct reviews of each contracting officer appointment as described below:

(A) An evaluation of the contracting officer's work products to include a cumulative assessment of the results of preaward and postaward reviews of contract actions by the activity contract review personnel.

(B) An examination of the contracting officer's Individual Development Plan to include completion of mandatory training courses for the level of warrant held, on-the-job training, and required college degree or 24 semester hours of business related study, unless exempted based upon criteria set forth in DFARS 201.603-2(2).

(C) A review of the contracting officer's professional competency which may include an appearance before the contracting officer review board to demonstrate that the contracting officer possesses the required knowledge of contracting officer authority and responsibility, the role of a contracting officer, activity/agency contracting procedures, decision making skills, and ethics.

(iii) Place written documentation of the results of the triennual review in the contracting officer's appointment file.

(b) The contracting officer review board will be composed of PLFA contracting personnel who have held contracting officer warrants from the following offices (or equivalent): Director or Deputy Director of contracting, plans, policy and systems office, business review office, and a senior contracting officer from a contracting team. Board results will be recorded and placed in the appointment file.

**1.603-93 Requirements for evaluations of contracting officers and others in the contracting career field.**

In accordance with Department of Defense Instruction (DoDI) 5000.66 "Operation of the Defense Acquisition, Technology, and Logistics Workforce Education, Training, and Career Development Program," December 21, 2005 —

(a) The first level performance evaluations of contracting officers shall be performed by individuals in the contracting career chain (GS-1102s and GS 1101s) who are certified in the Defense Acquisition Workforce Improvement Act (DAWIA) contracting career field at a level no lower than that of the individual being evaluated. The only exception is the chief of the contracting office whose first level performance evaluation shall be performed by the contracting activity Commander/Director/ Administrator for those contracting activities without a supply chain HCA.

(b) If personnel in the contracting career field are not contracting officers, they shall have an opportunity for review of their performance appraisals by an individual in the contracting career field who

is DAWIA certified in contracting at a level no lower than the individual being evaluated. (For recommended guidance, see PGI 1.603)

(c) Evaluation and documentation. Supplementing the normal monitoring of the COR by the contracting officer, the contracting officer shall maintain an activity file on each COR as a part of the contract file. The purpose of this file is to record and maintain the results of reviews conducted annually by the contracting officer of the COR's/COTR's contract related activities. The contracting officer shall annually evaluate and document the performance of the COR and provide a copy of this evaluation to the COR's/COTR's organizational head. If the contract performance period is less than 1 year, this evaluation shall be conducted prior to contract closeout. The contents of the activity file shall include, but are not limited to:

(1) A copy of the COR's/COTR's letter of appointment.

(2) Examples of in-depth reviews of the COR's/COTR's performance with appropriate identification of the work performed, as well as the formal COR/ COTR evaluation required by 1.603-93(c).

(3) Documentation by the contracting officer of the date, substance, and extent of the reviews conducted.

(d) Deputy Secretary of Defense (DepSecDef) memorandum dated August 27, 2008, "Reinforcing the Evaluation Requirements of Contracting Officers under DoDI 5000.66," clarifies DoDI 5000.66 policy and identifies the requirement for CABs/SPES to self-certify biennially that their organizations comply with DoDI 5000.66. This certification, initially performed by the DLA CAE on October 31, 2008, will be required every two years thereafter. Each Head of the Contracting Activity (HCA) and the Chiefs of Contracting Offices at activities for which the, Director, DLA Acquisition (J7) is the HCA, will submit a supporting certification every two years to the Director, DLA Acquisition (J7), on behalf of their respective organizations. The certification shall be submitted no later than September 30 of the year in which it is required. The certification will demonstrate that the component activities are in compliance with DoDI 5000.66. Each certification will confirm that all first level evaluations of contracting officers are performed by a contracting official in the contracting career field who has direct knowledge of the individual's performance and is at least one level above the contracting officer. Upon receipt of certification from each activity/organization, the DLA CAE will certify compliance on behalf of DLA to DPAP/SS.

<u>Biennial Certification</u>

In accordance with DoDI 5000.66, paragraph 5.3.12, heads of DoD components acting through their component acquisition executives (CAEs) and senior procurement executives (SPEs) are to ensure that at least first-level evaluations of contracting officers are performed within the contacting career chain. The only exception will be the performance evaluation of the senior official in charge of contracting for the organization, when tills official is not the primary contracting officer for the organization.

The Deputy Secretary of Defense memorandum, "Reinforcing the Evaluation Requirements of Contracting Officers under DoDI 5000.66," clarifies DoDI 5000.66 policy and identifies the requirement for CAEs/SPEs to self-certify biennially that their organizations comply with DoDI 5000.66.

I certify that the Defense Logistics Agency is in compliance with the requirements of DoDI 5000.66 and Deputy Secretary of Defense memorandum, Subject: Reinforcing the Evaluation Requirements of Contracting Officers under DoDI 5000.66.

_____
Printed name, position, and organization

_____
Signature

**1.690 Contract clearance and oversight.**

**1.690-1 General.**

(a) Applicability. The requirements of this section apply to all contracting actions.

(b) The Director, DLA Acquisition (J7) establishes and maintains clearance and oversight as a system of internal controls and a basis for certification of the procurement system required by Executive Order 12931, Federal Procurement Reform, dated October 13, 1994.

(c) Clearance and oversight are conducted to ensure an effective program for monitoring, evaluating, documenting, and improving the quality of the procurement system's performance. (See PGI 1.690-1 for standards.) Five key concepts are paramount:

(1) Strengthening procuring contracting officer (PCO) ownership of the procurement process.

(2) Placing accountability and responsibility at the appropriate level.

(3) Enhancing professional development.

(4) Streamlining the review and approval process by having a common procedural structure.

(5) Focusing on process improvements.

**1.690-2 Policy.**

(a) Heads of Contracting Activities (HCAs) shall have an effective management system that assures the procurement system provides supplies and services with reasonable prices, timely delivery, at the required quality, and that it meets the statutory, regulatory, and program needs of the Agency.

(1) HCAs shall institute clearance procedures to provide oversight and monitoring of all phases of the procurement system.

(i) Clearance procedures for all acquisitions shall have a structure similar to that for the acquisition strategy review panel (ASRP) and integrated acquisition review board (IARB). Reviews will be conducted when developing the acquisition strategy, prior to issuing a solicitation, prior to entering into discussions or negotiations, and prior to award. (See 1.690-7.)

(ii) Clearance procedures shall provide contracting supervisory chain review and approval of procurements.

(2) Clearance shall be at a level appropriate to the complexity, risk, priority, and maximum estimated dollar value of procurements in addition to the clearance requirements for ASRP and IARB in 1.690-7.

(b) Clearance by the field activity is required prior to submitting any contract action for ASRP or IARB, or any other higher-level review.

(c) The contracting officer has primary responsibility for the quality of the contracting arrangement.

(1) Contracting officers shall review every proposed contract and supporting file before signing the contract, with the exception of automated procurements (see 12.1, 13.1 and 19.2(d)(10)), and before forwarding the file for review by higher authority, if required.

(2) Documentation shall be in sufficient detail to permit reconstruction by a reviewer of all significant actions without consulting with the contracting personnel responsible for the procurement.

(d) As a component of the overall DLA acquisition management strategy, field activities will conduct surveillance and report results to J7 through HQ J72 and HQ J73 to ensure DLA's high visibility (Hi-Viz) and special interest acquisitions receive oversight at an appropriate management level. (See 1.690-4 and 1.690-5.)

**1.690-3 Establishment of clearance approval authority.**

(a) Clearance authority at the contracting activities and offices for acquisitions valued at $50 million and below is established by the Head of the Contracting Activity (HCA), unless the chief of the contracting office (CCO) has been delegated authority to establish clearance.

(b) Dollar thresholds. In calculating whether a contract action's value meets a dollar threshold, use the total anticipated maximum estimated dollar value for an acquisition, including the base and option periods and surge requirements. (See 1.108(c) and FAR 1.108(c).)

(c) For each contracting activity, the HCA is the clearance authority for all acquisitions above $50 million and less than the thresholds in Table 1 of this subsection.

(1) The HCA for a primary level field activity (PLFA) may delegate clearance authority for acquisitions designated as other procurements up to $100 million to the CCO.

(2) Where J7 is the HCA, clearance authority up to the threshold in Table 1 for acquisitions designated as other procurements is delegated to the CCO. J7 will otherwise review procurements for those activities in the role of the SPE.

(d) The Senior Procurement Executive (SPE), or designee, is the clearance authority for contract actions at or above the thresholds in Table 1 of this paragraph. These actions, which include long term contracts, require review in accordance with 1.690-6 and 1.690-7.

| Table 1. SPE Clearance Thresholds | |
|---|---|
| Supply chain, activity, or site | Dollar threshold |
| All | All acquisitions that require DPAP review (see 1.170 and DFARS 201.170) |
| All | All information technology (IT) only acquisitions that require DoD ASD(NII)/CIO review |
| All | All High Visibility (Hi-Viz) acquisitions, regardless of value (per 1.690-4) |
| All | All new DLA partnerships with a military service or organization for PBL or PV acquisitions, regardless of value |
| All | All tailored logistics support (TLS) (see 17.95) acquisitions, regardless of value |
| All | All corporate contracts (see 2.101), regardless of value |
| All | All A-76 competitions, regardless of value |
| All | All bundled contracts (see FAR 2.101), regardless of value |
| All | All letter contracts and undefinitized contract actions, regardless of value; and all unpriced change orders with an estimated value exceeding $5 million (see17.7403) |
| All | Definitizations beyond the mandated time frames which require the approval of the DLA Director (see 17.74) |
| All, except DLA Troop Support Clothing and Textiles, Medical, Subsistence, Construction and Equipment, and Industrial Hardware | All acquisitions under FAR 6.302-3, Industrial mobilization; engineering, developmental, or research capability; or expert services; regardless of value |
| DLA Troop Support Clothing and Textiles, Medical, Subsistence, Construction and Equipment, and Industrial Hardware | All acquisitions > $10 million under FAR 6.302-3, Industrial mobilization; engineering, developmental, or research capability; or expert services |
| Other procurements based on the following dollar thresholds | |
| DLA Aviation | $1 billion |
| DLA Energy | $1 billion |
| DLA Land and Maritime | $1 billion |
| DLA Troop Support | $1 billion |
| DLA Contracting Services Office | $30 million |
| DLA Disposition Services | $30 million |
| DLA Distribution | $30 million |

| Table 1. SPE Clearance Thresholds | |
|---|---|
| DLA Document Services | $10 million |
| DLA Logistics Information Services | $10 million |
| DLA Strategic Materials | $1 million |
| Defense Media Activity | $5 million |

**1.690-4 High-visibility (Hi-Viz) acquisitions.**
High-visibility (Hi-Viz) acquisition surveillance is a component of the overall DLA acquisition management strategy. It is intended to ensure that acquisitions that represent the highest risk to the Agency in terms of factors such as mission criticality, financial investment, and stewardship responsibilities receive oversight at an appropriate management level. Hi-Viz surveillance will be conducted and reported for acquisitions as prescribed in this section.

(a) The following acquisitions will be tracked by the DLA Acquisition Operations Division (J72) and reported on a bi-weekly basis to the DLA Director:

(1) Acquisitions designated by the Director, DLA, the Vice Director, DLA, or the Director, DLA Acquisition (J7). These acquisitions may be recommended by DLA Headquarters (HQ) or buying activity headquarters senior staff.

(2) Buying activities should nominate acquisitions that are known to represent a high level of risk to the Agency.

(b) The following acquisitions will be tracked by HQ J72 and reported on a weekly basis to the Senior Procurement Executive (SPE):

(1) Acquisitions designated by the SPE. These acquisitions may be recommended by DLA HQ or buying activity headquarters senior staff.

(2) Buying activities should nominate acquisitions that are known to represent a high level of risk to the Agency.

(3) Acquisitions that would otherwise be reported at the buying activity headquarters level that are processed by the DLA Contracting Services Office will be reported to the SPE.

(c) The following acquisitions will be tracked and reported at the buying activity headquarters level:

(1) Acquisitions designated by the buying activity's Commander, Director or senior staff.

(2) Any other acquisitions not designated for higher-level reporting that have been reviewed or will be reviewed by an integrated acquisition review board (IARB).

(d) The acquisitions designated in this section must be reviewed at the level specified, but buying activities may designate subordinate levels of review for other acquisitions.

(e) Acquisitions designated for review by the DLA Director or the SPE will be reported by the buying activities to HQ J72 on a weekly basis at a time specified by HQ J72 using a HQ J72 prescribed format, which will be separately furnished and is subject to change.

(1) Acquisitions monitored at the buying activity level may be reported in any approprie format.

(2) Buying activities will be required to provide updates to the DLA Director on their Hi-Viz surveillance programs in a prescribed format on a quarterly basis, or as otherwise specified by the Director.

(f) As part of the Hi-Viz surveillance program, the buying activities will establish and maintain procedures that provide for regularly-scheduled post award in-process reviews of their Hi-Viz acquisitions.

(1) At a minimum, these reviews will be conducted for each acquisition reported at the DLA Director level; these reviews will be conducted at the buying activity's Commander, Director or Head of the Contracting Activity level.

(2) In-process reviews of other Hi-Viz acquisitions may be conducted at subordinate levels.

(g) Acquisitions reported to the DLA Director may only be removed from Hi-Viz surveillance with the permission of the Director or Vice Director.

(1) Senior leaders at buying activities may make requests for removal from Hi-Viz surveillance to the Director or Vice Director with a copy to J7 or may submit requests with appropriate justification through J7.

(2) Acquisitions monitored by the SPE may only be removed from Hi-Viz surveillance with the permission of the SPE, which may be obtained by direct request or may be requested through HQ J72.

(3) Acquisitions monitored at the buying activity level may be removed from Hi-Viz surveillance at the discretion of the buying activities, with the exception that items subject to approval by the IARB must be monitored through award, at a minimum.

(h) Correspondence addressing the overall direction of or non-routine issues relating to a contract subject to Hi-Viz surveillance, to include correspondence with Department of Defense officials or Members of Congress, must be coordinated with the SPE prior to release.

**1.690-5 Special interest acquisitions.**
Special interest acquisitions are those acquisitions, including contract actions under existing contracts, 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. Classification as a special interest acquisition is separate from classification as a Hi-Viz acquisition under 1.690-4, although the same acquisition may be both special interest and Hi-Viz.

(a) Whenever a contracting office is processing or otherwise responsible for a special interest acquisition, the activity shall promptly notify DLA Acquisition Compliance Oversight and Acquisition Workforce (J73) and DLA Acquisition Operations (J72) of the acquisition.

(1) This notification is necessary to make DLA HQ leadership aware of the special interest and to be able to respond to inquiries from the interested parties.

(2) The notifications will be provided to HQ J73 and include the following information, tailored as necessary based on the stage of the acquisition, e.g., pre-award versus post-award:

(i) Contract data. Solicitation or contract number, modification number, or delivery order number, estimated or actual value of the action and total cumulative estimated or actual value of the contract, description of what is being bought, current or planned period(s) of performance, and date or anticipated date of the latest significant action and any other status information relevant to the special interest issue(s).

(ii) Offeror or contractor data. Name, address, actual or planned place of performance (if significant work is performed at a different location from the company's main address), and congressional district.

(iii) Special interest. Narrative of reasons for and nature of known or potential special interest and parties involved or potentially involved.

(iv) Contracting activity. Contracting office and contracting office point of contact.

(v) Source documentation. Copy of source document or communication, e.g., letters, memorandums, and/or emails that generate the interest.

(b) If required to provide offeror data that is considered source selection sensitive, the contracting activity shall ensure the notification is properly marked in accordance with FAR 2.101 and 3.104-4 "Source Selection Information – See FAR 2.101 and 3.104". Any e-mails, including protected information, should be digitally signed and encrypted.

(c) Contracting activities will ensure they have a process in place to track and report all special interest acquisitions to include notification of the supply chain acquisition chain of command.

**1.690-6 Acquisition review.**
In acquisition planning, contracting offices shall take into account the requirement for scheduling and conducting acquisition reviews as well as DPAP and DLA peer reviews in accordance with 1.170 and PGI 1.170, acquisition review and clearance, and documentation requirements.

(a) Acquisition reviews focus on key principles in taking an enterprise-wide approach, assessing metrics with expected outcomes, and establishing an acquisition to produce a business arrangement that is in the best interests of both DLA and DoD.

(b) Field activity reviews, including an acquisition review board (ARB) similar in structure to the ASRP and IARB, shall be conducted at a level appropriate to the complexity, risk, priority, and dollar value of the contract action.

(c) HCAs must conduct an ARB for all acquisitions over $50 million.

**1.690-7 Acquisition strategy review panel (ASRP) and integrated acquisition review board (IARB).**

(a) Contract actions valued at or above the thresholds in Table 1 in 1.690-3 shall be submitted for ASRP and IARB review and clearance.

(b) The SPE or designee may direct an ASRP or IARB review of any acquisition, such as a special interest or high-risk procurement (e.g., acquisitions with Congressional, policy, audit, legal, or other high-risk issues), as well as any acquisition with significant findings from a procurement management review.

(c) For acquisitions requiring DPAP peer reviews or other DoD reviews, the ASRP and IARB will be conducted as appropriate prior to such reviews.

(1) All competitive acquisitions valued at $1 billion and above, and all non-competitive acquisitions valued at $500 million and above shall be presented to DPAP for peer reviews in accordance with 1.170, PGI 1.170, DFARS 201.170, and DFARS PGI 201.170. For any acquisitions subject to a DPAP peer review, IARB reviews occur in advance of the corresponding DPAP peer review.

(2) All IT services acquisitions valued at over $500 million shall be presented to the Assistant Secretary of Defense for Networks and Information Integration, Chief Information Officer (ASD(NII)/CIO), as the decision authority in accordance with DODI 5000.02, Operation of the Defense Acquisition System, dated December 8, 2008, Enclosure 9, paragraph 5.

(d) Detailed procedures on the ASRP and IARB, including membership, responsibilities, briefing and documentation requirements, are in PGI 1.690-7.

(1) The ASRP and IARB may be tailored in certain acquisition situations upon request in writing to the division chief, DLA Acquisition Operations (J72), and with the approval of the SPE or designee.

(2) Contracting activities and offices shall coordinate with HQ J72 before submitting a request to tailor ASRP and/or IARB procedures.

(e) The ASRP occurs first, as early as possible in the acquisition planning process and well in advance of any substantial effort to develop required acquisition documentation, followed by an IARB for each phase.

(f) IARB reviews shall occur at three critical decision points, which correspond to the phases of a DPAP peer review (see DFARS PGI 201.170), as described in this section.

(1) Preaward phases 1, 2, and 3 IARB.

(i) For competitive procurements:

(A) The phase 1 IARB occurs prior to issuance of the solicitation and is equivalent to phase 1 of DPAP preaward peer review for competitive procurements.

(B) Phase 2 IARB.

*(1)* For award without discussions, there is no phase 2 IARB, rather only phase 3, which is award.

*(2)* For award with discussions, the phase 2 IARB occurs prior to issuing the request for final proposal revisions and is equivalent to phase 2 of DPAP preaward peer review for competitive procurements.

(C) The phase 3 IARB occurs prior to contract award and is equivalent to phase 3 of DPAP preaward peer review for competitive procurements.

(ii) For non-competitive (or limited competition) procurements:

(A) The phase 1 IARB occurs prior to issuing the request for proposals; there is no equivalent DPAP preaward peer review for non-competitive procurements.

(B) The phase 2 IARB occurs prior to opening negotiations and is equivalent to phase 1 of DPAP preaward peer review for non-competitive procurements.

(C) The phase 3 IARB occurs prior to contract award and is equivalent to phase 2 of DPAP preaward peer review for non-competitive procurements.

(2) The phase 4 IARB occurs postaward and prior to exercising options for services contracts and is equivalent to phase 4 of DPAP postaward peer review for services contracts.

(g) Waiver of ASRP and/or IARB review.

(1) Limited situations that may warrant a waiver would be acquisitions that are subject to the ASRP and IARB only because of dollar value and will use only required Government supply sources, such as Federal Prison Industries (FPI), AbilityOne participating nonprofit agencies which include National Industries for the Blind (NIB) and National Industries for the Severely Handicapped (NISH), as well as mandatory Federal supply schedules.

(2) For other very limited circumstances, a waiver can be requested by the HCA or, for contracting offices for which the Director, DLA Acquisition is the HCA, the CCO, through the division chief, Acquisition Operations, DLA Acquisition (J72), to the SPE. The request must be fully supported by an explanation of the particular facts and circumstances of the procurement that justify a waiver. Approval of a waiver by the SPE is made on an individual basis only.

(3) Insufficient procurement planning will not substantiate a waiver request.

(4) A waiver of one, some, or all of the acquisition review phases may be requested in writing.

(h) Forecasting ASRPs and IARBs.

(1) Field activities shall provide a rolling annual forecast to facilitate planning and tracking, as well as actual scheduling of ASRPs and IARBs.

(2) The rolling forecast shall be submitted from at least the level of CCO to HQ J72 at the end of each quarter, i.e., December 31, March 31, June 30, and September 30. (See DLAD PGI 1.690-7(h).)

**1.691 Legal review.**

(a) Legal advice and assistance of assigned legal counsel shall be obtained in the preparation of provisions or clauses other than standard provisions or clauses which are to be contained in solicitations; 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 the preparation and/or execution of contractual documents.

(b) Defense supply centers shall issue instructions on the legal review of solicitations and contractual documents issued by their activities.

(c) Contracting offices not designated as a contracting activity listed at 2.101 shall ensure that legal review is accomplished on all solicitations and contractual documents in excess of $150,000.

**1.692 Confirmation of quantity and technical requirements.**

(a) Prior to solicitation of repetitively single/sole source purchases in excess of $150,000, the contracting officer shall consider requesting review of all technical data by the responsible specification preparing activity/engineering support activity. Such a review should be requested if the contracting officer believes it is necessary in order to assure that the data is current, potential sources are identified, and lengthy, complex, or expensive testing requirements are eliminated to the extent practicable (i.e., qualified products list (QPL), first article requirements). The contracting officer shall also ensure that consideration has been given to other actions that may encourage competition, i.e., Government furnished tooling, alternate contract type, provisions for economical production quantities.

(b) Immediately prior to the award of any supply contract (other than an indefinite delivery contract) in excess of $500,000 or for mobilization requirements, the contracting officer shall confirm that the quantities are still required and that the technical requirements are still current. "Immediately prior to award" means that point in time when all required approvals have been obtained and the contract is ready for release to the contractor. Confirmation of quantity and technical requirements for military interdepartmental purchase requests (MIPRs) shall be obtained verbally from the MIPR Liaison/Coordinator or item manager levels of the requiring departments. Appropriate documentation shall be included in the contract file. Contracting offices are encouraged to establish similar procedures for significant awards below $500,000 as may be appropriate for their types of contract actions.

## SUBPART 1.7 – DETERMINATIONS AND FINDINGS

**1.703 Class determinations and findings.**

(b) Class determinations and findings (CDF) may not be extended beyond their effective periods. When a CDF is required for an additional period, a new CDF shall be executed. New requests shall set forth a summary of the acquisitions completed under the earlier CDF, as well as acquisitions contemplated under the new request.

(c) Heads of contracting activities shall periodically review effective CDFs to assure that they are still needed.

**1.704 Content.**

(g)(90) The printed name and title of the official authorized to sign the D&F shall be included with the signature and the date signed.

## SUBPART 1.9 – ADMINISTRATION OF DLAD

**1.900 Administration and explanation.**
The administration and explanation of the DLAD is the responsibility of the Director, DLA Acquisition (J7).

## PART 2 – DEFINITIONS OF WORDS AND TERMS
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2.101 Definitions.

## SUBPART 2.1 – DEFINITIONS

*(Revised September 19, 2012 through PROCLTR 2012-49)*

**2.101 Definitions.**

"*Acquisition Executives*" as used in this Directive means the senior acquisition executives for DLA Aviation, DLA Energy, DLA Land and Maritime, and DLA Troop Support.

*"Acquisition Strategy Review Panel (ASRP)"* means a DLA Headquarters (HQ) review that will review and approve the proposed contracting approach (see 1.690-7 and PGI 1.690-7).

*"Alpha contracting"* means an innovative contracting technique, typically used in satisfying non-competitive (or limited competition) requirements, that transforms the acquisition process from a consecutive, sometimes iterative, process into a more efficient concurrent process using a team approach to concurrently develop a requirement through award and implementation. Information on alpha contracting within DoD can be found at http://www.dau.mil.

"*Analysis of alternatives (AoA)"* means an abbreviated evaluation of potential sourcing strategies in support of a performance based logistics (PBL) acquisition.

"*Assisted acquisition"* means a contract awarded or task or delivery order placed on behalf of DLA, in an amount over the simplified acquisition threshold and with the use of DLA or DoD funds, by an official of the United States employed by other than a Department of Defense activity. This definition includes situations in which DLA or DoD funds are provided to an acquisition activity which then obligates its own funds on the contract or order.

*"Business case analysis (BCA)"* means a document that identifies viable functional alternatives and presents economic and technical arguments for carrying out alternatives over an acquisition life cycle to achieve stated business objectives. The BCA is designed to identify costs and benefits that the Defense Logistics Agency (DLA) will realize through the initiation of supply and services acquisition strategies. This analysis will help determine the alternative that is in the Government's best interest. The BCA process compares DLA's current "as-is" or status quo benefits and costs of doing business to the benefit and costs of viable acquisition alternatives.

*"Business clearance"* means, depending on the decision point of the acquisition, approval to proceed with an acquisition. For competitive acquisitions, business clearance is approval to issue a solicitation; approval to enter into discussions; or approval to request final proposal revisions. For non-competitive acquisitions, business clearance is approval to request a proposal, or approval to enter into negotiations.

"*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 Office | CCO |
|---|---|
| DLA Aviation Supplier Operations at Richmond, VA | Chief of the Contracting Office |
| DLA Aviation Strategic Acquisition at Richmond, VA | Chief of the Contracting Office |
| DLA Aviation Strategic Acquisition/AU, Ogden | Chief of the Contracting Office |

| | |
|---|---|
| DLA Aviation Strategic Acquisition/AO, Oklahoma City | Chief of the Contracting Office |
| DLA Aviation Strategic Acquisition/AP, Philadelphia | Chief of the Contracting Office |
| DLA Aviation Strategic Acquisition/AW, Warner Robins | Chief of the Contracting Office |
| DLA Aviation Strategic Acquisition/AH, Huntsville | Chief of the Contracting Office |
| DLA Energy | Director, Procurement Process Support Directorate |
| DLA Land and Maritime, including all detachments who do not have a CCO onsite | Director, Procurement Process Support Directorate, DLA Land and Maritime |
| DLA Land Warren (ZG) | Director, Depot Level Repairable Procurement Operations |
| DLA Land Aberdeen (DLA Land ML) | Director, Depot Level Repairable Procurement Operations |
| DLA Land Albany (DLA Land and Maritime – SAPD) | Director, Procurement Process Support Directorate |
| DLA Maritime Mechanicsburg (DLA Maritime – ZI) | Director, Depot Level Repairable Procurement Operations |
| DLA Troop Support (includes Medical, Subsistence, Clothing and Textile (C&T), Construction and Equipment (C&E), Industrial Hardware; DLA Troop Support Europe and Africa; and DLA Troop Support Pacific) | Director, Procurement Process Support Directorate |
| DLA Contracting Services Office | Chief of the Contracting Office |
| DLA Disposition Services | Chief of Contracting |
| DLA Distribution | Chief of Contracting |
| DLA Document Services | Chief of Contracting |
| DLA Logistics Information Services | Chief of Contracting |
| DLA Strategic Materials | Director of Contracting |
| Defense Media Activity, including DMA Riverside Contracting Office and DMA Fort Meade Contracting Office | Director, Acquisition and Procurement |

"*Commercial item*" – See 12.102(90) regarding determinations of commerciality.

"*Component Acquisition Executive*" (CAE) means the Director, DLA Acquisition (J7), pursuant to Delegation of Acquisition and Acquisition Management Authority memorandum dated January 29, 2007. The CAE is responsible for all acquisition matters within DLA.

*"Contract clearance"* means approval to award a contract or exercise an option, as appropriate.

"*Contracting activity*." The Director, DLA Acquisition (J7) shall exercise the functions, not otherwise delegated, of head of the contracting activity for any DLA contracting office not designated as a

"contracting activity" pursuant to DFARS 202.1. Actions required by the FAR, DFARS, this directive, or other directives involving the functions of the head of the contracting activity not otherwise delegated shall be referred to DLA HQ, attention: J71.

*"Contracting Offices*" means contracting offices not designated as contracting activities in DFARS 202.101, including the contracting offices listed below. The Director, DLA Acquisition (J7), shall exercise the functions of head of the contracting activity, not otherwise delegated, for any contracting office not designated as a contracting activity. Actions required by the FAR, DFARS, this directive, or other directives involving the functions of the Head of the Contracting Activity not otherwise delegated shall be referred to DLA Acquisition Operations (J72).

DLA Contracting Services Office
DLA Disposition Services
DLA Distribution
DLA Document Services
DLA Logistics Information Service
DLA Strategic Materials
Defense Media Activity (DMA)

*"Corporate contract"* means a multi-item, multiple year long-term supply contract that includes items managed across supply chains and/or military services. This type of contract may be identified by a "9" in the tenth position of the procurement instrument identification number (PIIN). (See 4.7003, 4.7004, and DFARS 204.7003.)

*"Defense Supply Center"* (DSC) as used in this directive means DLA Land and Maritime, DLA Aviation, and DLA Troop Support unless otherwise stated in individual paragraphs.

"*Depot Level Repairable (DLR) Detachment*" means the DLA DLR procurement office at a military service site that is responsible for providing direct contracting and related support for procurement of depot level repairable items.

*"Direct acquisition*" means a task or delivery order placed by a DLA buyer, contracting officer, ordering officer, or other authorized DLA official, in an amount over the simplified acquisition threshold and with the use of DLA or DoD funds, against a contract vehicle established outside the Department of Defense.

"*Economy Act order*." Specific statutory authority is required for a DoD activity to place an order with a non-DoD Agency for goods or services, and to pay the associated cost. If a more specific statutory authority does not exist, the default is the Economy Act, 31 U.S.C. 1535. The FAR states that the Economy Act may also be used as the authority for the placement of orders "between major organizational units within an agency." Within the Department of Defense, this means that a military service or Defense agency may use the Economy Act to acquire goods or services from or through another DoD component when other, more specific statutory authority is unavailable. Guidance for use of the Economy Act as the authority for interagency acquisitions can be found in FAR Subpart 17.5, DFARS Subpart 217.5, Subpart 17.5 of this guidance (the DLA Acquisition Directive), and volume 11A, Chapter 3 of the DoD Financial Management Regulations, DoD 7000.14-R. Guidance for use in intradepartmental acquisitions can be found in volume 11A, Chapter 3 of the DoD Financial Management Regulation and DoDI 4000.19, Interservice and Intra-Governmental Support.

"*Head of agency*" or "*agency head*" means the Director, DLA Acquisition (J7) pursuant to delegation of authority memorandum dated January 27, 2007.

*"High-visibility (Hi-Viz)"* refers to acquisitions that are deemed to represent high risk to DLA in terms of factors such as mission criticality, financial investment, and stewardship responsibilities. (See also 1.690-4.)

"*Inventory control point (ICP)"* as used in this directive means DLA Land and Maritime, DLA Energy, DLA Aviation, and DLA Troop Support, unless otherwise stated in individual paragraphs.

*"Integrated acquisition review board (IARB)"* means the DLA HQ decision-making authority that conducts a detailed review and approval of acquisitions prior to key decision points. The IARB has the ability to continue the acquisition, modify the strategy, terminate the process, or determine how next phases should proceed. (See 1.690-7 and PGI 1.690-7.)

*"Integrated product team (IPT)"* means a team composed of representatives from appropriate functional disciplines working together to build successful programs, identify and resolve issues, and make sound and timely recommendations to facilitate decision-making. There are three types of IPTs: overarching IPTs (OIPTs) that focus on strategic guidance, program assessment, and issue resolution; working level IPTs (WIPTs) that identify and resolve program issues, determine program status, and seek opportunities for acquisition reform; and program level IPTs that focus on program execution and may use input from industry.

"*Interagency acquisition.*" means an acquisition in which a DoD activity (requesting DoD agency/customer) needing goods or services obtains them from or with the assistance of a non-DoD agency (assisting/servicing agency/performer). For example, a DLA purchase from the General Services Administration's Federal Supply Schedules is considered an interagency acquisition. (See Subpart 7.90.)

*"Long term contract"* means any contract with a contract period, including base and options, greater than one (1) year. (See 16.190 and 17.9301.)

"*Non-economy act order*." This is an order, entered into under specific statutory authority, by a DoD component with a non-DoD Agency for the provision of goods or services that will be executed by a non-DoD Agency contracting activity (assisted acquisitions). Specific statutory authorities are the acquisition services fund, through which purchases are authorized to be made from the General Services Administration (GSA) (see 41 United States Code (U.S.C.) 251 et seq. and 40 U.S.C. 501); Franchise Fund authority (first established by Public Law (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; and project order authority, derived from 41 U.S.C. 23, which permits use of depot-level maintenance and repair (organic manufacturing) facilities by the DoD components. Considerations for use of any non-Economy Act authority for interagency acquisitions can be found in Subpart 17.96.

"*Non-severable services.*" This is a service contract whose benefit to the requiring activity only occurs at the end of the contractual period, because performance cannot easily be broken down into discrete undertakings. Non-severable work and services must be delivered whole or to completion in order for the requiring activity to realize any benefit from contract performance. For example, no benefit would be realized from a contract with a 12-month term for construction of a bridge that is terminated after 6 months, because the structure completed to that point would be unable to fulfill the original requirement

for which the bridge was intended. A more pertinent example for DLA is a contract for performance of a study and preparation of a report. Even though performance proceeds throughout the contract term, the value of the study would not be realized before the research was completed and the results analyzed, since the contract could not readily be separated into individual tasks, and its purpose is to produce the report.

"*Partnership"* means a support arrangement between DLA and a military service, DoD organization, such as the National Defense University, or a civilian Federal Agency, such as the Department of Veterans Affairs, to provide support at a defined service level.

"*Performance Based Logistics (PBL)*" means acquisitions of material and/or logistics support, such as inventory management, storage, materiel handling, and transportation, customer direct or DLA direct, where performance is measured or evaluated based on measurable outcomes that, to the maximum extent practicable, must be related to improved readiness, availability, or reduced overall costs to the customer and DLA. Performance-based logistics (PBL) acquisitions may include long term contracts (LTC), prime vendor (PV) contracts, tailored logistics support (TLS) contracts, and corporate contracts. (See 17.95 and 90.15.)

*"Primary Level Field Activity(ies)"* as used in this Directive means DLA Aviation, DLA Disposition Services, DLA Distribution, DLA Energy, DLA Land and Maritime, and DLA Troop Support.

"*Prime Vendor (PV)"* means a distributor who provides a commercial product line and incidental services to customers in an assigned region or area of responsibility. The prime vendor provides the products or services, which are to be delivered within a specified period of time after order placement. DLA manages DoD's program and DLA Troop Support is the lead center for managing prime vendor contracts for several major supply chains, which include medical, subsistence, and construction and equipment. All PV contracts are tailored logistics support contracts.

*"Procurement Management Review (PMR)"* means the DLA Acquisition (J7) review that is conducted by an independent and objective team of contracting professionals from DLA Acquisition and field contracting activities and offices to provide periodic and specific subject and/or area reviews of contracting activities and offices. (See the DLA Procurement Management Review (PMR) Handbook found on eWorkplace.)

"*Senior Procurement Executive*" means the Director, DLA Acquisition (J7). The SPE also serves as the agency's Component Acquisition Executive (CAE) pursuant to Delegation of Authority memorandum dated January 27, 2007.

"*Severable services.*" An agreement consisting of independent undertakings, expressed in a single instrument, is a severable services contract. It is capable of being divided, or "disassociated," into legally distinct rights or obligations as a contract. A severable service is one that provides full value every day; that is, benefit is received by the requiring activity throughout the period while materials, work, or services are being performed. Even if the services are stopped prior to the originally planned end of the contract's term, the requiring activity would still have received benefit. For example, contracts for the provision of daily secretarial and administrative support, or for weekly trash removal, are severable: if either contract was for a period of a year, but was terminated after 6 months, 6 months of benefit would have accrued to the receiving activity.

"*Simplified acquisition threshold*:" The contracting officer is delegated the authority to make the determination that the acquisitions are to be used to support a contingency operation or to facilitate

defense against or recovery from nuclear, biological, chemical, or radiological attack. This determination should be placed in the contract file.

"*Solicitations*" includes "request for quotations" or "request for proposals" (see FAR Parts 13 and 15).

"*Special interest acquisitions*" means those acquisitions, including contract actions under existing contracts, 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, or other OSD organizations, or a high potential to attract such interest. (See 1.690-5.)

*"Supply, Storage, and Distribution (SS&D*)" depot or site means the DLA SS&D procurement office at a military service site that is responsible for providing direct contracting and related support for procurement of logistics support functions and related items for the military service site.

***"****Supply Chains"* as used in this Directive means DLA Aviation, DLA Energy, DLA Land and Maritime, and DLA Troop Support, unless otherwise stated in individual paragraphs.

*"Tailored Logistics Support (TLS) Contract* " means an acquisition that is *flexible, mobile, integrated, compatible, and precise in targeting support to the point of the customer's need, which* 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. Acquisitions included in this category are prime vendor (PV) contracts, 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 contracts; however, not all TLS contracts are PV contracts. (See 17.95.)

"*Unified procurement/Defense working capital fund authority.*" The Economy Act does not apply to intra-DoD procurements where items have been specifically assigned to DLA under the unified procurement system for DoD agencies (see DoD 4140.1-R and 4140.26-M). DLA has separate, specific statutory authority, 10 U.S.C. 2208, for acquisitions and sales of assigned items. Since DLA sales of items subject to DLA integrated materiel management are made pursuant to this statute, they are not subject to the Economy Act (see FAR 17.500(b)). The unified system is implemented in FAR section 8.002, pertaining to required sources of supply, and in DFARS Subpart 208.70, Coordinated Acquisition.

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## 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.

### 3.104-3 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) Statutory and related prohibitions, restrictions, and requirements.

(S-90) 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, DCMD pricing personnel, preaward survey team members, preaward survey monitor, Defense Contract Audit Agency (DCAA) auditors, and respective engineering support activity personnel.

(S-91) The DLA Director, the DLA Vice Director, the Director, Defense Contract Management Agency, the Director, DLA Acquisition (J7), their Executive Directors and their supporting employees.

(S-92) The source selection authority, and the source selection evaluation board, technical evaluation panel, and source selection advisory council members.

(S-93) In accordance with 41 U.S.C. 423(h)(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 Statutory and related prohibitions, restrictions, and requirements.

(a)(S-90) Prohibition on disclosing procurement information (subsection 27(a) of the Procurement Integrity Act, 41 U.S.C. 423). Any person who is given authorized or unauthorized access to contractor bid or proposal information or source selection information is authorized to disclose such proprietary or source selection information regarding any DLA contracting offices' procurement of property or services to the following persons:

(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, DCMD 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 (J7); their Executive Directors and their supporting employees.

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

**3.104-5 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.**

(a)(S-90) The Director, DLA Acquisition (J7), Commanders/Directors of DLA contracting offices (see 2.101), supply chain 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 contracting offices' procurement of property or services (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, DCMD 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 (J7); their executive directors, and their supporting staff employees.

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

(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 Disqualification.**

(b) Disqualification notice. The designee of the HCA for those contracting offices for which the Director, DLA Acquisition (J7) serves as HCA (see 2.101) is:

(1) The Commanders of DLA Disposition Services, DLA Distribution, Defense Media Activity, DCMDs, and DCMDI;

(2) The Administrator, DLA Strategic Materials;

(3) The Director, DLA Document Services; and

(4) Staff Director, DLA Installation Support, DLA HQ Operations.

(c)(2) Resumption of participation in a procurement. The designee of the HCA for those contracting offices for which the Director, DLA Acquisition (J7) serves as HCA is the same as listed in (b) above.

**3.104-7 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.

**3.104-10 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 local counsel, the contracting officer may proceed with award.

(b) Local 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 3.104-10(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 local 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 recision 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 directly to the Director, DLA by letter signed by the Commander or Director of the supply chain.

(g) The designee of the HCA for DLA Strategic Materials, DLA Document Services, and DLA Installation Support for which the Director, DLA Acquisition (J7) serves as HCA are the Administrator, DLA Strategic Materials, the Director, DLA Document Services and the DLA Installation Support Staff Director, HQ Operations.

## SUBPART 3.2 - CONTRACTOR GRATUITIES TO GOVERNMENT PERSONNEL

*(Revised September 11, 2012 through PROCLTR 2012-25R)*

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

(a) The mandatory procedures at PGI 3.203 will be followed when reporting possible violations of the FAR Gratuities clause 52.203-3.

## 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 DCMDs.

## SUBPART 3.5 – OTHER IMPROPER BUSINESS PRACTICES

**3.590 Prohibition against the solicitation of "free issues."**
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. As a result, the solicitation of supplies or services from individuals or firms at no cost is prohibited. However, when an individual or a firm voluntarily offers to provide supplies or services at no cost, the Government may accept such offers without compensating the supplier therefor. A contract is not established in such cases as there is no consideration for the supplies or services received. In cases where the Government requires an obligation from the supplier (e.g., a warranty for the supplies or services), a no cost offer should never be accepted.

## 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 General Counsel, DLA HQ, within 20 days after the contracting officer learns of the final conviction. The report shall be signed by the contracting officer and submitted by the Commander of the reporting primary level field activity (PLFA). 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 PLFA 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 the General Counsel. The contracting officer's report shall be coordinated with local counsel prior to submission to the General Counsel. After review, the General Counsel, 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 J71.

### 3.806 Processing suspected violations.

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

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## SUBPART 4.1 – CONTRACT EXECUTION

**4.103-90 Contract clause.**
Use clause 52.204-9004, Administrative Deselect, if a clause used in the solicitation has been determined not applicable for award.

## SUBPART 4.2 – CONTRACT DISTRIBUTION

*(Revised March 12, 2012 through PROCLTR 2012-26)*

**4.202 Agency distribution requirements.**

**4.202(1)(ii)(A) (*FARS DEV 02-08*, PERMANENT)**
The Defense distribution depots do not need to be provided written copies of contracts that are awarded in the Standard Automated Material Management System (SAMMS) and require destination acceptance.

**4.202-90 Agency distribution requirements.**
Use clause 52.204-9005, Distribution of Contract to Agent, in solicitations when it is needed to supply a copy of the contract to a foreign contractor's U.S. agent.

**4.202-91 Local contract distribution.**

(a) HCAs, or their designees, or chiefs of contracting offices for which the Director, DLA Acquisition, is the HCA, may supplement local internal procedures for contract distribution; however, the procedures shall not be more restrictive than the FAR or DFARS.

## SUBPART 4.5 – ELECTRONIC COMMERCE IN CONTRACTING

**4.502-90 Electronic order transmission.**
Clause 52.204-9002, Solicitation Provisions and Contract Clauses Statement, is mandatory for all solicitations and awards.

Use 52.204-9001 in all LTC solicitation/awards in which electronic ordering (or automated outline agreements) may be utilized for issuing delivery orders. EDI does not apply to AutoIDPOs.

## SUBPART 4.6 – CONTRACT REPORTING

**4.602 General.**
See DFARS PGI 204.602 for additional information on the federal procurement data system (FPDS) pertaining to helpful documents, user's manual and procedures for resolving technical issues pertaining to the various contract writing systems or policy issues relating to FPDS.

**4.603 [Reserved.]**

**4.604 Responsibilities.**
See DFARS 204.604 for responsibilities in reporting to FPDS.

**4.606 Reporting Data.**

In addition to FAR 4.606, follow the procedures at DFARS PGI 204.606 for reporting data to FPDS. DD Form 350s and DD Form 1057s have been replaced with contract action reports (CARs). Guidance to find data elements for a CAR can be found at PGI 204.602(1) and 204.602(1)(i).

## SUBPART 4.8 – GOVERNMENT CONTRACT FILES

### 4.802 Contract files.

### 4.802 (f)(S-90)

(a) Simplified acquisitions, autoIDPOs, bilateral purchase order, and delivery orders (regardless of dollar value).

(1) The electronic contract folder (ECF) shall be the official repository of record for simplified acquisitions (including commercial acquisitions using the procedures outlined in FAR 13.5, autoIDPOs, bilateral purchase order, and delivery orders (regardless of dollar value).

(2) Any documents not automatically inserted into the ECF through EBS processing, must be scanned and imported into the appropriate folder in the ECF. Bilateral purchase orders or purchase orders with offline documentation must be scanned into the ECF using the designated document identification description such as a scanned DO or PO. If manual scanning of acquisition documents is needed, all required documents must be scanned and imported into the ECF within ten business days from the date of award. A list of documents that are automatically fed to the ECF can be found on EBS online help under the procurement job aid titled “EBS ECF automated feeds.” Instructions for scanning documents into the ECF can be found on EBS online help under the procurement job aid titled “ECF user manual.”

(3) The contracting officer is responsible for ensuring that the ECF contains all the required documents, even if someone other than the contracting officer scans and posts the documents into the ECF.

(b) Large acquisitions, long-term contracts (LTCs), and basic ordering agreements (BOAs).

(1) For other acquisitions, including large purchases (acquisitions over the simplified acquisition threshold or FAR 13.5 threshold), LTCs, and BOAs, the ECF shall be the secondary repository of contract information. The hard copy file remains the official file of record.

(2) At a minimum the following acquisition documents must be scanned and placed in the ECF in the appropriate location: Solicitation, DD 2579, acquisition plan, amendments, pre-negotiation briefing memorandum, price negotiation memorandum, final abstract, copy of the signed contract, and contract modifications.

(c) Contract modifications.

(1) Modifications processed in the DLA post-award contracting system (DPACS) will automatically be fed into the ECF, unless the offline documentation or bilateral modification block has been checked on the DPACS prepare modification screen (see 3b).

(2) Modifications prepared outside DPACS must to be scanned into the ECF and assigned a description that matches the modification number of the document being imported.

(d) Sensitive information and processing guidance.

(1) The scanning and posting of contractor bid or proposal information, source selection information, procurement sensitive or proprietary information into the ECF shall occur after contract award only and only those individuals identified at 3.104-4 are allowed to view this information. Once this information is scanned, the contracting officer is responsible for importing these documents to the appropriate folder in the ECF. The sensitive, proprietary or source selection information shall be processed in accordance with normal procedures for handling this category of information.

(2) Oversized documents, such as drawings, that cannot be scanned into the ECF will be maintained as a hard copy. A reference statement or pointer will be added to the ECF by the acquisition specialist notifying authorized users of the location of hardcopy documents.

(3) Cancelled purchase requests and other documents, such as no bids or part number information, may be scanned into the ECF for future reference.

(4) Documents associated with any contracting officer or Agency protests received in the course of the acquisition must be scanned and imported into the ECF.

## SUBPART 4.11 – CENTRAL CONTRACTOR REGISTRATION

### 4.1103 Procedures.

(d)(S-90) Provide the commercial and Government entity code on contractual documents transmitted to the payment office.

## SUBPART 4.13 – PERSONAL IDENTITY VERIFICATION

*(Revised June 6, 2012 through PROCLTR 2012-28R)*

### 4.1301 [Reserved.]

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

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

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

(a) Use clause 52.204-9000 Contractor Personnel Security Requirements, 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 security office through the contracting officer.

(b) Contracting officers located at depot level repairable (DLR) and supply, storage, and distribution (SS&D) sites that are not controlled by DLA, may exclude clause 52.204-9000 Contractor Personnel Security Requirements, if physical site and/or information technology security requirements (the latter if applicable) specific to their locations are included in solicitations and resulting contracts.

## SUBPART 4.70 – UNIFORM PROCUREMENT INSTRUMENT IDENTIFICATION NUMBERS

*(Revised December 21, 2011 through PROCLTR 2012-13)*

### 4.7003 Basic PII number.

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

(a) Corporate contracts. 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 | Corporate Contracts |
|---|---|
| SPE | For EProcurement |
| SPR | For a DLR site (even after EProcurement) |
| SPM | All others |

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

| Position 4 designator | Awarding Contracting Activity and/or Location (if a Depot Level Repairable (DLR) or Supply, Storage, and Distribution (SS&D) Detachment) |
|---|---|
| 1,2,3,5 or 8 | DLA Troop Support |
| 4 | DLA Aviation |
| 7 | DLA Land and Maritime |
| R | Huntsville, Alabama |
| W | Warner Robins, Georgia |
| P | Philadelphia, Pennsylvania |
| T | Oklahoma City, Oklahoma |
| H | Ogden, Utah |
| D | Warren, Michigan |
| M | Mechanicsburg, Pennsylvania |
| B | Aberdeen, Maryland |
| A | Albany, Georgia |

| | |
|---|---|
| Y | Supply, Storage, and Distribution (SS&D) Detachment, DLA Shipyard<br>(note that Position 6 will denote location as follows):<br>1 = Norfolk, Virginia<br>2 = Puget Sound, Washington<br>3 = Portsmouth, New Hampshire<br>4 = Pearl Harbor, Hawaii)<br>(NOTE: use of the 1 - 4 in the 6th position is not restricted to the Shipyards) |

(3) Position 5 identifies the supply chain.

| Position 5 designator | Supply Chain |
|---|---|
| A | Aviation |
| L | Land |
| M | Maritime |
| S | Subsistence |
| C | Clothing and textile |
| D | Medical |
| E | Construction and equipment |

(4) Position 6 identifies the division designator.

| Position 6 designator | Division |
|---|---|
| 0 (zero) | Emergency supply operations (ESOC) buy |
| X | Strategic material sourcing group (SMSG) long term contracts (to include corporate contracts)<br>(included items are cross supply chains) |
| G | SMSG long term contracts (items are supply chain specific) |
| K | Kitting |
| Other Number | The procurement business process analyst will assign a number other than “0” (zero) or alphabetic character for the division when one of the above designators are not appropriate for use. |

(5) Positions 7 through 8 identify the last two digits of the fiscal year in which the contract instrument number was issued or awarded.

(6) Position 9 identifies the type of contracting instrument as defined in DFARS 204.7003. 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.

(7) Use the number“9” in position 10 if awarding a corporate contract.

(8) Positions 11 through 13 identify the serial number of the instrument in these positions as defined in DFARS 204.7003.

**4.7004-90 Supplementary PIINs.**

(a) Corporate contracts.

(1) The awarding contracting activity will assign the basic PIIN in accordance with 4.7003-90.

(2) Orders placed by all activities under a corporate contract will cite the basic PII number as specified in DFARS 204.7004. Follow the mandatory procedures in the PGI 4.7004-90.

(3) 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.

## SUBPART 4.71 – UNIFORM CONTRACT LINE ITEM NUMBERING SYSTEM

**4.7103-1 Criteria for establishing.**

(d)(90) The cost of a deliverable, a non-deliverable, or a financial adjustment for which the contractor is entitled to payment, but did not appear on the purchase request, or was not known prior to receipt of the bids/offers, may be identified as an additive contract line item number (CLIN) in accordance with DFARS 204.7103-1(d). Additive CLINs create a system record for such charges at activities using the Standard Automated Material Management System (SAMMS).

**4.7103-2 Surge and sustainment contract line-items.**

(a)(90) To facilitate contract funds accounting, the following contract line items shall be used and established for surge and sustainment (S&S) elements. Funding sources are either Defense working capital (DWC) funds or industrial capability (IC) funds.

| Additive CLIN | Service Material Number | Description |
|---|---|---|
| 9910 | S00000041 | S&S capability assessment – DWC funds |
| 9999 | S00000049 | S&S investments – DWC funds |
| 9953 | S00000057 | S&S lump sum decrease – DWC funds |
| 9952 | S00000045 | S&S lump sum increase – DWC funds |
| 9999 | S00000050 | S&S material storage maintenance – DWC funds |
| 9999 | S00000047 | S&S miscellaneous – DWC funds |
| 9910 | S00000042 | S&S testing plan – DWC funds |
| 9910 | S00000043 | S&S testing report – DWC funds |
| 9960 | S00000029 | S&S capability assessment – IC funds |

| Additive CLIN | Service Material Number | Description |
|---|---|---|
| 9965 | S00000034 | S&S investments – IC funds |
| 9968 | S00000056 | S&S lump sum decrease – IC funds |
| 9967 | S00000036 | S&S lump sum increase |
| 9966 | S00000035 | S&S material storage maintenance – IC funds |
| 9969 | S00000037 | S&S miscellaneous – IC funds |
| 9962 | S00000031 | S&S testing – IC funds |
| 9961 | S00000030 | S&S testing plan – IC funds |
| 9963 | S00000032 | S&S testing report – IC funds |

Note: See the EBS procurement job aid for additive CLINS/service material for more information.

**4.7103-2 Numbering procedures.**

(a)(91) 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).

**4.7104-1 Solicitation and award documents in business system modernization (BSM) and base operations support system (BOSS).**

**(b)(1)(90)** Solicitation and award documents in BSM and BOSS-BSM shall not contain sub-CLINs. Acquisition specialists shall use separate CLINs as a substitute for subCLINs. Separate CLINs shall also be used for phased-delivery schedules. For additional guidance, reference PGI 4.7104-1 (b)(1)(90).

**4.7104-2 Numbering procedures.**

(a)(1)(90) 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).

(a)(2)(90) Subclins may be used for the CLINs established under 4.7103-2(a)(90), as necessary. To facilitate contract funds accounting, the following subclins shall be used for CLIN 6003 under 4.7103-2(a)(90) when these sub-elements are required and pricing needs to be established for them:

CLIN 6003 S&S testing
CLIN 6003AA S&S test plan
CLIN 6003AB Performance of S&S test
CLIN 6003AC S&S test report

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## SUBPART 5.2 – SYNOPSES OF PROPOSED CONTRACT ACTIONS

### 5.202 Exceptions.

(a)(2) The requirements of FAR 5.202(a)(2) are satisfied upon execution of the justification (see FAR 6.302-2(c)(1)) or upon receipt by contracting personnel of the information described in 6.303-2(b). (The use of the exception to synopsizing contained in FAR 5.202(a)(2) does not necessarily, in and of itself, preclude the use of full and open competition.)

### 5.203 Publicizing and response time.

(h) The cognizant DLA contracting office, if it elects to take advantage of the authority at FAR 5.203(h), is responsible for identifying the general category or categories of items and publishing the forecast. If using a combined synopsis/solicitation for acquisitions subject to the North American Free Trade Agreement (NAFTA) or the Trade Agreements Act (TAA), a minimum response time of 10 days is required.

### 5.207 Preparation and transmittal of synopses.

(e)(4) As required in FAR 5.207(e)(4), when FAR Part 12 is not used, numbered note 26 shall be cited in the synopsis notice. This note states that Part 12 is not being used because the Government has not identified any commercial items that can meet the requirement. The note advises prospective suppliers that they have 15 days to identify, and indicate their interest in providing, a commercial item that can meet the requirement. When numbered note 26 is used, the solicitation should indicate that offers of any item other than the exact approved item cited in the procurement item description (PID) will require an evaluation for technical acceptability. The solicitation should also describe the circumstances when an evaluation will and will not be conducted and when the instant acquisition will and will not be delayed. The provision at 52.217-9002, when applicable, is available for this purpose; or local provisions can be developed that are consistent with the guidance at 17.7501(b)(4).

### 5.207-90 Non-commercial solicitations.

The provision at 52.205-9000, Federal Business Opportunities (FedBizOpps.gov), shall be used in non-commercial solicitations between $25,001 and $150,000 which are sent to DIBBS versus being synopsized. This is used for contracting officer compliance with the FAR 5.207(c) - General format for "description" section (e) requirement to include the substance of notes (footnotes) when publicizing by means other than FedBizOpps.

## SUBPART 5.3 – SYNOPSES OF CONTRACT AWARDS

### 5.303 Announcement of contract awards.

(a) Public announcement.

(S-90) Information on all proposed contract actions (see DFARS 205.303(a)(i)) of $6.5 million or more shall be submitted on DLA Form 1693, Contract Announcement, to DLA Strategic Communications (DP) by facsimile to (703) 767-6187 or DSN 427-6187 at least 2 full working days prior to the date of award. All required approvals and funding must be obtained prior to submission. Changes, such as changes in the availability of funds, shall be forwarded to the Congressional and Public Affairs

Office to take appropriate action. Excluded from this requirement are mandatory orders placed with Federal Prison Industries, Inc. (FPI) and AbilityOne. The value of contract actions subject to announcement should not include the amount of any Government furnished property. Except for DLA Energy, each announcement must indicate the concurrence of the chief of the contracting office.

(S-91) 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) above no later than 4:00 p.m. on the day the contract is awarded.

## SUBPART 5.4 – RELEASE OF INFORMATION

### 5.401 General.

(b) See 7.304(c)(91) for treatment of requests for information relevant to commercial activities cost studies.

### 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.

## SUBPART 5.5 – PAID ADVERTISEMENTS

### 5.502 Authority.

(a)(1) For those contracting offices for which the Director, DLA Acquisition (J7) serves as Head of the Contracting Activity (see 2.101), approval authority for newspaper advertisements and for publicizing contracting information is redelegated to the activity Commanders, Directors, or Administrator. This authority is not further delegable.

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**6.003 Definitions.**

"Procuring activity," as used in this Part and in FAR Part 6 and DFARS Part 206, means the contracting activities defined in DFARS 202.101 and the following:

DLA Distribution.
DLA Disposition Services.
DLA Strategic Materials.
Defense Media Activity.
DLA Document Services.
DLA Installation Support.

## SUBPART 6.1 – FULL AND OPEN COMPETITION

**6.101 Policy.**

(a) An acquisition provides for full and open competition if:

(90) The solicitation contains or references a complete, unrestrictive technical data package.

(91) Such data can be used for a determination of responsiveness/technical acceptability.

(92) The solicitation and the circumstances of the solicitation contain no limiting restrictions other than those required by law or regulation; and

(93) The Government has taken all reasonable steps to promote full and open competition:

(i) Ensured that specifications are not unduly restrictive in that they reflect the Government's needs, and are, to the maximum degree possible, functional in nature.

(ii) Performed market surveys and/or market research, as appropriate.

(iii) Complied with FAR Subpart 5.2.

(iv) Otherwise taken all reasonable steps to inform potential suppliers of its requirement.

The number of offers expected or received against the solicitation is not relevant to the determination that an acquisition does or does not provide for full and open competition. For example, if all the above conditions are met, an acquisition for an item on a Qualified Products List is full and open competition regardless of the number of products qualified (see FAR 9.2).

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

**6.202 Establishing or maintaining alternative sources.**

(b)(1) Authority to sign determinations and findings (D&Fs) required by FAR 6.202(b)(1) has been delegated to the Director, DLA Acquisition (J7). Proposed D&Fs shall be forwarded to J7 for signature by the Director, DLA Acquisition (J7). Requests to sign proposed D&Fs shall be reviewed and approved by the supply chain HCA and forwarded by a letter of transmittal signed by the Commander/Director of the requesting component. The letter of transmittal shall include:

(i) The proposed D&F in the format specified in DFARS 206.202(b)(ii) and supporting documentation in accordance with DFARS 206.202(b)(i).

(ii) The acquisition plan (see FAR Subpart 7.1).

**6.203 Set-asides for small business.**

(b)(90) Notwithstanding the criteria for full and open competition in 6.101, when an acquisition (or portion thereof) is set-aside for small businesses in accordance with FAR Subpart 19.5, and complete, unrestrictive technical data is not available, no justification for other than full and open competition is required.

## SUBPART 6.3 – OTHER THAN FULL AND OPEN COMPETITION

**6.302-2 Unusual and compelling urgency.**

(b)(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)(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. Although DLAD 4410.1, Uniform Material Movement and Issue Priority System, states that priorities will not be challenged in DSC processing, the request for additional information to support the J&A does not constitute a challenge to the priority assigned. If misapplication of priority is suspected, these instances should be reported in accordance with DLAD 4410.1.

(c) Limitations.

(2) Whenever competition is limited pursuant to this authority, the historically lowest priced source(s) shall be solicited. An award may be made to other than the lowest priced offeror provided the premium paid is reasonable and consistent with the extent to which delivery is required to be expedited.

Quoted prices and delivery terms for each source solicited shall be fully documented, along with rationale which clearly supports source selection. (See 13.106(c)(1).)

6.302-3 Industrial mobilization; or engineering, developmental, or research capability; or expert services.

(90) Contracts awarded under the authority of 10 U.S.C. 2304(c)(3), (see FAR 6.302-3(a)(2)(i) shall include a surge option clause (see DFARS 217.2008-70(b)) or some other type of surge readiness provision.

**6.302-3-70(90) Solicitation provisions and clauses.**
The DLA Energy Aerospace contracting officer shall include 52.206-9000, Domestic or Canadian Source Performance Restriction (DLA Energy) in all aerospace energy solicitations/contracts when competition has been restricted to domestic sources pursuant to FAR 6.302-3 and DFARS 252.206-7000 is included in the solicitation/contract. An approved Justification and Approval shall also be included in the contract file when utilizing this clause.

**6.302-7 Public interest.**

(c) Limitations.

(1)(i) Requests for making determinations and findings (D&Fs) under authority of 10 U.S.C. 2304(c)(7), as implemented by FAR 6.302-7, shall be reviewed and approved by the HCA and forwarded to J7 by a letter of transmittal signed by the Commander or Director of the component, for submission through the USD(A&T), to the Secretary of Defense.

(3) Every request to exercise the authority of FAR 6.302-7(a) shall be accompanied by a justification (see FAR 6.303) supporting the D&F.

**6.303 Justifications**.

**6.303-1 Requirements.**

(b) DLA contracting offices shall establish approval levels for the certifications required by FAR 6.303-1(b).

(d) The agency point of contact with the Office of the United States Trade Representative is J71.

**6.303-2 Content.**

(a)(11) The justification shall include, when applicable, a description of (i) the action being taken to obtain a data package adequate to establish competitive acquisition of the item and (ii) market research efforts to eliminate impediments to subsequent acquisitions. The contracting officer shall follow the mandatory procedures at PGI 6.303-2(a)(11).

(a)(90) Justifications requiring approval by the SPE should be prepared using the following format which may be adapted and supplemented to suit the needs of the particular acquisition, provided each justification 1) includes the specified topic headings, 2) cites the associated statutory requirement of 10 U.S.C. 2304(f)(3)(A)-(F), and 3) sets forth the facts and rationale in a logical sequence. Under each

heading, use as many paragraphs as needed to explain the justification. Avoid jargon and overly technical or esoteric language. Numbering of sections and paragraphs is recommended for ease of reference.

Title: "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 PGI 6.303-2(a)(90)(6)(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 |

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

(1) 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.

(2) 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.

(3) 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.

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

(b)(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) Proposed contracts over $12.5 million but not exceeding $85.5 million require approval of the head of the contracting activity (HCA). For those contracting offices not designated as contracting activities listed at 2.101, the HCA is the Director, DLA Acquisition (J7).

(a)(3)(S-90) Justifications for those contracting offices listed at 2.101 requiring approval by the Director, DLA Acquisition (J7) serving as the head of the procuring activity for purposes of approval of the justification (including class justifications based on estimated total value of the class) shall be forwarded to J72 by a letter of transmittal signed by the Commander or Director of the requesting activity. The letter of transmittal shall be forwarded sufficiently early as to allow for Headquarters review and approvals prior to the commencement of negotiations. The letter of transmittal shall include:

(i) The proposed justification (see FAR 6.303).

(ii) The acquisition plan (see FAR Subpart 7.1).

(iii) Any other pertinent supporting facts or information bearing on a decision to approve the justification.

(a)(4) See FAR 6.304

(a)(4)(B)*(2)*(S-90) This authority has been delegated to the Director, DLA Acquisition (J7) by the Director, DLA.

(a)(4)(B)*(2)*(S-91) Justifications requiring approval by the Senior Procurement Executive (including class justifications based on estimated total value of the class) shall follow the procedures at 6.304(a)(3)(90) for submitting requests to HQ.

(a)(4)(B)*(2)*(S-92) The DLA competition advocate shall review and recommend approval or disapproval of justifications exceeding $85.5 million.

**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 (c) and (d) below (with the exception of servicing Office of 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)). Supply chains and contracting organizations 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 J7 is the HCA, shall ensure J&As are appropriately posted to FedBizOpps within the mandated statutory timeframes (see FAR 6.305(a) and (b)). Local and headquarters level procurement management reviews will include J&A postings as one of their subjects for oversight.

(c) When drafting J&As, contracting offices should carefully consider whether to include information whose disclosure, either alone or in combination with other publicly-available information, could lead to compromise of classified information or sensitive activities. They should first consider whether the information can be omitted from the J&A without compromising its intended purpose. If the information can be omitted, then it should be. For example, the J&A might concern support for sensitive overseas special operations activities. If possible, it should be written in such a way that it satisfies legal and regulatory requirements while not disclosing the nature of the activities being supported. If the information is critical to the J&A, then it should be phrased in a general way so as not to disclose any more sensitive information than is absolutely necessary.

(d) Review prior to posting.

(1) The contracting officer and the servicing Office of 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. Office of Counsel review for exempt material may be done as part of the normal review process for a J&A.

(2) For further guidance and instructions on redacting information, see the DLAD PGI 6.305(c)(2).

(e) Reviewing posted J&As. HCAs, or CCOs when J7 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.

(f) Agency web-site link requirement. The FAR 6.305(a)(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 activities and 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 Requirement.**

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

(b) In accordance with delegated authority from the Director, DLA Acquisition (J7), the Heads of Contracting Activities (HCA) shall appoint activity competition and an alternate activity competition advocates, as needed, for their respective procuring activities. Those activities for which the Director, DLA Acquisition (J7) is the HCA will forward nomination recommendations to J72 signed by the activity's Commander or Director. 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 Duties and responsibilities.**

(90) Agency competition advocate.

(a) In addition to the duties and responsibilities outlined in FAR 6.502, the agency competition advocate shall perform the duties and responsibilities outlined at PGI 6.502(90)(a)(1)-(4).

(91) Activity competition advocate.

(a) In addition to the duties and responsibilities outlined in FAR 6.502(a), the activity competition advocate shall perform the duties and responsibilities outlined at PGI 6.502(91)(a)(1)–(6).

**6.503 Annual reporting requirements.**
For details, see mandatory PGI 6.503.

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# PART 7 – ACQUISITION PLANNING

**7.000 Scope of part.**
This part also prescribes policies and procedures for --

(S-90) Use of non-Department of Defense contract vehicles, including both assisted and direct acquisitions, for acquiring supplies or services.

## SUBPART 7.1 – ACQUISITION PLANS

*(Revised September 19, 2012 through PROCLTR 2012-49)*

For Defense Procurement and Acquisition policy (DPAP) peer review program procedures, see PGI 1.170. For Defense Logistics Agency (DLA) peer review procedures, see PGI 1.170-90.

**7.102 Policy.**

(a) As stated in FAR, acquisition planning is to be performed for all acquisitions, but what is entailed, and the format it will take, will depend on the scope, dollar value, and duration of the acquisition. As stated in (b)(S-90), below, written plans are required for all acquisitions with values greater than the simplified acquisition threshold (SAT).

(b) Planning to ensure that the Government meets its needs in the most effective, economical, and timely manner sometimes includes consideration of the use of contract vehicles not originally put in place by DoD personnel (e.g., Federal supply schedules). The considerations for use of these vehicles, as well as the procedures to be followed and safeguards to be employed when sending contracting dollars outside the Department, are set forth in subparts 7.90, 17.5, 17.78, and 17.96.

(S-90) Written acquisition plans are required for all acquisitions expected to exceed the SAT, including those accomplished by means of direct or assisted acquisitions using non-DoD contract vehicles; see subpart 7.90, below. This does not apply to individual orders against contracts when the contract-level acquisition plan is adequate to cover all anticipated orders.

(1) Acquisition plans shall be prepared, as applicable, in accordance with FAR 7.105, DFARS 207.105, DLAD 90.1101, and 90.1102, and be approved at a level above the buyer, as established by the chief of the contracting office (CCO), except that acquisition plans shall be reviewed and approved by the CCO prior to solicitation for all actions that are not long term with a value equal to or greater than $2 million, and for all long term actions with a value equal to or greater than $10 million.

(2) For acquisitions accomplished by means of non-DoD contract vehicles, including placement of orders against Federal supply schedules, this review and approval must be at a level above the buyer; see 7.90.

(3) Approval prior to solicitation can be waived per supply chain guidance for urgent requirements.

(4) The format at 90.1102 may be modified to suit the needs of the contracting office. A standard DLA-wide form is not prescribed in order to permit use of supply chain forms or formats.

(5) If a DLA activity or functional unit that does not have contracting authority in its own right (e.g., DLA HQ J-code activity; DLIS; DLA-C; DLA-E; DLA-P; DORRA) intends to acquire support

through use of a non-DoD contracting vehicle on either a direct- or assisted-acquisition basis (see definitions in Part 2), that activity must contact the DLA contracting office that generally provides its contracting support, and request it to implement the appropriate review and approval procedures.

(i) 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 supply chain's contracting office) must involve DLA contracting personnel in the review and approval process for the proposed acquisition.

(ii) Contracting offices that exercise this function on behalf of others (e.g., DLA Disposition Services on behalf of DLIS) 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. (See also 7.90.)

(S-91) Market surveys (see FAR 7.102) and market research (see FAR and DLAD Part 10) shall be performed consistent with any local operating procedures.

(S-92) The acquisition plan shall accompany the justification for other than full and open competition (see FAR 6.301, 6.304, and DLAD 6.304) when it is 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.

(S-93) The plan shall identify anticipated costs, performance metrics, and the points of contact for monitoring contract performance.

(S-94) A business case analysis (BCA) will be developed in accordance with the guidelines set forth in DLA Instruction 2101, "Acquisition Business Case Analysis." Approval thresholds for acquisition-related BCAs are addressed in 1.690 and subpart 90.15; they are also referred to in Subpart 37.5 for the acquisition of services. Although the BCA and the bundling or consolidation benefit analysis required in 7.107 and 7.170 are not synonymous, the quantitative analysis in the BCA generally can be used in the determination of benefits accruing from the bundling or consolidating of contract requirements. When the BCA is used in this manner, the data pertaining specifically to bundling or consolidation should be extracted from the overall BCA and provided as a separate document in support of the justification to bundle or consolidate the requirements, unless the information cannot be fully understood without providing the entire BCA.

(S-95) See 17.9503, Acquisition Planning, for acquisition planning requirements for prime vendor, modified prime vendor, and other tailored logistics support contracting initiatives.

(S-96) The acquisition plan shall identify any proposed use of time and material (T&M) or labor hour (LH) CLINS, contracts, or task orders and address the requirements found in 90.1101 and 90.1102 concerning T&M and LH. The monitoring and reporting requirement is found in 16.601-90.

**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.

(1) 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.

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

**7.104 General procedures.**

(a) For Defense Procurement and Acquisition Policy (DPAP) peer review program procedures, see mandatory coverage at PGI 1.170.

(b)(S-90) 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. 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 S&S requirements. 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)(S-91) 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. 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.

(c)(S-90) The contracting officer is responsible for taking timely actions to assure that the procurement cycle for forecasted requirements is adequate so it is not necessary to place an award or order on an undefinitized basis.

**7.104-90** [Reserved.]

**7.104-91** [Reserved.]

**7.105-90 Contents of written acquisition plans.**

In accordance with FAR 7.105, contracting officers, program managers, planning specialists, or other officials responsible for the program or requirement will identify potential vulnerabilities when developing acquisition strategies/plans and when conducting post award and contract administration functions and will develop mitigation strategies. Contracting personnel shall specifically consider and identify vulnerabilities that create opportunities for fraud, address them in mitigation plans as part of acquisition planning, and include them in lessons learned. These vulnerabilities should be addressed during the development of the acquisition strategy and in written acquisition plans for procurements above the simplified acquisition threshold. Heads of contracting activities (HCAs) will establish a process to collect issues relating to pre-award and contract administration activities and share lessons learned with the acquisition community. HCAs will ensure that the lessons learned and any corrective actions are considered by the contracting team when beginning future acquisition planning. See 90.1101 for guidance on content.

(b)(1) Include an analysis, coordinated with the appropriate legal office, of whether bundling or consolidation are applicable to the procurement. Include the specific reasons that bundling and/or consolidation are or are not applicable.

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

(a) "Necessary and justified" (with regard to bundling) is a two-part determination, made with the aid of market research. It means not only that the bundle is considered essential from a management perspective, but also that the benefits accruing from the bundling of requirements, as compared to not doing so, would be measurably substantial (as defined in FAR 7.107(b)). Note that the definition of "measurably substantial" contains a requirement for quantification of benefits.

(c)(S-90) If quantification of the benefits of a bundled acquisition does not equal quantification levels set forth in FAR 7.107(b), ordinarily the contracting officer shall not bundle requirements. However, in exceptional situations the contracting officer may still proceed with the contracting action. The contracting officer shall seek the approval, in a determination and findings, of the Under Secretary of Defense for Acquisition, Technology and Logistics (USD(AT&L)), that bundling is necessary and justified. In that case, even though the quantified benefits do not reach the specified dollar equivalents, they must be shown to be critical to the agency's mission success. The acquisition strategy described in the request to USD(AT&L) shall provide for maximum practicable participation by small business concerns. (See Part 19 for further guidance on maximizing small business participation.) Reduction of administrative or personnel costs alone cannot be used as justification for bundling in support of the request to USD(AT&L).

(S-91) 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). The contracting officer shall not issue a bundled solicitation until the determination and finding granting the permission has been received from USD(AT&L).

(e) In establishing the procurement strategy for any bundled requirement, whether or not of a dollar value constituting substantial bundling, the contracting officer may want to address the following considerations as part of the market research required to be conducted in accordance with FAR 10.001(a)and (c) and 10.002(e): benefits; impediments to small business prime contracting participation; actions to maximize small business subcontracting participation; and affirmative determination that the benefits justify bundling. However, in cases not involving substantial bundling, FAR does not require that the documentation of the research results be so extensive as it would be for instances of substantial bundling. See 7.102 for the proper use of business case analyses in the documentation of benefits of bundling; see 10.001 for the extent and type of market research necessary to support the required level of documentation.

(S-90)(i) 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.

(ii) 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.

(iii) 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-91) 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. 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. (See the definition of bundling at FAR 2.101 for aspects of a procurement that might make small business participation unlikely.) Given the seriousness of these consequences, the contracting officer must be able to show that any such proposed bundle is "necessary and justified" (as defined in 7.107(a), above), and that benefits that are anticipated to accrue to the Government will be "measurably substantial," as explained in FAR 7.107(b). Reduction of administrative or personnel costs are not considered sufficient justification for bundling, unless these savings are expected to be substantial. If the contracting officer cannot determine that a bundling of requirements is necessary and justified, and that its benefits will be measurably substantial (including situations where the contracting officer cannot quantify such benefits), the contracting officer shall not proceed with the bundling without approval by USD(AT&L).

(S-92) In cases where there is disagreement between the SBA and the contracting officer over a bundled or substantially bundled requirement, the PCR or SBA Area Office may initiate an appeal to the head of the contracting activity. Levels of appeal and associated timeframes are provided in FAR 19.402(c)(2) and, for general reference, 19.505.

**7.170 Consolidation of contract requirements.**

**7.170-2 Definitions.**

(S-90)(i) 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. Any aggregation of requirements into a single solicitation valued over $6 million that meets the consolidation definition in DFARS 207.170-2 is considered a consolidation within the meaning of this section, whether or not the previous contracts were provided by small businesses. (Despite the lack of a specific reference to small business, though, the legislation that this coverage implements was intended to enhance the participation of small business entities. See Part 19 for a complete treatment of small business issues.)

(ii) 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.

(S-91) As with bundling, "substantial" benefits of consolidation are those that are essential, ample, and not illusory. They should, but , unlike bundling, need not absolutely be quantified.

**7.170-3 Policy and procedures.**

(a)(1) See PGI 10.002-90 (d) for a discussion of market research as it pertains to the consolidation of contract requirements.

(a)(3) The Senior Procurement Executive (SPE) has authorized the field activity's Acquisition Executive (AE) to execute a determination that a consolidation is necessary and justified for a procurement valued at up to $100 million. That 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 (S-90).

**7.203 Solicitation provision.**

(S-90) The FAR provision shall be tailored, or a locally developed clause used, 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.**

(c)(1) Where the Director, DLA Acquisition (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 (see 1.690-6(b)(3)).

(S-90) Procedures for SBA requested 8(a) commitments. When, due to application of the confidentiality requirements of FAR 7.304(d), it is not possible to obtain an in-house cost estimate independent of the Government's sealed in-house offer for use in determining an estimated current fair market price (FMP), the contracting officer may determine the FMP based on cost or price analysis in accordance with the provisions in FAR 19.805 and 19.806, as appropriate. When agreement is reached with the SBA or its subcontractor on the terms and conditions of the proposed contract, the Government's sealed in-house estimate shall be opened and the cost comparison completed in accordance with FAR 7.306(b). When agreement between SBA or its subcontractor as to the terms and conditions of the proposed contract is not reached and the SBA withdraws its certification, the Government's sealed in-house estimate shall not be opened. A competitive solicitation shall subsequently be issued, either on a set-aside or non-set-aside basis in accordance with FAR 7.306. The 8(a) firm(s) for which the SBA commitment was originally required shall be provided an opportunity to offer on the competitively issued solicitation. The procedures of FAR 7.306(a) or (b), as appropriate, apply to the balance of the cost comparison process.

(S-91) 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 DLAR 5400.14, DLA Freedom of Information Act Program, paragraph VIII.E., 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.

**7.306 Evaluation.**

(a) Sealed bidding.

(3) The contract file must be forwarded to DLA HQ, attention: J73, for review and approval, and the PLFA must be advised by J73 that the file is approved before the PLFA commander signs the decision summary form (DLA Form 1764, Cost Comparison Analysis In-House versus Contract Performance, or DLA Form 1764a, Cost Comparison Analysis Expansions, New Requirements, and Conversion to In-House). The contracting officer shall not sign the decision summary form until J73 approval of the contract file has been received or until J73 comments, that are a condition of approval, have been properly addressed.

## SUBPART 7.90 – USE OF NON-DOD CONTRACTS

### 7.9001 General considerations.

(a) The use of non-DoD contracts by DLA personnel, via either direct or assisted acquisitions (see definitions at 2.101), to procure supplies and services is often an effective way to accomplish acquisitions in support of the Agency mission. Because of this, the use of these vehicles, including but not limited to the Federal Supply Schedules awarded by the General Services Administration or the multiple award contracts put in place by the Department of the Interior, Department of the Treasury, or any other federal activity, is encouraged when it is determined to be the best method of procurement to meet DLA requirements. However, acquisition planning must be done for all buys valued at amounts greater than the simplified acquisition threshold to determine whether using such a vehicle is actually the best method for satisfying the requirement. Market research and the early involvement of financial management and requirements personnel are essential steps in the process. Contracting personnel must take care to ensure that non-DoD contracts are not used to circumvent conditions and limitations imposed by DoD Authorization Acts and other legislation on the use of funds; to ignore other Defense-specific programs and policies; or to compensate for poor or non-existent acquisition planning.

(S-90) In order to make use of non-DoD contracts on either a direct or assisted acquisition basis, any activity or functional unit that does not have a contracting office or contracting personnel must contact the DLA activity or supply chain that customarily provides its contract support, so that the review and approval requirements of Subpart 7.1 and of this Subpart may be fulfilled. It is no longer permissible for any DLA activity or program office to expend funds for acquiring goods or services (including funds provided via MIPR to another DoD or a non-DoD activity) without the involvement of DLA contracting personnel; specifically, this means the involvement of a warranted contracting officer for all acquisitions valued greater than the simplified acquisition threshold.

(b) Any acquisition of services via a non-DoD multiple-award contract vehicle must be consistent with the requirements of Section 803 of the National Defense Authorization Act for Fiscal Year 2002, Competition Requirements for Purchase of Services Pursuant to Multiple Award Contracts (implemented in DFARS 208.405-70 and 216.505-70). This section is concerned with the "fair opportunity to compete" and "fair notice of intent" requirements and exceptions pertaining to multiple-award contracts (MACs). The rule "follows the money:" Civilian agencies that receive DoD funds to obtain services for DoD must comply with DFARS 208.405-70, Additional ordering procedures for services, and 216.505-70, Orders for services under multiple-award contracts. However, there is a distinction made between GSA FSS and all other non-DoD MACs. For the former, the contracting officer is required to contact as many schedule holders as practicable to ensure that at least three responses are received. For the latter, all contractors offering under the MAC must be given a fair notice of intent to make the purchase, and all must be afforded an opportunity to make an offer and have it fairly considered. See 8.405-70(c)(1) and DFARS 208.405-70, DFARS 216.505-70, and DLAD 37.105, Competition in service contracting, for further information.

(c) Nothing in this subpart is intended to affect the applicability of FAR Section 8.002, Priorities for Use of Government Supply Sources; FAR 8.405-6, Sole Source Justification and Approval (for orders against FSS); FAR Subpart 17.5, Interagency Acquisitions under the Economy Act; or DoD Instruction 4000.19, Interservice and Intragovernmental Support.

(d) Financial management personnel are responsible for ensuring:

(1) That the individual preparing the documentation required in 7.9002(b) and 7.9003(b) certifies that all applicable DLA review and approval policies have been followed.

(2) That funds are available and appropriate for the procurement action.

**7.9002 Policies and procedures pertaining to direct acquisitions.**

(a) All direct acquisitions of supplies or services are subject to the review levels specified in DLAD 1.690. Direct acquisitions of services shall also comply with the documentation, review and approval requirements of 37.590. A DLA contracting officer shall review and execute, within the limits of his/her warrant, the direct acquisition of supplies and/or services for every acquisition with a total value over the simplified acquisition threshold.

(b) For all direct acquisition orders for supplies or services placed against non-DoD contracts, including GSA federal supply schedule (FSS) orders, and for each blanket purchase agreement issued against a GSA FSS, the buyer, contracting officer, ordering officer or other authorized DLA official maintaining the contract file shall document that:

(1) The order is in the best interests of DLA. Consider such factors as satisfying customer requirements; cost effectiveness, taking into account discounts and fees, and price; delivery schedule; non-availability of a suitable contract within DoD; contract administration/oversight; small business opportunities; and any other factors, as applicable.

(2) Supplies or services to be provided are within the scope of the non-DoD contract.

(3) Funding is available and appropriate for the acquisition. The documentation shall reflect that the financial management organization validated that funds are appropriate for the acquisition; see 7.9001(d)(2), above.

(4) Any terms, conditions and/or requirements unique to DoD or DLA are incorporated into the order to comply with applicable statutes, regulations and directives (e.g., the requirement that the items listed in DFARS 225.7002-1, pertaining to restrictions on food, clothing, fabrics, specialty metals, and hand or measuring tools, and that are procured with DoD funds, be of domestic origin).

(5)(i) All procedures contained in this subpart, and in 1.690, 17.5, 17.78, and 37.5, as applicable, have been followed. Also, although PGI 17.9602 contains procedures that specifically support Subpart 17.96, which pertains to non-Economy Act assisted acquisitions, certain procedures have applicability to direct acquisitions. Accordingly, these PGI sections also need to be addressed for each direct acquisition from a non-DoD agency.

(ii) A signed certification to this effect shall be included in the file; see 7.9001(d)(1), above.

**7.9003 Policies and procedures pertaining to assisted acquisitions.**

(a) All assisted acquisitions of supplies or services are subject to the review levels specified in 1.690. Assisted acquisitions of services shall also comply with the documentation, review and approval requirements of 37.590. An assisted acquisition of supplies or services requires review by a DLA

warranted contracting officer for every transaction with a total value over the simplified acquisition threshold.

(b) For all assisted acquisitions of supplies or services placed against non-DoD contracts (including GSA federal supply schedule (FSS) orders), the buyer, contracting officer, ordering officer or other authorized DLA official maintaining the contract file shall document that:

(1) The use of a non-DoD contract is in the best interests of DLA. Consider such factors as satisfying customer requirements; cost effectiveness (taking into account discounts and fees) and price; delivery schedule; non-availability of a suitable contract within DoD; contract administration/oversight; small business opportunities; and any other factors, as applicable.

(2) Supplies or services to be provided are within the scope of the (non-DoD) contract to be used. Coordinate with the non-DoD contracting officer to verify the requirement is within the scope of the assisting agency's selected contract.

(3) The funding appropriation is legal and proper for the acquisition and used in accordance with any appropriation limitations. (The documentation shall reflect that the financial management organization validated that funds are appropriate for the acquisition; see 7.9001(d)(2), above, and 17.9604.

(4) Any terms, conditions and/or requirements unique to DoD or DLA are incorporated into the order or contract to comply with applicable statutes, regulations and directives (e.g., the requirement that the items listed in DFARS 225.7002-1, pertaining to restrictions on food, clothing, fabrics, specialty metals, and hand or measuring tools, and that are procured with DoD funds, be of domestic origin).

(5) All procedures contained in this subpart~~,~~ and in 1.690, 17.5, 17.78, 17.96, and 37.5, and PGI 17.96, as applicable, have been followed. A signed certification to this effect shall be included in the file; see 7.9001(d)(1).

(6)(i) For interagency acquisitions subject to the Economy Act (31 U.S.C. 1535), comply with the determination and findings (D&F) requirements at FAR 17.503, and provide the D&F, signed by a senior executive or flag or general officer, to the servicing activity (i.e., the non-DoD activity whose contract is being or shall be used) in accordance with FAR 17.504 and DFARS 217.504.

(ii) Assisted acquisitions by GSA are generally authorized by other statutes, such as the Federal Property and Administrative Services Act or the Clinger-Cohen Act, and are therefore not subject to the Economy Act; no D&F is required to be prepared. To the extent other non-DoD contracts are authorized under other statutes (e.g., GWACS authorized under 40 U.S.C.11302(e); use of Franchise Fund activities authorized by various public laws (see 31 U.S.C. 501 note); and similar specific statutory authorities), the Economy Act does not apply, and D&Fs are not required to be prepared. For complete treatment of these non-Economy Act transactions, see Subpart 17.96.

(7) Departmental policy, as set forth in the October 29, 2004 memorandum, Proper Use of Non-DoD Contracts, jointly signed by USD(AT&L) and the Principal Deputy Under Secretary of Defense (Comptroller), reflects the requirements of Section 854 of the National Defense Authorization Act for Fiscal Year 2005. That section requires data to be collected and reported on the use of assisted acquisitions throughout the Department of Defense, specifically with reference to service charges imposed on these purchases by the assisting (non-DoD) activity. The Federal Procurement Data System –

Next Generation (FPDS-NG) will eventually provide the automated reporting capability to fulfill this requirement. Until DLA is a full participant in the FPDS-NG system, each contracting activity shall locally maintain a list of all assisted acquisitions placed on their behalf, with the service charge identified for each. This list shall be submitted to J71 on a fiscal-year basis no later than October 31st each year.

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## SUBPART 8.4 – FEDERAL SUPPLY SCHEDULES

*(Revised July 18, 2012 through PROCLTR 2012-39R)*

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

(a) General. DoD EMALL, https://dod-emall.dla.mil/acct/, is a DoD web-based eCommerce electronic ordering site that allows authorized users to search, compare, and purchase commercial and non-commercial products through a single interface. Customers include Federal and, when authorized by law, state and local users. DoD contractors may also be authorized to order on DoD EMALL pursuant to FAR Subpart 51.1.

(b) Policy. DLA HQ J71 will provide contracting guidance for DLA's enterprise use of DoD EMALL. 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 operations program manager; DLA HQ J71 – DLA DoD EMALL contracting policy; DLA Logistics Information Service – DLA DoD EMALL contracting Center of Excellence; J8 – DoD EMALL program funding; J6 – DoD EMALL IA/IT architecture; DLA Contracting Services Office – DoD EMALL infrastructure/operations support contracting.

(3) The contracting office for DLA's DOD EMALL contracts will be a DLA Logistics Information Service contracting office and will receive contracting authority from and be subject to the contracting oversight of DLA Disposition Services.

(d) Contracting.

(1) DLA Logistics Information Service, the DLA Center of Excellence (COE) for DLA's DoD EMALL contracting operations, is responsible for DLA contracts that will be specifically awarded for placement on DoD EMALL as DoD EMALL contracts.

(i) The DoD EMALL contracting office at DLA Logistics Information Service, with contracting authority from and under the contracting oversight of DLA Disposition services, shall establish contracts only for DLA-assigned and/or managed items. The DoD EMALL contracting office 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) The DoD EMALL contracting office will 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. The DoD EMALL contracting office shall comply with FAR Part 38 in establishing FSS-type contracts.

(iii) The DoD EMALL contracting office at DLA Logistics Information Service must concur with DLA Logistics Information Service rules of governance to which contractors will be held. -The DoD EMALL contracting office will include a requirement in DoD EMALL contracts that contractors comply with the rules of governance.

(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 contracting office will perform a preliminary review of catalogs to ensure part numbered items are cross-referenced to NSNs. Similar reviews will be performed periodically by the DoD EMALL contracting office 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 contracting office, in coordination with DLA HQ 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 supply chain shall review and approve their respective items for inclusion on DoD EMALL contracts. The supply chain may delegate in writing to the DoD EMALL COE for contracting the authority to include their respective items unless instructed otherwise by that supply chain. Additionally, each supply chain shall designate a DoD EMALL point of contact to the DoD EMALL COE 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. The statistical sampling approach in 15.402-91 Pricing policy – EMALL is one such approach that could be used. Once a viable pricing software tool is validated or approved, the information from the tool may also be used for determining the price reasonableness of DoD EMALL contracts.

(e) Ordering. Ordering against DoD EMALL contracts is subject to FAR Subpart 8.4, and in particular to the requirements in FAR 8.404, 8.405, and 8.406, and to DFARS Subpart 208.4 for orders

over the simplified acquisition threshold (SAT). Orders against non-DoD EMALL contracts available for ordering on DoD EMALL are subject to the ordering requirements applicable to the particular contract.

**8.404 Using schedules.**

(a) General. The use of Federal Supply Schedules does not obviate the need for conducting a bundling or consolidation analysis for acquisitions described in FAR 2.101 (definition of "single contract," paragraph (3) of the bundling definition) or DFARS 207.170-2 (definition of "multiple award contract" within the definition of consolidation). See 7.107 and 7.170.

**8.405-70 Additional ordering procedures.**

(c)(l) The requirement from Section 803 of the FT 2002 National Defense Authorization Act (P.L. 107-107) to provide for notice to "as many (schedule) contractors as practicable" can be fulfilled by using the General Services Administration's e-Buy web site at www.gsaAdvantage.gov. E-Buy is an electronic RFQ system that automatically notifies vendors of solicitations from agencies for goods and services.

(S-90) For additional requirements pertaining to use of Federal Supply Schedules, see subpart 7.90.

**8.406-1(90) Virtual prime vendor solicitations.**
Use 52.208-9002, Defense Logistics Agency Mandatory Source Requirements, in all virtual prime vendor (VPV) type solicitations which include items that DLA has awarded on requirements contracts or when the required source of supply is Federal Prison Industries (FPI) or AbilityOne.

**8.406-4 Termination for cause.**

(e)(S-90) Reporting. If the reporting requirement in FAR 8.406-4(e) is applicable, contracting officers are responsible for ensuring the termination data is reported in the FAPIIS module of the PPIRS using the procedures at PGI 8.406-4(e)(90).

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

*(Revised August 13, 2012 through PROCLTR 2012-46)*

**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 restriction on price comparisons in FAR 15.404-1(b)(90)(2)(ii)).

"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) The contracting officer must use the results of market research to determine the comparability of the FPI product, considering all three areas of price, quality, and time of delivery. (See PGI 10.002-90).

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. The contracting officer is strongly encouraged to consult with counsel on acquisitions stemming from such comparability determinations.

(i)(90) Use the provision at 52.208-9001, Acquisition of Federal Prison Industries Items, 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.

(91) If, despite the comparability of the FPI product, the contracting officer nevertheless concludes that purchase of the item from a private-sector source is in the best interests of the Government (e.g., for readiness or industrial-base reasons), a clearance may be pursued from FPI in accordance with FAR 8.605.

(ii)(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. See 19.502-1(b)(90).

(a)(90) 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.

(a)(91) In addition to assuring that the award price to FPI does not exceed the current market price, the contracting officer shall:

(i) 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;

(ii) 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;

(iii) Obtain an independent cost/price analysis of purchases estimated to exceed $200,000 and other actions as deemed appropriate. ( See 15.404-1(a)(90)). Coordinate 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);

(iv) 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);

(v) Negotiate with FPI to assure 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;

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

(vii) Refer instances of unreasonable price which cannot be corrected to a higher authority in accordance with FAR and DLAD 15.405(d). 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 and 8.606).

(a)(92) 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.

**8.604 Ordering procedures.**

(b)(90) Contracts and orders to FPI shall be on a free on board (f.o.b.) origin basis unless otherwise specified.

(c)(90) Ceiling priced awards.

(i) The clause at 52.208-9000, Price Adjustment on Federal Prison Industries, Inc. (FPI) Contract/Order, may be utilized only if

(A) the contract or order will be issued to FPI at a fair and reasonable price that does not exceed the estimated current market price;

(B) the contracting officer completes action specified in 8.602(a)(91)(vii); and

(C) the chief of the contracting office determines in writing that ordering the urgently needed Schedule item cannot be further delayed and approves such award.

(ii) After issuing a contract/order containing the clause at 52.208-9000, the contracting officer shall brief the chief of the contracting office of efforts to reach an agreement as to the current market price reduction applicable thereto. Agreements reached shall be confirmed by a revision to the contract or order stating the applicable price and removing the clause at 52.208-9000.

(iii) Efforts to obtain agreement may continue up to the time of inspection and acceptance of the first delivery. If agreement has not been reached by that time, the case shall be submitted by the chief of the contracting office (not delegable, except that the executive director for procurement at DLA Aviation may further delegate this authority to the deputy executive director for procurement and the chief, base support division without power of redelegation) to DLA HQ, attention: J73 as unresolvable and shall contain a detailed explanation of the factors used in determining the current market price and/or reasonable price which were not acceptable to the FPI.

**8.604-90 Pricing policies for awards to Federal Prison Industries, Incorporated (FPI).**

(a)(1) Prices in awards to FPI for the partial or total quantity of an acquisition shall not exceed current market prices.

(2) On acquisitions involving multiple awards to both commercial contractors and to FPI of a mandatory item, the current market price will be a price considered by the contracting officer to reflect current market levels, but in no event a unit price higher than the highest award price made on the unrestricted portion adjusted for applicable cost factors, unless it is determined that the price was the result of a distressed bid, bidder's mistake, or inflated because of Department of Defense requirements. In awards involving multiple destinations, each destination, for purposes of determining the price to be paid FPI, shall be considered a separate award. The term "unrestricted" as used in this part refers to the portion of the acquisition not purchased from FPI, whether or not a small business set-aside has been made.

(3) 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.

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

(5) Prices for FPI contracts shall be rounded off to the nearest mil.

(b) The cost of transportation of Government furnished property to both FPI and to commercial contractors shall be excluded. Differences in Government transportation costs of end items to the same destination point under FPI award and under awards to commercial contractors shall be included. Also, variation in the cost of Government furnished property, based on stated percentages of usage of Government-furnished property allowances, shall be included.

(c) Firm delivery orders shall be given to FPI promptly upon determination of the quantity to be awarded FPI. The following procedures are to be utilized in determining prices to be included on these delivery orders:

(1) When a concurrent commercial contract is being made, the price quoted by FPI shall be cited on the delivery order and the clause at 52.208-9000 shall be included in the order. In the event the current market price determined by the contracting officer under the "unrestricted" acquisition is lower than the quoted FPI price, adjustment shall be made to the lower price; provided, however, that in the time elapsed between the delivery order to FPI and the opening date on the "unrestricted" portion, there has been no significant change in market conditions. Should there have been a significant change in market conditions, the current market price for an FPI order will be determined under the provisions of subparagraph (a)(3), above.

(2) When the circumstances described in subparagraph (a)(3) above exist, immediate action shall be taken to determine the current market price. Should that price be lower than the quoted price, prompt contact shall be made by the most expeditious means with the FPI and the circumstances and factors used in the determination explained. Should an agreement not be reached as to the current market price within 5 consecutive days from the date of contact, the order shall be promptly issued on the basis of the current market price determined by the contracting officer, and the clause set forth at 52.208-9000, Price Adjustment on Federal Prison Industries, Inc. (FPI) Delivery Orders, shall be included on the FPI delivery order.

(3) After issuance of a delivery order containing the clause at 52.208-9000, every effort will be made by the contracting officer to reach an agreement as to the current market price applicable to the order. Agreements reached shall be confirmed by a revision to the delivery order stating the price applicable to the order, and rescission of the clause at 52.208-9000.

(4) Efforts to obtain agreement, to include exchange of data on which the current market price was based, may continue up to the time of inspection and acceptance of the first delivery. If agreement is not reached by that time, the case shall be submitted to DLA HQ, attention: J73, as unresolvable, and shall contain a detailed explanation of the factors determining the current market price which was not acceptable to the FPI.

**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

(a)(S-90) To expedite the determination of FPI's capability and capacity to produce an item, a cooperative interface should be established between FPI's staff and center technical staff.

(S-91) See 7.104 for guidance on industrial preparedness planning in connection with requirements that are being considered as an item of supply for FPI.

(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 not only to cooperate fully with the Committee for Purchase from People Who Are Blind or Severely Disabled (the Committee), its Central Nonprofit Agencies (CNAs) (namely, the National Industries for the Blind (NIB) and NISH - formerly, the National Industries for the Severely Handicapped), and the individual nonprofit agencies (previously known as workshops and/or work centers) in accordance with statutory mandates, but also to provide the maximum practicable opportunity

by which these “AbilityOne” (formerly called Javits-Wagner-O’Day Act (“JWOD”)) entities may become full partners in DLA's reengineered business processes 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 which use source selection procedures. The contracting officer shall use an evaluation factor encouraging the maximum practicable use of “AbilityOne ” entities as subcontractors (i.e., beyond statutorily mandated use of these entities by prime contractors; see FAR 8.001(c)). This factor shall apply to all source selections where the resultant contract is expected to exceed $500,000, unless omission is approved by the chief of the contracting office. (Inclusion of this coverage in solicitations below $500,000, though optional, is encouraged in all appropriate circumstances.) Proposals that demonstrate a strong commitment to affording “AbilityOne ” entities a real opportunity to participate in the Government contracting arena, including prime vendor and virtual prime vendor arrangements, shall be rated more favorably than those that demonstrate little or no such commitment. See 15.304(c)(91).

(1) The contracting officer should consult with the local office of counsel prior to making this evaluation factor more important than other socioeconomic factors, to ensure that it does not displace any other factors required by statute or overall DoD policy.

(c) 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 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) See 15.304(c)(91) for the prescription for use of solicitation provisions 52.215-9004, Javits-Wagner-O'Day Act Entity Proposal, and 52.215-9005, Javits-Wagner-O'Day Act Entity Support Evaluation.

(e) For applicable contract actions, the contracting officer shall provide incentives for prime contractors to subcontract with “AbilityOne” entities, even when they are not statutorily obligated to do so. These contract actions include:

(1) Evaluation of current or proposed participation in this program of support for “AbilityOne” as an independent factor (separate from any overall past performance evaluation factor) in source selection;

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

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

(4) Consideration of contractor present and past performance with reference to “AbilityOne” entities in the exercise of options for the follow-on years of long-term contracts.

(f) In order for determinations to be made regarding the efficacy and viability of this coverage, each contracting activity shall, ten days after the end of each fiscal quarter, submit a report to J71 indicating the percent change in the extent of non-mandatory prime contractor support (i.e., percent of total subcontracting dollars) for “AbilityOne” entities.

## 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.

**8.7002-2 Requiring department responsibilities.**

(a) Requisitions for metalworking machinery in FSG 34 should be submitted to DLA Aviation-JHCA to determine availability of comparable idle assets and initiation of a purchase request. Local procurement is prohibited unless a local procurement authorization request has been submitted to and approved by DLA Aviation -JHCA.

**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, as determined appropriate locally, 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 defense supply center (DSC) 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 8.72 – [RESERVED]

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

*(Revised 3/22/2012 through PROCLTR 2012-30.)*

**8.7300 General.**

(a) Recovery and utilization of precious metals (silver, gold, platinum, palladium, rhodium, iridium) from scrap materials.

(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. Supply chain HCAs, 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 Procedure**s.
Follow the procedures at PGI 8.7303 for the precious metals recovery program. The procuring contracting officer (PCO) shall provide instructions to the administrative contracting officer (ACO) for metal disposal upon completion of the contract.

**8.7305 Solicitation provisions and contract clauses**.

(a) To maximize participation in the precious metals recovery program, the acquisition specialist shall follow the procedures at DFARS Subpart 208.73 and DLAD PGI 8.73, and add the following clause and provision as prescribed in paragraphs 8.7305(a)(1)-(2).

(1) Insert the clause at 52.208-9007, Precious Metals (Government-Furnished Property), in all solicitations and contracts except as provided in 8.7305(a)(1)(i)-(iii). When this clause is used, insert the clauses at FAR 52.245-1 and DFARS 252.208-7000 in the solicitation and contract. Do not insert the clause:

(i) When the contracting officer has determined that the required precious metals are not available from DLA Troop Support (see PGI 8.7303(a));

(ii) When the contracting officer knows that the items being acquired do not require precious metals in their manufacture (i.e., when precious metals indicator code (PMIC) is “A, item does not contain precious metal”); or

(iii) For acquisitions at or below the simplified acquisition threshold.

(2) Insert the provision at 52.208-9008, Evaluation of Offers for Items Containing Precious Metals, in all solicitations except as provided in 8.7305(a)(2)(i)-(iii). When this provision is used, insert the clauses at FAR 52.245-1 and DFARS 252.208-7000 in the solicitation.

(i) When the contracting officer has determined that the required precious metals are not available from DLA Troop Support (see PGI 8.7303(a));

(ii) When the contracting officer knows that the items being acquired do not require precious metals in their manufacture (i.e., when precious metals indicator code (PMIC) is "A, item does not contain precious metal"); or

(iii) For acquisitions at or below the simplified acquisition threshold.

(a)(S-90) When 252.208-7000 and 52.245-1 were incorporated in the solicitation, however, the contracting officer has later determined no GFP or precious metals will be furnished on the award, the contracting officer may use 52.208-9003 Precious Metals Not Furnished in the contract.

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## SUBPART 9.1 – RESPONSIBLE PROSPECTIVE CONTRACTORS

*(Revised September 13, 2011 through PROCLTR 2011-33)*

### 9.104-1 General standards.

(c)(90) 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 the System for the Analysis of Laboratory Testing (SALT) program, and other applicable quality history records, such as those from the quality evaluation program (QEP) and from the customer depot complaint system (CDCS), should be included in the contracting officer's determination and documentation of contractor responsibility.

Contractor quality performance records will not be limited to product quality deficiencies, but also will include discrepancies due to inadequate packaging, improper or missing documentation, overages, shortages, misdirected or damaged shipments, and similar discrepancies. Individual and summary records of actions taken will be maintained for review by management. If there are overriding reasons for awarding a contract to a supplier who has an unsatisfactory quality history, the contract file will be documented accordingly, and a quality assurance letter of instruction (QALI) shall be submitted to the activity responsible for Government acquisition quality assurance at source or destination.

(c)(91) Contracting offices will maintain appropriate documentation to facilitate assessment of contractor's recent delivery performance. Contracting personnel should utilize performance data on both currently active and recently closed awards (if available) in responsibility determinations and when considering contractors for placement on the DLA contractor alert list (CAL). Absent identifiable positive corrective action, poor past performance indicates poor future performance. Documentation of contractor-caused delinquencies should serve as sufficient evidence to substantiate a nonresponsibility determination. (For procedural consequences of that determination with regard to small businesses, see, generally, FAR 19.6 and DFARS 219.6.)

A supplier's repeated refusal to perform purchase orders issued in accordance with small purchase procedures may also be used as a basis for not awarding future contracts. Since inaccuracies in delivery data may occur, performance histories should be reviewed and furnished to the contractor before serious actions are taken. Overall delivery performance data shall be based on ship dates not receipt dates, due to problems in obtaining timely receipt data.

**9.104-1(e)(90)**
Use clause 52.209-9014, Vehicle Registration and Operations, for base support acquisitions involving installation access to the Defense Logistics Agency facility located in Richmond, Virginia.

(g)(90) 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 DoD-FDA Interagency Agreement on Drugs, dated 17 December 1975. 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.

(90) The Defense Logistics Agency contractor alert list (CAL) is a monthly listing of suppliers who may require special evaluation before a determination of responsibility can be made. The list is provided to contracting offices by the Defense Contract Management District East (DCMDE) based on input from all Defense Contract Management Districts (DCMDs) and other contracting offices. Suppliers are added to the list when they are recommended for a preaward survey (PAS) by a contract administration office (CAO) for a particular reason. Contracting officers shall consider the DLA CAL as they would other similar data related to contractor performance. Appearance on the list (or any other indication of questionable prior performance, as set forth in 9.106-1(a)(90)(1) through (9)) does not mean a supplier is nonresponsible, but it puts the contracting officer on notice to consider carefully and deliberately the need for additional steps in making a responsibility determination in individual cases. (Any questions pertaining specifically to the alert data should be directed to the PAS monitor at the CAO that has cognizance over the contractor involved, rather than to the contracting officer.)

**9.104-2 Special standards.**

(a)(90) As stated in FAR 9.104-2, special standards of responsibility may be needed for a particular acquisition to ensure adequate contract performance.

(b)(90) Contract clause.

Insert the clause at 52.209-9031, Definitive Responsibility Criteria (DLA Energy), in DLA Energy solicitation and contracts when the offeror is required to meet special standards of responsibility, prior to award, in addition to the general standards for meeting responsibility requirements. See FAR 9.104-2 for further guidance. This clause shall not to be used to create qualification requirements as stated in FAR 9.2.

Other DLA contracting activities may use this clause as needed when similar conditions exist. The contracting officer shall insert a description of the requirement, i.e., letter, permit, license, authorization, proof of capability, in paragraph (a).

**9.104-6 Federal Awardee performance and integrity information system (FAPIIS).**

(c)(2)(90) When performing a responsibility determination, if the contracting officer or acquisition specialist identifies information in FAPIIS that is appropriate for the DLA debarment and suspension official's consideration, the buyer shall inform local counsel of the existence of such information. If upon review, local counsel determines that the information could be relevant for consideration in connection with a current or prospective debarment or suspension action, the attorney shall notify General Counsel, DLA HQ.

**9.105 Procedures.**

**9.105-1 Obtaining information.**

(90)(a) The excluded parties list system (EPLS) is the official, mandatory source for identifying contractors that are ineligible for award. DLA buying activities shall ensure that data in the EPLS and information on the Defense contractor review list (DCRL) are consistent. Whenever updates are made to the EPLS (i.e., when contractors that have been identified as debarred, suspended, proposed for

debarment, or otherwise ineligible for award are added to (or removed from) the EPLS), notification shall be provided to the DCRL Monitor requiring identical updates to the DCRL.

(90)(b) Insert the clause at 52.209-9032 Responsibility Criteria for Support to Overseas Contingency Contracts in all solicitations for overseas contingency operation support contracts in excess of $10 million per year. This provides authority for the contracting officer to request an offeror to provide total company ownership information prior to award of any overseas contingency operation support contract in excess of $10 million per year.

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

(1) Comply with all requirements in FAR 9.105-1;

(2) Immediately prior to award, review the EPLS to ensure the prospective contractor is not listed, print a screen shot for documentation of this review, and place the screen shot in the official contract file and the ECF. (For EBS activities, automated delivery orders and automated awards made using the Procurement Automated Contract Evaluation (PACE) System do not require insertion of an EPLS screen shot in the contract file. In the event the prospective awardee is on the EPLS, the contract-writing system will refer the acquisition for manual review; in which case, the requirement to print a screen shot documenting that the awardee is not on the EPLS and insert it in the official contract file and the ECF will apply.)

(3) Review the DCRL (see 9.105-1(92) and comply with DCRL special attention treatment codes in Business System Modernization (BSM) SAP; and

(4) Refer to on-site procedures to determine whether application of any of the following additional tools is mandatory:

(i) Contractor performance history (CPH). (See 9.105-1(92)(3).)

(ii) Dun and Bradstreet (D&B) financial reports. Acquisition specialists (preaward) may submit requests for D&B information to the industrial specialist.

(A) D&B reference plus provides the acquisition specialist (preaward) a firm's D&B rating (if D&B has rated the company). The rating or composite credit appraisal (CCA), with a brief explanation of that rating code, provides information relative to whether the contractor has adequate financial resources, or the ability to obtain them, to perform the contract.

(B) If a contractor is not listed, or is listed but not rated, and there are financial concerns about the contractor and/or the contract is a very high dollar value and complex long-term contract, a report may be ordered in accordance with on-site procedures.

(iii) Contractor general files. Refer to on-site procedures for required content and DSC focal point responsible for maintaining file. Contractor general files include delivery performance data on both active and recently closed awards.

(iv) Pricing branch files. Refer to on-site procedures.

(v) Quality history. When a detailed review of a contractor's past quality performance is desired and a preaward survey (PAS) is not being contemplated, the acquisition specialist (preaward) may request a quality history from the product specialist in accordance with on-site procedures. If a preaward survey is being contemplated, the acquisition specialist (preaward) shall follow on-site procedures for requesting the quality portion of the preaward survey.

(92) Defense contractor review list (DCRL).

(1) Maintenance and dissemination.

(i) The DCRL monitor is responsible for maintaining the DCRL. 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 in DPACS DCRL.

(ii) The DCRL is accessible through the DPACS "Vendor" icon; or by viewing the "DCRL" Field in. The DCRL field identifies contractors by CAGE Code that are on the DCRL. Personnel who do not have access to DPACS may request a hard copy of the information, which will mirror the information contained in DPACS DCRL field. Detailed information will be controlled and obtained from the DCRL Monitor.

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

(2) Effect of the listing.

(i) Acquisition specialists (preaward) shall comply with BSM SAP special attention treatment codes, both "required" and "recommended". Acquisition specialists (preaward) shall not make award decisions inconsistent with DCRL treatment code requirements; unless the DCRL monitor is consulted, higher-level approval is obtained, and the rationale is fully documented in the contract file.

(ii) The BSM DPACS DCRL includes contractors that are undergoing close scrutiny by all three Defense supply centers (DSCs). The BSM DCRL is enterprise-wide, with reason and treatment codes from all three DSCs. Generally, acquisition specialists shall apply the codes designated by the supply chain to which they are assigned, as experience has shown that vendor performance varies widely from one supply chain to another; however, acquisition specialists (preaward) shall consult the DCRL monitor if clarification is needed.

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

(iv) The DCRL shall not be used as a "blacklist". Contractors on the DCRL shall still be considered for solicitation (except when the special attention treatment code is "08" (see 9.105(92)(6)(i)(B)).

(v) Information on the DCRL may or may not be sufficient to determine a contractor nonresponsible. It is possible for a contractor that is on the DCRL to be determined responsible.

(3) Contractor performance history (CPH). When the BSM SAP special attention treatment code SAP description states "review contractor performance history," refer to on-site procedures for the procedures for requesting a CPH. The completed CPH will include specific actions recommended for the current procurement.

(4) Referrals to the DCRL monitor include, but are not limited to the following:

(i) Notifications requiring that contractors be added to the DCRL when there is suspected fraud, unauthorized product substitution, counterfeit material, collusion, unauthorized foreign items, etc.; and an investigation has been initiated. The notification includes specific instructions for Acquisition Specialists (preaward and postaward) to follow in the event of award;

(ii) Referrals for investigation of a contractor (e.g., when the contractor has had several confirmed PQDRs; when a contractor has requested multiple cancellations, etc.).

(iii) Referrals for investigation of a contractor (e.g., when the contractor has had several confirmed PQDRs; when a contractor has requested multiple cancellations, etc.).

(5) Reviewing/updating information on DCRL.

(i) The DCRL monitor shall periodically review each contractor listed on the DCRL to ensure the information is accurate and up to date. When conducting a review, the DCRL monitor contacts appropriate acquisition personnel to validate that previously reported conditions still exist. If the DCRL monitor recommends a contractor be removed from the DCRL and acquisition personnel disagree, the acquisition personnel shall provide information to justify retention of the contractor on the DCRL.

(ii) Acquisition Specialists (preaward and postaward) shall contact the DCRL monitor if they become aware of circumstances that may warrant changes to DCRL information.

(iii) Contractors shall be removed from the DCRL when the DCRL monitor 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.

(6) Information in DPACS DCRL consists of reason/treatment codes, the date the contractor was placed on the DCRL, and a brief recommendation/instructions narrative.

(i) BSM reason and treatment codes. BSM reason and treatment codes representing recommendations/instructions are cited for each vendor/CAGE code listed. The purpose of these recommendations/instructions is to provide visibility of known/potential areas of concern and actions that shall be taken to address such issues. When a preaward survey results in a negative recommendation, a certificate of competency is required when a small business is involved. The only instances of "do not award" involve cases of debarment, suspension, and proposed debarment; except as otherwise directed by the DSC fraud monitor (refer to on-site procedures).

(A) Special attention reason codes.

For DCRL Code A -- (In the SAP debarment status column, a “D” is entered for Debarment, a “P” is entered for proposed debarment/suspension, and an “S” is entered for suspended.)

| SAP Special Attention Reason Codes | SAP Description | DPACS Help Text |
|---|---|---|
| A | Suspended or Debarred | Debarred, Suspended or Otherwise Ineligible. 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. 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 Preaward Survey | Negative Preaward Survey. Contractors are included in this category when a preaward survey (PAS) that recommends no award has been received |

| SAP Special Attention Reason Codes | SAP Description | DPACS Help Text |
|---|---|---|
| | | 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 Alert System | DCMA "Alerts" System. 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. (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 cancel purchase orders just prior to due date in an apparent effort to reduce its delinquency rate. (5) Take advantage of a purchase order that is not legally binding on the contractor until acceptance or start of performance. |
| 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. The DoDIG 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 |

| SAP Special Attention Reason Codes | SAP Description | DPACS Help Text |
|---|---|---|
| | | (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 may not be divulged 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 ABVS purposes. |
| X | Contractor Report No Receipt of PO | Contractor Reported for Non-Receipt of Purchase Order. |
| Y | Reserved | Reserved |
| Z | Reserved | Reserved |

(B) Special attention treatment codes.

| SAP Special Attention Treatment Codes | SAP Description | DPACS Help Text |
|---|---|---|
| 01 | Reserved | Reserved |
| 02 | Evidence of AID MFR Part Number | For Part Numbered items, get evidence item was acquired from Manufacturer cited in the AID |
| 03 | Reserved | Reserved |
| 04 | Withhold Fast Pay Recommended | Withholding of Fast Pay recommended |
| 05 | Recom PAS > SAT/ Verbal < SAT | Recommend Preaward Surveys for large buys/verbal preaward 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 ABVS Info | This CAGE Code has been combined with other CAGE codes for ABVS 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 | Reserved | Reserved |
| 22 | Recommend no DRI/DEF awards | Recommend no delivery reduction Incentive/Delivery Evaluation Factor Awards |

| SAP Special Attention Treatment Codes | SAP Description | DPACS Help Text |
|---|---|---|
| 23 | Coordinate Indust Prep Monitor | Coordinate with Industrial Preparedness Monitor |
| 24 | Reserved | Reserved |
| 25 | Reserved | Reserved |
| 26 | Recommend Price Reasonableness | Recommend documentation of price reasonableness |
| 27 | Suspend Automated Awards | Suspend from Automated Systems (case by case basis) |
| 28 | Reserved | Reserved |
| 29 | Reserved | Reserved |
| 30 | Reserved | |

**9.105-2 Determinations and documentation.**

(a) Determinations.

(1)(90) If a contractor's quality deficiencies are of a critical/repetitive nature and the contractor has not taken corrective action, this information may be used as a basis for a nonresponsibility determination. Contractor quality performance deficiencies can include product quality deficiencies, discrepancies due to inadequate packaging, improper or missing documentation, overages, shortages, misdirected or damaged shipments, and/or other similar discrepancies.

(91) If it is determined that award will be made to a contractor that has a questionable quality history but cannot be determined non-responsible, the acquisition specialist (preaward) shall—

(A) Document the contract file;

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

(C) Forward a referral to the product specialist in accordance with on-site procedures, requesting a quality assurance letter of instruction (QALI). The product specialist shall submit the QALI to the activity responsible for Government quality assurance.

(92) Adverse performance history shall always be well documented.

(93) Awards proposed to vendors who are designated DCMA corrective action request level IV, (DCRL Code 12), or offering the product of a level IV firm, require higher level review and approval in accordance with on-site procedures.

(94) Use working knowledge of the contractor’s performance, and coordinate with acquisition specialist (post award) and the product specialist, as necessary.

(b) Support documentation.

(b)(2)(i)(90) If the conditions set forth in FAR 9.105-2(b)(2)(i) exist, contracting officers are responsible for ensuring that the determination of non-responsibility is reported to the Federal Awardee Performance and Integrity Information System (FAPIIS). Prior to executing a non-responsibility determination meeting the conditions of FAR 9.105-2(b)(2)(i), the contracting officer or acquisition specialist must submit an undated/unsigned draft determination with relevant supporting documents to their local counsel for review. After receipt of written confirmation that counsel has reviewed the determination, the contracting officer shall execute the determination and follow the procedures at DLAD PGI 9.105-2(b)(2)(i)(90).

(90) Determinations of responsibility or nonresponsibility shall be documented and included in the Electronic Contract File (ECF). Refer to on-site procedures for documentation and content requirements. For simplified acquisitions, an annotation on Form 395, Significant Events, in DPACS, or comparable record, is generally sufficient to document the acquisition specialist's actions under 9.105(a)(1) and (2).

(91) Distinguishing responsibility determination from past performance evaluation factor. Acquisition Specialists (preaward) shall not make a determination of responsibility based on past performance information that applies to evaluation of the contractor's offer (e.g., an automated best value system (ABVS) score).

(i) Past performance information (to include an ABVS score supported by substantiating backup documentation) can be used for evaluation purposes, if a past performance evaluation factor is included in the solicitation. The evaluation process involves a comparative assessment of offers to determine which offer represents the best value based on price, past performance, and other evaluation factors stated in the solicitation. Acquisition specialists (preaward) must, however, determine that a prospective contractor is responsible. If a contractor cannot be determined responsible, it is ineligible for award whether or not its offer appears to represent the best value.

(ii) To determine that a contractor is responsible, acquisition specialists (preaward) must determine that the contractor meets all the standards in FAR 9.104 (i.e., has adequate financial resources (or ability to obtain them); has ability to satisfy delivery requirements; has a satisfactory performance record; has a satisfactory record of integrity and business ethics; has the necessary organization, experience, internal controls, and technical skills; and is otherwise qualified/eligible for award). The DCRL is an essential resource for determining responsibility; because it not only includes past performance data – some or all of which may have gone into the calculation of the ABVS score – but it also captures data that is not included in ABVS (e.g., financial difficulties, suspected product substitution, etc.). Consequently, a contractor may have favorable ABVS scores but could be included on the DCRL for reasons that will preclude a determination of responsibility.

(93) If a preaward survey is not obtained on a proposed award exceeding $150,000, the contracting officer shall include in the contract file a memorandum explaining the basis for the determination of responsibility, addressing each of the applicable standards in FAR 9.104. When the contracting officer makes a determination regarding the prospective contractor's responsibility that is contrary to that recommended in the preaward survey report, the reason for not following the preaward survey report recommendation shall be included in the contract file. In each instance where the preaward survey report recommendation is not followed, the case must be reviewed and concurred in by the chief of the contracting office and at DLA Troop Support by the commodity business unit chiefs. The contracting officer shall provide written notice to the surveying activity that performed the preaward survey of the reason for not following the preaward survey recommendation.

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

(a)(90) Although a formal PAS is not normally requested for acquisitions valued at $150,000 or less, there are circumstances which justify conducting a PAS (formal or informal), regardless of the dollar value of the acquisition under consideration. (An informal PAS is one in which the contracting officer's request for information is able to be fulfilled by a phone call to the CAO component, and may not necessitate contacting the firm or individual in question. A formal PAS, on the other hand, requires, at a minimum, the CAO PAS monitor to conduct a telephone survey, and may require one or more site visits to the prospective contractor's location. A formal PAS always incorporates an informal survey.) Because the survey is the primary means by which the responsibility of some contractors can be determined, its performance is strongly recommended on a prospective contractor (manufacturer or nonmanufacturer) that:

(1) Has been listed on the GSA list of parties excluded from federal procurement programs within the past 3 years (or other locally determined time period);

(2) 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 locally determined time period);

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

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

(5) Has negative quality records (PQDRs, RODs, etc.) in the quality evaluation program (QEP), is on the contractor alert list (CAL), has a poor product verification record (PVR) as indicated by ICP PVR, or is otherwise known to the contracting officer to have a poor or marginal performance history;

(6) Has, within the past year (or other locally-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;

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

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

(9) Is the subject of information that is not sufficient on which to base a responsibility determination, or is a current contractor about whom the historical capability data, in terms of productive capacity, quality assurance, financial ability, etc., is unavailable to the contracting officer or is inconclusive.

(a)(91) When an offer received from a prospective contractor described in (a)(90)(1) through (9) above is proposed for award, and the contracting officer decides that actual performance of the PAS is in the best interests of the Government, the contracting officer shall request the survey, and provide the rationale for that request in the "Remarks" section of the SF 1403, Pre-award Survey of Prospective

Contractor (General). When a PAS is requested with respect to an offeror described in (a)(90)(1) above, the contracting officer shall identify integrity as a factor about which information is needed and shall ask that the PAS team specifically identify the corrective actions undertaken by the prospective contractor to address the problems that resulted in the contractor's being listed on the GSA List of Parties Excluded from Federal Procurement Programs.

(a)(92) When a preaward survey (PAS) is contemplated, the acquisition specialist (preaward) shall first obtain as much information as feasible from DSC records and use this information to determine if a preaward survey is required. If the acquisition specialist (preaward) cannot make a determination of responsibility or nonresponsibility based on DSC records and requires more information, the acquisition specialist (preaward) shall consider a preaward survey. For simplified acquisitions, the acquisition specialist (preaward) shall use informal (verbal) PAS procedures. For acquisitions other than simplified, the acquisition specialist (preaward) shall use either informal or formal PAS procedures, depending on the situation.

(93) To request a preaward survey:

(i) Informal preaward survey (PAS): When limited information is desired, the acquisition specialist (preaward) shall use an informal PAS to preclude the administrative effort and time of a formal survey. The acquisition specialist (preaward) shall not use an informal PAS if there is sufficient data to indicate that a formal PAS is required. Request an informal PAS in accordance with on-site procedures. 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.

(ii) Formal preaward survey (PAS): A formal PAS is used to get detailed information regarding key performance areas (e.g., technical, production, quality, etc.). (Defense Contract Audit Agency (DCAA) requires 30 days to respond to a request for financial data.) If a formal PAS is requested for a simplified acquisition, the request shall be justified in writing.

(A) Before requesting a formal PAS, the acquisition specialist (preaward) shall submit an email, or process a DPACS referral, to the product specialist for a recommendation as to whether the quality portion of the preaward survey is required. The response from the product specialist can be used to determine whether to include or exclude the quality portion of the preaward survey. Product Specialist responses may include:

*(1)* Quality history indicates quality portion of the preaward survey is not required. (If highlights are provided by the product specialist, document in accordance with on-site procedures.)

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

*(3)* Unique characteristics or manufacturing process require quality portion be done. (Document this response in accordance with on-site procedures.)

*(4)* The product specialist desires to participate in the PAS. (Document in accordance with on-site procedures.)

(B) Written requests for formal preaward surveys. (Refer to on-site procedures).

**9.106-2 Requests for preaward surveys.**

(90) Generally, a preaward survey shall be requested only when award is contemplated to a firm from which a bid or proposal has been received. However, a preaward survey may be requested of the facilities or firms supplying perishable food items before receipt of a bid or proposal when the time between opening/closing and award would not be sufficient for a survey following receipt of an offer. Concurrent requests for preaward surveys may be made in emergency situations and/or when multiple awards are contemplated. The need to request concurrent preaward surveys will depend upon the circumstances of the individual acquisition. Contracting officers shall obtain the agreement of the appropriate CAO preaward survey monitor prior to the submission of such requests. Although FAR 9.106-2(d) specifies a norm of 7 working days for conducting preaward surveys, except for FDA determinations, contracting offices should provide for the maximum allowable time, particularly if a negative finding is anticipated or a secondary survey will be required. When the contracting office needs a response in less than 7 working days, the surveying activity should be provided with the reason for the expedited survey. Surveying activities should notify contracting officers of survey results by telephone or electronically transmitted message on the day the survey is mailed.

(a) Additional factors would include the need for special facilities (e.g., tools, machines, test facilities) required to produce the item. Failure to liquidate indebtedness indicates a lack of responsibility. Therefore, if it is proposed to contract with firms indebted to DLA, and the proposed contract would otherwise require a preaward survey, an annotation should be made in the "Remarks" section of the SF 1403.

(a)(ii) 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.

(e) Contracting officers shall restrict their requests for preaward survey information to that which is not already available to the contracting office. The contracting officer must determine the scope of the preaward survey to be performed. (Preaward survey requests on sole source suppliers will be limited to partial surveys.) The only factors to be investigated (e.g., production backlog, finances, and quality history) are those which actually affect or indicate the contractor's ability to perform under the contract and for which the contracting officer does not have sufficient knowledge to make a responsibility determination.

(i) When limited information is required, it can often be obtained through telephonic contact with the PAS monitor at the cognizant contract administration office (CAO), precluding the administrative effort associated with a formal PAS request.

(ii) 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.

**9.106-3 Interagency preaward surveys.**

(b) The list shall be retained with the contract file.

**9.106-4 Reports.**

(a) Refer to on-site procedures for actions required when a negative preaward survey report is received.

(b) When a contracting officer's determination of contractor responsibility is inconsistent with the recommendation in the preaward survey report, the rationale shall be documented in the contract file. This decision shall be reviewed and approved in accordance with on-site procedures. The preaward survey monitor shall advise the surveying facility of the contracting officer's decision.

(c) Acquisition specialists (preaward) shall document the procurement file and ensure all documents are scanned into the electronic contract file (ECF).

**9.106-90 DLA preaward survey monitors.**

(a) Each DSC will designate an organizational element to serve as the focal point for preaward surveys 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 preaward surveys, the focal point 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 DSC quality assurance personnel. The on-site PAS Monitor shall:

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

(2) Send one copy of all formal preaward survey documentation regarding a company's quality control to the product specialist. (Refer to on-site procedures.)

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

(b) A register of all PAS requests and responses, both formal and informal, shall be maintained in a current status by the PAS monitor at each DSC. As a minimum, this register shall include:

(1) PAS or FDA number (to provide an audit trail).

(2) Date of preaward survey request. If the request is made by phone and a written report is requested, the SF 1403 must follow by mail on the same day as the telephone request.

(3) Date completed report to be returned (Block 10). (This is the date by which the surveying activity is to mail the completed report.)

(4) Extended date when extension is granted.

(5) Date telephonic or electronically transmitted report is received by the DSC.

(6) Date preaward survey report is received by the DSC.

(7) Prospective contractor's name and location.

(8) Surveying activity's location.

(9) Solicitation number (RFP/IFB/PR Number).

(10) Buyer or contracting officer name.

(11) Dollar amount of proposed award.

(12) Brief identification of item to be acquired.

(13) Recommended action, whether "A," "P," or "N" (affirmative, partial, or negative).

(14) Remarks. Indicate whether recommendation was overturned, and add any other pertinent comments. (See 9.105-2(b).)

(15) Date of award, if any.

**9.106-91 Capability surveys for workshops for the blind and other severely handicapped.**

(a) The contracting office, upon request from the Committee for Purchase from People who are Blind or Severely Disabled, shall request a capability survey to determine the capability of the workshop(s) to produce specific items being considered for addition to the procurement list.

(b) The contracting office, when requesting a capability survey, shall make the request on Standard Form (SF) 1403, Preaward Survey of Prospective Contractor (General). The contracting office should emphasize factors concerned primarily with production capabilities. When a capability survey is being requested, the form shall clearly indicate the request is for a "Capability Survey" only.

(c) The contracting office shall forward requests for capability surveys to the appropriate office, in accordance with DFARS 209.106-2. The contracting office shall furnish a copy of the completed survey to the Executive Director, Committee for Purchase from People who are Blind or Severely Disabled.

(d) Capability surveys will be executed by the cognizant contract administration office in accordance with DLAM 8300.1, Defense Contract Management Agency Industrial Support Manual, Section 1-102(i).

## SUBPART 9.2 – QUALIFICATIONS REQUIREMENTS

**9.202 Policy.**

(a)(1) The chief of the contracting office shall provide to DLA HQ, attention: J72 and J7, 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 DLA HQ is not required, unless DLA HQ 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 activity competition advocate and the activity commercial advocate. When a qualification requirement is proposed for application to an item described by a document that is subject to

the Defense Standardization Program, the procedures in DoD 4120.3-M, Appendix B, apply, including the requirement for OASD approval.

**9.203 QPLs, QMLs, and QBLs.**

**9.203(a)(90) QPL connector assemblies and QPL electrical contacts.**
Use 52.209-9000, QPL Connector Assemblies and QPL Electrical Contacts, in solicitations and awards when purchasing QPL connectors with contacts listed on other QPL(s). The purpose of this clause is to increase competition and reduce the unit price of the assembled item. This can be achieved when assemblers are able to pass along cost savings they have realized by purchasing the connector from one QPL manufacturer and the contacts from another.

**9.203(a)(91) Qualified list for manufacturers/qualified suppliers list for distributors.**
Use 52.209-9012, Qualified List for Manufacturers/Qualified Suppliers List for Distributors, in solicitations and contracts which have a Qualified Suppliers List for Manufacturers (QSLM) and/or a Qualified Suppliers List for Distributors (QSLD) requirement for the item. There must be an established QSLM/QSLD in place before inclusion of this clause.

**9.203(a)(92) Component QPL/QML Items.**
Use 52.209-9013, Component QPL/QML Items, with FAR 52.209-1 (I09A01), Qualification Requirements, in all solicitations and contracts that contain component QPL(s)/QML(s).

(a)(93) Insert the clause at 52.209-9028, Qualified Suppliers List of Distributors (QSLD) – FSC 5961 and 5962, in solicitations and awards for all FSC 5961 and 5962 items in the Land and Maritime Supply Chains, including when the acquisition is conducted using FAR Part 12. If a Qualified Products List/Qualified Manufacturers List (QPL/QML) is applicable, also insert the clause at FAR 52.209-1, Qualification Requirements.

**9.206-2 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 Qualified Suppliers List of Distributors (QSLD) or Qualified Suppliers List of Manufacturers (QSLM) has been established by the contracting office, in accordance with the requirements in FAR and DLAD 9.202;

(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 Qualified Products List, Qualified Bidders List, or Qualified Manufacturers List applies to the acquisition.

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

(b) See 11.302-90 for policy regarding notification and assistance to sources removed from an acquisition identification description (AID).

**9.290 Solicitation provisions and contract clauses for aircraft launch and recovery equipment (ALRE).**

(a) Ensure the ALRE provision 52.209-9001 is included in the solicitation for all ALRE requirements with an SPC code of "01" and the AMSC is B, C, K, M, N, S, V, or Y.

## SUBPART 9.3 – FIRST ARTICLE TESTING AND APPROVAL

**9.306 Solicitation requirements.**

(c)(1) Insert 52.209-9019, Requests for Waiver of First Article Testing Requirements, in all solicitations and contracts for items that require first article testing, including when acquiring items using FAR Part 12; unless—

(i) Information provided by the product specialist in the material master, product assurance tab, indicates the specification requires submission of drawings for Government approval prior to production of first article test units, in which case insert the following clauses:

(A) 52.209-9019 with its Alternate I; and

(B) 52.209-9021, Drawing approval prior to production; or

(ii) Acquisition is for DLA Aviation depot level repairable (DLR) items managed by Army Aviation and Missile Command (AMCOM), in which case insert the clause at 52.209-9019 with its Alternate II in solicitations and contracts.

(iii) Acquisition is for DLA Land and Maritime depot level repairable items managed by Logistics Command (LOGCOM), in which case insert the clause at 52.209-9029, Notice of First Article Requirement and Conditions for Waiver (LOGCOM DLR – DLA Land and Maritime).

(90)(i) When acquiring items that require first article testing (either in accordance with FAR 52.209-3 or 52.209-4) and the dollar value of the procurement is not expected to exceed the simplified acquisition threshold, the clause at 52.209-9015, Waiver – First Article Test – Simplified Acquisitions, may be used if—

(A) One or more sources are identified as having been previously approved for waiver of the first article testing requirements, and the contracting officer has confirmed with the product specialist that the sources are still eligible for a waiver;

(B) The file is thoroughly documented with the rationale for considering only items produced by sources eligible for waiver of the first article testing requirements; and

(C) The price can be determined fair and reasonable.

(ii) When the clause at 52.209-9015 is used, the contracting officer shall—

(A) Delete from the solicitation any clauses other than 52.209-9015 that reference first article testing; and

(B) Use "Data Maintenance" to—

*(1)* Delete any reference to first article testing requirements in the Purchase Order Text (POT); and

*(2)* Type the following statement in the POT: This procurement is limited to consideration of quotes for items produced by sources that are eligible for waiver of first article testing requirements (see 52.209-9015).

(f)(2) Insert 52.211-9019, Reduced Delivery Schedule Applies When First Article Testing Requirements Are Waived, in all solicitations and contracts for items that require first article testing, including when acquiring items using FAR Part 12.

(i)(90) When FAR 52.209-4 applies and the Government's testing cost will be used as a factor in evaluating offers, insert the provision at 52.209-9016, Evaluation of Offers – First Article Testing, in solicitations, including when acquiring items using FAR Part 12.

(91) When FAR 52.209-3 applies and the Government's cost to review the contractor's first article test report will be used as a factor in evaluating offers, insert the provision at 52.209-9016, Evaluation of Offers – First Article Testing, with its Alternate I, in solicitations, including when acquiring items using FAR Part 12.

(92)(A) First article evaluation factors, Logistics Command (LOGCOM) DLA Land and Maritime.

(1) Insert the provision at 52.209-9030, First Article Evaluation Factors (LOGCOM DLR – DLA Land and Maritime) in solicitations for DLA Land and Maritime acquisitions of depot level repairable items managed by LOGCOM when first article testing is required.

(2) Use the provision with its Alternate I when the First Article Testing will be performed by the Government.

**9.306-90 Solicitation requirements for production lot test.**

(a) Policy. The product specialist determines whether production lot test (PLT) will be required.

(1) The acquisition specialist shall establish PLT as a separate, no-charge CLIN in the solicitation. This will preclude paying for the items twice, when they are delivered with the production quantity.

(2) The acquisition specialist shall refer any requests for waivers or deviations from PLT requirements to the product specialist, who will evaluate the request and furnish recommendations to the acquisition specialist.

(3) Upon receipt from the testing facility of the testing results and the recommendation of approval or disapproval, the acquisition specialist shall provide a copy of the results/recommendation to the product specialist, in addition to providing written notification to the contractor.

(b) PLT clause.

Insert the clause at 52.209-9026, Production Lot Test (PLT), in solicitations and awards, including when the acquisition is conducted using FAR Part 12, when the procurement item description (PID) includes the statement: "Production Lot Test Required."

(1) Complete the fill-ins in 52.209-9026 with information in the Material Master, Product Assurance tab, under Classification.

(2) Whenever PLT is required, the product specialist is responsible for adequately defining the required quality requirements. These requirements shall, at a minimum, include the following:

(i) Specific production lot tests and evaluations to be conducted; including sequence of processes, testing procedures, and evaluation;

(ii) Reporting requirements (e.g., due date, number, distribution of production lot test reports); and

(iii) Criteria for determining conformance to production lot test requirements.

**9.307 Reserved**

**9.308 Contractor 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 first article testing are identified, or a statement is present indicating there are no waived sources, when the clause at 52.209-9015 will be used (see 9.306(c)(90)(i));

(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, First Article Approval, with its Alternate I. Complete the fill-ins with information in the material master, product assurance tab;

(B) Ensure the delivery schedule specified in the solicitation includes the number of calendar days allotted to the contractor for first article testing 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 additive CLIN number for ""Contractor first article test (FAT) (including test report)." Insert the inspection and acceptance points under the additive CLIN and in SAP.

(2) 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 at 9.308-1(a)(91)(ii)(A)-(C) 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:

*(1)* Use Alternate I when the product specialist has communicated to the contracting officer that first article approval authority shall be delegated to the Defense Contract Management Agency (DCMA) administrative contracting officer (ACO) whenever the awardee will be required to perform contractor first article testing;

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

*(3)* Use Alternate III when the material master, 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)" additive CLIN. The price offered for the contractor first article test (FAT) (including test report) must be determined fair and reasonable, in addition to 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 First Article Test (FAT)," the following requirements apply:

(A) Ensure the appropriate additive CLIN numbers are established for "Contractor First Article Test (FAT) (including test report)" in the award document; and in SAP, upon funding of the

award. Additive CLINs must be established for all FAT requirements (e.g., CLIN 9906, FAT Samples; CLIN 9907, FAT Report; etc.). 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) Provide notification by e-mail, including award number, NSN, and Additive 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:

DLA Land and Maritime FAT Monitor, BPI
Post Office 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
Test Coordinator Office
8000 Jefferson Davis Highway
Richmond, Virginia 23297-5100

*(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 20376-5160
Telephone: (202) 781-3729

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

(ii) Outline agreements. When awarding outline agreements that include items with first article testing 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.

(iii) When the clause at 52.209-3 was included in the solicitation, and it has been determined that the first article test and approval requirements will be waived for the awardee, the contracting officer shall reflect this in the award by taking the following actions:

(A) Insert the clause at 52.209-9020, First Article Testing Requirements Are Waived, in the award; and

(B) Use "Data Maintenance" to—

(1) Delete any reference to first article testing in the purchase order test (POT); and

(2) Free-type the following statement in the POT: First article testing 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 First Article Testing (FAT) are identified, or a statement is present indicating there are no waived sources, when the clause at 52.209-9015 will be used (see 9.306(c)(90)(i)); 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 first article testing. Micro-purchase procedures and simplified acquisition procedures that solicit and/or award automatically shall not be used.

(91) Solicitation. Insert the clauses as prescribed at 9.308-2(a)(91)(i)-(ii) 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, 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)*(1)* Insert the additive CLIN number for "Government First Article Test (FAT)." Insert the inspection and acceptance points under the additive CLIN and in SAP.

*(2)* Identify the "Government First Article Test (FAT)" 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) 52.209-9018, First Article – Government Test – Additional Requirements; with its alternate(s) as prescribed below, if applicable—

(B) 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).

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

(D) Use Alternate III for Medical and Subsistence items. The contracting officer shall complete the appropriate fill-in in paragraph (a)(2)(ii) with information in the Material Master, Product Assurance tab; or, if no alternative direction appears, mark "Other," and insert "in accordance with contract terms."

(E) Use Alternate IV for meal, ready-to-eat (MRE) and tray pack items;

(F) Use Alternate V when the purchase order text (POT) cites that MIL-STD-1525B applies;

(G) Use Alternate VI when the material master, 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;

(H) Use Alternate VII when progress payments for the first article units are authorized in the contract. Circumstances justifying the need for progress payments (e.g., when exceptionally high start-up costs are anticipated, etc.) and the basis for determining the maximum dollar value and/or percentage of total contract price shall be thoroughly documented in the contract file.

(I) Use Alternate VIII in requests for quotes when Government first article test requirements apply, and the contracting officer determines its use is appropriate (e.g., if prior quoters for the item are known to have submitted unbalanced quotes in the past, etc.).

(92) Evaluation of offers.

(i) Review the price offered for the "Government First Article Test (FAT)" Additive CLIN. The price offered for "Government First Article Test (FAT)" must be determined fair and reasonable, in addition to the price offered for the production units. Evaluation shall be based in part on the terms for disposition of the first article units.

(ii) If the provision at 52.209-9016, Evaluation of Offers – First Article Testing, was included in the solicitation, the Government's estimated testing costs shall be used as a factor in evaluating offers.

(93) Award.

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

(A) Ensure the additive CLIN numbers are established for "Government First Article Test (FAT)" in the award document; and in SAP, upon funding of the award (e.g., CLIN 9906, FAT Samples; CLIN 9907, FAT Report; etc.). Additive CLINs must be established for all FAT requirements. 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) Provide notification by e-mail, including award number, NSN, and additive 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:

DLA Land and Maritime FAT Monitor, BPI
Post Office 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, Test Coordinator Office
8000 Jefferson Davis Highway
Richmond, Virginia 23297-5100

*(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, DC 20376-5160
Telephone: (202) 781-3729

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

(D) 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.

(E) 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 First Article Test (FAT). When the clause at 52.209-4 was included in the solicitation, and it has been determined that the first article test and approval requirements will be waived for the awardee, the contracting officer shall reflect this in the award by taking the following actions:

(A) Insert the clause at 52.209-9020, First Article Testing Requirements Are Waived, in the award;

(B) Select the appropriate additive CLIN number in DPACS to indicate that first article testing requirements are "Waived;"

(C) 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

(D) Use "data maintenance" to—

(1) Delete any reference to First Article Testing in the Purchase Order Test (POT); and

(2) Free-type the following statement in the POT: First article testing requirements are waived for this procurement.

**9.308-2(90) Pre-award sample(s) for medical materiel.**
Use 52.209-9003, Pre-Award Sample(s), in solicitations for medical materiel. If the contracting officer determines that routine preaward survey techniques are inadequate or have failed to result in a conclusive determination of the prospective contractor's responsibility, the clause allows the contracting officer to request a sample to verify responsibility.

(a) Preaward samples may be required only when the contracting officer has included in the file written documentation detailing the reasons that a conclusive determination of the prospective contractor's responsibility is not possible unless preaward samples are submitted for evaluation.

(b) The clause shall not be used when any of the following conditions exist:

(1) Sole source items

(2) Rapid entry items

(3) Military unique items

(4) Repair parts

(5) DVD purchases

(6) Bid samples are required

(7) First article testing is required

(c) Insert in paragraph (a) the item number(s) and number of units required; insert in paragraph (c)(2) the number of days, not to exceed 20 days, needed to evaluate the samples.

**9.390 Compatibility testing.**
When the material master indicates compatibility testing is required, insert the clauses at 52.209-9022, Compatibility Testing Requirements, and 52.209-9023, Compatibility Testing Approval – Government Testing, in solicitations and awards, including when acquisitions are conducted using FAR Part 12. Complete the fill-ins in 52.209-9023, Compatibility Testing Approval – Government Testing, with information shown in the material master, product assurance tab.

**9.391 Government fit verification testing.**
When acquiring DLA Aviation items and the material master indicates Government fit verification testing is required, insert the clauses at 52.209-9024, Government Fit Verification Testing, and 52.209-9025, Government Fit Verification Testing Approval, in solicitations and awards, including when acquisitions

are conducted using FAR Part 12. Complete the fill-ins in 52.209-9025, Government Fit Verification Testing Approval, with information shown in the material master, product assurance tab.

## SUBPART 9.4 – DEBARMENT, SUSPENSION, AND INELIGIBILITY

### 9.404 Parties excluded from procurement programs.

(c)(1) The Special Assistant for Contracting Integrity (SACI), General Counsel, DLA HQ, shall furnish to the General Services Administration all additions, deletions, or modifications to the list of parties excluded from federal procurement and nonprocurement programs resulting from DLA action.

(c)(4) Departmental records. The records required by FAR 9.404(c)(4) are maintained for DLA by the SACI.

(c)(90) Each DLA activity shall obtain and have available the most recent edition of the list of parties excluded from federal procurement and nonprocurement programs. Consult the list before completing any contracting action identified in FAR 9.405, 9.405-1(b), or 9.405-2.

### 9.404-90 Sources for clothing/textile components.

Use 52.209-9004, Sources for Clothing/Textile Components - NIB and NISH, in all orders in the clothing and textile and medical supply chains with NIB/NISH for clothing and equipment items which are to be fabricated in whole or in part from a cloth or textiles subcontractor.

### 9.404-91 Identification of sources for all components for clothing/textile items.

Use 52.209-9005, Identification of Sources for All Components for Clothing/Textile Items, in solicitations in the clothing and textile and medical supply chains for clothing and equipment items which are to be fabricated in whole or in part from cloth or textiles.

### 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 shall forward a written request, including supporting information and rationale that has been reviewed and approved by the supply chain HCA, to the SACI via the local counsel for a determination that there is a compelling reason to make an exception. The proposed contracting action may not be taken until an exception is granted in writing by the SACI.

(90) 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 and any other affected DLA activity that is aware of the recommendation will coordinate with the 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 General Counsel of a report recommending debarment or suspension, contracting officers, in coordination with local 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 activity 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 HQ. The notice shall include a brief summary of the reasons for the recommendation. Through Counsel at the activity, each affected activity shall notify the 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)(ii)(90)(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 local counsel, shall coordinate with the 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 DLA HQ, and provide to the contractor a brief summary of the reasons for the recommendation and for the determination of nonresponsibility. In addition:

(i) 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.

(ii) If the contractor is a small business concern, the contracting officer shall include with the FAR 19.602-1(a)(2) referral to the Small Business Administration a copy of all elements of the report required by DFARS 209.406-3(a)(ii) and 9.406-3(a)(ii)(90) of this directive that would be releasable directly to the contractor.

(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 DLA HQ 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 local Counsel, shall coordinate by telephone with the General Counsel, actions to be taken under subparagraphs (2) and (3) above.

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

(a) When a DLA contracting 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 activity's records shall be reviewed to determine whether the activity 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.

(b) If a DLA activity determines that there may be such a basis, information stating the factual basis in as much detail as practical shall be forwarded promptly to the General Counsel.

(92) Procedures and responsibilities. To preclude contractors that are debarred, suspended, or proposed for debarment from receiving contracts:

(1) Buying activities shall ensure that procedures are in place—

(i) To notify the DCRL monitor when contractors that are identified as debarred, suspended, or proposed for debarment have been added to the Excluded Parties List System (EPLS);

(ii) To preclude awards of automated delivery orders under outline agreements (OAs)/long-term contracts (LTCs) to contractors that are debarred, suspended, or proposed for debarment;

(iii) 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 acquisition specialist (preaward).

(2) Acquisition specialists (preaward) shall:

(i) Not accept requests for solicitations from contractors that are debarred, suspended, or proposed for debarment during the period of time prescribed in the DCRL;

(ii) Ensure the prospective contractor is not debarred, suspended, or proposed for debarment when preparing the award; and document the award file accordingly.

(iii) Review FAR 9.405-2 for restrictions on subcontracting with contractors that are debarred, suspended, or proposed for debarment.

(3) Contracting Officers shall, prior to signing award documents, verify that the Acquisition Specialist (preaward) complied with all requirements in 9.405(92)(2).

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

(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 local counsel, prior to such authorization.

**9.406 Debarment.**

**9.406-3 Procedures.**

(a)(i)(90) Reports based on indictments or convictions.

(A) 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).

(B) 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.

(a)(ii)(A) The activity contact point shall be an attorney in the Counsel's office of the DLA activity submitting the report.

(a)(ii)(90) In addition to the information required by DFARS 209.406-3(a)(ii), include the following:

(A) A brief fact sheet setting forth the essential reasons for the recommendation to suspend or debar.

(B) The name of the investigative agency, or agencies, if any, that investigated either the facts reflected in the report or other aspects of the contractor's business dealings with the Government.

(C) Available Dun and Bradstreet reports on the subject contractor, including the Dun and Bradstreet Government Activity Report, and the Dun and Bradstreet number of the subject contractor, if available.

(D) Relevant information obtained from the Federal Awardee Performance and Integrity Information System (FAPIIS).

(91) When the basis for debarment or suspension is nonperformance, untimely performance, unsatisfactory quality or production performance, noncompliance with contract terms, or any other cause under FAR 9.406-2(b), include an explanation of previous contract steps taken to protect the Government's interest (e.g., termination for default, determinations of nonresponsibility) or an explanation of why such steps were not taken.

(92) When preparing a report pursuant to DFARS 209.406-3(a), contact the cognizant DCMD(s) to obtain the information required by DFARS 209.406-3(a)(ii)(F). If DCMD records reflect contracts with other DLA contracting offices, notify those other DLA contracting offices of the proposed recommendation and furnish them and the DCMD(s) the information upon which the report will be based. State in the report that this intra-agency coordination has been accomplished, list the DLA activities contacted, and summarize the information exchanged.

(a)(iii) The report required by DFARS 209.406-3(a) shall be signed by the contracting officer, reviewed and approved by the supply chain HCA, and submitted by the Commander or Director of the PLFA recommending activity to the General Counsel, DLA HQ. Designate the report "For Official Use Only," unless the contents of the report warrant a security classification.

(a)(iii)(90) When a report recommending debarment or suspension is forwarded to the General Counsel, distribute copies of the fact sheet described in 9.406-3(a)(ii)(90)(A) to contracting personnel at the recommending activity assigned to commodities for which solicitations are likely to result in offers from the contractor identified in the report and to other DLA activities identified pursuant to (ii)(92), above.

(c)(6) The effect includes the possibility that a preaward survey evaluation factor may be applied to offers from the debarred source for the period of time specified in 9.106-1(a)(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. Debarment reflects a business judgment about a contractor's trustworthiness, commitment, and capability to successfully perform Government contracts. The debarment regulations recognize two general bases for debarment -- fraudulent or other seriously improper conduct suggesting that a contractor cannot be trusted to fulfill its contractual obligations and poor performance suggesting an inability to fulfill contractual obligations. Responsibility for managing the DLA fraud program has been assigned to the General Counsel. Thus, in those instances where suspected criminal misconduct provides the basis for debarment action, the responsibility for initiating action to ensure that a debarment report is forwarded to DLA HQ for further action lies primarily with local counsel. Conversely, 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. The contracting officer, together with the other members of the contracting team, must initiate timely, effective action to ensure that the Government's business interests are protected when a contractor's action or inaction threatens successful contract performance. The contracting officer is responsible for ensuring that contracts are awarded only to responsible contractors with a high likelihood of being able to successfully perform in accordance with contract terms and conditions. Contracting officers are also responsible for making effective use of available contract remedies, including action to terminate contracts for default and recover for damages suffered, and pursuing extra-contractual remedies, such as debarment of poor performers, where the Government's business interests are at risk. In accordance with the procedures contained in subparagraph (c) below, the cognizant contracting officer will refer to local 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 local 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 the only reasonable alternative available left to the Government. Efforts by the Government to protect its interests by less severe measures (e.g., changing the point of acceptance, suspension of progress payments or placing the contractor on the local contract award checklist) must be clearly identified. While debarment decisions are based on a determination of a contractor's present responsibility, detailed knowledge of that contractor's performance history and record including actions taken by the Government is critical to the debarring official's determination. Referrals to local 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 local counsel in presenting the case to the DLA SACI.

(2) When referring a contractor to local 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)(90)(1) after the suspension is no longer in effect (see 15.304(c)(95)).

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# PART 10 – MARKET RESEARCH

*(Revised August 13, 2012 through PROCLTR 2012-46)*

**10.001-90 Policy.**

(a) The extent of market research that is appropriate depends on such factors as urgency, estimated dollar value, complexity, and past experience. Buying activities shall tailor market research efforts based on anticipated benefits and cost effectiveness, as well as consideration for the type of procurement being conducted.

(b) To ensure that applicable market conditions are considered in the acquisition decision-making process, market conditions may need to be continually monitored, analyzed and forecasted by the contracting activity to determine their potential impact on various elements of the acquisition strategy and plan (see FAR 7.105(b)(1)).

(c) Market research is a joint responsibility of the contracting office and the requiring activity. Requirements personnel and contracting officers must work together as a team to gather market data needed to make decisions.

(1) The contracting officer shall ensure that requirement statements reflect any available commercial solutions.

(2) The contracting officer shall advise the requiring activity which may perform market research that their research must be restricted to identifying commercial solutions and sources and not obtaining price quotes or entering into detailed discussions with suppliers about their capabilities.

(d) DLA activities will not delay the instant acquisition to conduct market research when the estimated dollar value is less than the simplified acquisition threshold (SAT), unless the contracting officer determines it is cost-effective to do so or a bundling analysis must be performed pursuant to FAR 10.001(a)(2)(iv) and DFARS 210.001.

**10.002-90 Procedures.**

(a) DLA contracting activities may develop local procedural guidance for conducting market research as necessary, so long as there is no conflict with the FAR, DFARS or DLAD Part 10.

(b) Market research efforts shall be documented in the procurement file and used in acquisition planning and requirements development (see Parts 7 and 11).

(c) Procedural guidance is provided in PGI Part 10.

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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

**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. When the contracting officer considers it appropriate to obtain documentation to confirm that the market acceptance criteria have been met, in addition to any documentation that may be specified in the requirements document, the contracting office may use the provision at 52.211-9001, Market Acceptance.

(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.

(xi) When the contracting officer considers it appropriate to obtain documentation to confirm that the market acceptance criteria have been met, in addition to any documentation that may be specified in the requirements document, the contracting office may use the provision at 52.211-9001, Market Acceptance.

**11.107 Solicitation provisions.**

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

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.

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 July 28, 2011 through PROCLTR 2011-21)*

**11.201 Identification and availability of specifications.**

(b) 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.

(S-90) 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 air port of embarkation (APOE).

**11.204-91 New drug applications**.
Use 52.211-9044, New drug applications, in all solicitations for pharmaceuticals and drugs.

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

**11.204-93 FDA compliance.**
Use 52.211-9046, FDA Compliance, in solicitations and contracts for non-standard drugs, pharmaceuticals, biological and chemical items to be shipped to overseas destinations and subsistence items.

**11.204-94 Annotation of shipping documents for bulk lubricating oil, engine.**
52.211-9030, Annotation of Shipping Documents for Bulk Lubricating Oil, Engine, Grade OE/HDO 40, provision shall be utilized for solicitations for bulk lubricating oil, engine, grade OE/HDO 40, MIL-L-2104E.

**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.

**11.204-96 Packaging and marking requirements.**
Use 52.211-9033, Packaging and Marking Requirements, in all solicitations and awards.

**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.

**11.204-101 Special notice of contractor responsibilities for components and tooling (Army Aviation and Missile Command (AMCOM) depot level repairable (DLR) –DLA Aviation).**
Insert the clause at 52.211-9065, Special Notice of Contractor Responsibilities for Components and Tooling (AMCOM DLR – DLA Aviation), in solicitations and awards for DLA Aviation acquisitions for depot level repairable items managed by AMCOM when the acquisition is valued greater than $150,000 and Government furnished property (GFP) is to be provided.

**11.204-102 Required delivery for orders (AMCOM DLR – DLA Aviation).**
Insert the clause at 52.211-9066, Required Delivery for Orders (AMCOM DLR – DLA Aviation), in solicitations and awards for BOAs, IDIQs, and requirements type contracts for DLA Aviation depot level repairable items managed by AMCOM.

**11.204-103 Deliveries or performance – time of delivery (Naval inventory control point (NAVICP) depot level repairable (DLR) – DLA Aviation).**
Insert the clause at 52.211-9067, Deliveries or Performance – Time of Delivery (NAVICP DLR – DLA Aviation), in solicitations and awards for DLA Aviation acquisitions of depot level repairable items managed by NAVICP if the Government desires delivery by a certain time but requires delivery by a specified later time, and the delivery schedule is to be based on the date of the contract. When this clause is used, the acquisition specialist shall complete the fill-ins in paragraphs (a) and (c); and the clause at 52.211-9051, Time of Delivery, shall not be used.

**11.204-104 Packaging, packing, marking and labeling of hazardous material shipments (DLA Maritime-Norfolk).**
Insert the clause in full text at 52.211-9084, Packaging, Packing, Marking and Labeling of hazardous Material Shipments, in all DLA Maritime-Norfolk firm-fixed-price solicitations and awards which require shipment and delivery of hazardous materials.

**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.

**11.204-106 Deteriorative material marking (DLA Maritime-Norfolk and Puget Sound).**
Insert the clause in full text at 52.211-9086, Deteriorative Material Marking, in all DLA Maritime-Norfolk and Puget Sound firm-fixed-price solicitations and awards which require delivery of deteriorative material.

**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 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 clause.**

**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 NSN as evidenced by acquisition advice code (AAC) W and a statement in the special message field of the 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 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 BSM or 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 August 3, 2012 through PROCLTR 2012-45)*

**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)(90) 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.)

(b)(91) Market research requirements for establishing and maintaining long term contracts (LTCs). Business rules governing establishment and maintenance of LTCs by integrated supplier teams (ISTs) and strategic material sourcing groups (SMSGs) are addressed in the procurement business rule for long term contracting, which can be accessed at https://polh.bsm.dla.mil/.

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

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

*(2)(i)* 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

*(ii)* 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.).

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

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

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

*(2)* 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.).

(C) 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).

*(1)* 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. (See 11.302(b)(92)(iii).) 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.

*(2)* Establish internal audit procedures to ensure that offers of surplus material are processed in accordance with the policy in this Subpart 11.3 and in Appendix L.

(D) 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.

(E) 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:

*(1)* Dollar value of the acquisition;

*(2)* Age of the offered material;

*(3)* When the buy is for stock;

*(4)* When the offer is for less than the solicited quantity;

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

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

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

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

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

*(1)* 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.

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

(b)(92) Contracting officer responsibilities and procedures.

(i) Unless 11.302(b)(92)(iii) 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) trailer sheet indicates that offers of surplus material will not be considered for the item being acquired (see 11.302(b)(91)(ii)).

(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) If an offer of surplus material is determined technically unacceptable, the technical/quality specialist must provide supporting documentation that cites specific reasons why the material is technically unacceptable. Promptly notify the offeror that the offer was rejected (see 11.302(b)(92)).

(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 (11.302(b)(92)). 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 (11.302(b)(92)(xi)(B)(3)). 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 (11.302(b)(92)). 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.

(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. (For example, 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 11.302-90(a)(1)-(3)).

(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 | Noncritical or CIC Blank | Yes | No | No | No |
| | CAI | Yes | No | No | No |

| | | | | | |
|---|---|---|---|---|---|
| offering "exact product" cited in POT or PID | 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 procedures in PGI 11.302-92, Obtaining and Assessing Adequacy of Traceability Documentation.

(b) 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.**
See mandatory procedures in PGI 11.302-92, Obtaining and Assessing Adequacy of Traceability Documentation.

**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 provisionsand 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; 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 Contract clauses.**

(a) Use 52.211-9024 Shelf-Life Items Manufacturing Restrictions for Federal supply group (FSG) 91 fuels, lubricants, waxes and oils items when shelf-life requirements are specified in the purchase order text (POT). Do not use when acquiring direct vendor delivery (DVD) shipments for FSG 91. Use 52.211-9024 alternate I, Shelf-Life Items Manufacturing Restrictions for FSG 91, when acquiring DVD shipments for FSG 91 and shelf-life requirements are specified in the POT.

(b) Use 52.211-9025, Compliance with National Sanitation Foundation (NSF) Requirements, in Solicitations, Negotiated Contracts and Purchase Orders for purchase of items in FSC 41 and 73. Time of delivery shall reflect the additional time below added to the normal required delivery period when the offeror indicates that the item will be or currently is being tested for compliance with NSF standards.

(c) (1) Use 52.211-9043, Medical Material Requiring Refrigeration, in solicitations and awards for medical items requiring special handling and/or refrigeration.

(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.

(d) The clause at 52.211-9015, Preference for Recycled Toner and Cartridges, shall be used in solicitations and awards for toner cartridges for laser printers, photocopiers, facsimile machines, or micrographic printers unless, based on conditions listed in the clause, it is determined remanufactured or recycled toner cartridges will not be procured.

(e) Contract clause for deoxyribonucleic acid (DNA) marking. Use the clause at 52.211-9074, Deoxyribonucleic Acid (DNA) Marking on High Risk Items, for all acquisitions of items falling within Federal Supply Class (FSC) 5962, Electronic Microcircuits, when the item description states that the item requires DNA marking.

## SUBPART 11.4 – DELIVERY OR PERFORMANCE SCHEDULES

*(Revised September 26, 2012 through PROCLTR 2012-52)*

(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.

**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.)

**11.401(93) DLA Energy solicitations and contracts - performance in the Republic of Korea.**
Insert the clause at 52.211-9068, Continuance of Performance During any State of Emergency (Republic of Korea) (DLA Energy), in DLA Energy solicitations and contracts when performance is in the Republic of Korea.

**11.402 Factors to consider in establishing schedules:**

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.

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.

(b) Materiel management review of DVD items.

(1) The pre-award acquisition specialist should coordinate with the product specialist and ensure that customer direct items are assigned the appropriate acquisition advice code (AAC "H"). 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)).

(2) The inclusion of manager review codes (MRCs) shall be minimized to only those that are required (unless specifically approved by the head of the applicable business unit/ division/ application group) to ensure the delivery order flows uninterrupted through the automated system.

(3) The supply planner shall ensure that item notes are included for all NSNs assigned to a LTC having contract delivery time frames that exceed TDD standards or for those contracts that are exempted from customer direct TDD requirements.

**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.**

**11.404-90 Solicitation provision – business systems modernization (BSM) delivery terms and evaluation.**
Insert the provision at 52.211-9011, Business Systems Modernization (BSM) Delivery Terms and Evaluation, in all DLA BSM solicitations.

(b) Insert 52.211-9037, Time of Delivery – DVD, in solicitations/contracts for long term contracts with planned DVD support for customer direct deliveries. May also be used in planned DVD solicitations/contracts that include DLA depot locations. Used in conjunction with 52.211-9011.

**11.404-91 Contract clauses – delivery and shipment.**

(a) 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).

(b) Use the clause at 52.211-9026, Delays in Shipment of Products Requiring USDA Laboratory Analysis, in solicitations and awards for products requiring USDA laboratory analysis.

**11.404-92 Shipping and routing - solicitations and awards for bulk lubricating oil.**
Insert the clause at 52.211-9032, Shipping and Routing, in solicitations and awards for bulk lubricating oil: engine, grade OE/HDO 40, MIL-L-2104E.

**11.404(a) Supplies or services.**

**11.404(a)(1)(90) Time of delivery - fixed quantity request for proposals (RFPs), solicitations, and awards.**

Clause 52.211-9051, Time of Delivery, shall be used in fixed quantity RFPs, solicitations, and awards. For urgent buys requiring an accelerated delivery schedule, also insert FAR 52.211-11, Liquidated Damages, as appropriate in accordance with FAR 11.501 and 11.503.

**11.404(a)(1)(91) Time of delivery – accelerated delivery.**
Clause 52.211-9020, Time of Delivery – Accelerated Delivery, may be used in solicitations and awards when accelerated delivery is permitted at no cost or obligation to the government. Prior approval for acceleration from the contracting officer or other Government representative is not required. When accelerated delivery is requested by the Government, delivery shall be included in the solicitation as an evaluation factor, allowing a preference for offers less than the required delivery schedule.

**11.404(a)(1)(92) Time of delivery – incremental delivery.**
52.211-9049, Time of Delivery – Incremental Delivery, shall be used in solicitations and awards when incremental delivery is requested by the Government. Delivery shall be included in the solicitation as an evaluation factor.

**11.404(a)(1)(93) Time of delivery – contracts.**
The clause at 52.211-9054, Time of Delivery - Contracts may be used in negotiated acquisitions, specifically requests for proposals (RFPs). Insert NSN(s), quantity that may be ordered any calendar month, and number of days, and any additional quantity that may be ordered per month and number of days."

**11.404 (a)(1)(S-95) Time of delivery - customer oriented delivery.**
Use clause 52.211-9083, Time of Delivery - Customer Oriented Delivery, in DLA Troop Support construction and equipment solicitations and awards for indefinite quantity contracts which provide for direct vendor delivery, when the conditions at 11.402-90 and 11.402-91 are met, and written documentation by the contracting officer justifying the use of required delivery date (RDD) in lieu of time definite delivery (TDD) is included in the file in accordance with the requirements at 11.402-90. The contract specialist shall fill-in required text.

**11.404(a)(1)(94) General receiving and storing conditions (DLA Energy).**
Insert the clause at 52.211-9072, General Receiving and Storing Conditions (DLA Energy), in solicitations and awards for DLA Energy acquisitions of contractor-owned/contractor-operated (COCO) storage services.

**11.404-93 Base installation services for industrial plant equipment.**
Use clause 52.211-9038, Time of Delivery/Performance – Base Installation, in all acquisition that require installation services for FSC 34, industrial plant equipment to be performed at one of the following DLA locations, DLA Aviation, DLA Land and Maritime, or DLA Troop Support.

**11.404-94 Ordering/time of performance -indefinite delivery/time and material/labor hour contracts.**
Use clause 52.211-9057, Ordering/Time of Performance (Indefinite Delivery/Time and Material/Labor Hour Contract), in indefinite delivery T&M/Labor Hour solicitations and awards.

**11.404-94 Time of delivery – ordering office.**
Use clause 52.211-9069, Time of Delivery – Ordering Office, in solicitations for LTCs that do not contain First Article requirements, unless another time of delivery clause is more appropriate.

**11.404-96 Time of delivery – alternate delivery schedules.**
Use provision 52.211-9059, Time of Delivery – Alternate Delivery Schedules, in IFBs for C&T, Medical, Subsistence, or C&E items except those for IDCs or partial small business set-asides, where accelerated delivery and liquidated damages are required.

**11.404-97 Time of delivery - DLA Land and Maritime.**
Clause 52.211-9060, Time of Delivery, may be used in awards for DLA Land and Maritime acquisitions, regardless of what time of delivery clause was used in the solicitation to set forth a revised delivery schedule.

**11.404-98 Time of delivery (overlapping orders) ---LTC solicitations and contracts.**
Use clause, 52.211-9061, Time of Delivery (Overlapping Orders), in LTC solicitations and contracts when maximum delivery/production rates may limit the suppliers delivery capacity.

**11.404-99 Delivery requirements, in solicitation and awards for clothing and textile, medical, and semi-perishable subsistence.**
Use clause, 52.211-9062, Delivery Requirements, in solicitation and awards for clothing and textile, medical, and semi-perishable subsistence (excluding Subsistence brand name resale items) items.

## SUBPART 11.5 – LIQUIDATED DAMAGES

**11.502 Policy.**

(d) Recommendations concerning the remission of liquidated damages shall be transmitted to the General Counsel.

**11.503 Contract clauses.**

**11.503(a)(90) Liquidated damages.**
Use 52.211-9040, Amount of Liquidated Damages, in solicitations and contracts for clothing and textiles, medical, or subsistence items when 52.211-11 is used and delivery is an evaluation factor in addition to price.

## SUBPART 11.6 – PRIORITIES AND ALLOCATIONS

**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.

(b) [Reserved.]

(c) The rating authority continued in effect under 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 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. 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 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. The ICPs must ensure that the DPAS officer reviews contracts for end items to verify proper ratings are applied. 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. 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.

(1) [Reserved.]

(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.

(5) [Reserved.]

(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 Solicitation provision and contract clauses.**

(90) Notice to offerors. The clauses at 52.211-9002, Priority Rating, and 52-211-9004, Priority Rating for Various Long-term Contracts, shall be included as appropriate in all solicitations distributed to industry for contracting action and contracts, except for items excluded under 15 CFR 700.18 and by Delegation 1 to 15 CFR 700 for commercial end items.

(91) 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

**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 an 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.

(c) The clause at 52.211-9021 should be used in all solicitations and awards for wire and cable, FSC 6145. Include FAR 52.211-16 when 52.211-9021 is used.

**11.703-90 Aerial photographic film.**
Use 52.211-9050, in solicitations, purchase orders, and negotiated contracts for aerial photographic film, FSC 6750.

**11.703(91) Overseas acquisitions of domestic bulk fuels and bulk lubes**.
Insert the clause at 52.211-9073, Determination Of Quantity (DLA Energy), in solicitations and awards for DLA Energy overseas acquisitions of domestic bulk fuels and bulk lubes.

## SUBPART 11.90 – PRODUCT PHASE-OUT

**11.9001 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 contractor shall be advised that, in the event that manufacturing phase-out or discontinuance of production of such items is contemplated, the contractor is required not only to publish the discontinuance in the Government-Industry Data Exchange Program (GIDEP), where feasible, but also to provide advance notice to the applicable supply center diminishing manufacturing suppliers and material shortages (DMSMS) point of contact (POC), as well as to the DLA DMSMS integrated support team (IST).

**11.9001-90 Solicitation provision and contract clause.**
Use 52.211-9052, Notification to Government of and Contemplated Production Phaseout, in solicitations and awards for items designated as having "critical application."

**11.9002-90(a) Relief From Diminishing Manufacturing Sources Or Material Shortages Components (F-16 Program) (Air Force-Hill Depot Level Repairable (DLR) – DLA Aviation).**
Insert the clause at 52.211-9070, Relief From Diminishing Manufacturing Sources Or Material Shortages Components (F-16 Program) (Air Force-Hill DLR – DLA Aviation, in solicitations and awards for DLA Aviation acquisitions for depot level repairable items managed by Hill AFB, when diminishing manufacturing sources or material shortage components are applicable.

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## SUBPART 12.1 – ACQUISITION OF COMMERCIAL ITEMS - GENERAL

**12.102 Applicability.**

(a)(90) Part 12 is mandatory, except for the exemptions at FAR 12.102(d), if --

(i) The commercial off-the-shelf (COS) field in the contracting technical data file (CTDF) is coded "Y," which indicates to the buyer that a technical review, either on an individual or group basis, has resulted in a preliminary determination that the item meets the definition of commercial item at FAR 2.101 (see FAR 12.1 regarding the contracting officer's authority to make the determination).

(ii) The COS field is blank, but the item or service is clearly a type that is used by non-Government customers and that would meet the definition of commercial item at FAR 2.101;

(iii) (A) After issuance of the solicitation, the agency identifies an available item or service that will satisfy the government's requirement and that meets the definition of commercial item at FAR 2.101; and

(B) The item, if other than the exact approved item cited in the procurement item description (PID), has been determined technically acceptable.

(iv) A non-Part 12 long-term contracting instrument expires and a new long-term contracting arrangement will be negotiated; unless the contracting officer conducts adequate market research, seeks commercial solutions, determines FAR Part 12 is inappropriate for use, and documents the contract file appropriately (see FAR 10.001(a)(2)(ii), 10.001(a)(3)(ii), 10.002(e), and 12.101); or

(v) Simplified acquisition procedures (FAR Part 13) are being used to acquire commercial items.

(91) Part 12 cannot be used if --

(i) The COS field is coded "N;"

(ii) The COS field is blank, but the item or service is clearly Government-unique (see FAR 10.002(d)(2));

(iii) Only noncommercial items are being acquired; except that nondevelopmental items can compete for a requirement that was solicited under FAR Part 12 (see FAR 11.002(a)(2)(iii));

(iv) The acquisition is conducted using an automated procurement system that (A) does not include FAR Part 12 such as, procurement automated contract evaluation (PACE); or (B) is issuing an order against a pre-existing non-Part 12 contract;

(v) The acquisition is conducted under the Federal Prison Industries, Incorporated (FPI) Program (FAR Subpart 8.6); or

(vi) The following conditions apply --

(A) The COS field is blank;

(B) It is not clear whether the item or service is a type that is used by non-Government customers;

(C) The acquisition is below the simplified acquisition threshold (SAT); and

(D) It is not cost-effective to conduct market research (see FAR 10.001(a)(2)(iii)).

(92) 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. The contracting officer has the latitude to employ the full flexibility of the FAR definition and the responsibility for making the best business decision appropriate to the total circumstances surrounding a particular acquisition.

(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. These factors should be documented in a business case analysis, appropriate to the size and complexity of the acquisition.

(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.

(F) In the absence of appropriate market research that demonstrates otherwise, contracting officers may rely on previous contracting requirements. The only exception to this is when market research has confirmed a change is appropriate; and all procedures/controls for making such a change have been followed, such as, for example, coordination with the cognizant technical/quality specialist and/or the engineering support activity.

(G) Whatever decision is made concerning commerciality, 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 what is 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 is not generally required to conduct additional market research to confirm an entry in the commercial field in the CTDF (see 12.102(a)(90)(i)). 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(a)(2).

(2) To meet paragraph (a) of the commercial item definition at FAR 2.101, an item must be "of a type customarily used for nongovernmental purposes" and must have been "sold, leased, or licensed to the general public" or "offered for sale, lease, or license to the general public." (See 12.102(90)(2)(i) – (iii). The phrase "customarily used for nongovernmental purposes" means a governmental entity is not the exclusive end user. The term "general public" does not include foreign military sales.

(i) Invoices documenting sales to commercial customers should normally be sufficient to indicate that an item or service has been sold to the general public.

(ii) The phrase, "offered for sale, lease, or license to the general public" addresses items that are fully developed and that are ready to be made available to the general public (see 12.102(90)(2)). These could be items that were originally developed for exclusive commercial application; items that were originally developed for dual use by Government and the commercial market; or items that were originally developed for Government-unique application but for which nongovernment applications were subsequently identified and there is no reason to expect that commercial sales will not be forthcoming. Market forces are at work when a company decides to make an item available to the commercial marketplace, because that decision is based on market research indicating what the general public will demand in terms of capabilities, pricing, quality, and other criteria. To determine if an item has been offered for sale, lease, or license, the contracting officer needs evidence to indicate that the offeror or contractor makes its catalog available or otherwise markets to legitimate potential customers, appropriate to the type of item being acquired.

(iii) Knowledge that an item is in a catalog is insufficient to determine that the item is commercial, especially if the commerciality of all items included in the catalog has not been verified. The contracting officer should ask the offeror or contractor to identify to whom it markets and, if such firms are not implicitly known by the contracting officer to be legitimate customers or potential customers, ask the offeror or contractor for information on actual sales of similar items made to such customers or contact the prospective customer identified for more information to determine if the offering is legitimate.

(3) To determine that an item is commercial pursuant to one or more paragraphs of the definition other than (a), 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 addresses some of these other paragraphs:

(i) Paragraph (b) is intended to address 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) When making a determination under paragraph (c) 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 to an item that met paragraph (a) or (b) of the definition. 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 meets paragraph (c)(1) of the commercial item definition, the offeror or contractor must demonstrate that a modification is of a type customarily available in the commercial marketplace. Under paragraph (c)(1), a modification can be a "major" modification. If an offeror or contractor claims their item meets paragraph (c)(1), 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) To meet paragraph (c)(2) of the commercial item definition, 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) The definition of "commercial item" includes "services" (paragraphs (e) and (f)). Paragraph (e) addresses services in support of an item that meets paragraph (a), (b), (c) or (d) of the definition. Paragraph (f) is much broader. Services are defined as commercial under paragraph (f) if they are of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. 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. Solicitation requirements must not individually, or in total, be of such a nature as to transform the type of services sought into something other than a commercial item. The established market price does not have to be published or written. 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.

(4) 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 (see paragraph (h) of the commercial item definition). 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.

(5) An item does not have to be "commercially available off-the-shelf (COTS)" to meet the commercial item definition. COTS items are a subset of the broader commercial item definition. COTS items must have been sold, leased or licensed in substantial quantities in the commercial marketplace and must be offered to the Government without modification. Because of these requirements, acquisitions of COTS items are considered to involve lower risk to the Government than other types of commercial buys. The definition of COTS item does not include services, or bulk cargo (such as petroleum products).

(6) 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. Documentation of sales to commercial customers may indicate an item or service is commercial (see 12.102(90)(2)(i)).

(ii) Notices or brochures announcing new products or services. An announcement of a forthcoming product or service may indicate commerciality (see 12.102(90)(2)(ii)).

(iii) Listing in catalogs or brochures. Inclusion in a commercial catalog or brochure may indicate an item or service is commercial (see 12.102(90)(2)(iii)).

(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. When reviewing a large number of components, commerciality reviews should be conducted on a group basis whenever possible (see 10.001(a)(2)(91)).

(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.

(7) 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.

When necessary, local provisions may be developed that include more specific requirements for information.

(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.

**12.102(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

### 12.204 Solicitation/contract form.

(a) DLA activities are authorized to use the SF 1449 on an optional basis for all acquisitions of commercial items. This DLAD coverage constitutes a class deviation in accordance with DFARS 201.404(b)(ii). When using the authority of this deviation to conduct Part 12 buys using forms other than the SF 1449, the Part 12 terms and conditions must be applied in the same manner as if the SF 1449 were being used; and all information that would otherwise be provided on the SF 1449 itself must be included in solicitations and/or contracts (such as, for example, Method of Solicitation, i.e., Request for Quote, Invitation for Bid, or Request for Proposal). This deviation will remain in effect until Business Systems Modernization (BSM) is fully implemented. (FARS DEV 02-03)

### 12.204 (b) Reference to UCF in commercial acquisitions.

Use 52.212-9004, Reference to UCF in Commercial Acquisitions, in solicitations and awards for commercial items under FAR Part 12 procedures when the SF 1449 is not being used.

### 12.207 Contract type.

(90) 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),

(91) 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 Contract quality assurance.

(90) 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 (see 10.001(a)(3)(iv)(90)). 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). 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 September 20, 2012 through PROCLTR 2012-50)*

### 12.301 Solicitation provisions and contract clauses for acquisition(s) of commercial items.

(b)(2)(90) When the conditions at 13.101 apply, use the provision at 52.213-9004, Offeror Representations, Certifications, and Fill-in Information--Electronic Commerce, instead of FAR provision 52.212-3.

(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. (A catalog or market price generally includes the cost of liability or similar insurance; therefore, a contracting officer should negotiate an appropriate reduction in the catalog or market price, or tailor FAR 52.212-4(p), Limitation of liability, so the contractor is not relieved from consequential damages (see FAR 46.803). Also 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.

(91) 52.212-9000, Changes – Military Readiness, as prescribed in 12.302(b)(3)(91).

(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).

(94) [Reserved.]

(S-95) The contracting officer shall insert the provision at 52.213-9005, Contractor Past Performance Evaluation – Automated Systems,

*(1)* In all acquisitions using FAR Part 12 procedures when the DoD Source Selection Procedures Guide are not used;

*(2)* In which past performance will be an evaluation factor in best value award decisions; and

*(3)* Where ABVS/PPIRS-SR information will be considered to evaluate contractor past performance.

*(4)* Contracting officers shall annotate FAR 52.212-2 Evaluation-Commercial Items (a) appropriately.

(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) The clause at 52.239-9000, Y2K Compliance Notice, as prescribed in 39.106(a)(92).

(101) 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.

(102) The clause at 52.211-9010, Military Shipping Label (MSL) Requirements – MIL-STD-129P, as prescribed in 11.290(b).

(103) The clause at 52.211-9014, Contractor Retention of Traceability Documentation, as prescribed in 11.304-92.

(104) The clause at 52.247-9012, as prescribed in 47.305-1.

(105) The clause at 52.217-9017, Tailored Logistics Support Purchasing Reviews, as prescribed in 17.9508.

(106) The clause at FAR 52.232-17, Interest, as prescribed in FAR 32.617.

(107) The clause at FAR 52.242-13, Bankruptcy, as prescribed in FAR 42.903.

(108) The clause at FAR 52.242-15, Stop Work Order, as prescribed in FAR 42.1305(b)(1).

(109) 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 clauses at 52.246-9064, Quality Conformance Inspection Requirements, and 52.246-9065, Protection From Degradation Due To Electrostatic/Electromagnetic Forces, as prescribed in 46.401-91(a) and (b), respectively.

(111) The provisions and clauses listed below, as necessary to support acquisitions of items that require first article testing:

(i) 52.209-9015, Waiver - First Article Test – Simplified Acquisitions, as prescribed in 9.306(c)(90)(i);

(ii) 52.209-9016, Evaluation of Offers – First Article Testing, as prescribed in 9.306(i)(90) or 52.209-9016 with its Alternate I, as prescribed in 9.306(i)(91);

(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);

(vi) 52.209-9020, First Article Testing Requirement – Waiver Approved, as prescribed in 9.308-1(a)(93)(iii)(A) and 9.308-2(a)(93)(ii)(A);

(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.

(112) 52.209-9022 Compatibility Testing Requirements, and 52.209-9023, Compatibility Testing Approval – Government Testing, as prescribed in 9.390.

(113) 52.209-9024, Government Fit Verification Testing, and 52.209-9025, Government Fit Verification Testing Approval, as prescribed in 9.391.

(114) the clause at 52.211-9063, Unit Package Marking Requirement for Component Lead Finish, as prescribed in 11.291.

(115) 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.

(116) the clause at 52.246-9066, Documentation of Traceability, as prescribed in 46.490(c).

(117) 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.

(90) Contracting officers may delete from solicitations and contracts the portions of the provisions at FAR 52.212-3 and DFARS 252.212-7000 and the clauses at FAR 52.212-5 and DFARS 252.212-7001 that do not apply and replace them with applicable language, if any.

(91) Use clause 52.212-9000, Changes – Military Readiness, with FAR Clause 52.212-4, Contract Terms and Conditions – Commercial Items, in all contracts negotiated under Part 12. This clause provides for bilateral agreement on contract terms and conditions during normal operations, but allows unilateral changes to the method of shipment, packing, and place of delivery during contingency operations or humanitarian or peacekeeping operations.

(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 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

*(Revised August 15, 2011 through PROCLTR 2011-31)*

### 12.403 Termination.

- (c)(4)(S-90) Reporting terminations for cause. If the reporting requirement in FAR 12.403(c)(4) is applicable, contracting officers are responsible for ensuring the termination data is reported in the Federal awardee performance and integrity information system (FAPIIS) module of the past performance information retrieval system (PPIRS) using the procedures at PGI 12.403(c)(4)(S-90).

## 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(b)(4), 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.

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*(Revised July 2, 2012 through PROCLTR 2012-36)*

**13.003 Policy.**

(a) The contracting officer is delegated the authority to make the determination specified at 2.101, simplified acquisition threshold (2), that the acquisitions are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack, thereby authorizing the use of the higher SAT thresholds specified under that section. The specific authority utilized (i.e. Temporary Emergency Procurement Authority or Homeland Security Act) 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 requirements of whichever authority is used must be fully complied with.

(e) It is the policy of DLA that each supply chain shall utilize 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 provided in PGI 13.003-90(e)(S-90).

## SUBPART 13.1 – PROCEDURES

*(Revised September 20, 2012 through PROCLTR 2012-50)*

**13.101 General.**

(a)(1)(90) The Government should take advantage of quantity price breaks whenever warranted. A provision substantially the same as that at 52.213-9000, Quantity Break, should be included in simplified acquisition solicitations, except where the contracting officer documents why it would serve no useful purpose. When it appears that it is in the best interest of the Government to purchase a larger quantity to take advantage of a lower unit price, the item manager should immediately be provided the details and an amendment to the purchase request quantity requested. If the item manager indicates that the quantity cannot be increased, the contracting officer shall document the contract file and purchase the original quantity.

(b)(2)(90) The provision at 52.213-9004, Offeror Representations, Certifications, and Fill-in Information--Electronic Commerce, shall be used in all solicitations below the simplified acquisition threshold issued via electronic means. It consolidates, to the maximum extent practicable, various FAR, DFARS, and DLAD clauses and/or provisions that require the respondent/offeror to submit information to the Government prior to and for the purpose of award. It is also intended to ensure the successful transmission and subsequent interpretation of that information within the automated processing system by means of alphanumeric coding. See also FAR 13.302-5(d).

(91)(i) When the individual FAR, DFARS, and DLAD provisions cited in provision 52.213-9004, Offeror Representations, Certifications, and Fill-in Information--Electronic Commerce, are used in solicitations issued using electronic means, the latter provision shall be used for certifications and representations, and to record and consolidate all offeror or respondent provided information required by the applicable fill-in paragraphs of the cited source provisions. Although still bound by these source provisions in their entirety, offerors/contractors shall not be required to enter requested information into both the consolidated and the individual provisions. Entering the requested information into 52.213-9004 shall be considered complete fulfillment of the data requirements of the applicable paragraphs of all source provisions.

(ii) The full text of source provisions used in consolidated provisions intended to facilitate electronic commerce shall be made available as follows: DLAD or local acquisition regulation-level provisions shall be included in full text in every applicable buying activity master solicitation. If the FAR and DFARS level provisions are not also reproduced in full text in the master solicitation, the contracting officer shall provide a reference within the consolidated provision to an Internet location where they may be found. See 14.203-3(90).

(S-90) See 90.12 for the simplified acquisition price review program.

**13.106 Soliciting competition, evaluation of quotations or offers, award and documentation.**

**13.106-1 Solicitation competition.**

(a) Considerations.

(1) (Reserved.)

(2) Use of best value buying procedures is encouraged in competitive purchases where they would help improve the quality of the award decisions.

(b) Soliciting from a single source.

(1) Whenever urgency of the requirement necessitates limiting competition, and precludes the use of normal automated contracting procedures, the historically lowest price source should be contacted. However, award may be placed with another source when any increased price is reasonable and consistent with the extent to which delivery is required to be expedited.

**13.106-1(90) [Reserved.]**

**13.106-1 (91) DLA Internet Bid Board System (DIBBS) quoting information for BSM automated solicitations.**
The provision at 52.213-9007 shall be used in all BSM automated solicitations valued at or below $150,000 that are posted on the DLA internet bid board system (DIBBS) effective with the BSM retrofit release.

**13.106-2 Evaluation of quotations or offers.**

(b)(S-90) Evaluation procedures.

(1) The procedural flexibilities described at FAR 13.103 and 13.106-2 are intended to be illustrative, not all inclusive. If discussions are necessary with an offeror, contracting officers are authorized to hold discussions with one or more offerors, but need not conduct discussions with all offerors in the competitive range if such discussions are unnecessary and the procedures for these discussions are fair and equitable to all offerors.

(2) Procurement automated contract evaluation (PACE) program information.

(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 the procurement automated contract evaluation (PACE) program.

(ii) See 1.601-90(b)(3)(iv) and 1.602-2(92) 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) Acquisition executives (AEs) for DLA Aviation, DLA Land and Maritime, and DLA Troop Support, shall perform an annual analysis to determine optimum percentage variance numbers for both competitive and non-competitive acquisitions by supply chain.

(A) The analysis must outline the methodology and calculations utilized and must demonstrate that the percentages are optimum in terms of cost savings, number of automated awards, results of internal reviews, and workload impacts.

(B) The AEs for DLA Aviation, DLA Land and Maritime, and DLA Troop Support shall submit their recommendations for establishment of new percentage variance numbers to the DLA Acquisition Policy and Systems Division, J71, by January 31 of each year.

(C) The J71 procurement systems process owner will direct a system update to reflect the optimum variance percentage recommended by the AEs for price evaluation.

(D) If any interim changes are required, an updated recommendation with supporting analysis must be submitted to DLA HQ J71.

(3)(ii)(D)(S-90) Past performance evaluation and past performance information systems.

*(1)* The contracting officer shall insert the provision at 52.213-9005, Contractor Past Performance Evaluation – Automated Systems,

*(i)* In all acquisitions using simplified acquisition procedures;

*(ii)* In which past performance will be an evaluation factor in best value awards decisions; and

*(iii)* Where ABVS/PPIRS-SR information will be considered to evaluate past performance.

*(iv)* Contracting officers are not precluded from collecting/analyzing past performance information in addition to ABVS/PPIRS-SR.

*(2)* The procedures at PGI 13.106-2(b)(3)(ii)(D)(S-90) should be followed when the provision 52.213-9005 Contractor Past Performance Evaluation –Automated Systems and ABVS/PPIRS-SR is used for manual awards.

**13.106-3 Award and documentation.**

(a) Basis for award.

(3)(S-90) Contracting personnel should avoid placing orders with vendors who have a minimum order quantity/value, and/or a minimum billing/charge policy, wherever possible. In furtherance of this policy, indefinite delivery contracts (IDCs), blanket purchase agreements (BPAs), and basic ordering agreements (BOAs) shall contain a provision explicitly precluding such features. In addition, the following alternatives should be explored before placing a purchase order with a supplier that follows such practices:

(i) Seek to eliminate or minimize the charge. (However, when an offer is low on an individual acquisition, inclusive of minimum charge, which the offeror will not reduce or agree to remove from its offer, such offeror should receive the award.);

(ii) When appropriate, increase the quantity of the buy; or

(iii) Make a concerted effort to consolidate orders with other buys from the same vendor. If the foregoing efforts are to no avail, DLA contracting personnel, when writing orders with vendors having such policies, will separately identify the unit price and amount for each item ordered and the minimum billing or service charge.

(b) File documentation and retention.

(S-90) Data to support purchases.

(1) The price reasonableness determination shall:

(i) Be documented (including the price reasonableness codes (15.401), basis thereof and other relevant information cited in the sample format (PGI 13.106-3(b)(90)(a)(i)).

(ii) Address the adequacy of any price competition received for assuring price reasonableness.

(iii) Address the comparability to prior prices paid for the same or similar item, if any, and

(iv) Incorporate, attach, or reference any other analyses performed concerning the reasonableness of the award price (see FAR, this paragraph, and DFARS 217.7504), along with any source data utilized (e.g., name, date, location, and page number of contractor catalog or other reference).

(2) Pricing techniques in the absence of adequate price competition.

(i) The technique of comparing the items to a similar competitive item should offer the best assurance of fair and reasonable pricing in simplified acquisitions. In the majority of purchases over the micro-purchase threshold involving noncompetitive and non-cataloged items, this method should be used to determine price reasonableness. It is not necessary to locate an identical item or to compare every feature of the two items. Quantity, packaging, and other factors must be considered in arriving at an independent estimate of a reasonable price for the individual acquisition. Abstracts of bids maintained by the contracting office may be useful in this regard. Commercial catalogs and price lists should also be used.

(ii) When prices appearing in a contractor price list are used for determining price reasonableness, see 15.404-1(b)(2)(iv).

(iii) Visual examination of warehouse samples, photographs, videotapes, drawings and/or DD Form 146, Federal Item Logistics Data Record, descriptions can be of considerable value in determining that a price is fair and reasonable. Often the actual manufacturer is revealed by this examination. Sources solicited shall include any manufacturers revealed by visual examination.

(iv) When other methods available to contracting personnel are unproductive, pricing/technical assistance should be considered for use in the buyer's price reasonableness determination.

(v) When a price reasonableness determination cannot be made via a price analysis technique, the determination may be made using one of the forms of cost analysis. When the cost analysis involves proposed, recommended, or approved forward pricing rates, factors, and/or a formula pricing methodology, see 15.404-1(c)(90).

**13.106-90 Other solicitation issues.**

(a) Use 52.213-9001 alternate I, Evaluation Factor for Source Inspection Alternate I with 52.213-9001 when destination inspection is specified in the solicitation and the solicitation will result in the award of a contract where multiple delivery orders will be issued, such as a long term contract (LTC).

(1) Evaluation of simplified acquisitions/quotations involving source inspection.

(i) The provision at 52.213 -9001, Evaluation Factor for Source Inspection, shall be inserted in all simplified acquisition solicitations. It shall be exercised for the acquisition of items normally requiring destination inspection (see FAR 46.402 and 46.403), when source inspection is specified for offerors under either of the following conditions: the offeror has a history of delivering nonconforming material on destination assigned contracts/purchases; or the offeror insists that inspection be performed at source, despite the Government’s determination that source inspection is unnecessary.

(ii) When source inspection is to be performed under either of these conditions, the contracting officer shall exercise the provision at 52.2 13-9001 and add $250 to that offeror’s quoted price. If multiple source inspections are required, the evaluation factor will be multiplied by the number of inspections required, and that figure will be added to the offerors quoted price.

(b) Evaluation of simplified acquisitions/quotations involving the conduct of a preaward survey (PAS). This paragraph pertains only to those contracting offices that have decided, in accordance with 15.304(c)(95), to use the PAS evaluation factor coverage. The provision at 52.215-9001, Evaluation Factor for Preaward Survey, shall be inserted in simplified acquisition solicitations and exercised when a PAS is required to determine the responsibility of prospective contractors described in 15.304(c)(95)(A) through (F).

(c) Disposition of unsolicited quotations.

(1) Unsolicited quotations need not be evaluated except when it is feasible and practicable to do so in order to:

(i) Satisfy the requirements of FAR 13.104 to provide for maximum practicable competition; or

(ii) Consider alternate offers to provide competition for sole source items (also see 17.7501(b)(4)).

(2) Contracting personnel should return quotes to the offeror with an explanation of the reason(s) the quote is not being considered for award, to include whether the RFQ number or other identifying number was not included, the quote did not contain certification requirements, the quote offerred an alternate item, without evaluation data sufficient to evaluate the quote.

(d) All solicitations issued under this part, Part 13, both written and oral, will be assigned a unique request for quotations number ("Q", "T", or "U" in PIIN position 9, as appropriate), to be used for the primary identification of the solicitation. While the procurement request number may be cited as an additional reference number in solicitations, it must be used in conjunction with an RFQ number.

## SUBPART 13.2 – ACTIONS AT OR BELOW THE MICRO-PURCHASE THRESHOLD

### 13.201 General.

(g)(1) For other than purchase card acquisitions the contracting officer is delegated the authority to make the determination that the acquisitions are 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 individual specified in DLAI DLA Government Purchase Card Program; the individual provides the written pre-approval when purchasing other than routine office supplies. Contract files or written pre-approvals shall document how the acquisition is in support of a contingency operation or to be used to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack.

### 13.202 Purchase guidelines.

(a) Solicitation, evaluation of quotations, and award.

(2) A conclusion as to price reasonableness is required prior to award, regardless of dollar value. In competitive buys, review of competitive quotations and pricing history should normally suffice. For non-competitive buys, the conclusion may be based on comparable prior buy history or, where appropriate, a commercial catalog/price list, similar item or other price analysis technique. In the absence of any of the foregoing a price quotation from one (1) additional vendor is required.

(3)(S-90) Price reasonableness verification (e.g., to a source document or other authority) is required prior to award (or call acceptance):

(i) For first-time buys.

(ii) When a price is highlighted/kicked out for buyer review pursuant to a price variance check procedure in SPEDE, PACE, and other automated systems.

(b) Documentation.

(S-90) Award documentation shall be limited, but include:

(1) The price quote(s) received plus, for any other price(s) considered, the price, source, quantity, and effective date;

(2) The price reasonableness conclusion, in any instance where the award is to be made at a price known or suspected of being unfair and unreasonable, or where the price is not considered reasonable. (The absence of documentation of the conclusion shall be deemed as an implicit affirmation that the price was considered reasonable); and

(3) The basis/bases of the price reasonableness conclusion (e.g., catalog price, commercial off the shelf item, comparable item, etc.) for:

(i) first time buys where competitive prices were not received;

(ii) a single quote for a previously bought item is considered excessive in comparison to such prior prices(s), as adjusted for any differences in quantit~~y~~, time, etc.

The absence of documentation of the basis/bases shall be deemed an implicit affirmation that the price reasonableness conclusion was based on competition received or on consistency of a single quote with the prior price(s).

**13.270 Use of the Governmentwide commercial purchase card.**

(a) DLA has been granted DEPSECDEF exceptions from the mandatory requirement to use the purchase card for wholesale stock fund purchases. The exceptions resulted from business cases demonstrating that introducing the manual processes associated with using the card would not be cost effective when compared to the efficiencies DLA gained from existing automation capabilities.

## SUBPART 13.3 – SIMPLIFIED ACQUISITION METHODS

*(Revised September 26, 2012 through PROCLTR 2012-52)*

**13.301 Governmentwide commercial purchase card.**

(S-90) The Governmentwide commercial purchase card 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. Procedural guidance on use of the purchase card is in the DLA Government Purchase Card Program Issuance.

**13.302 Purchase orders.**

**13.302-1 General.**

(S-90) Documentation of the price or cost analysis techniques as discussed at 13.106-3(b) shall also be accomplished for awards of priced purchase orders and definitization of unpriced purchase orders (UPOs).

**13.302-2 Unpriced purchase orders.**

(S-90) Consistent with the intent of DFARS 217.74 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) While BPAs may be established with federal supply schedule (FSS) contractors for both non-FSS items and FSS items, a distinction between such items should be made.

(i) A BPA with an FSS contractor for non-FSS items which can be construed to cover FSS items because of a generic item description should contain a statement to the effect that the BPA excludes all items on FSSs.

(ii) If it is desired to establish a BPA with an FSS contractor for items on an FSS, the agreement shall be consistent with the provisions of the applicable FSS, i.e., period of agreement, terms and conditions. The terms of the agreement 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) Description of agreement. The maximum aggregate amount, if any, of all calls to be issued against one BPA shall be prescribed by the HCA.

**13.306 Standard Form (SF) 44, Purchase Order-Invoice-Voucher (Deviation).**

(a)(1)(A) SF 44, purchase order-invoice-voucher.
(Deviation 2007-01) Fuel and oil. The aviation into-plane reimbursement (AIR) card or the ships bunkers easy acquisition (SEA) card, as appropriate, may be used in lieu of an SF 44 for fuel and oil transactions valued up to the simplified acquisition threshold.

**13.307-90 Forms.**

(a) DLA Form 1224, Shipping Instructions, may be used to issue automated calls made under a BPA.

(b) The Standard Automated Material Management System (SAMMS) automated simplified purchase system (SASPS) issues requests for quotations using DLA Form 1231, Request for Quotation.

**13.390 Indefinite delivery purchase orders (IDPOs).**

**13.390-1 General.**

(a) An IDPO is a simplified acquisition procedure that applies indefinite delivery contract concepts to a procurement action not exceeding the simplified acquisition threshold (see FAR 2.101). 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.

(b) Only a warranted contracting officer shall award an IDPO and, as necessary, execute modifications or terminations. The contracting officer may designate an ordering officer for one specific IDPO, with authority to only issue orders.]

**13.390-2 Application and provisions and/or clauses.**

(a) Use of an IDPO is appropriate where 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. Only one IDPO shall be established per item.

(b) The aggregate total dollar value of orders issued against an IDPO during the ordering period shall not exceed the maximum value stated in the basic order, which, in turn, shall not exceed the simplified acquisition threshold (see FAR 2.101).

(c) Requirements shall not be split to qualify for use of an IDPO (see FAR 13.003(c)).

(d) Publication. To establish an IDPO, either unilaterally or bilaterally with an aggregate value in excess of $15,000, the contracting officer must disseminate information to satisfy the requirements at FAR 5.101, which are applicable to the basic order.

(e) The ordering period should not normally exceed 1 year. Otherwise, the policy under 16.190 may apply and the procurement action may be considered a long term contract.

(f) The decision to establish an IDPO shall be made by the contracting officer in coordination with the customer.

(g) Order numbering.

(1) IDPO orders shall be numbered in accordance with the uniform procurement instrument identification numbering (PIIN) system (see. DFARS 204.7003)

(2) The initial purchase order and subsequent orders shall be distinguished by 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.

(h) Provisions and clauses for IDPOs.

(1) Clause - IDPO evaluation.

(i) The clause at 52.213-9010, Indefinite Delivery Purchase Order (IDPO) Evaluation, shall be used when the evaluation will be based on the estimated annual demand stated in the schedule.

(ii) The clause advises that the Government may reject quotes as technically unacceptable from offerors that do not agree to the one of the IDPO clauses, either clause 52.213-9011, Indefinite Delivery Purchase Order (IDPO) Agreement, for a unilateral IDPO, or clause 52.213-9012, for a bilateral IDPO, depending on the contracting officer’s decision as to the type of IDPO. Award shall be made, under the conditions specified in the request for quote (RFQ), to that offeror that submits the low,

technically acceptable quotation for either the minimum requirement, or the combined basic and IDPO requirements, depending on the conditions specified in the RFQ.

(iii) When the award includes one of the IDPO clauses, the price(s) for the minimum purchase order quantity and for the IDPO projected requirements shall be determined fair and reasonable at the time of award of the basic requirement

(2) Clause – unilateral indefinite delivery purchase order (IDPO) agreement.

(i) An IDPO may be established unilaterally. When the vendor has quoted against the clause at 52.213-9010, the vendor will not have entered into a contract that binds the contractor for performance under subsequently issued orders. Likewise, the Government is not obligated to place subsequent orders under the IDPO clause. The procurement action awarded is an agreement with terms and conditions for ordering.

(ii) The clause at 52.213-9011, Indefinite Delivery Purchase Order (IDPO) Agreement, shall be included in the request for quote and award documents when a unilateral IDPO is contemplated.

(A) A unilateral IDPO provides the flexibility for the contracting officer to determine the method of purchase that is in the best interest of the Government for a subsequent requirement, either by ordering against the IDPO or issuing a new request for quotes.

(B) The request for quotes will be based on the requirement and whether the prospective contractor agrees to accept subsequent orders within the stated quantity range at the quoted price for the current requirement specified in the request for quotations. The basic quantity requirement shall be within the minimum and maximum quantity range and order frequency limit included in the request for quotes.

(iii) When using 52.213-9011, include the following clauses --- FAR 52.216-19, Order Limitations, FAR 52.216-22, Indefinite Quantity and DFARS 252.216-7006, Ordering (see DFARS 216.506(a)).

(iv) Evaluation and award. Award shall be made to that responsible offeror that submits the lowest technically acceptable quotation for the basic requirement. If the price for the projected requirement is determined fair and reasonable at the time of award for the basic requirement, a price reasonableness determination need not be made for subsequent orders placed under the IDPO clause.

(3) Clause – bilateral indefinite delivery purchase order (IDPO) clause.

(i) An IDPO may be established bilaterally. Under this approach, offerors shall be advised, by inclusion of the clause at 52.213-9012, Indefinite Delivery Purchase Order (IDPO), that performance under the purchase order, by supplying the minimum order quantity (which is the basic order quantity), requires the contractor to provide the additional supplies specified in the clause, within the stated minimum and maximum quantities, as ordered. Use of this approach establishes a binding contract for the IDPO, yet does not bind the Government to place future orders against the IDPO.

(ii) The clause at 52.213-9012, Indefinite Delivery Purchase Order (IDPO) shall be included in the request for quotes and award documents when a bilateral IDPO is contemplated. This clause provides that initial performance under the purchase order, by supplying the minimum purchase order

quantity, obligates the contractor to provide the additional supplies, within the stated minimum and maximum quantities cited in the purchase order, as ordered by the ordering officer.

(iii) When using 52.213-9012, include the following clauses --- FAR 52.216-19, Order Limitations, FAR 52.216-22, Indefinite Quantity and DFARS 252.216-7006, Ordering (see DFARS 216.506(a)).

(iv) The contracting officer may decide to include FAR 52.243-1, 52.232-23, 52.249-8, and DFARS 252.243-7001, however, these FAR clauses are not prescribed for use in commercial acquisitions.

## SUBPART 13.4 – FAST PAYMENT PROCEDURE

### 13.401 General.

(a) The fast payment procedure allows payment to a contractor before receipt verification only under "limited conditions." Fast pay should therefore not be used unless necessary from a business standpoint. If receipt documentation is or could be forthcoming from the customer on a timely basis, or if expectations of fast pay use do not exist in a particular market sector, fast pay should not be used, even if the acquisition is a prime vendor arrangement or other direct delivery contract.

(90) As implied by FAR Subpart 13.4, fast payment procedures shall not be used for the acquisition of services.

### 13.402 Conditions for use.

(a) FAR 13.402(a) establishes an upper limit threshold of $30,000 for the allowable use of fast payment procedures on individual purchasing instruments. Various exceptions to this threshold exist, both at the DoD and agency (DLA) level. DFARS 213.402 allows for fast payment procedures to be utilized on individual orders exceeding the simplified acquisition threshold for brand name commissary resale subsistence items and medical supplies for direct shipment overseas. DLA permits higher-dollar applications of the fast pay tool under conditions specified in Federal Acquisition Regulation deviations (FARS DEVs) 06-05 through 06-08 and 09-05. The former four are one-time deviations with applicability limited to use in certain base realignment and closure (BRAC) acquisitions; FAR DEV 09-05 is a class deviation. A July 31, 2009 memorandum permits use of fast pay at higher dollar levels for OCONUS subsistence awards in support of contingency operations. See these individual documents for relevant conditions and dollar ceilings.

(f)(1)(90) In order for a contracting office to use fast payment procedures, the FAR and the DoD Financial Management Regulation (FMR, DoD 7000.14R, volume 10, chapter 10, §1003) both require that a system be in place to ensure documentary evidence of contractor performance.

(91) See PGI 13.402 for mandatory procedures to ensure fulfillment of the requirement to document evidence of contractor performance under fast pay.

(90) The additional criteria set forth below shall be followed when determining the applicability of fast payment procedures.

(1) Depot shipments. Requirements which are shipped to a depot and marked for stock are not authorized to use fast payment procedures, with the exception of OCONUS stock buys supporting forward stock locations (FSL) initiatives that require inspection and acceptance at destination. However, the fact that requirements may be shipped to a depot for transshipment purposes under customer direct/direct vendor delivery procedures does not disqualify the acquisition from fast pay applicability (but see (2), below).

(2) Direct vendor deliveries (DVDs). DVDs, including shipments that go through the consolidation point are authorized to use fast payment procedures (see 25.7302-90) if the requirements for use are otherwise satisfied. However, DVDs with source inspection or DVDs with subsistence requirements shipped through a consolidation point prior to shipment overseas are not authorized to use fast payment procedures.

(3) A contracting officer's written determination that the conditions of FAR 13.402(a) through (f) are fulfilled, or that an applicable deviation relieves compliance with one or more of those conditions, shall be included in the contract file for manual awards when fast pay is included in a contract.

(4) The contract file for every order and contract utilizing fast pay shall be maintained up to date, and shall be immediately accessible for verification and other purposes (such as procurement management reviews (PMRs) or special audits), in electronic or hard-copy format. As part of the post-payment validation process described at PGI 13.402(f)(1)(91), the contract file should be checked (electronically for simplified acquisitions, and manually for acquisitions valued above the simplified acquisition threshold) to ensure that the underlying contract actually contains fast payment terms.

**13.404 Contract clause.**

(90) The contracting officer shall insert the clause at 52.213-9009, Fast Payment Procedure, in solicitations and contracts containing FAR 52.213-1. When fast payment applies 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.**

(a)(S-90) Circumstances when the contracting officer may reasonably expect that quotes or offers will include only commercial items include, but are not limited to, the following:

(1) No sources of items other than commercial items are known to exist; or

(2) Sources of items other than commercial items are known to exist but are not expected to offer.

If the contracting officer reasonably expected that quotes or offers would only include commercial items but receives one or more offers of other than commercial items, the contracting officer may proceed with the acquisition under the procedures in subpart 13.5.

(S-91) Contracting officers are authorized to issue purchase orders and blanket purchase agreement (BPA) calls (see FAR 13.303-5(b)(2)) in amounts greater than the simplified acquisition threshold but not exceeding $6,500,000 when the contracting officer determines, after the synopsis of the

requirement, and after the evaluation of all offers or quotes in response to the synopsis, that the purchase order or BPA call is the appropriate contract vehicle. Each DLA contracting office may establish appropriate guidelines, based on the nature of the commodities it is responsible for acquiring, as to when a request for proposals may be more appropriate than a request for quotations, and may issue other guidance it determines necessary to protect the Government's interest (e.g., identifying circumstances when use of a bilateral purchase order should be considered). Each DLA contracting office shall retain BPA call limitations it determines appropriate to its automated systems and that are consistent with both the nature of the items it is responsible for acquiring and the historical pricing practices of its suppliers.

(S-92) Some procedures in Part 13 are expressly limited to the simplified acquisition threshold or some lower threshold, or their use is expressly superseded by a reference to differing procedures in FAR subpart 13.5. Part 13 procedures are not be authorized for use when conducting an acquisition under subpart 13.5 include the following acquisitions:

(i) Micro-purchase procedures (FAR 13.2);

(ii) Simplified justification procedures for sole source buys (FAR 13.106-1(b)(1) and 13.106-3(b)(3)(i));

(iii) Fast payment procedures (FAR Subpart 13.4); and

(iv) Imprest fund procedures (FAR Subpart 13.305).

(c)(1) Unless Part 12 expressly provides otherwise, procedures required in other FAR parts still apply to acquisitions of commercial items, including those conducted under Subpart 13.5 to include the following requirements:

(i) Synopsize proposed contract actions expected to exceed $25,000 in the Commerce Business Daily (CBD) (FAR 5.101(a)(1)); and

(ii) Announce contract awards valued over $3,000,000 (FAR 5.303(a)) ($5,000,000 for DoD (see DFARS 205.303(a)(i))).

(2) Agency and/or local requirements for review under specified circumstances also still apply, unless explicitly waived. Additionally, if an exemption applies only to acquisitions that are not expected to exceed the simplified acquisition threshold, such an exemption is not applicable when using subpart 13.5. One example of an exception that does not apply under subpart 13.5 is the exception from the synopsis requirement when the contract action is expected to exceed $25,000 but not expected to exceed the simplified acquisition threshold and will be made through FACNET (FAR 5.202(a)(13)). See 7.102, which requires written acquisition plans for all proposed contract actions other than "those not expected to exceed the simplified acquisition threshold," instead of "those effected under FAR Part 13."

(S-93) Acquisitions under subpart 13.5 cannot be conducted in the same manner as those that were formerly called "small purchases," which did not exceed $25,000 and therefore were never subject to synopsis requirements. Synopsis requirements are not waived for acquisitions conducted under Part 13 (including Subpart 13.5), and all questions or offers must be considered (see FAR 5.101(a)(1) and 13.106-2(a)(3), respectively). Therefore, acquisitions conducted under the authority of Subpart 13.5 are comparable to simplified acquisitions between $25,000 and $150,000, which also require synopsis.

**13.501 Special documentation requirements.**

(a) If an acquisition is conducted under circumstances that would be considered "other than full and open" if Part 6 applied, but is not conducted on a "sole source" basis, no justification and approval (J&A) is required. If the exception for urgency applies but more than one source is solicited, no J&A is required. This is a different standard from the standard in FAR and DLAD Part 6, where any circumstance that is other than full and open requires a J&A. Acquisitions of commercial items described only by a single manufacturer's name and part number are sole source acquisitions and do require a J&A pursuant to FAR Subpart 13.5. When multiple manufacturers and part numbers are identified in the purchase description, the acquisition is not sole source, and no J&A is required.

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## SUBPART 14.2 – SOLICITATION OF BIDS

### 14.201 Preparation of invitations for bids.

(a) Supply and service contracts. For supply and service contracts, invitations for bids shall contain the following information if applicable to the acquisition involved. All items of information shall be set forth in the appropriate sections.

### 14.201-2 Part I – The schedule.

### 14.201-2(b) Section B, Supplies or services and prices.

(90) Pursuant to 17.203(d), a provision similar to that at 52.214-9001 should be used when item pricing of options involves separate firm fixed price and fixed price with economic price adjustment portions.

### 14.201-3 Part II – Contract clauses.

(90) Section I, Contract clauses. The contracting officer shall insert the clause at 52.214-9004, Subcontracting to Other Industrial Preparedness Planned Producers, in solicitations and contracts whenever contracting without providing for full and open competition under the authority of FAR 6.302-3 (10 U.S.C. 2304(c)(3)).

### 14.201-5 Part IV – Representations and instructions.

(c) Section M, Evaluation factors for award.

(90) A provision substantially as provided at 52.214-9002, Trade Discounts, may be included in invitations for bids when appropriate. The provision advises bidders that trade discounts offered will be considered in evaluating offers for award and provides that an offered discount in excess of 2 percent will be considered as a trade or special discount, unless the offeror states otherwise. Use of such a provision will assure that the Government does not forego the benefits of intended bids of trade discounts.

(91) A provision substantially as provided at 52.214-9003, Right to Apply F.o.b. Origin Offer, may be included in invitations for bids when appropriate. The intent of the provision is to permit the Government to award f.o.b. origin offers that otherwise could not be covered in a sealed bid acquisition. Example: Items 1 and 2 are for the same product, but different item numbers are used because of the different destinations. F.o.b. origin offers are permitted. Bidders A and B bid f.o.b. origin on item 1. No bids are received on item 2. Item 1 is awarded to Bidder A. Under present conditions, item 2 would have to be resolicited. With the provision at 52.214-9000, and provided the bidder had not specified otherwise, the Bidder B offer could be applied against item 2. Assuming Bidder B's price was reasonable, item 2 could be awarded to Bidder B and the need for a resolicitation negated.

(92) Bids for incremental quantities (i.e., 500, 1000, 1500, 2000 units) or range quantities (i.e., 500-999, 1000-1499, 1500-1999 units) may be solicited provided the invitation for bids specifies that awards will be made on that quantity and price combination which is most advantageous to the Government.

(93) The provision at 52.215-9011, Requirements for Quantity Increments or Ranges, may be used to solicit bids for quantity increments (e.g., 500, 1000, 1500, 2000 units) or quantity ranges (e.g., 500-999, 1000-1499, 1500-1999 units).

**14.201-6 Solicitation provisions.**

(v) When 52.214-31 is included in the solicitation, insert the provision at 52.215-9008 Facsimile Bids and Proposals in DLA Aviation solicitations if facsimile bids are authorized. For DLA Land and Maritime and DLA Troop Support solicitations use Alternates I and II to replace paragraph (c) as appropriate.

**14.201-8 Price related factors.**

(a)(90) This paragraph pertains only to those contracting offices that have decided, in accordance with 15.304(c)(94), to use this source inspection evaluation factor coverage. The provision at 52.213-9001, Evaluation Factor for Source Inspection, shall be inserted in solicitations when the conditions at 13.106(90)(a) exist. The coverage at 13.106-90(a) applies regardless of the dollar value of the acquisition.

(a)(91) This paragraph pertains only to those contracting offices that have decided, in accordance with 15.304(c)(95), to use the preaward survey (PAS) evaluation factor coverage therein. The provision at 52.215-9001, Evaluation Factor for Preaward Survey, shall be inserted in solicitations and exercised when a PAS is required to determine the responsibility of prospective contractors described in 15.304(c)(95)(A through (F)).

**14.202 General rules for solicitation of bids.**

**14.202-91 Place of production of an industrial preparedness program (IPP) planned item.**
Use 52.214-9007, Place of Production of An Industrial Preparedness Program (IPP) Planned Item, and 52.214-9004, Subcontracting, to other industrial preparedness planned producers in solicitations and contracts whenever contracting without providing for full and open competition under authority of FAR 6.302-3 (10 U.S.C.2304(c)(3)).

**14.202-5(90) Descriptive literature.**
Insert the clause at 52.214-9005, Descriptive Literature, in RFPs or simplified solicitations for descriptive literature in FSG 34, Industrial Plant Equipment (IPE), as applicable.

**14.203 Methods of soliciting bids.**

**14.203-3 Master solicitation.**

(b)(90) Distribution of new or revised master solicitations is as follows:

| | | |
|---|---|---|
| DLA HQ | (Director, DLA Acquisition (J7)) | 1 copy |
| DCMDs | (Director, Contract Management) | 3 copies each |
| | (Director, Quality Assurance) | 2 copies each |
| | (Director, Program and Technical Support) | 2 copies each |
| DCMAs | (Chief, Contract Management) | 15 copies each |
| | (Chief, Quality Assurance) | 5 copies each |

| | | |
|---|---|---|
| | (Chief, Program and Technical Support) | 2 copies each |
| DPROs | (Chief Contract Management) | 6 copies each |
| | (Chief, Quality Assurance ) | 2 copies each |
| | (Chief, Program and Technical Support) | 2 copies each |
| Defense Finance and Accounting Service: Columbus Center | | 2 copies each |

(b)(91) Copies of contracts forwarded to GAO shall include a copy of the master solicitation.

(90) Each applicable buying activity master solicitation shall include the full text of all DLAD and local provisions cited in, and incorporated by reference via, provisions consolidating various contractor representations, certifications, and fill-ins. See 13.104(90)(2). FAR-and DFARS-level source provisions shall also be made available as described therein.

**14.203-90 Other distribution.**
One information copy of each invitation for bids involving the production testing of items will be forwarded at time of issue to DLA HQ, attention: J74 in accordance with DLAR 4125.1, Production Testing of DLA Managed Items.

## SUBPART 14.3 – SUBMISSION OF BIDS

**14.302 Bid submission.**

**14.302-90 Clause for conditional or qualified offers.**
The clause at 52.214-9006, Conditional or Qualified Offers, may be used in solicitations except for IDC solicitations and commercial procurements.

**14.302-91**
Use 52.214-9008, Rounding Off of Offer and Award Prices, in solicitations and awards for medical, subsistence, clothing and textile, construction and equipment.

(b)(1) Telephonic communication of a telegraphic bid shall not be acceptable. A copy of the written telegram must be received by the designated office not later than the exact time set for opening of bids.

**14.303 Modification or withdrawal of bids.**

(a) A telegraphic modification or withdrawal of a bid received by telephone from the receiving telegraph office shall not be considered. The guidance in 14.302(b)(1) also applies to modifications and withdrawals of bids.

**14.304 Late bids, late modifications of bids or late withdrawals of bids.**

**14.304-90 Hand-carried bids.**
Suppliers shall be notified that it is a responsibility of the bidder to place the bid in the bid depository if a bid is hand-carried. Each DLA activity shall establish procedures to ensure that Government personnel do not handle, stamp, or mark the bid envelopes prior to placement of the bids in the depository by the supplier.

(c) Determinations to cancel invitations for bids made pursuant to FAR 14.404-1 shall be in writing, shall describe the items solicited, quantities, number of bids received and prices, and shall include a discussion of the basis for canceling, and why it is a compelling reason.

## SUBPART 14.4 – OPENING OF BIDS AND AWARD OF CONTRACT

### 14.407 Mistakes in bid.

### 14.407-3 Other mistakes disclosed before award.

(e) [Reserved.]

### 14.408 Award.

### 14.408-1 General.

(d) It is particularly important that copies of the award document furnished for contract administration and finance purposes include detailed information as to acceptable additions or changes made by a bidder in the bid. The award document shall include the following data to the extent applicable:

(90) A list of the items or lots accepted with the quantity, unit price, and total price of each item.

(91) An indication of the extent to which award is made on the basis of f.o.b. destination or f.o.b. origin.

(92) Any discount offered by the successful bidder, whether or not such discount was considered in the evaluation of bids.

(93) When the invitation for bids authorizes bids on the basis of brand name or equal, the brand, model, part number, and any other identifying characteristics of the item to be furnished by the successful supplier.

(94) The place of manufacture of the supplies or the performance of services awarded and the name of the supplier when different from that of the contractor.

(95) The place of inspection and acceptance and the name of the activity authorized to effect inspection and acceptance on behalf of the Government.

(96) When the invitation for bids includes the requirement for minimum size of shipments or guaranteed maximum shipping weights (and dimensions, if applicable), and award is made f.o.b. origin, see 47.305(91).

(97) The time of delivery.

(98) The place of delivery.

(99) The place for the submission of invoices and payment.

(100) A statement that the award confirms a notice of award.

(101) A statement that the progress payment clause is a part of the contract.

(102) A provision for advance payments.

**14.408-2 Responsible bidder - reasonableness of price.**

(90) When a sole responsive bid is received, and in other situations where the sealed bidding method may not have achieved competition sufficient for award at a fair and reasonable price, a price reasonableness determination shall be made based on a price analysis (see 15.404-1(a)(90)(2)) which is documented in the contract file.

**14.409 Information to bidders.**

**14.409-1 Award of unclassified contracts.**

(b) Notification to unsuccessful bidders should not be delayed pending preparation and distribution of contractual documents. In cases where a bidder is apparently low based on a comparison of bid price only, the notification should take the form of a letter including the specific reasons for the rejection of the lower bid. This is especially important where rejection results from a transportation evaluation, a negative preaward survey, or for any reason not readily apparent to the bidder. A letter, if complete and issued promptly, should minimize further correspondence and result in improved contractor relations.

**14.90 Requests for decision by the Comptroller General.**
Where a decision by the Comptroller General is desired on contracting or disposal matters such as mistakes in bids, remission of liquidated damages, reformation of contracts or other contract issues, the request will be coordinated by local counsel and forwarded to the General Counsel. Each case submitted for a Comptroller General decision will be accompanied by an administrative report which shall include a summary of the matter at issue, the recommendation of the contracting office, and all documents and information deemed pertinent to the issue.

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## SUBPART 15.1 – SOURCE SELECTION PROCESSES AND TECHNIQUES

### 15.101-90 Phased competition.

(a) Definition - Phased competition is a risk reduction strategy that provides for the development of business approaches, systems development, etc. 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. The risk for industry is that the cost of development work required to submit a proposal will not be recouped if the proposal is not accepted. Such risk reduces industry's interest and willingness to offer innovative solutions. The risk for the Government is that the proposed approach will not meet the Government's requirements or provide the optimal solution.

(3) Risk can be reduced for both parties if development and testing are accomplished under contract through the use of a phased competition. While this is the classic method used to acquire major systems, it is also an appropriate method for business practice reengineering where state of the art solutions are being sought. 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. This is in consonance with the order of precedence established in FAR Subpart 11.1. 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. Meaningful industry dialog can help the Government to further refine both the solicitation process and the SOW.

(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. Because of the evolutionary nature of this process, 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 where all responsible sources are afforded the opportunity to compete for the initial contract award. 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. Evaluation factors should be discerning and should elicit information that will allow the evaluators to qualitatively distinguish differences in proposals.

(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, trade secrets, or business confidential information, such as deliverables that will be evaluated to determine which contractor(s) will be selected to perform in subsequent phases.

(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. For example, the Government may wish to include an option in the solicitation to test solutions at more than one site. Another example would be 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. Information must be shared in a manner that precludes preferential treatment throughout all phases.

(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. The Government evaluation of proposals should include a review of the type of contract proposed in consonance with the approach proposed, and how the contract type fits with program goals when establishing negotiation objectives. Contract type may differ in each phase, resulting in a hybrid contract.

## SUBPART 15.2 – SOLICITATION AND RECEIPT OF PROPOSALS AND INFORMATION

*(Revised September 20, 2012 through PROCLTR 2012-50)*

### 15.201 Exchanges with industry before receipt of proposals.

(b) Early exchanges with industry, an essential part of the procurement process, are used to elicit industry participation in the planning and execution of the acquisition, especially when seeking to re-engineer business processes. The acquisition team, to include the program manager, contracting officer, technical support, requirements personnel, and customer representatives, should tailor the nature and extent of the techniques used to each acquisition. Early exchanges with industry can also facilitate the following objectives:

(1) Overcome barriers to acquiring commercial items and technologies and emulating commercial business practices;

(2) Develop more effective acquisition strategies and procurements tailored to elicit the best commercial solutions available;

(3) Emulate commercial manufacturing, distribution, and inventory management techniques (e.g., manufacturing on demand, direct vendor delivery, electronic tracking of inventory, and the electronic commercial catalogue);

(4) Create new buyer-seller relationships that reduce suppliers' dependence on defense business and facilitate integration of defense and commercial industrial bases (e.g., teaming arrangements, dual-use technologies, and shared production agreements with suppliers); and

(5) Make available a defense mobilization base capable of responding to peacetime supply requirements and in time of emergencies.

(c)(3) Sources sought announcements and letters to known potential sources are effective market research methods to identify interested suppliers and available products and capabilities.

(c)(6) Draft requests for proposals (DRFP's) provide industry an opportunity to comment on any aspect of the proposed acquisition prior to issuing a solicitation. It is appropriate to use DRFP's whenever, in the contracting officer's judgment, the acquisition will benefit significantly from early industry involvement. DRFPs are an effective means to resolve potential contract issues and obtain feedback from prospective offerors. Such information can lead to significant cost savings and productivity enhancements; reduce proposal preparation and evaluation time; reduce the need for solicitation amendments and preclude other delays that disrupt timely completion of the acquisition; and result in better proposals, end products, and services. The use of DRFPs can encourage potential sources to provide valuable comments on such matters as:

(i) Proposed customer requirements, including identification of requirements that are "cost drivers;"

(ii) Proposed acquisition and evaluation strategy, including business and technical approaches;

(iii) Contract methodology, including how best to elicit proposals based on current and emerging commercial practices, and contract type;

(iv) Methods to reduce proposal and contract costs and explore technology advancements and contract incentives; and

(v) Revisions to performance, schedule, or other contractual requirements.

The contracting officer should publicize the DRFP using a variety of methods, such as CBD announcements and those methods addressed at 15.201(c) and FAR 5.101(b). The publication and response times for proposed contract actions at FAR 5.203 are not mandatory for DRFPs. The contracting officer should establish reasonable times for receipt of responses to DRFPs that reflect the nature of the product or service, the supply base, and the specifics of the individual procurement. Requirements shall be synopsized in accordance with FAR 5.203 prior to issuing the solicitation. Alternatively, notice of the availability of the DRFP and a future date when the solicitation will be issued may be included in the same synopsis.

(d) Preproposal Conferences. If a preproposal conference is planned, insert the provision at 52.215-9007 Preproposal Conference. If the contracting officer determines that additional publicity is in the best interests of the Government, a special notice on the Government Point of Entry at http://www.fedbizopps.gov may also be used as provided by FAR 5.205(c).

**15.204 Contract format.**

**15.204-2 Part I – The schedule.**

(a) Section B Supplies or services and prices/costs.

(90) Guidance at 14.201-2(b)(90) also applies to request for proposals (RFPs) and request for quotations (RFQs).

(91) When clause 52.216-9000 (or substantially the same clause) is used with FAR clause 52.216-2, include a note in Section B that essentially states ”as stated in FAR clause 52.216-2, the price the offeror is to record in the Schedule in submitting its offer shall instead be recorded in clause 52.216-9000 (See Section I).”

(92) When clause 52.216-9001 (or substantially the same clause) is used with FAR clause 52.216-3, include a note in Section B that essentially states ”as stated in FAR clause 52.216-3, the price the offeror is to record in the Schedule in submitting its offer shall instead be recorded in clause 52.216-9001 (See Section I).”

(c) Section C, Description/specifications/statement of work. Clearly stamp or otherwise indicate “Foreign Military Sales (FMS) Requirements” on the face of each negotiated contract which includes FMS requirements.

**15.204-3 Part II – Contract clauses.**
Section I, Contract clauses. The contracting officer shall insert the clause at 52.214-9004, Subcontracting to other industrial preparedness planned producers, in solicitations and contracts whenever contracting without providing for full and open competition under authority of FAR 6.302-3. 10 U.S.C. 2304(c)(3).

**15.204-4 Part III – List of documents, exhibits, and other attachments.**

**15.204-4(91) List of documents, exhibits, and other attachments.**
Use 52.215-9017, List of Documents, Exhibits, and Other Attachments, in solicitations/ awards when a list of documents, exhibits, and other attachments that comprise the solicitation/award package is required. The contracting officer will identify the form number, title, date, and number of pages in each document.

**15.204-5 Part IV Representations and instructions.**

15.204-5-90 Solicitations and awards over the simplified acquisition threshold – provisions and clauses.

(a) Use 52.215-9016 in large purchase solicitations and awards ~~to alleviate difficulties~~ if DFAS does not receive Part IV (Section K-M) of the solicitation as part of the award.

(b) Section M or equivalent, Evaluation factors for award. A provision substantially as provided at 52.214-9002, Trade Discounts, may be included in requests for proposals and requests for quotations when appropriate. See 14.201-5 for the effect of this provision.

(c) 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).

(d) 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.

(e) For non-automated procurements, when all or none offers for an entire item quantity or for a group(s) of items is desired, use provision 52.215-9010, All or None (IFB/RFP only)

(f) Insert the provision 52.215-9018, Authorized Limitation, in solicitations which have more than one item, where award is to be made by item; or which have more than one lot, where award is to be made by lot.

**15.209 Solicitation provisions and contract clauses.**

(e) When FAR 52.215-5 is included in the solicitation, insert the provision at 52.215-9008 Facsimile Bids and Proposals in DLA Aviation solicitations if facsimile proposals are authorized. For DLA Land and Maritime and DLA Troop Support solicitations use Alternates I and II to replace paragraph (c) as appropriate.

**15.270 Peer review.**
Refer to 1.170 for Defense Procurement and Acquisition Policy (DPAP) peer review requirements.

(S-90) For Defense Logistics Agency (DLA) peer review program procedures, see PGI 1.170-90.

## SUBPART 15.3 – SOURCE SELECTION

*(Revised September 20, 2012 through PROCLTR 2012-50)*

**15.300-90 Scope.** The DoD Source Selection Procedures (SSP) as supplemented in PGI 15.300-90 and Appendix C, which contains standardized templates with instructions, are mandatory and shall be used for all best-value, negotiated, competitive acquisitions under FAR Part 15, including low-price/technically-acceptable procurements, unless one of the exemptions in DoD SSP is applicable. . The DoD SSP procedures can be found at https://dap.dau.mil/policy/Lists/Policy%20Documents/Attachments/3268/SourceSelectionProcedures.pdf. In situations that are not addressed in the DoD SSP, contracting officers shall ensure the situation is adequately addressed in the source selection plan and when appropriate in the solicitation. These situations shall also be brought to the attention of the contracting activity's chief of policy.

**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 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 DoD SSP as supplemented in PGI 15.300-90 and Appendix C.

(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 as supplemented by PGI 15.300-90 and Appendix C shall be followed, in conjunction with FAR and DFARS requirements, in establishing and evaluating evaluation factors and subfactors. Refer to OUSD(AT&L) memorandum dated March 4, 2011, subject: Department of Defense Source Selection Procedures, at http://www.acq.osd.mil/dpap/policy/policyvault/USA007183-10-DPAP.pdf.

(c)(3) [Reserved.]

(c)(4) Socioeconomic (small business) evaluation factor. To implement DLA policy and the guidance contained in FAR 15.304(c)(4) and DFARS 215.304(c)(i), the contracting officer shall establish an evaluation factor to evaluate the extent of an offeror's proposed use of small businesses, HUBZone, women-owned small businesses, veteran-owned small businesses, service-disabled veteran-owned small businesses (SDVOSB), economically disadvantaged women-owned small businesses (EDWOSB), and historically black colleges/universities or minority institutions (HBCUs/MIs), in order to incentivize offerors to subcontract with such concerns. 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. The factor itself and its evaluation should be separate and distinct from the subcontracting plan if one is required as well as from use of the mentoring business agreements (MBA) factor (see (c)(S-90)) and the factor to promote use of AbilityOne entities (see (c)(S-91)). Proposals that demonstrate a strong commitment to affording entities

in one or more of the categories described above a real opportunity to participate shall be rated more favorably than those that demonstrate lesser or no such commitment.

(i) 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, women-owned small business, or HBCU/MI 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.

(ii) 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) DLA mentoring business agreements (MBA) program evaluation factor. Proposed participation in the DLA MBA program (see 19.90) shall be separately considered as an evaluation factor in all long term contracts expected to exceed $500,000. Proposals submitted pursuant to this factor shall be evaluated in accordance with the DoD source selection procedures.

(c)(S-91) 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. (See 8.702.) 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 both the socioeconomic (small business) evaluation factor described in (c)(4), and also from the MBA factor (see (c)(S-90). All solicitations, except those acquisitions that are set aside under one of the provisions of FAR Part 19 shall include this factor. This factor will be evaluated in accordance with the DoD source selection procedures. Proposals that demonstrate a strong commitment to affording AbilityOne entities a real opportunity to participate in the Government contracting arena (beyond the statutorily mandated use of these entities by prime contractors; see FAR 8.002(c)) shall be rated more favorably than those that demonstrate little or no such commitment.

(i) 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 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.

(ii) Solicitation provisions. Include the provisions at 52.215-9004, AbilityOne (formerly called Javits-Wagner-O'Day Act (JWOD)) Entity Proposal, and 52.215-9005, AbilityOne (formerly called Javits-Wagner-O'Day Act (JWOD)) Entity Support Evaluation, or similar provisions, in all unrestricted solicitations.

(iii) Contract clause. A clause substantially the same as the one at 52.215-9006, AbilityOne (formerly called Javits-Wagner-O'Day Act (JWOD)) Entity - Contractor Reporting, shall be included in each contract for which the successful offeror submitted an AbilityOne entity subcontracting proposal with its offer.

(c)(S-92) 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 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).

(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-93) Surge and sustainment will be evaluated in accordance with the terms and conditions of the solicitation. (See 17.9300)

(c)(94) Cost of source inspection evaluation factor. (See also 13.106-90(a), 14.201-8(a)(90), 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)(95) Cost of preaward survey (PAS) evaluation factor. (See also 13.106-90(b), 14.201-8(a)(91), and 52.215-9001)). 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, the provision at 52.215-9001, Evaluation Factor for Preaward Survey, shall be inserted in solicitations. Additionally, 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, DLA's Automated Best Value System (ABVS), 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 15.300-90.

(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 has mandated initial deployment of the newest PPIRS iteration, the Past Performance Information Retrieval System-Statistical Reporting (PPIRS-SR). DLA is positioning the

enterprise to transition from its current vendor past performance assessment tool, the Automated Best Value System (ABVS), to the Past Performance Information Retrieval System – Statistical Reporting (PPIRS-SR). PPIRS-SR is being phased in with deployment of EProcurement.

(2) When ABVS is used, if the offeror having the lowest evaluated price also has an ABVS FSC score below 70 and would potentially be bypassed under best value in favor of a higher priced offeror with a higher ABVS FSC score, then past performance evaluation will be accomplished using PPIRS-SR information, in lieu of ABVS, for all offers received. The ABVS or PPIRS-SR score and other past performance information shall be evaluated in accordance with DLAD 15.300-90.

(3) For aquisitions 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 ABVS or PPIRS-SR. For business sector definitions and thresholds, see the CPARS Policy Guide at http://www.cpars.csd.disa.mil/cparsfiles/pdfs/DoD-CPARS-Guide.pdf, Attachment 1 Business Sectors.

(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 perforce for that procurement;

(iii) Potential sources of the past performance information;

(iv) Supply chain focal point (address and telephone number) for questions/ challenges if ABVS scores will be used; and,

(iv) Discrepant past performance information resolution process.

(2) The contracting officer shall insert the provision at 52.215-9022, Contractor Past Performance Evaluation – Automated Systems, in all acquisitions in which past performance will be used as an evaluation factor in best value award decisions. However, contracting officers are not precluded from collecting/analyzing past performance information in addition to ABVS/PPIRS for acquisitions in excess of the SAT.

**15.304-91 Solicitation for an item producible with facilities.**
Insert 52.215-9015 in C&T solicitations when a solicitation calls for an item producible with facilities that also could be used for the production of other items being purchased simultaneously under a separate solicitation.

**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 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.

(a)(4) The chief of the contracting office is delegated authority to determine whether technical evaluators may have access to cost information.

(a)(5) (Reserved.)

**15.308-90 Source selection decision.**
Information for the source selection decision is provided at PGI 15.300-90 and Appendix C.

**15.308-91 [Reserved.]**

**15.308-92 [Reserved.]**

**15.308-93 Competitive negotiated solicitations using source selection procedures and use of product demonstration models**.
Use 52.215-9020, Instructions for Submitting Product Demonstration Models (PDM), for supply chains at DLA Troop Support in competitive negotiated solicitations using source selection procedures when product demonstration models (PDMs) are used. The buyer or contracting officer needs to check-off paragraph (c) when using the PDM as a "manufacturing standard" or allow the contractor to utilize "alternate" material in the PDM. However, they should not be used together. This provision only applies to the supply chains at DLA Troop Support .

(a) The number of models required will be determined by the number and type of testing criteria. The contracting officer will make the determination based on input from the technical evaluators. The contracting officer is responsible for ensuring that the number of models requested is reasonable and realistic considering the estimated dollar value and size of the end item.

(b) When removing identifying information will not destroy the product, the contracting officer will make all efforts to remove all identifying information from the PDM without destroying the product prior to submitting the PDM for technical evaluation to preclude bias on the part of the technical evaluators.

**15.308-94 Solicitations for medical equipment and instruments.**
Use 52.215-9019, Operational Capability Demonstration, in solicitations for medical equipment and instruments when recommended by cognizant technical personnel/the requiring activity, and best value source selection evaluation procedures will be used. Use this clause when the acceptability of the item(s) offered can be evaluated by the written technical proposal alone, but an operational capability test is needed to functionally test the item(s) prior to award.

## SUBPART 15.4 – CONTRACT PRICING

*(Revised September 26, 2012 through PROCLTR 2012-52)*

**15.401 Definitions.**

"Attribute acceptance sampling." Attribute acceptance sampling is typically used for evaluating a contractor's internal controls. This includes the evaluation of policies, procedures, and practices to determine the adequacy of internal controls for detecting and preventing operational deficiencies. some level of non-compliance that can be tolerated. Attribute acceptance sampling is designed to discern whether non-compliance is within tolerable limits. Attribute acceptance sampling is not designed to identify questionable costs or the reasonableness of prices included in a contractor's catalog. For purposes of DoD EMALL contracting personnel will use variable sampling as described below to support price reasonableness determinations.

"Catalog price." A catalog price means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant numbers of buyers constituting the general public (FAR 2.101).

"Commercial catalog." A commercial catalog is a catalog of items meeting the FAR 2.101 definition of commercial item.

"Confidence level." Confidence level is the assurance (or probability) that the amount being estimated by the sample will fall within a specified range (or interval) determined from sample results. A confidence interval is commonly defined as the point estimate plus or minus the precision amount. A 95 percent confidence level indicates that with repeated sampling under the same sampling plan, 95 times out of 100 the actual universe is expected to be within the interval computed from the sample results. This means that any single sample has a 95 percent chance of producing an interval that includes the actual universe amount. For a given sample size, the more confident an evaluator wants to be that the confidence interval contains the true amount, the wider the interval must be.

"Cost or pricing data" also encompasses decrement factor information.

"Decrement factor information" is the historical data necessary to determine the average difference between vendors' and 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.

"Dollar unit sampling." Dollar unit sampling is a substitute for stratification by dollar amount. In general, the two approaches are roughly similar in what they can accomplish. Dollar unit sampling does have an advantage in dealing with selected items that prove to be clusters of smaller physical units. Dollar unit sampling's selection probability proportional to size feature concentrates the sampling evaluation towards larger items much the same as stratification does for physical unit sampling. Collectively, the dollars making up an item give that item a chance of selection proportionate to its size in the universe. Dollar interval selection is used to select dollar unit sampling samples. Dollar unit sampling implies that "dollar units" or "dollar hits" as opposed to physical units are being sampled. Physical units, such as invoices or price lists, are the sampling unit, with the sample items being identified by the dollar hits. In order to evaluate a dollar hit the item or the cost of the physical unit, containing the dollar hit must be analyzed.

"Exclusive dealers." When original equipment manufacturers (OEMs) use exclusive distributors/dealers to sell their products, the Government usually must buy these products directly from the exclusive distributor/dealer. In these situations, the exclusive dealers are functioning as prime contractors, and the OEMs as subcontractors.

"EZ-Quant." EZ-Quant is statistical software developed and used by the Defense Contract Audit Agency (DCAA) and other Government agencies in evaluation of large universes of data such as a contractor bill of material. DLA contracting personnel will use EZ-Quant in performance of statistical sampling for DoD EMALL catalogs because of its wide acceptance within both the Government and contractor community.

"Inferential or inductive statistics." Inferential or inductive statistics are methods of using sample data taken from a statistical population to make actual decisions, predictions, and generalizations related to an area of interest. In contract pricing, stratified sampling of a proposed bill of materials is used to infer the degree it is overpriced or under-priced.

"Precision." The term "precision" pertains to the amount or degree of probable error associated with an estimate or the extent to which the sample findings may differ from the actual universe values or conditions. It measures the accuracy of a point estimate by showing, for a specified confidence level, how much the point estimate may vary from the true universe amount. In sampling for variables, precision can be expressed as either an interval about the point estimate obtained from the sample; or a maximum or upper limit such as less than $25 or less than 5 percent error. In most cases, the primary consideration influencing the evaluator's selection of a desired level of precision will be the potential effect of the error on Government contract costs.

"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 PGI 15.406-3(a)(11)).

"Desired precision amount." Desired precision amount is the amount of sampling error, stated as a dollar or percentage amount that is considered acceptable by the evaluator.

"Population." A population is the set of all possible observations of a phenomenon with which we are concerned. All the part numbers in an offeror's commercial catalog would constitute a population. A numerical characteristic of a population is called a parameter.

"Random selection." Random selection is a key principle in statistical sampling. To select randomly is to eliminate personal bias or subjective considerations, which cannot be expressed numerically, from the choice of a sample. Random sampling is a selection process in which each item in a stratum has a known probability (chance) of being selected.

"Sample." A sample is a subset of the population of interest that is selected in order to make some inference about the whole population. For example, part numbers randomly selected from an offeror's commercial catalog would constitute a sample. A numerical characteristic of a sample is called a statistic.

"Sampling frame." A sampling frame is the physical (or electronic) representation of the sampling units from which the sample is actually selected. In sampling for variables, examples of sampling frames include a computer listing of a consolidated bill of materials, or a file of vouchers. For these sampling frames, possible sampling units are a part number, or physical voucher respectively.

"Significance level." The significance level is equal to 1.00 minus the confidence level. If the confidence level is 95 percent, the significance level is 5 percent. The significance level is then the area outside the

interval which is likely to contain the population mean. Setting the significance level depends on the amount of risk you are willing to accept that the confidence interval does not include the true population mean. As the amount of risk that one is willing to accept decreases, the confidence interval will increase. In other words, to be surer that the true population mean is included in the interval, widen the interval.

"Statistical reliability." Statistical reliability of sample findings is measured by two interrelated parameters, precision and confidence level. The evaluator must establish desired values of these parameters for either approach as a physical unit or dollar unit for variable sampling.

"Statistics." Statistics is a science which involves collecting, summarizing, analyzing, and interpreting data in order to facilitate the decision making process. Statistical sampling is the preferred method of evaluation of less than 100 percent review of universe data. Statistical sampling is preferred over non-statistical (judgmental) sampling because of its advantages, which include objectivity, overall defensibility, and measurability of risk of substantial or material sampling error.

"Stratification." Stratification is the partitioning of the evaluation universe into smaller groups according to a scheme that suits evaluation purposes. The evaluation universe consists of all of the transactions or other basic items within the scope of the evaluation. Stratification does not change the evaluation universe. Stratification is primarily used in variable sampling, and is rarely used in attribute sampling. The usual purpose of stratification is to enhance sampling precision, and thereby decrease the amount of evaluator time required to obtain adequate support for the evaluator's conclusions.

"Universe." A "universe" is a group of items or transactions from which information is desired. For purposes of PGI 15.402-91 the term "universe" will refer to the "sampling universe," the group of items which remains after the large dollar or sensitive transactions have been stratified or segregated for complete as opposed to partial evaluation.

"Variable sampling." Variable sampling is generally used to verify account balances or cost elements and note any differences. This type of sampling is substantive testing (as opposed to compliance testing) whereby sample items are evaluated for error amounts or variables (as opposed to attributes). The evaluation sampling universe is the entire grouping of items from which a sample will be drawn. Variable sampling can be applied to proposals, incurred costs, and contractor catalog prices.

**15.402 Pricing policy.**
Contracting officers must adhere to the following policy.

(a)(S-90) If the price cannot be determined fair and reasonable, spot buys may be used as a last resort to maintain customer support.

(a)(S-91) Develop and assure conduct of a systematic repetitive review process with the supply chain cost and price analysis office to assure that "one pass pricing" and similar arrangements with contractors (that are relied upon to support determinations that prices are fair and reasonable) will be revalidated periodically within a reasonable period of time so that these arrangements can still be used for purposes of determining item prices fair and reasonable on long term contracts.

**15.402-90 Pricing policy – exclusive dealers.**

(a) DLA contracting officers are required to obtain price and cost-type information, without requiring certification (see FAR 15.402(a)(2)(i) and (ii)), when 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 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 cost-type information 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 cost data, the contracting activity must notify the Compliance Oversight and Acquisition Workforce Division (J73), and J7 will then notify Defense Procurement, Acquisition Policy, and Strategic Sourcing (DPAPSS) (see mandatory PGI 15.402-90).

**15.402-91 Pricing policy – EMALL.**

(a) FAR 15.403-3(c)(1) states that at a minimum, the contracting officer must use price analysis to determine whether the price is fair and reasonable whenever the contracting officer acquires a commercial item. The fact that a price is included in a catalog does not, in and of itself, make it fair and reasonable. If the contracting officer cannot determine whether an offered price is fair and reasonable, even after obtaining additional information from sources other than the offeror, then the contracting officer must require the contractor to submit information other than certified cost and pricing data to support further analysis in accordance with FAR 15.404-1 proposal analysis techniques. In most situations the contracting officer should be able to obtain information needed to perform price analysis on commercial catalogs. However, in limited situations where price analysis is not adequate, the contracting officer should request other than certified cost and pricing data and perform cost analysis.

(b) Determining the price reasonableness of a commercial catalog for the DoD EMALL poses a challenge due to the number of items in a catalog, e.g. 50,000 or more, with minimal or no historical demand or sales data, coupled with low (below the micropurchase threshold) prices. The contracting officer shall use the mandatory procedures in PGI 15.402-91 in making price reasonableness determinations for new commercial catalogs to be placed on EMALL, additional items added to existing catalogs, or renewal of catalogs.

(c) Situations for using statistical analysis. Statistical analysis can be invaluable to use in developing the Government objective for contract prices based on historical values. Historical costs or prices are often used as a basis for prospective contract pricing. When several historical data points are available, you can use statistical analysis to evaluate the historical data in making estimates for the future. Statistical analysis is particularly useful in the analysis of commercial catalogs with large numbers of items where an overall price reasonableness decision is made on the catalog based on the items statistically selected for review.

(d) Applicable principles in using statistical analysis. Most audit universes are widely dispersed. Usually, there is a wide variation between the smallest and largest individual dollar amounts, with most of the amounts being relatively small and only a few amounts being very large. Since a random sample from the entire universe would probably include only a few large (high dollar) items, the reliability of the results would be correspondingly low. This is possible because wide variations are likely between questionable amounts for individual large items and the average of questionable amounts from the universe. These issues can be addressed by a combination of stratification and random sampling.

(e) Stratification involves the evaluation of a large quantity of data without sacrificing quality. Stratified sampling techniques allow examination of 100 percent of the items with the greatest potential for cost reduction, while random sampling helps assure that there is no general pattern of overpricing smaller dollar items. Stratification of the universe into several dollar ranges or strata can be used to improve the review reliability and reduce the overall number of items evaluated. Normally, the universe is stratified into high-dollar stratum for 100 percent evaluation and several other strata from which samples are selected for evaluation. The review effort is concentrated on the high-dollar items where the risk is greatest. The samples are statistically selected as a random sampling from each of the other strata, which are used as the basis for making decisions on the price reasonableness of the corresponding universe.

(f) The exact number of strata for statistical sampling will depend on the dollar range of various catalogs based on judgment of the evaluator. The underlying assumption of random sampling is that a sample is representative of the population from which it is drawn. If the sample is fairly priced, the entire stratum is assumed to be fairly priced. Conversely, if the sample is overpriced, the entire stratum is assumed to be proportionally overpriced.

(g) Contracting officers and cost/price analysts are not expected to perform 100 percent review of the entire commercial catalog, because of the limited resources available, and the relative risk of overpayment by not performing 100 percent review. However, DLA must have an acceptable methodology for determining price reasonableness of the entire catalog through a viable review process. Therefore, use statistical sampling in reviews. Statistical sampling is preferred over judgmental sampling, because of its advantages, which include objectivity, overall defensibility, and measurability of the risk of substantial (material) sampling error. In a randomly selected sample each item has a known chance (or probability) of being selected. The results of a statistically selected sample can be objectively applied to the universe from which it was drawn to assist the evaluator in projecting the results of evaluation of the sample to the universe. Do not attempt to project results to the universe if the sample was not randomly selected.

(h) In sampling for variables, there is no single “best sample size.” Sample size is a compromise between the inversely related considerations of precision and evaluator time. Evaluating too many sample items can result in achieving greater precision than necessary. That is, more resources will have been devoted to sample analysis than necessary. Therefore, the use of EZ-Quant software is mandated to ensure selection of the proper sample size. The EZ-Quant sample size estimation option allows the

evaluator to determine the optimum sample size for variable sampling based on three factors: (1) presumed error rate or the results of a sample from a similar evaluation universe; (2) precision amount; and (3) confidence level.

(i) Sampling plan. The successful application of statistical sampling begins with the design of the sampling plan. General sampling plan elements are list below.

(1) Briefly state the objective of the sample or what the evaluator is looking for in the universe. For example, "The objective is to determine price reasonableness of offeror's catalog."

(2) Describe the universe and state its size.

(i) Describe the sampling unit (i.e. the basic auditable item to be examined);

(ii) Specify the scope of the review so that all sampling units pertinent to the sampling objective can be identified; and,

(iii) State the size of the universe (i.e. the total number and amount of all sampling units).

(3) Select the universe size – the number and value (if applicable) of all sampling units. An example is the universe of 5,000 catalog items totaling $2 million.

(4) Describe the sampling frame. This is the physical or electronic representation of the universe to which the mechanics of sampling will be applied, for example, an Excel spreadsheet of the offeror's parts catalog with associated prices.

(5) Select a suitable sampling approach. When performing variable sampling the reviewer may choose physical unit sampling or dollar unit sampling (DUS).

(6) Develop the sampling reliability parameters.

(7) When sampling for variables establish a sample size using sample sizing utilities in DCAA EZ-Quant.

(8) Describe the sample selection method.

(9) A copy of the sampling plan and a cross reference to the items reviewed for price reasonableness shall be retained in the contract folder for each catalog reviewed.

**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 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 (see PGI 15.402-92).

(2) This finding shall be titled "adequacy of price competition" finding (see PGI 15.402-92) and the contracting officer must attach this document to the price reasonableness determination statement (see 15.406-3(a)(11)).

(b) For sole-source items that are subject to limited competition (see 15.402-92(a)), the contracting officer must decide whether additional information is necessary to determine the reasonableness of the otherwise successful offeror's price. The contracting officer shall review the price offered by the proposed awardee in the instant competition and compare it to prices paid for the item under prior awards. When conducting this price comparison, the contracting officer shall also take into consideration any changed conditions. In documenting this review, the contracting officer shall include the dates, quantities, unit prices, awardees and price reasonableness codes for all buys immediately preceding the buy used in the comparison, to the most recent buy to date; and include the source, name and individual values of any price historical and forecasted price or index used. The price comparison analysis, discussion of changed conditions and conclusion shall be included as part of, or by attachment to, the price reasonableness determination (15.406-3(a)(11)).

(c) DLA contracting officers shall follow the policy herein and the corresponding PGI 15.402-92 guidance.

**15.403 Obtaining cost or pricing data.**

**15.403-1 Prohibition on obtaining cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).**

(b) Exceptions to cost or pricing data requirements. The existence of a Truth in Negotiations Act (TINA) exception (FAR 15.403-1(b)) including 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 cost or pricing data requirements.

(1) Adequate price competition. The contracting officer must document one or more of the three circumstances allowing a finding of adequate price competition described in FAR 15.403-1(c). Subparagraph 15.402-92(a) provides guidance for determining whether adequate price competition exists for procurements involving sole-source items that are subject to limited competition.

(2) [Reserved.]

(3) Commercial items. See 15.404-1(a)(92).

(4) Waivers.

(A)(2) Senior Procurement Executive (SPE) coordination. Where appropriate, the SPE shall coordinate on exceptional case TINA waiver D&Fs estimated to exceed $100 million (calculated using the appropriate subparagraph (15.403-4(a)(1)(i)(90),-(ii)(90), or –(ii)(91)) signifying approval of a request elevated from a supply chain HCA for authorization of the supply chain HCA to grant the waiver; and prior to executing a D&F elevated for grant of an exceptional case TINA waiver on behalf of a contracting office not designated as a contracting activity (see DFARS PGI 215.403-1(c)(4)(A)(2)).

(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 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/contractor 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/contractor'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

*(1)* through the DLA supply chain channels for action by the chief, commodity business unit, or through detachment channels, where applicable, to their senior reviewing official; and if unsuccessful, for action by the chief of the supply chain contracting office and an appropriate corporate official; or, for other than a DLA supply chain,

*(2)* through contracting management channels at other DLA contracting activities.

*(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 supply chain HCA or, for other DLA contracting offices not designated a contracting activity (see 2.101), to the DLA HCA (J7), 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 supply chain cost and price analysis office.

*(viii)* The supply chain cost and price analysis office is the supply chain focal point for reviewing and providing advice on proposed TINA waiver D&Fs, maintaining the supply chain TINA waiver tracking log, a copy of the proposed and approved TINA waiver D&Fs and for emailing the supply chain's monthly report of all exceptional case TINA waivers that were in-process or executed during the month, using the J73 prescribed TINA waiver spreadsheet, to the DLA HQ J73 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 information other than cost or pricing data to enable the supply chain 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, supply chain or other contracting office, the Commander/ Director, supply chain HCA or chief of the contracting office shall promptly notify DLA HQ, 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)(1) to (14)), should be forwarded electronically to DLA HQ, attention: J73 by the CCO or designee, e.g., normally the chief of the supply chain cost and price analysis office.

*(xi)* Within seven working days following receipt of the complete documentation package, J7 will contact the vendor and request the certified cost and pricing data or the written refusal. If the supply chain 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 vendor has provided the refusal and information to enable a fair and reasonable price determination, or the vendor has re-engaged in negotiations with the contracting officer leading to fair and reasonable prices, the supply chain HCA can sign the waiver. If the vendor still refuses to provide documentation of its refusal, J7 will provide written documentation of the HQ effort, and outcome, to the cognizant supply chain or other contracting office

for its records (Including where applicable, the SPE coordination per 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 supply chain 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 supply chain cost and price analysis office, a copy of the completed J73 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 (basis of the annual OSD report (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 information 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 supply chain HCA to:

(*1*) the supply chain chief of the contracting office (CCO), with power of redelegation without further delegability, to one level below the supply chain CCO, and

(*2*) the senior reviewing official of a detachment under the supply chain, without power of further delegation.

(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.

**15.403-4 Requiring cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).**

(a)(1) If the contracting officer cannot determine that an item claimed to be commercial is in fact commercial or that any other TINA exception applies (FAR 15.403-1(b)(1) through -1(b)(5)) to a contract action exceeding the TINA threshold, the contracting officer shall require submission, and subsequently, certification of cost or pricing data. See additional guidance at 12.102 (90).

(i) Pricing a contract award:

(S-90) In determining whether an award action exceeds the current Truth in Negotiations Act (TINA) threshold (see FAR 15.403-4(a)(1)) for requiring cost or pricing data, use the anticipated dollar value of the award, plus the dollar value of all priced options evaluated at time of award. 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 1.108(c)).

(ii) Pricing a contract change or other modification (measured for TINA applicability using the TINA threshold cited in the FAR 52.215-11, -13 and -21 clauses included in the contract) (See also 1.108(c) and FAR 15.403-4(a):

(S-90) The requirement to obtain cost or pricing data and subsequent certification 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), and

(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.

(S-91) The following postaward actions do not require 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 repricing 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 supply chain cost and price analysis office as soon as pricing assistance is needed in accordance with 15.404-1(a)(90)(1)(i) or (ii).

(S-91) Cost or pricing data for indefinite quantity and requirements contracts.
FAR 16.503 and 16.504 state 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--

*(1)* It should be used by the offeror in developing the unit price(s) proposed;

*(2)* 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

*(3)* The offeror is requested to quantify any reduction in the offered unit price(s) available if the minimum order quantity were raised and/or a guaranteed minimum contract quantity established.

**15.403-5 Instructions for submission of cost or pricing data or information other than cost or pricing data.**

(a)(3) Submission of cost data.
Insert the provision at 52.215-9034, Submission of Cost Data, in requests for proposals when the contracting officer determines in writing, based upon his/her knowledge of the inductry, market place, region or market research conducted, that cost data may be required to establish a reasonable price and when adequate competition will not be obtained to support price reasonableness.

(b)(2) Solicitation instructions for submission of cost or pricing data shall include or incorporate by reference in Section L, the Table 15-2 general instructions, cost elements and format requirements specified at FAR 15.403-5(b)(1) and shall require identification of decrement factor information, defined at 15.401, as part of the data submission requirements.

**15.404 Proposal analysis.**

**15.404-1 Proposal analysis techniques.**

(a) General.

(S-90) The cost/price analysis element shall provide:

(1) A price or cost/price analysis report, as appropriate, for:

(i) all sealed bid acquisitions of $550,000 or more where a sole responsive bid is received, and

(ii) all negotiated acquisitions of $550,000 ($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(b)) 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)(91)b(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 PGI 15.402-92) when deemed necessary and requested by a contracting officer; and

(6) Review/approval status concerning:

(a) Contractor accounting system reviews,

(b) Cost Accounting Standards disclosure statement adequacy reviews and compliance reviews,

(c) Contractor estimating system reviews,

(d) Contractor insurance/pension reviews,

(e) Contractor purchasing system reviews, and/or

(f) other similar status information applicable to a specific contractor entity when deemed necessary and requested by the contracting officer.

(S-91) The contracting officer (the price analyst and/or value engineering/other technical specialist when requested to furnish an analysis of the proposal}, shall identify or have identified from

existing data bases and/or files, any independent Government estimate (IGE){"should cost") that had been performed; and include in the proposal evaluation report and prenegotiation briefing memorandum, comments as to the extent of utility of the IGE results as analytical or corroborative information for determining price reasonableness, establishing negotiation objectives, and for contract negotiations.

(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.

(b) Price analysis.

(S-90) Whenever cost or pricing data or commercial item exemption data is obtained, the analysis shall also address the reasonableness of the offered price in comparison to prior prices paid for the item.

(1) [Reserved.]

(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 utilized 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 depicts prices at which sales are currently being made or were last made. See 12.102(90) for guidance on determining if a procurement is for an item that meets the commercial item definition at FAR 2.101.

(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. It does not inherently reflect the benefits if one approach provides improved performance over another. It 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.

(c) Cost analysis.

(S-90) When a contractor catalog or other price developed using proposed, recommended, or approved forward pricing rates, factors, and/or a formula pricing methodology is utilized to determine price reasonableness, the contracting officer shall include in the price reasonableness determination documentation of the steps taken in confirming that the rates and factors and/or formula pricing methodology and catalog prices are current and have been reviewed and determined reasonable, the review date, and the office accomplishing that review (i.e., normally the field ACO). Use of this technique also requires documentation that the direct material quantities/prices, direct labor hours, and/or other bases against which the rates and factors are applied have been reviewed and determined reasonable.

(c)(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.

(c) Cost analysis.

(S-90) [Reserved.]

(S-91) One pass pricing. One pass pricing (OPP) is·a collaborative pricing technique that allows simultaneous proposal analysis and agreement on price significantly reducing the procurement lead time. The OPP process may be used by the contracting officer to price sole-source items in establishing a long-term contract (LTC), adding to/modifying an existing LTC, or establishing a stand-alone fixed quantity contract. Cost or pricing data, or information other than cost or pricing data, is used in the OPP process as prescribed in FAR 15.403. One pass pricing is used in sole-source procurements where acceptable accounting practices exist and both parties (contractor and Government) have entered into an agreement that identifies the essential elements of the process and satisfactorily addresses contractual and oversight requirements of their respective organizations. The use of the OPP process is optional, but if used the contracting officer shall follow the PGI 15.404-1(c)(91) guidance.

**15.404-2 Information to support proposal analysis.**

(c) Audit assistance for prime contracts and subcontracts.

(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 Supply Chain 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, supply chain HCA and, as appropriate, by the supply chain Commander/Director. When a contractor/subcontractor has refused to provide the required data for the first time, or when the Commander/Director or supply chain HCA has not personally negotiated with the contractor/subcontractor recently to obtain such data, the Commander/Director or supply chain HCA should attempt to secure the data. The Commander/Director or supply chain 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, supply chain HCA, or Chief of the Contracting Office for those contracting activities without a supply chain HCA, shall promptly notify DLA HQ, attention: J7, and forward recommendations to resolve the impasse, with supporting documentation ((1)-(14) above), to DLA HQ, attention: J73.

(S-93) See 15.403(c)(4)(A)(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.

**15.404-3 Subcontract pricing considerations.**

(a) The contracting officer's determination of price reasonableness for a proposed award shall take into consideration the estimated, or actual prices, to be paid by the proposed awardee to its subcontractors (see FAR 15.404-3(a)). The contracting officer shall follow the guidance at DFARS PGI 215.404-3 and PGI 15.402-92 to determine whether a subcontractor's proposed prices are fair and reasonable.

(c) The contracting officer shall consider requiring submission of subcontractor cost or pricing data (unless an exception to TINA applies), if the contracting officer determines the subcontractor's price is unreasonable or does not meet at least one of the criteria in FAR 15.403-1(b)).

**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 redelegated not lower than the chief of the contracting office. The DLA Aviation CCO may further delegate this authority to the deputy director, supplier operations, contracting, and the chief, base support division, without power of redelegation. Promptly upon execution, a copy of each approval shall be furnished to DLA HQ, J73.

(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 briefing memorandum or attach it thereto, e.g., as a separate attachment or as part of the price/cost analysis report.

**15.404-73 Alternate structured approaches.**

(c)(1) The DD Form 1547, Record of Weighted Guidelines Application, shall be used whenever an alternate structured approach is utilized. When a zero weight is assigned to one or more of the factors specified in DFARS 215.404-71-1(a) or additional factors are utilized, complete rationale shall be documented.

**15.404-71-4 Facilities capital employed.**

(b)(2) See DFARS 215.404-71-4(b)(2) for the treatment of facilities capital cost of money on production special tooling and production special test equipment.

**15.405 Price negotiation.**

(a)(S-90) Occasionally, the price is not as close to the negotiation objective as the contracting officer would like, but it cannot be judged unreasonable. In such cases, the file should contain a positive statement that the price is either considered fair and reasonable under the circumstances or cannot be determined reasonable, and enumerate the circumstances. For every price reasonableness determination, the contracting officer should accomplish price or cost/price analysis, as necessary, to determine the price either to be reasonable or unreasonable. 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 unfair or unreasonable.

(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, including the Commander, Administrator, DLA Strategic Materials, or Director, DLA Document Services. For estimated awards over $550,000 where an offeror refuses to provide cost or pricing data required pursuant to FAR 15.403-4, and/or a price that can be determined fair and reasonable, the chief of the contracting office shall personally 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)(S-90) Whenever it is decided that the contract auditor will not be participating in the prenegotiation and/or price negotiation meeting for a contracting action which involved an audit, the contracting officer shall document in the prenegotiation briefing memorandum (PBM) and/or price negotiation memorandum (PNM), as applicable, the results of discussions with the auditor or other basis for such decision.

(b)(S-91) Prior to the beginning of any contract price negotiation, the award of a competitive negotiated contract, or the disposition of any other recommended contract action cited below, a briefing of the proposed negotiation, award, or settlement shall be presented to the chief/acting chief of the contracting office (CCO) for approval:

(1) Every award exceeding $25,000 ($150,000 for ICPs) of a letter contract, undefinitized BOA order or other undefinitized instrument. (The responsibility in paragraph (b)(S-91) above is delegable only for awards that do not exceed $250,000 (ICPs only), without power of redelegation, to one level (two levels for ICPs) below the CCO, and, for ICPs only, any other awards for filling a backordered or nonstocked requirement meeting DLA's criteria for heightened management (see 17.7404-1(a));

(2) Every definitization exceeding $150,000 ($250,000 for ICPs) of a letter contract, undefinitized BOA order, or other undefinitized instrument (for ICPs only, the responsibility in paragraph (b)(91) above is delegable, without power of redelegation, to one level below the CCO when the contract action does not exceed $550,000);

(3) Every other negotiated contract pricing, repricing and final pricing action that exceeds $150,000, ($550,000 for the ICPs). (For other than ICPs, the responsibility in paragraph (b)(91) above is delegable, without power of redelegation, to one level below the CCO when the contract action does not exceed $250,000. For ICPs, to one level below the CCO; two levels when the action does not exceed $1,000,000);

(4) "Resolution" of reports of defective cost or pricing data and other "reportable" audits (see 15.406-3(b)(S-91)). (For ICPs only, the responsibility in paragraph (b)(S-91) above is delegable, without power of redelegation, to two levels below the CCO if the value of the action does not exceed $150,000); and

(5) Any action not cited in (1) thru (4) above which requires DLA HQ Director, DLA Acquisition (J7) review and approval. (The responsibility in paragraph (b)(91) above is delegable, without power of redelegation, to one level below the CCO.)

Note that pursuant to (1)-(5) above, (a) delegees must occupy a supervisory chief or deputy chief position at the immediately lower organizational (not procurement functional) level (or, for ICPs, at the either the first or second lower organizational level) and be certified at Level III in the contracting acquisition career field; (b) chief and their deputy/deputies are deemed to be at the same organizational level; and (c) dollar value determinations shall be made in accordance with 1.690-6(a).

(b)(S-92) At a minimum, the briefing shall cover:

(1) The acquisition situation, including any unique features.

(2) Previous price history.

(3) Where price negotiations are contemplated, the analytical methods utilized in establishing the prenegotiation objectives (i.e., price, improved delivery schedule, etc.):

(i) For proposals not involving cost or pricing data or a cost breakdown, discuss and include a written schedule showing the buildup of the offeror's price and any significant differences between the proposed price negotiation objectives (i.e., minimum, target, and maximum prices, and the proposed price, and any audit, ACO, or cost/price analyst recommendations. Also discuss when there are dissimilarities between the item or quantity offered and the commercial item for which a catalog price exists;

(ii) For acquisitions to be awarded based on cost or pricing data, or cost realism data, discuss the buildup of the offeror's price by element of cost and profit, and any significant differences between the proposed price negotiation objectives (i.e., includes minimum, target, and maximum objectives for costs, profit, fee, and price) and the contractor's proposed price, audit findings, technical report comments, ACO recommendations, and cost/price analyst recommendations, together with rationale supporting the overall price negotiation objectives. Include a comparative schedule showing each element of cost and profit included in the contractor's proposal; the recommendations contained in the audit, technical, and field pricing reports; any independent Government estimate (IGE), the cost/price analyst's recommendations; and the price negotiation objectives.

(iii) Negotiation plan (i.e., phone or in person).

(iv) Anticipated negotiation problems (e.g., contingencies, required deletions or changes in contract clause, etc.) and proposed solutions.

(v) When the contracting officer has a “significant disagreement” with the auditor’s findings (defined as one in which the contracting officer’s prenegotiation objective plans to sustain less than 75 percent of the total audit recommended questioned costs on a proposal valued at $10 million or more), the procedures at PGI 15.406-1 will be followed.

(4) Where price negotiations are not contemplated, the analytical methods utilized in determining price reasonableness:

(i) If award is to be made as a result of initial competitive offers received, include a written schedule comparing the offerors' prices, price history, and any IGE.

(ii) If award is to be made following best and final offers (BAFOs) received, address the nature and results of discussions and offers, include a written schedule comparing the initial offers and BAFOs if exemption data or cost/cost realism data are obtained, also include the requirements (excluding prenegotiation price objectives) of (3)(i) or (3)(ii) above respectively.

(iii) If award is to be made based on competitive prices of current or recent awards for the same or comparable items, include a written schedule comparing the offered prices to such recent competitive award prices and any IGE.

(iv) For other sole offers, include a written schedule showing the price for each line item (and offeror's buildup by element of cost and price, if known, with a written comparison to any significant differences in the audit findings or review recommendations).

(b)(S-93) A memorandum summarizing the principal elements of the briefing prenegotiation objectives, the attendees, and the results of the briefing (including any significant comments or specific recommendations made by briefing attendees) and attaching the price schedule used in the briefing, shall be prepared for signature by the approving official.

(b)(S-94) The appropriate prenegotiation approval authority or delegee, shall be notified of the need for any significant change in negotiation objectives. A copy of the approval of revised price objectives shall be made an attachment to the pre-negotiation briefing memorandum (PBM).

(b)(S-95) The following are exempt from the requirement for prenegotiation/preaward briefings:

(1) Perishable subsistence acquisitions.

(2) Subsistence commodity market items that are subject to marketing exigencies, such as coffee, flour, and salad oil.

(b)(S-96) The following exceptions are authorized to the requirements for a prenegotiation briefing to the official specified at 15.406-(b)(S-91):

(1) DLA Energy petroleum acquisitions not involving a cost proposal audit that consist entirely of unrelated line items that are consolidated solely for administrative purposes. The briefing in such cases may be conducted at a level lower than the chief of the contracting office when no single line item is valued $200,000 or more, even though the total acquisition is valued $500,000 or more.

(2) For DLA Troop Support subsistence actions cited at 15.406-1(b)(S-91) may be delegated, regardless of dollar value, by the chief of the contracting office to the Defense subsistence region commanders, with redelegation authorized to the purchasing division chiefs.

(3) Orders against federal supply schedules or mandatory orders placed under the Javits-Wagner-O'Day Act (FAR Subpart 8.7).

**15.406-2 [Reserved.]**

**15.406-3 Documenting the negotiation.**

(a) While excessive detail should be avoided, the price negotiation memorandum (PNM), standing alone, must convince all reviewers that the price negotiated (or awarded without negotiations) was reasonable, given the circumstances of the particular acquisition. Although the content will vary depending on the magnitude of the contract, contract type, cost or pricing data obtained, the extent of negotiations, etc., a standard format should be used. The PNM should have the following subdivisions: "subject," "introductory summary," "particulars," "procurement situation," "negotiation summary," and

"miscellaneous." For acquisitions involving cost or pricing data, the negotiation summary shall include a schedule reflecting each element of cost and profit in the contractor's proposal, the approved negotiation objectives, any revised proposal or negotiation objective, and the final negotiated amount. A copy of the PBM, along with any changes thereto, shall accompany and be listed as an attachment to the PNM.

(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 PGI 15.406-3(a)(7)), and

(ii) include an "adequacy of price competition" finding (See 15.402-92) with the price reasonableness determination statement for acquisitions of sole-source items subject to limited competition that meet the TINA adequate price competition exemption requirements.

(iii) 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)).

**15.407 Special cost or pricing areas.**

**15.407-1 Defective cost or pricing data.**

(b)(7) The 26 U.S.C. 6621 quarterly interest rate cited in the corresponding FAR paragraph, is published in an Internal Revenue Bulletin the Federal Register during the third week of March, June, September and December. The annual rate for the forthcoming quarterly period and information on its application is available on the DLA pricing webpage http://www.dla.mil/Acquisition.

(d)(S-90) If, following review by the pricing element and legal (see 1.691(a)) and approval in accordance with 15.406-1(b)(91), 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 briefing memorandum, including the audit and pricing reports and other relevant documentation (see 15.406-1(b)(91)(5) and (93)), shall be furnished for receipt in DLA HQ, attention: J73 at least 10 working days prior to initiating settlement action with the contractor.

**15.407-5 Estimating systems.**
Refer to DFARS 215.407-5-70, Disclosure, Maintenance, and Review Requirements, 215.407-5-70(g)(2)(vi) and (3). See also subpart 17.92.

(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 element, 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 followup 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 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 (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 (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 "nonreportable 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 HQ, attention: J73, 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.

**15.408 Solicitation provisions and contract clauses.**

(l) Requirements for cost or pricing data or information other than cost or pricing data. Reserved. (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 Clauses and provisions.**

(a) Insert 52.215-9013 in solicitations and contracts where the contractor is producing goods at one or more facilities.

(b) Insert the clause 52.215-9021 in all DoD EMALL solicitations and contracts.

(c)(1) 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 decision not to use reverse auctioning is made by the primary level field activity Commander or Director and documented in the contract file. This authority is not delegable. Fully competitive solicitations are those for which the procurement will be conducted pursuant to FAR Subparts 6.1, 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). Contracting officers will consider use of this provision in solicitations for all competitive procurements valued between the micro-purchase threshold and the simplified acquisition threshold (SAT). See mandatory PGI 15.408-90(c) for reverse auction candidate selection criteria and weekly reporting requirements.

(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).

**15.408-91 Clause – indefinite delivery type contract.**
Use clause 52.215-9024, State Minimum Price Regulations, in solicitations for solicitations for milk indefinite delivery type contracts.

## SUBPART 15.6 - UNSOLICITED PROPOSALS

*(Revised on August 21, 2012 through PROCTLR 2012-47)*

**15.604-90 Handling of Unsolicited Proposals.**
See PGI 15.604-90 for procedures for handling unsolicited proposals.

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## SUBPART 16.1 – SELECTING CONTRACT TYPES

*(Revised July 6, 2012 through PROCLTR 2012-34)*

### 16.105 Solicitation provision.

(90) Use 52.216-9018, Alternate Offer Conditional Award, when clause 52.216-9017 is included in Section I of the solicitation, and award of this contract is made under the condition that an alternate offer will be approved.

### 16.105-91 Alternate offer conditional award.

Use 52.216-9018, Alternate Offer Conditional Award, when clause 52.216-9017 was included in Section I of the solicitation, and award of this contract is made under the condition that an alternate offer will be approved.

### 16.190 Long-term contracting.

(a) Scope of section. This section and PGI 16.190 prescribe policy and procedures applicable to the Defense supply centers for establishing and processing long-term contracts (LTC) [at all dollar values for supplies and services in support of DLA customers for all primary level field activities. Additional LTC policy is contained elsewhere in the DLAD (see parts 4, 7, 9, 10, 11, 13, 15, 16, 17, 46, and 47).

(b) Definition. A “long-term contract” (LTC) is defined as any contract with a contract period, including base and options, greater than one (1) year. DLA policy is that all LTCs shall be structured for a minimum of three years (see 16.190(c)).

(c) Policy. Contracting officers shall establish and process long-term contracts in accordance with this section.

(1) For materials, LTCs shall be awarded for items meeting the criteria of business driver categories 1-3 (i.e., forecastable national stock numbers that rank in the top 5 percent of each supply chain on the basis of annual forecast value or that have a demand in every single month for the past year), unless items are coded obsolete.

(2) The primary level field activity Commander or Director is authorized to approve exceptions to this policy based on rationale demonstrating an LTC is not appropriate. This authority is not delegable.

(3) The rationale and waiver shall be documented in the contract file. All LTCs shall be structured for a minimum of three years. Mandatory procedures for processing long-term contracts can be found in PGI 16.190 to include systems and tools, standards, and metrics.

(d) Systems and tools. Contracting officers shall maximize the use of the following EBS and other appropriate tools when establishing, processing, and reporting long term contracts:

(1) LTC project tracker;

(2) DLA pre-award contracting system (DPACS);

(3) Federal Business Opportunities (FedBizOpps);

(4) Central Contractor Registration (CCR);

(5) DLA internet bid board system (DIBBS);

(6) Industrial base tools (e.g., IBMS, SPIDERS, RMA);

(7) Federal procurement data system-next generation (FPDS-NG);

(8) Past performance information retrieval system (PPIRS);

(9) Excluded parties list system (EPLS);

(10) SAP outline agreement (OA)

(11) Electronic contract file (ECF);

(12) Wide-area workflow (WAWF), STORES, CDMIA;

(13) Vendor scorecard;

(14) Bidwiser, COPortal; and

(15) E-Procurement (when it becomes available).

(e) Standards and metrics.

(1) Long-term contract processing standards are set forth in a table at PGI 16.190. Each individual segment of the overall response time should take from one to 30 days; these segments result in a total acquisition response time of 120 days.

(2) Long-term contract processing metrics, including color ratings for duration values for each major stage of the process, are illustrated in the mandatory table at PGI 16.190.

## SUBPART 16.2 – FIXED PRICE CONTRACTS

*(Revised September 12, 2011 through PROCLTR 2011-30)*

### 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 (a) are regularly maintained by the manufacturer or vendor; and (b) 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 Description.**

(a)(S-90) 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. (DAR Tracking Number 95-D0003, FARS DEV 96-10).

(c)(S-90) 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.)

**16.203-290 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.

**16.203-390 Limitations.**

(a) A fixed price contract with economic price adjustment (EPA) may also be used to provide for price adjustments authorized in this section. (Refer to DAR tracking number 95-D0003, FARS Deviation 96-10.) (See also 16.203-1, 16.203-2 and 16.203-4.

(b) An EPA clause may be planned for use in the event the contracting officer substantiates in documentation included as part of the acquisition plan that the conditions cited in FAR 16.203-3 exist and an EPA provision is required to achieve one of the two objectives stated therein, and/or its use is authorized in this section.

(c) When the contracting officer determines that no existing FAR EPA clause (including a FAR EPA used in conjunction with the corresponding FAR EPA "Implementation" DLAD clause (see 16.203-4(a)(1)(90), -4(b)(1)(90), and -4(c)(1)(90)), no DFARS EPA clause and no DLAD EPA clause satisfies the need for an EPA clause, a new EPA clause may be developed in accordance with FAR 16.203-4, DFARS 216.203-4-70, and approved using 1.301-91. See PGI 16.203 for additional guidance.

(d) 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. This requirement also applies to acquisitions of commercial items.

(e) The CCO or designee (not lower than one level above the contracting officer) shall approve any 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.

(f) If not included in the EPA clause, the solicitation and contract 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).)

(g) 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 – EPA and adjustments or indexes.**

(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 (see (a)(1)(90), (b)(1)(90) and (c)(1)(90) below) 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)(90) or (c)(90)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 upon approval pursuant to 16.203-3(91). (Refer to DAR tracking number 95-D0003, FARS Deviation 96-10.)

(S-91) Adjustments based on established market prices or indexes (see also (d) below).

(i) 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.

(ii) 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.

(iii) 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 at

(d)(iv)(90), after substituting the phrase "market price" indicator for the five occurrences of the word "index".

(iv) 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.

(a) Adjustments based on established prices--standard supplies.

(1)(90) The clause at 52.216-9000 (or substantially the same clause) may be used with FAR clause 52.216-2.

(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 FAR 52.216 52.216-9039

(i) The clause at 52.216-9011, Economic Price Adjustment - DoD Electronic Mall (EMALL) may be included in long-term contracts to be loaded into the DoD Electronic Mall (EMALL).

**16.203-4(a)(2)(90) EPA – Established catalog price. two upward adjustments per year open season E-CAT solicitation.**

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.

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)(91) EPA, FSS prices, open season E-CAT solicitation, medical FAR Part 12 solicitations and contracts.**

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.

For dental, optical, and laboratory integrated delivery system (LIDS) buys use 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 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 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.**

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.

OFA 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.

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.**

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.

OFA 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.

For dental, optical, and laboratory integrated delivery system (LIDS) buys use 52.216-9046, Economic Price Adjustment – Other Federal Agency Contracts – E-CAT.

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.**

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.

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.**

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.

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.

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.**

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.

The clause requires buyer fill-in of 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).

The contracting officer shall insert the appropriate ceiling percentage in paragraph (c)(5) as determined by the chief of the contracting office or designee. Explicit approval must be obtained for any ceiling exceeding ten (10) percent in accordance with 16.203-3 (94).

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.**

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. 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), (ii), (ii)(6), (ii)(7), (ii)(8, (ii)(9), (ii)(10), (ii)(11), and paragraphs (c) and (f).

The contracting officer shall insert the appropriate ceiling percentage in paragraph (f) as determined by the chief of the contracting office or designee. Explicit approval must be obtained for any ceiling exceeding ten (10) percent in accordance with 16.203-3 (94).

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.**

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.

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).

The contracting officer shall insert the appropriate ceiling percentage in paragraph (c)(5) 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 16.203-3 (94).

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.**

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. The contracting officer shall insert the appropriate ceiling percentage in paragraph (c)(4) as determined by the chief of the contracting office or designee. Explicit approval must be obtained for any ceiling exceeding ten (10) percent in accordance with 16.203-3 (94).

The buyer shall insert applicable date for each publication in paragraph (f). For OPIS, the Monday date of the publication shall be used. Requires fill-in (see paragraphs (b)(2), c(4), 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, 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. The contracting officer shall insert the appropriate ceiling percentage in paragraph (c)(5) as determined by the Chief of the Contracting Office or designee. Explicit approval must be obtained for any ceiling exceeding ten (10) percent in accordance with 16.203-3 (94). 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. The contracting officer shall insert the appropriate ceiling percentage in paragraph (c)(4) as determined by the Chief of the Contracting Officer or designee. Explicit approval must be obtained for any ceiling exceeding (10) percent in accordance with 16.203-3(94). Requires buyer fill-ins at paragraph (c)(4) 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. The contracting officer shall insert the appropriate ceiling percentage in paragraph (c)(2) as determined by the chief of the contracting office or designee. Explicit approval must be obtained for any ceiling exceeding ten (10) percent in accordance with 16.203-3 (94). The contracting officer must complete the applicable ceiling in Note 1 of paragraph (c)(2).

**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 contracting officer shall insert the appropriate ceiling percentage in paragraph (c)(4) as determined by the chief of the contracting office or designee. Explicit approval must be obtained for any ceiling exceeding ten (10) percent in accordance with 16.203-3 (94). 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.

(b) Adjustments based on established prices--semistandard supplies.

(1)(90) The clause at 52.216-9001 (or substantially the same clause) may be used with FAR clause 52.216-3.

(c) Adjustments based on actual cost of labor or material.

(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.

(3)(90) When the FAR “Implementation” DLAD clause is also used with the note specified at 15.204-2(b)(91), the contracting officer shall include the required information in such clause vice the contract Schedule.

(4)(iii)(90) When the FAR “Implementation” DLAD clause is also used (along with the note specified at 15.204-2(b)(91)), the contracting officer shall include the required information in such clause vice the contract Schedule.

(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.

(d) 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.

(d)(iv)(S-90) 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."

(d)(v)(S-90) 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) Clauses – consumer price index and economic price adjustment.**

**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)**
Use 52.216-9051, Economic Price Adjustment - One Adjustment Per Year – Base Year Only 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.

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.

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)**
Use 52.216-9052, Economic Price Adjustment - One Adjustment Per Year – Base/Option Year Only FCP Percentage Adjustment, in Medical FAR Part 12 solicitations and contracts for yellow fever vaccine and other appropriate pharmaceutical items which have an annual Federal Ceiling Price (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.

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.

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)(95) EPA – actual material costs for subsistence delivered price business model.**
Insert the clause at 52.216-9064, Economic Price Adjustment (EPA) – Actual Material Costs for Subsistence Delivered Price Business Model, 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.

This EPA clause is applicable to CONUS subsistence prime vendor (SPV) procurements. The contracting officer shall insert the applicable ceiling clause in paragraph (d) as determined by the chief of the contracting office or designee. Explicit approval must be obtained for any ceiling exceeding ten (10) percent in accordance with 16.203-3(94).

The buyer will fill-in required in paragraphs (c)(1)(iii); (c)(1)(v);(c)(1)(vi); 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. Additionally, for acquisitions that require review and approval by the DLA HQ IARB, these fill-in paragraphs and statement of work sections will be reviewed for adequacy/accuracy by the DLA HQ price/cost analyst in coordination with General Counsel.

**16.203-4(d)(2)(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 OCONUS subsistence prime vendor (SPV) procurements. The language in the basic clause is applicable to procurements in OCONUS locations that do not require the specific distribution pricing language in alternates I or II.

(ii) The remainder of the basic clause other than paragraph b is applicable to all OCONUS locations. The contracting officer shall insert the applicable ceiling percentage in paragraph (d) as determined by the chief of the contracting office or designee. Explicit approval must be obtained for any ceiling exceeding ten (10) percent in accordance with 16.203-3(94).

(iii) Buyer fill in is required in paragraphs b(3)(i)(I); b(D); b(5); b(7); c(1)(ii); c (l)(iii); c(I)(v); c(1)(vi); 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 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 HQ 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 J72 cost/price analyst in coordination with DLA General Counsel.

(iv) Use alternate (ALT) I for support to Afghanistan.

(iv) Use alternate II for support to specifically identified OCONUS locations. DLA Troop Support will identify the specific OCONUS location(s) where Alternate II is required when section (b)(5) in the basic clause does not adequately address the circumstances of those locations. The basis for this determination will be included in the contract file.

**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. 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 price index.

(1) The clause at 52.216-9030 Economic price adjustment – department of labor price 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);

(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 local DLA pricing element before selecting the PPI, and the number of price adjustments in paragraphs b)1) and c)1, respectively, of 52.216-9030. For the activities for which there is no local pricing element, the fill-in section shall be coordinated with the DLA Acquisition Operations Division (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) 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) 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) 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) 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) 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) 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) 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) 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 (US 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.

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.

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.

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, attention: J73 every two years for review and updating of the clause as necessary.

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, attention: J73 every two years for review and updating of the clause as necessary.

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, attention: J73 every two years for review and updating of the clause as necessary.

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 16.203-2, -3, and -4 are met.

The clause at 52.216-9067 shall be used in contracts for procurement of liquid propane gas (LPG). 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. The buyer must also fill in percentage applicable in (c)(5), as determined in accordance with 16.203-3 (94) and local procedures. This clause is approved for use by DLA Distribution only.

**16.205-4 Contract clauses.**
Contracting officers may use clause 52.216-9038, Price Redetermination- Prospective (Deviation), in contracts 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.

## SUBPART 16.5 – INDEFINITE-DELIVERY CONTRACTS

*(Revised September 26, 2012 through PROCLTR 2012-52)*

**16.501-2 General.**

(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).

(S-90) Indefinite delivery contracts (IDCs) that enable decentralized ordering shall contain provisions for customers and other users the options of (i) placing orders to be paid using their Governmentwide purchase card and (ii) ordering against their purchase card, for individual orders not to exceed $150,000. An exception is authorized only to the extent the prospective contractor refuses to accept the purchase card for ordering and payment. Customers and other users of the Governmentwide

purchase card against IDCs issued by contracting offices of DLA and other agencies are bound by any applicable restrictions and policies issued by or in accordance with procedures applicable to the individual users. (DLA users are governed by the DLA Government Purchase Card Program issuance and DLA issuance, DLA Governmentwide Commercial Purchase Card Program).

(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**
The clause at 52.216-9027, Evaluation of Quantity Sensitive and Indefinite Delivery Contracts (IDCs), shall be used in solicitations which will result in IDC contracts 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.

(4)(iv) Consideration of past performance in order placement decisions shall include success in implementation of proposed socioeconomic support programs (see 15.605(b)(1)(91) and performance in carrying out Mentoring Business Agreement proposals (see 19.90)and 15.605(b)(92), and support of "AbilityOne" (formerly called Javits-Wagner-O'Day Act (JWOD)) qualified entities (see 15.605(b)(1)(94)). Solicitations shall so state in the explanation of order placement criteria (FAR 16.504(a)(4)(iv)).

(c) 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 $103 million (including all options) (see FAR 1.108(c) for guidance in calculating the contract value) to a single source requires supply chain Head of the Contracting Activity (HCA) approval (unless delegated to the chief of the contracting office (CCO)), or CCO (hereafter referred to as "or equivalent") approval for those DLA organizations for which the, Director, DLA Acquisition (J7) 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)* The required written determination to make a single award of a task or delivery order contract over $103 million (including all options) shall be signed by the Director, DLA Acquisition (J7), who has delegated Head of Agency authority. Contracting activities will send a draft determination to J72 that shall be accompanied by a memorandum from the supply chain HCA or equivalent that provides sufficient detail to justify why the multiple award approach was found to be unsuitable and fully supports the determination and findings required by FAR 16.504(c)(1)(ii)(D)(1). See PGI 16.504(c)(1)(ii)(D)(1)(90) for further guidance, procedures, and templates. Submit requests in ample time for HQ review and signature, preferably within the early stages of the acquisition process, but no less than 21 days before contract award.

*(d)* Copy of the determination. J71 will provide a copy of determinations signed by the Director, DLA Acquisition (J7), to the Deputy Director, Defense Procurement (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) Solicitations shall advise offerors that (1) the competition requirements of FAR Part 6 do not apply to placement of individual task and delivery orders; (2) individual orders shall be placed in accordance with the selection criteria specified in the solicitation/contract; and (3) complaints about the placement of individual orders shall be reviewed by the activity competition advocate.

(2) 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.

(5) 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)(5). 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)(5).

(b)(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(f)(90)**
Use 52.216-9017, Single or Multiple Awards, on Solicitations and Contracts for single or multiple awards of indefinite quantity contracts when the Government reserves the right to award multiple task/delivery order contracts for the same or similar services or supplies to two or more sources under this solicitation. One or more awards may be conditioned on the approval of an alternate offer. Use with 52.216-27.

(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, LTCs incorporating a manufacturer's price list, comprehensive weapon system spare parts support or a specific range of items, etc.

(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 considerable flexibility in defining contract scope but must be careful to avoid ambiguities.

(91)(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)(1) The contracting officer may use the clause at 52.216-9009, Estimated Total Quantity in solicitations for Requirements Contracts using information furnished by the Item manager.

(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.

(e) The contracting officer may use the clause at 52.216-9023, Additional Ordering Limitation, in conjunction with FAR 52.216-19, Ordering Limitations in solicitations and contracts for definite-

quantity, indefinite quantity, or a requirements contracts, when the Government wants to ensure that ordering will not be required until the contractor cures an untimely delivery status on a previous order or other contract.

(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(91)**

(g) The DLA Energy contracting officer may use the clause 52.216-9055 Contractor Order Receipt Agents (DLA Energy) in DLA Energy solicitations/contracts when it is anticipated that an offeror may wish orders be directed to other than the prime contractor. Include this clause in the offeror submission package.

The DLA Energy contracting officer may use 52.216-9057, Orders (Canadian Forces Vessels) (DLA Energy) in bunkers solicitations and contracts.

(h) The DLA Disposition Services contracting officer shall insert 52.216-9056, Limitation of Requirements (DLA Disposition Services), in all DLA Disposition Services solicitations and contracts for the disposal of hazardous waste.

**16.506(92)(a)**
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. 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.**
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 (NSN) 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. 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 contract specialist.

## SUBPART 16.6 – TIME – AND - MATERIALS, LABOR -HOUR, AND LETTER CONTRACTS

**16.601 Time and materials contracts.**

**16.601-90**

(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 Director, DLA Acquisition (J7) 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 Procedures.**
The policy and procedures of 17.74 and PGI 17.7404-3 are applicable to letter contracts.

## SUBPART 16.7 – AGREEMENTS

**16.703 Basic ordering agreements.**

(b)(90) Application.
Use 52.216-9016, Intent to Award Against Existing BOA, on solicitations between $25,000.01 and $150,000 which are expected to be awarded to a sole source contractor against an existing BOA and are posted to the DLA-BSM Internet Bid Board System (DIBBS) in lieu of being synopsized.

(c) (S-90) Limitations.

(1) If a DLA BOA is to permit progress payments, such payments should normally be precluded on orders with a ceiling price below $1 million and/or having deliveries scheduled to commence in less than 6 months (less than $150,000 and/or less than 4 months for small business firms). This exclusion may be waived where the contracting officer documents the review and results specified in FAR 32.502-1(d)(1) and approval is granted at a level above the contracting officer.

(i) (Reserved.)

(ii) The requirements of DFARS 217.7404-1 through 217.7404-4, DFARS 217.7405 through DFARS 217.7406, and DLAD 17.7404-2 through 17.7404-90 shall be included in the terms and conditions of BOAs executed by DLA contracting offices which authorize issuance of undefinitized delivery orders (UDOs), for applicability to such UDOs.

(d) (S-90) Orders.

(1) The file shall be documented when the price or cost analysis techniques discussed at 15.404-1(b) and –1(c) are used for award of priced delivery orders and definitization of UDOs.

(2)(ii) If a DLA BOA contains a progress payment clause without an exclusion provision for orders with a ceiling price below $1 million ($150,000 for small business firms) and/or having deliveries scheduled to commence in less than 6 months (4 months for small business firms), a provision precluding such applicability shall be included in all delivery orders below these thresholds except where the contracting officer documents that the requirements of 16.703(c)(90) and/or FAR 32.502-1 have been met.

(3)(i) The requirements of DFARS Subpart 217.74 and DLAD 17.74 shall be met on all UDOs issued by DLA contracting offices.

(ii) The requirements of 16.603-90 shall be followed when DLA HQ preaward review and approval to award a UDO is required by 1.690.

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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). However, such acquisitions must comply with the following:

(1) An analysis must be conducted during the acquisition planning process to determine the most beneficial period of performance length, and for indefinite-quantity contracts, the appropriate guaranteed minimum. This analysis must address why the proposed duration and contract minimum provide pricing and business benefits, and also must address the degree of Government risk associated with a longer-term arrangement. Items that should be considered at a minimum include: cost, future potential for competition on the solicited items, whether the resultant contract will contain an EPA clause, associated contractor start-up costs, and potential impact on the current/future small business base. Results of the analysis must be documented in the Acquisition Plan.

(2) Acquisition personnel must coordinate with their comptroller's office to ensure adequate funding procedures are in place so that such acquisitions do not, singly or cumulatively, create a negative impact on cash flow or obligation authority that impedes support to other procurement requirements.

(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. Contracting offices not designated as contracting activities (see 2.101) shall forward requests for modification of cancellation provisions to the Director, DLA Acquisition (J7) for approval.

### 17.105-1 Uses.

(b) 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 Director, DLA Acquisition (J7) for approval.

(c) 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)(3) 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 11, 2011 through PROCLTR 2012-01)*

**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).

(b) For market research requirements related to establishing and maintaining long term contracts (LTCs), see 11.302(b)(91). Additional business rules for LTCs are addressed in the procurement business rule for long term contracting, which can be accessed at https://polh.bsm.dla.mil/.

**17.203 Solicitations.**

(a) Highlight the inclusion of an option provision in a solicitation by a cross-reference to the option in the price schedule.

(b) The requirements of 15.403-4(a)(1) shall be addressed when stating the basis of evaluation.

(c) [Reserved.]

(d) When a separately priced option quantity or period is permitted in a solicitation which also includes an economic price adjustment (EPA) or similar repricing provision applicable to the same option quantity or period price(s) for the same item(s) of supply or services, the contracting officer shall preclude potential overpricing, usually by providing for a price buildup in the schedule (see 52.214-9001) from mutually exclusive portions of the (basic and option) price subject to EPA and the firm fixed price portions. The firm fixed price portion of the option price may exceed the comparable portion of the basic award price (see 52.217-9001). However, "overlap", where any portion of the option quantity or period price is also covered by an EPA clause, is permitted only when the contracting officer documents reasons why overpricing will not occur and utilizes a provision which requires offering of prices for the firm fixed price portion of the quantity or period prices which are no higher than that for the basic contract (see also 16.203-3(93)).

(e) [Reserved.]

(f) Such option price restriction may be used in other exceptional circumstances where fully justified (FAR 17.203(f)) by documentation included in the acquisition plan.

(g) The approval cited in FAR 17.203(g)(2) should also be included in the acquisition plan. The option price restriction shall be conspicuously included in Section M of the solicitation. The cautionary notice (FAR 17.203(g)(1)) shall also be included in Section M.

**17.204 Contracts.**

(e) (1) The total of the basic and option periods in the case of services, or the total of the basic and option quantities in the case of supplies, may, under special circumstances, exceed 5 years (but only up to 10 years for task or delivery order contracts unless the provisions below are met) when approved by the supply chain HCA, or J7 HCA for non-supply chains, 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) The total of the base and option ordering periods for most task or delivery order contracts awarded by DoD (see DFARS 217.204(e)) may, under exceptional circumstances, exceed 10 years when approved by the DLA Head of Agency (HoA) (see 2.101). The DLA Senior Procurement Executive (SPE) shall approve each task or delivery order issued against such contracts if performance under the task or delivery order is expected to extend more than one year past the 10 year limit or the approved extended limit (see DFARS 217.204(e)(iv)).

(3) Requests to 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 supply chain HCA, or CCO for non-supply chains. 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) As mandated in PGI 217.204(e), 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 and approval not to evaluate an option estimated to exceed $550,000 prior to contract award (or definitization, if an undefinitized contract) shall be in the contract file, and shall include (see also 15.403-4(b)(90)) either,

(1) An explanation of the specific exemption that can be applied to avoid the data submission and certification requirements of P.L. 87-653, and identification of the pricing technique(s) available to subsequently determine the option price fair and reasonable without submission of certified cost or pricing data or catalog exemption data; or

(2) A statement that such option price(s) are identified in the solicitation and contract Schedule as "not to exceed" ceiling price(s) subject to later definitization (see 17.208(a)(90)).

**17.207 Exercise of options.**

(a) The option clause shall require that the contractor be given adequate notice (see FAR 17.207(a)) of the requirement to perform under the option (as a general rule, at least 14 days prior to the last scheduled delivery date).

(c)(S-90) In addition to those considerations set forth in the FAR, exercise options only if it is determined that:

(1) There is no cardinal change in the requirement; and,

(2) The contractor's performance is satisfactory. A record of demonstrated superior performance may warrant additional consideration under buying best value guidelines. (See 17.207(e)(90).) Satisfactory performance includes successful implementation of any support to socioeconomic programs which was evaluated as part of source selection as well as any mentoring business agreements which were proposed and evaluated during source selection. For contracts that effected a shift to commercial practices or change in method of customer support, see 42.1103(90).

(d) (1) A new solicitation should not normally be used as a means to determine reasonableness of option prices. Tests of the reasonableness of the option price should generally be made by one of the methods identified in FAR 17.207(d)(2) or (3). Whenever a contracting officer determines that it is necessary to test the reasonableness of the option price by use of a formal solicitation, the contract file must contain a memorandum which briefly explains the reasons for the decision.

(2) The following are examples of factors which may be considered in the informal test of the market and evaluation of the option price(s):

(i) The fact that the option price was evaluated for price reasonableness prior to initial award.

(ii) The relationship of the option price to the price for the initial contract quantity.

(iii) The adequacy of competition at time of initial award and the length of time since the award.

(iv) Changes in the general economy that could affect the contractor's costs.

(v) The results of any market research and analysis efforts (see Part 10).

(2)(S-90) After conducting an informal analysis of prices or an examination of the market, in accordance with FAR 17.207(d)(2), the contracting officer may determine it is more advantageous to exercise the option and also become aware that another source (such as a surplus dealer) has favorable pricing and/or availability for one or more items on the contract. If so, the contracting officer shall forward the information 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.

(e)(S-90) An additional factor to be considered is the desirability of continuing a successful contractual relationship with a vendor that has demonstrated superior quality and delivery performance. Where the market analysis or survey shows that the item may be available at lower cost, this need not preclude the exercise of the option given a history of superior performance by the contractor.

Performance criteria, may be used in determining superior performance and evaluating its importance relative to market price considerations and other factors.

(f) Prior to exercising an option, the contracting officer shall consider the factors at FAR 9.104-1 particularly the contractor's performance under the base contract period and any previous options. A decision not to exercise the option after considering responsibility-type factors is not a determination of contractor responsibility, and is not subject to referral to the SBA if the contractor is a small business. The written documentation shall address the basis for the contracting officer's determination (see FAR 17.207(d)).

**17.208 Solicitation provisions and contract clauses.**

(a)(S-90) If the contract includes an option in amount exceeding $500,000 which was not evaluated prior to award, the contracting officer shall include a clause substantially the same as the clause at DFARS 252.217-7001, Surge Option, providing for definitization of the option before option exercise, except in the event urgency dictates post-exercise definitization.

(b) In addition to DFARS clause 252.217-7001, the contracting officer shall include the provisions and/or clauses prescribed in 17.9306.

(d)(90) Exercise quantity options. The clause at 52.217-9029, Exercise Quantity Options, may be used in IFBs, RFPs, and RFQs, and contracts when an option clause providing for incremental quantity option exercise is needed to supplement or replace FAR clauses 52.217-6, Option for Increased Quantity, and 52.217-7, Option for Increased Quantity-Separately Priced Line Items.

## SUBPART 17.5 – INTERAGENCY ACQUISITIONS UNDER THE ECONOMY ACT

**17.500 Scope of subpart.**

(b) If more specific statutory authority exists, do not use the Economy Act as the authority to acquire goods or services through a non-DoD agency or another DoD component. For guidance pertaining specifically to non-Economy Act acquisitions, see Subpart 17.96, below, and PGI 17.96.

## SUBPART 17.73 – IDENTIFICATION OF SOURCES OF SUPPLY

**17.7301 Policy.**
In the interest of maintaining supply system and item integrity, and fostering the spare parts breakout programs, it is essential to know what is being purchased and from whom. It is the policy of DLA to retain the right to require identification of the manufacturing sources of the items purchased. Therefore, refusal of offerors to provide such information when specifically required is a valid basis for rejection of offers.

**17.7302 Procedures.**

(c) When required, the source of manufacture must be identified. Refusal of offerors to do so precludes a contracting officer from determining the technical acceptability of the item to be supplied. Therefore, the offer cannot be accepted. Additionally, if an offeror furnishes the information but restricts

its use on the basis of confidentiality, except as provided in subparagraph (e) below, the contracting officer must advise the offeror that--

(1) It is not DLA policy to make awards with such restrictions or to hold such information in confidence;

(2) In order to be eligible for award, the confidentiality requirements must be removed; and

(3) If such limitation is not removed, the offer may be rejected.

(d) Obvious reasons for not maintaining confidentiality are that it is operationally impractical because the total administrative costs could outweigh savings on the instant purchase. In addition, because of the volume of purchases, it is difficult to guarantee confidentiality, and DLA could be liable for inadvertent disclosure. Finally, it is contrary to DoD efforts to expand competition.

(e) Notwithstanding subparagraph (d) above, there may be instances when award may be beneficial to the Government whether or not the confidentiality restriction is removed. In these instances, prior to award, the contracting officer shall review the validity of the restriction. For example, if the identified manufacturing source is advertised in trade journals, commercial source listings, or is otherwise known to industry and Government, then holding the identity of the manufacturing source in confidence is not appropriate and shall be challenged. If it is determined that the confidentiality restriction is valid, then that information shall be held in confidence.

(f) Accordingly, a solicitation provision substantially as set forth in 52.217-9003 shall be included in negotiated solicitations, except in solicitations for commercial items. (Note: This provision, when used, may not be used as a modification to the provision at 52.217-9002, Conditions for Evaluation and Acceptance of Offers for Part Numbered Items.)

(g) It must also be noted that, if there is no provision in the solicitation which requires the offeror to disclose manufacturing/production sources, the offeror may properly conceal those sources in a competitive atmosphere.

**17.7302(90) Solicitation and contract clauses for perishable dairy products.**
Use 52.217-9024, Special Provisions for Bulk Milk Dispensing Equipment (Subsistence Supply Chain), in solicitation and contracts for perishable dairy products.

## SUBPART 17.74 – UNDEFINITIZED CONTRACT ACTIONS

**17.7403 Policy.**
Follow the procedures of PGI 17.7404-3 when requesting DLA HQ review and approval of a letter contract or other undefinitized contract action (UCA), regardless of value, or an unpriced change order with an estimated value exceeding $5 million. Only the Director, DLA, has the authority to approve use of a UCA, regardless of value, or an unpriced change order with an estimated value exceeding $5 million. Definitization of any UCA or an unpriced change order valued over $5 million within the mandated time frames does not require DLA Director approval. Definitization beyond the mandated time frames does require the approval of the DLA Director.

(a)(S-90) The contracting officer shall expedite Government and contractor efforts to secure an acceptable price proposal and evaluation pending and following approval by the Director, DLA, to award a UCA. All proposed UCAs, regardless of value, and all unpriced change orders with an estimated value exceeding $5 million must be approved in accordance with this policy before issuance by the contracting officer. 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. The chief of the contracting office shall monitor usage of UCAs for conformance with regulatory requirements.

(a)(S-91) The chief of the contracting office (or a local UCA Monitor, where designated) shall:

(1) monitor the activity's usage of UCAs for conformance with local UCA procedures, DLAD and higher level regulatory requirements;

(2) prepare and forward the activity's template reports, including negative reports, electronically to DLA HQ J73 not later than ten calendar days following the end of each month and

(3) ensure UCAs are correctly coded in the Federal Procurement Data System

(c)(S-90) Use the current electronic version of the DoD template for consolidated undefinitized contract action (UCA) management report (available from DLA HQ J73, in MS Excel) for enhanced management oversight and monthly reporting of all UCAs having an estimated or actual contract ceiling value (including options) that exceeds $5 million. In addition, include in the report any unpriced change orders over $5 million, as required by DFARS 243.204-70-7.

**17.7404 Limitations.**

**17.7404-1 Authorization.**

(a) A proposed undefinitized contract action (UCA), as defined in DFARS 217.7401, regardless of value, or an unpriced change order with an estimated value exceeding $5 million must be submitted to J72 for staffing to the Director, DLA, for approval before entering into the UCA or unpriced change order. No letter contract or other UCA shall be awarded until properly approved in accordance with this requirement. This requirement includes UCAs of any dollar value and those falling under one or more of the exceptions in DFARS 217.7402. HCA authority in DFARS 217.7404-1 to approve entering into UCAs is withheld and shall not be used by PLFAs and other contracting offices.

(b) Requests for approval to use the authority in DFARS 217.7404-1(b) to authorize use of a UCA for a non-urgent requirement will normally be approved only where the non-urgently needed quantity should be included and priced coincident to definitization of an urgently required quantity of the item. Authorization will normally be limited to use of a UCA to fill a requisition for a backordered or non-stocked quantity requiring heightened management, i.e.:

(1) a military service requisition with issue priority designator (IPD) 01;

(2) a Military Service requisition with IPD 02 or 03; and either an anticipated not mission capable supply (ANMCS) or not mission capable supply (NMCS) indicator in the required delivery date

field (record positions 62-64) beginning with a "9", "N", or "E" or an OSD/JCS project code (record position 57-59) beginning with a "9".

(3) a foreign military sale requisition under the cooperative logistics program support agreement (CLSSA) with IPD 02 or 03 and an OSD/JCS project code beginning with a "9".

(c) Follow the procedures of PGI 17.7404-3 when requesting DLA HQ review and approval of a letter contract or other UCA, regardless of value, or an unpriced change order with an estimated value exceeding $5 million. The request for approval shall document the specific urgency which compels use of a UCA or unpriced change order, demonstrate that the requirements of DFARS 217.7403 and/or DFARS 243.204-70 are met, and identify the consequences of failure to take such action.

**17.7404-2 Price ceiling.**

(S-90) The "not to exceed" definitized contract total price ceiling shall be based on a "not to exceed" unit price included in the UCA for each item (each labor rate, for labor hour or time and materials type UCAs.

**17.7404-3-90 Definitization schedule.**

(a) As required in DFARS 217.7404-3 or 243.204-70-3, DLA contracting activities shall ensure the definitization schedule provides for definitization within the earlier of 180 days from issuance of the UCA or unpriced change order (this may be extended for no more than an additional 180 days following receipt of a qualifying proposal from the contractor) or the date on which the amount of funds obligated under the UCA or unpriced change order is equal to or more than 50% of the not-to-exceed price (subject to the requirements in 17.7404-4(90) below, this may be increased to up to 75% of the not-to-exceed price if the contractor submits a qualifying proposal before obligation of 50% of the not-to-exceed price). 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.

(b) Any definitization occurring beyond the mandated time frames requires the approval of the DLA Director. Notify J72 immediately if this event is likely to occur. Submit the definitization requiring DLA Director approval a minimum of two weeks prior to the required issuance. J7 and DLA General Counsel will review the definitization.

**17.7404-4 Limitation on obligations.**

(S-90) Upon receipt of required information, the contracting officer should 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 UPOs.)

**17.7404-5 Exceptions.**

(S-90) Approval of the Director, DLA Acquisition (J7), is required to use any of the exceptions in DFARS 217.7404-5.

**17.7404-6 Allowable profit.**

(S-90) The chief of the contracting office shall assure conformance with the requirements of DFARS 215.404-71-3(d)(2) and 217.7404-6 and document the risk assessment in the contract file. (These requirements are not applicable to UPOs.)

**17.7404-90 Other requirements.**

(a) Payment limitations. To facilitate timely proposal submission and price definitization, contracting officers should establish initial funding available for interim financing and payments (e.g., progress payments, interim delivery payments (DFARS 232.102-70), public vouchers, and DD250s) consistent with the estimated amounts of contractor expenditures as of the dates specified in the definitization schedule for submission of a qualifying proposal and for price definitization. The contracting officer should subsequently relax or tighten such controls and incentives (e.g., by revising interim billing rates, reducing or suspending progress payments (DFARS 232.503-6)) as necessary and appropriate to achieve timely definitization.

(b) Delivery schedule. Specify a firm delivery schedule, otherwise a "not to exceed" schedule reflecting the Government's minimum needs

(c) Delegation of an undefinitized delivery order. The contracting officer shall identify and include with any delegation of an undefinitized delivery order against a BOA, IDC, or T&M contract or other UCA for definitization by the cognizant ACO, any independent Government estimate, to include "should cost", that have been performed and found useful for determining price reasonableness, establishing negotiation objectives, and for contract negotiations. The delegation letter should request that the ACO furnish feedback on the utility and effectiveness of the independent Government estimate (IGE) to the delegating contracting activity and to office(s) preparing and furnishing the IGE.

## SUBPART 17.75 – ACQUISITION OF REPLENISHMENT PARTS

**17.7501 Procurement of parts.**

(b)(3) Solicitation provision.

(i) The provision at 52.217-9002 entitled "Conditions for Evaluation and Acceptance of Offers for Part Numbered Items" may be used in negotiated acquisitions of replacement parts, components, and assemblies which are identified in the purchase order text (POT) or procurement item description (PID), formerly known as acquisition identification description (AID), only by the name of an approved source, a part number, and a brief description, including when acquisitions are conducted using FAR Part 12, except that the provision at 52.213-9004, Offeror Representations, Certifications, and Fill-in Information--Electronic Commerce, or an alternative method of collecting the data therein, shall be used instead, and shall incorporate 52.217-9002 by reference, whenever a solicitation below the simplified acquisition threshold is automated. (See 13.104(90).) The provision at 52.217-9002 shall be used verbatim, except that the acronym “CLIN” may be substituted for the word “item” wherever it appears in the provision.

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) The provision at 52.217-9002 may also be used in acquisitions of NSNs identified as "critical safety items (CSIs)" in the POT or PID (see 11.302-91); however, when acquiring CSIs, offers of "exact product" are evaluated in accordance with the clause at 52.211-9005, Conditions for Evaluation and Acceptance of Offers for Critical Safety Items.

(iii) The provision at 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 POT or PID, 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.

When the provision at 52.217-9002, "Conditions for Evaluation and Acceptance of Offers for Part Numbered Items" 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 purchase order text (POT) or procurement item description (PID) will be acceptable (e.g., restricted source or source controlled items, NIOSH items for which necessary testing equipment is not reasonably available, etc.)

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)(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.

(i) [Reserved.]

(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 vendors 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 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, Spare Parts Breakout Program.

(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 engineering Support Activity (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.**

**17.7502(b)(2)(70)**
Use 52.217-9023, Restriction of Alternate Offers for Source Controlled Items, 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)(2) The thresholds for base price comparison check procedures under EBS simplified purchase procedures and local automated procedures shall not exceed 25 percent and $250, after adjustments specified in DFARS 217.7505.

(b) The requirement for review and certification to be accomplished before the purchase applies after awards under simplified purchase procedures where the price is not known until after acceptance of the Government's offer.

(1) Further, the certification to the HCA is required as a notification to management, not an approval requirement, of substantial price increases.

(2) The method and frequency of periodic notification and the degree and level of management involvement may vary, depending on such factors as dollar value, nature of the procurement, and extent of competition; however, regardless of the approach taken (e.g., quarterly oral or written brief using a table comparing the numbers of certified buys by percentage ranges of price increase within award value ranges, with the results of prior periods), HCA awareness is required of significant price increases on a continuing basis.

(3) A local focal point (the price analysis branch/element, where one exists) shall compile and provide local management and DLA HQ J73, at least annually, with information on such usage based on a copy of each certification furnished by contracting officers.

## SUBPART 17.76 – CONTRACTS WITH PROVISIONING REQUIREMENTS

*(Revised August 21, 2012 through PROCLTR 2012-48)*

### 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.

(c) The requirements of DFARS Subpart 217.74 and Subpart 17.74 shall be met for all UPIOs awarded by DLA contracting offices.

### 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, Provisioning, 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. Also use with 52.217-9000, Data Pricing, Evaluation, And Award.

(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 primary-level field activity (PLFA) 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 PLFA 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 for provisioning shall register in the DoD contracting officer’s representative tracking (CORT) tool.

(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,

(2) conducting conferences when required by the contract,

(3) assisting the contracting officer, who may negotiate reductions in provisioning technical documentation requirements,

(4) recommending equitable adjustments to the contracting officer in the contract price or delivery terms based on technical provisioning considerations,

(5) conducting surveillance necessary to assure receipt of provisioning technical documentation, and

(6) notifying the contractor of required corrections (rejection) or acceptance of provisioning technical documentation.

**17.7601-94 Data pricing, evaluation, and award.**

The clause cited at 52.217-9000, Data Pricing, Evaluation, and Award, shall be inserted in solicitations for acquisition of data with end items. The clause shall be inserted in Section M, Evaluation Factors for Award.

**17.7601-95 Solicitation and contract clause.**
Use 52.217-9022, Provisioning Documentation is Waived, when any DLAD provisioning clauses were included in the solicitation and the contracting officer determines at time of award that provisioning documentation will be waived.

## SUBPART 17.78 – CONTRACTS OR DELIVERY ORDERS ISSUED BY A NON-DOD AGENCY

**17.7800-90 Scope.**

(a) For agency-specific coverage regarding use of non-DoD contracts, see Subpart 7.90. See also Subparts 17.5 and 17.96 and related PGI material for guidance on the use of Economy Act and non-Economy Act authorities, respectively.

## SUBPART 17.90 – MULTISOURCE CONTRACTING

**17.9000 Scope.**
This subpart prescribes policies and procedures for acquisitions of supplies and services from multiple sources when the coverage at FAR 16.504 for making multiple awards of indefinite-quantity task and delivery order contracts is not used.

**17.9001 Policy and authority.**

(a) Provision for making awards to more than one source of supply or service may be made for the following purposes or reasons under the authority described for the respective purpose or reason.

(1) Establishing or maintaining alternative sources. See FAR 6.202.

(2) Industrial mobilization; or engineering, developmental or research capability. See FAR 6.302-3.

(3) Production test. See DLAR 4125.1, Production Testing of DLA managed items and FAR 6.101.

(4) Prospective contractor not responsible for entire quantity. See FAR 9.103.

(5) Supply assurance. See FAR 6.101.

(b) Contracting officers shall obtain the advice of local counsel both in acquisition planning and prior to award whenever multisource contracting is proposed on an other than full and open competition basis.

**17.9002 Conditions for use.**

(a) The conditions for use of multisource contracting for the purposes or reasons described in 17.9001(a)(1) and (a)(2) above are described in FAR 6.202 and 6.302-3, respectively.

(b) Multisource contracting may be used when it is necessary for the purpose of testing under contract, the adequacy and practicability of specifications for a new or modified item to assure that the specification will permit quantity or mass production of quality items within economical production practices, and that the specification does not restrict competition.

(c) When the otherwise low, responsive or technically acceptable offer is from a prospective contractor that cannot be determined to be responsible for the entire quantity on which it offered, award may be made to that offeror only for the portion of the total requirements for which the offeror can be determined responsible.

(1) In such cases, the contracting officer may award the balance of the total requirements or that portion of the balance of the total requirements to the next low, responsive or technically acceptable offeror(s) to the extent that such offeror(s) is determined to be responsible, provided that the terms and conditions of the solicitation do not limit the Government's right to make multiple awards and the prospective contractor(s)does not condition its offer to preclude such awards.

(1) When the provision at FAR 52.214-10, Contract Award - Sealed Bidding, is included in IFBs, as required by FAR 14.201-6(e) (2), the Government has the right to award less than the total quantity solicited. Bids that take exception to this provision are not responsive. When the provision at FAR 52.215-1, Instructions to Offerors - Competitive Acquisition, is included in RFPs, as required by FAR 15.407(d)(4) and 15.209, the Government has the right to award less than the total quantity solicited. Offers that take exception to this provision are not technically acceptable.

(d) Provision for making multiple awards may be made to ensure the availability of supplies in business risk situations.

(1) A reasonable basis for making multiple awards in such situations must exist, for example, the record shows a history of poor performance (unrelated to Government caused delay) for a critical item due to a contractors' or inadequate production capacity; or the specification is complex or difficult and requirements must be satisfied in a relatively constrained timeframe.

(2) To adequately justify making multiple awards in such cases, the contracting officer must demonstrate that awarding less than the total requirements to more than one source will aid in ensuring that the prior contractor performance problems will not recur. Further, the benefits of having more than one source under contract for the same supplies or services at the same time should outweigh any anticipated increased prices that result from the award of more than one contract.

**17.9003 Limitations on use.**

(a) When provision for multiple awards is made for the purpose of production testing a specification:

(1) The Government's minimum need must be principally for the purpose of determining that an item of supply can be manufactured to the specification on a production basis. Obtaining delivery of supplies is a secondary purpose.

(2) The quantity to be awarded to any contractor should, normally, be limited to the minimum economic production quantity required to ensure an adequate production test.

(b) When multiple awards are made due to the fact that the low, responsive or technically acceptable offeror cannot be determined to be responsible for the entire quantity solicited, the responsibility determination made on such offeror must reasonably describe the rationale for determining that award of more than the proposed award quantity to such prospective contractor would be beyond that prospective contractor's production or service capacity.

(c) When provision for multiple awards is made to ensure the availability of supplies in business risk situations:

(1) The contracting officer must adequately document a reasonable basis for making multiple awards that: supports the Government's need to make multiple awards to obtain the requirements when needed; explains how awarding more than one contract will reduce or eliminate past performance or supply availability problems; and describes the benefits of obtaining more than one source that outweigh any anticipated increases in prices resulting from the award of more than one contract (see 17.9002(d) above).

(2) The solicitation must permit award of the entire requirement to one offeror.

(3) The solicitation should include a provision reserving the Government's right to make multiple awards to other than the lowest priced offerors.

(4) Sealed bidding cannot properly be used because the solicitation provides that award may not be made solely on the basis of lowest price.

(5) The contracting officer must document, after receipt of offers and prior to award, that a reasonable basis to award to multiple sources exists.

(6) The contracting officer should make provision for a degree of competition, when practicable (e.g., low offeror will be awarded 60 percent of the total requirement, whereas the second low offeror will be awarded 40 percent of the total requirement).

**17.9004 Supply assurance through multisource contracting.**

(a) Use 52.217-9018, Supply Assurance Through Multisource Contracting, in solicitations when first article testing is required and the contracting officer anticipates a split award to more than one source of supply may be necessary to facilitate supply availability. The buyer must consider the administrative expenses of qualifying additional sources as well as the total dollar value of the procurement when deciding whether to make more than one award based on this provision. The file must be fully documented to support decision to make multiple awards in the Government's best interest. Use of price break ranges in the solicitation will allow offerors the opportunity to submit more than one price should the buyer decide to make more than one award.

(1) If the buyer has a proven, waived source and an unproven source, consider using this provision to assure supply availability when the unproven source is the best value source. The best value source, in this case, the unproven source, shall receive at least 60% of the total requirement.

(2) If the buyer has a proven, waived source and an unproven source, consider using this provision to increase the vendor base of waived sources by also awarding a portion to the unproven source when the proven source is the best value source. The best value source, in this case, the proven source, shall receive at least 60% of the total requirement.

(3) If there are no waived sources but the buyer receives offers from two unproven sources, consider using this provision to increase supply availability by awarding a portion to both unproven sources. The best value source shall receive at least 60% of the total requirement.

(b) This procedure shall not be used when establishing requirements contracts, multiple award task or delivery order indefinite quantity contracts or when partial small business set-asides apply.

## SUBPART 17.91 – USE OF PUBLIC MANUFACTURERS

**17.9100 Public (Organic) Manufacturing**.
Refer to DLAI 3210 Organic Manufacturing for guidance.

## SUBPART 17.92 – REOPENER CLAUSES

**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 and DLAD 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 (see 31.205-7(c)(2)(90)(v)) 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), and (2) the adequacy of the contractor’s estimating system and whether any estimating system deficiencies have been identified, and if so, whether a reopener clause or other technique is recommended (DFARS 215.407-5-70(g)).

(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) When the weighted guidelines method is used, the profit objective otherwise developed should reduce the value for contract type risk (DFARS 215.404-71-3(d)(4)(iii)); and the values for management and/or for cost control under the performance risk factor, when use of a reopener clause is needed due to an inadequate analysis of the subcontractor's proposal by the prime contractor (DFARS 215.404-71-2(e)(3)(i)(E)) and/or when there are estimating system deficiencies, cost proposal inadequacies and/or ineffective cost/schedule control (DFARS 215.404-71-2(f)(3)), respectively;

(e) 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.

(f) Obtain legal review for sufficiency and consistency with other contract clauses;

(g) 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);

(h) 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.

(i) 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.

(j) 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.

(k) 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)), as specified in DFARS 215.407-5-70(g)(3)(i)-(iv);

(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 certification that the award price does not include any amount for the specified contingency except as provided for in the clause.

**17.9205 Contract clauses.**
The reopener clauses listed below are available for use in negotiated contracts only after an advisory copy has been submitted and reviewed in accordance with 17.9202(h):

(a) Reopener clause - Cost of specified direct materials/other direct cost items (52.217- 9004); and

(b) Reopener clause - Pending indirect rates proposal (52.217-9005).

## SUBPART 17.93 – SURGE AND SUSTAINMENT (S&S)

*(Revised September 11, 2012 through PROCLTR 2012-41R)*

**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 HQ 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, vendor managed inventory, prime vendor 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 supply chains. 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 vendor contracts, where the ordering period of performance with option periods is greater than 1 year. 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) supply chain 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 vendor'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 ) vendor part numbered items such as cataloged commercial items under a prime vendor 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.**
Refer to PGI 17.9303 for procedures when processing surge requirements from the pre-solicitation through post-award phases.

**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 supply chain's industrial specialist, shall obtain the approval of DLA HQ 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, Surge and Sustainment (S&S) Requirements, 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, Surge and Sustainment (S&S) Instructions to Offerors, 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, Surge and Sustainment (S&S) Evaluation, 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, Surge and Sustainment (S&S) Pricing, when including MWR or D1-D6 in the solicitation and resulting contract.

(e) Use clause 52.217-9010, Limitations on Surge and Sustainment (S&S) Investments, when including MWR, D1-D6, or surge quantity option in the solicitation and resulting contract.

## SUBPART 17.94 – CUSTOMER VALUE CONTRACTING

**17.9400 Scope.**
This subpart prescribes policies and procedures for soliciting offers, awarding contracts, and placing orders under DLA's customer value contracting (CVC) initiative. The Administrator of General Services and DLA have agreed that DLA is responsible for developing and maintaining Federal supply schedule type contracts for assigned items in furtherance of the national supply system concept (see DoD 4140.1-R, DoD Supply Chain Materiel Management Regulation, Appendix 7). Authority for this is also found in FAR 8.401(a) and FAR 38.000.

**17.9401 Definitions.**

"Customer value contracting (CVC)" is a multiple award schedule (MAS) method of providing logistics support that empowers the customer to select the product that best meets their mission needs. This multiple award, customer best value approach is similar to GSA Federal supply schedules. CVC is similar to the multiple award delivery order contracts covered by FAR Subpart 16.5 in that it uses either an indefinite delivery/indefinite quantity contract with a minimum ordering amount or an indefinite delivery requirements contract. It differs from the multiple award delivery order contracts covered by FAR Subpart 16.5 with regard to the solicitation and award process. In FAR Subpart 16.5 acquisitions, CICA and the FAR require a statement of definite requirements allowing direct competition in the award of contracts, but this degree of requirements definition is not required for CVC, thus allowing CVC contracts to include entire product lines and catalogs of products.

**17.9402 General.**

(a) The CVC contract approach provides DLA customers access to multiple indefinite delivery contracts involving the same or similar commercial items/product lines, enabling them to select the item(s)/product lines they determine meet their requirements using the lowest overall cost alternative, utilizing best value ordering procedures to satisfy mission requirements.

(b) Activities shall adhere to all applicable FAR, DFARS, and DLAD requirements in establishing CVC contracts. These include, but are not limited to FAR Part 5, Publicizing Acquisitions; FAR Part 6, Competition Requirements; FAR Part 7, Acquisition Planning; FAR Part 8, Required Sources of Supplies and Services; FAR Part 9, Contractor Qualification; FAR Part 10, Market Research; FAR Part 11, Describing Agency Needs; FAR Part 12, Acquisition of Commercial Items; FAR Part 16, Types of Contracts; FAR Part 19, Small Business Programs; and, FAR Part 25, Foreign Acquisition.

(c) CVC contracts.

(i) CVC contracts are awarded pursuant to "competitive procedures" within the meaning of the Competition in Contracting Act (CICA) (10 U.S.C. § 2302(2)) since 1) participation in the program is, open to all responsible, responsive sources whose prices have been determined fair and reasonable, and 2) orders and contracts under the program result in the lowest overall cost/best value alternative to meet the needs of the United States.

(ii) CVC contracts involve a variety of equipment, parts, inserts, and/or number of catalogs for same or similar product lines. If new CVC contracts are being awarded for same or similar product lines already available under existing CVC contracts, they may be awarded sequentially. If new CVC contracts are being awarded for products or product lines not already available under existing CVC contracts, the DLA customer must be advised that independent competition to satisfy the customer's need(s) will be required, unless a non-competitive acquisition can be properly justified.

(d) CVC solicitations will appropriately advise prospective offerors that all offerors that submit technically acceptable offers at fair and reasonable prices are eligible for award on the MAS; if award will be made to less than all qualified offerors, the solicitation must state the basis for award, including evaluation factors and their relative weights. The solicitation shall also indicate that individual orders will be placed based on the DLA customer's determination as to the best value/lowest overall cost alternative.

(e) Activities shall ensure CVC solicitations contain small business plan provisions/clauses if required.

**17.9403 Acquisition planning.**
Based on market research, an analysis should be conducted to determine and identify those items/product lines that demonstrate a reasonable probability of being requisitioned in a CVC environment. Use of CVC shall be annotated in acquisition planning documents.

**17.9404 Ordering procedures.**
The following requirements shall be followed regarding placement of orders against CVC contracts.

(a) CVC contract awarding activities shall ensure ordering activities are aware of proper ordering procedures, to include the best value and ordering requirements specified in paragraphs (d) and (e) below. If the CVC contracts are available for ordering through an online ordering system, then the online ordering system must inform ordering activities of the ordering requirements of this section.

(b) Ordering activities must be made aware of all available CVC sources of supply. This can be done via a number of methods, to include use of web-based resources.

(c) Orders valued at or below the micro-purchase threshold may be placed with any CVC contractor, without regard to the requirements of this section.

(d) Orders exceeding the micro-purchase threshold shall be placed with the CVC contractor that can supply the item that represents the best value to the Government. Ordering activities are required to maintain their best value determination documentation as part of their order file in accordance with (i) below. Areas that should be considered to determine best value include:

(1) Price;

(2) Item features required for effective mission performance, e.g., quality, customer/user considerations, reliability, transportability including airlift capability;

(3) Warranty considerations;

(4) Delivery requirements;

(5) Past performance;

(6) Interchangeability

(7) Environmental and energy efficiency considerations;

(8) Small business considerations;

(9) Special features of the supply or service required for effective program performance;

(10) Trade-in considerations;

(11) Probable life of the item selected compared to that of a comparable item; and

(12) Maintenance and repair availability and uniformity with current equipment.

(e) Orders exceeding the micro-purchase threshold shall be placed using the following ordering procedures:

(1) Review available vendors on online electronic ordering systems or at least three CVC pricelists; and

(2) Select the best value based on (d) above

(f) Ordering offices need not seek further competition, synopsize the requirement, make a separate determination of fair and reasonable pricing, or consider small business programs.

(g) Contracting officers awarding CVC contracts have already determined the prices of items under those contracts to be fair and reasonable. By placing an order against a CVC contract using the procedures in this section, the ordering office has concluded that the order represents the best value and results in the lowest overall cost alternative (considering price, special features, administrative costs, etc.) to meet the Government's needs.

(h) Orders placed under a CVC contract—

(1) Are not exempt from development of an acquisition plan (see FAR Subpart 7.1) and an information technology acquisition strategy (see FAR Part 39);

(2) Are not exempt from the mandatory sourcing requirements of FAR Part 8; and

(3) Must comply with all FAR requirements for a bundled contract when the order meets the definition of "bundled contract" (for the purposes of this section the definition of "single contract" used in the definition of "bundling" in FAR 2.101(b) is expanded to include an order placed against a CVC contract).

(i) Documentation:

(1) Minimum documentation is generally all that is required. Orders should be documented, at a minimum, by identifying the contractor the item was purchased from, the item purchased, and the amount paid. If an Activity requirement in excess of the micro-purchase threshold is defined so as to require a particular brand name, product, or a feature of a product peculiar to one manufacturer, thereby precluding consideration of a product manufactured by another company, the ordering office shall include an explanation in the file as to why the particular brand name, product, or feature is essential to satisfy the agency's needs. Ordering activities shall maintain appropriate documentation for each order in their files.

(2) Orders must be reviewed on a periodic basis to determine which products represent the best value at the lowest overall cost alternative to the Government and give each CVC contractor a fair opportunity to have its products considered.

## SUBPART 17.95 – TAILORED LOGISTICS SUPPORT CONTRACTING

*(Revised July 18, 2012 through PROCLTR 2012-35)*

### 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.

"Catalog" is a vendor's listing of items that have been determined to have fair and reasonable pricing by DLA and are now available for ordering by authorized users. The catalog is limited to DLA approved items and is not necessarily inclusive of the full range of items that a vendor can provide.

"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 vendor acquisitions found in the PGI 17.9504 (a) pricing model.

"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 group of line items on the proposed contract to establish fair and reasonable price determinations. Items and quantities selected for inclusion in a market basket must represent a minimum of 75 percent of the anticipated dollar value of the planned acquisition. Market basket 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.

"Modified prime vendor (MPV)" are those PV-like arrangements that provide additional capabilities beyond distribution. Some of these other support arrangements have been known in the past as integrated prime vendor and virtual prime vendor. There may or may not be a direct relationship between the prime vendor and the customer.

"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.

"Prime vendor (PV)" is a supplier of a wide variety of products within a specific industry or sector, which along with supplying those products provides additional capabilities such as distribution. The additional capabilities are evaluated as part of the best value decision making process. Examples are the medical or surgical, pharmaceutical, and garrison feeding PV contracts.

**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) Primary level field activity (PLFA) contracting officers shall establish tailored logistics support (TLS) contracts whenever a viable commercial supply chain exists for the items and associated services being acquired, unless the decision not to establish a TLS contract is made by the PLFA Commander or Director and documented in the contract file for the reasons stated below. This authority is not delegable.

(1) The DLA tailored logistics support approach provides access to an extensive variety of products through indefinite delivery contracts, enabling DLA customers to obtain products quickly and efficiently while utilizing the commercial inventory and distribution infrastructures established by distributors. They may be part of a performance based logistics (PBL) initiative, and if so, would also be subject to the PBL acquisition process coverage in 90.15.

(2) Selecting a tailored logistics support approach requires a clear and convincing business case justification that this acquisition strategy shall provide the best support for the customer, provides

competitive pricing and transparency of those prices throughout the life of the contract, and that there are sufficient resources available to adequately monitor compliance with all contract terms and conditions.

(c) Training of acquisition workforce. Government individuals assigned to work on or provide significant support for PV or MPV contracts shall take part in a tailored logistics support program of instruction, tailored by the supply chain to its programs, within one month of assuming their duties on a PV, MPV, or other tailored logistics support program. These individuals shall be required to obtain annual certification of training in tailored logistics support requirements and pricing from their supply chain. See in PGI 17.9502 mandatory guidance for a suggested course curriculum.

(d) For field activities without an acquisition executive (AE), all tailored logistics support (TLS) acquisitions require DLA HQ review and approval of the acquisition plan regardless of dollar value. Also refer to 7.104-91 for AAPT requirements. Acquisition planning documents and briefings to DLA HQ shall address the elements of this subpart, in order.

**17.9503 Acquisition planning.**
All acquisition strategies for all dollar value tailored logistics support contracts must be approved by DLA HQ before public notice of the procurement is published and a solicitation is issued. As described below, included in the request for approval must be an acquisition plan, a business case analysis, and a contract management plan.

(a) Acquisition plans. Acquisition plans shall comply with all requirements for acquisition plans prepared in accordance with the regulatory coverage referenced at 7.102 and, in addition, contain 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) Documentation showing how the tailored logistics support contract shall be performance based for the service aspects of the contract.

(5) A discussion of whether the acquisition is or will become part of a current or future performance based logistics initiative.

(6) Show how the vendor will periodically assess and monitor suppliers' compliance with domestic sourcing requirements, particularly the Berry Amendment and show how DLA will monitor vendor compliance in this area. For example, a vendor's plan could include random sampling and unannounced inspections of its suppliers' product origin. Evaluating proposals should include determining if the vendor has a viable plan. Contract administration responsibilities would include checking to see that the vendor is following its plan. See 25.7002-2(91)(e) for discussion of potential actions to ensure continued contractor compliance.

(7) If the purchasing review clause is applicable to the acquisition (see 17.9508(a)), discuss how the vendor's purchasing system will be evaluated, approved, and implemented. Some basic characteristics of a good purchasing system, in proportion to the size and capability of the vendor, are:

(i) Internal audits or management audits, training, and policies and procedures for the purchasing department to ensure the integrity of the purchasing system.

(ii) Policies and procedures to assure purchase orders and subcontracts contain all flow down clauses, including terms and conditions required by the prime contract, as well as any clauses needed to carry out the requirements of the prime contract.

(iii) An organizational and administrative structure that ensures effective and efficient procurement of required quality materials and parts at the most economical cost from responsible/reliable sources.

(iv) Selection processes to ensure the most responsive and responsible sources for furnishing required quality parts and materials and to promote competitive sourcing among dependable suppliers so that purchases are reasonably priced and from sources that meet contractor quality requirements.

(v) Price or cost analysis performed with every purchasing action.

(vi) Procedures to ensure that proper types of subcontracts are selected and that there are controls including oversight and surveillance of subcontracted effort.

(8) Documentation of market research performed.

(9) A discussion of the management information system being used for the program and its use of acquisition metrics.

(10) If a market basket is applicable, describe the approach being taken, such as number of items, dollar value of market basket items, etc.

(11) Discounts and rebates. Discuss how trade, quantity, volume, and early payment discounts or rebates are expected to be allocated to DLA orders. Discuss the sharing arrangement to be negotiated with the vendor. Ensure the vendor has a way to track and record the discount or rebate activity and issue the appropriate amounts to the Government.

(12) A discussion of anticipated unusual freight charges. Discuss how these will be controlled by the Government.

(13) 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.

(b) A business case analysis (BCA). See the DLA issuance "Acquisition Business Case Analysis Process" for content requirements. Generally, a type I BCA is sufficient at this stage. The BCA shall discuss acquisition alternatives and risk.

(c) Source selection plan and solicitation.

(d) Contract management plan. A contract management plan (CMP) describes how performance shall be monitored over the life of the contract. The CMP specifically addresses the resources assigned to conduct and sustain contract monitoring procedures. The CMP shall be approved as part of the acquisition approval process prior to award of the contract for acquisition approval levels. (See 1.690.) See the recommended guidance for pricing tools to be used as a part of this contract oversight in PGI 17.9507(c). See PGI 17.9503(e) for an example of a contract management plan.

(1) Areas to address in the plan shall include but not be limited to: resources required and each resource's responsibilities, assignment of a COR/COTR, order flow, pre-solicitation or pre-proposal conferences, post-award audits describing who shall be responsible for performing monthly, quarterly, and annual reviews, invoicing procedures, performance measurement metrics to include identification of the number of reviews and the process for review and reporting on these 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, responsibilities for monitoring contract performance including ascertaining whether BCA objectives have been met, non-compliance issues, and contract closeout. In short, the CMP makes it clear who is responsible for performing which function.

(2) The contract management plan shall be updated in a timely manner when any of the above functions, procedures, or metrics change the way in which contract performance will be monitored. Updates to CMPs following contract award shall be approved by the CCO. The CCO may delegate approval of minor, non-substantive updates, as determined by the contract administration and compliance division, to the supply chain director of supplier operations. Approved individual CMPs for all PV contracts shall be posted electronically to the contract administration and compliance division or the contract review division intranet site, if such a site is maintained, and include the date of the latest effective change, as well as to the ECF. If no such intranet site is maintained, the CMP shall be included in the ECF.

**17.9504 Pricing.**

(a) A PV contract must be able to comply fully with one of the established PV pricing models found in PGI 17.9504(a).

(b) A modified PV contract or other tailored logistics support contract must be able to comply fully with one of the pricing models in PGI 17.9504(b).

(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 17.9504 (a) or (b). 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.

**17.9505 Pre-award.**

Contracting officers shall develop metrics to monitor critical factors in the tailored logistics support arrangement to include price and other factors. In addition to complying with the acquisition planning

requirements at 17.9503, contracting personnel shall utilize the automated tailored logistics support tools to perform analyses and justifications for the contract. These tools are found in PGI 17.9505(a).

**17.9506 Ordering procedures.**

(a) Contracting officers shall ensure ordering procedures comply with the pricing model applicable to the contract.

(b) Contracting officers shall clearly define contract scope and communicate it to trained and approved ordering officers. Contracting officers shall ensure that orders are within the scope of the contract.

**17.9507 Post-award actions and management oversight.**

(a) Adding items. Items may be added to the contract in accordance with the pricing model for the contract.

(b) Obtaining refunds, rebates, and volume discounts. Refunds, rebates and volume discounts from contractors should be sought in accordance with clause 52.217-9017, Tailored Logistics Support Purchasing Reviews, or as otherwise specified in the contract if the clause is not used.

(c) Management oversight. Tailored logistics support contracts are subject to continuous and rigorous oversight as follows:

(1) Reviews/audits shall be conducted on a monthly, semi-annual, and annual basis.

(i) 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 monthly pricing reviews. Reports will include a representative sample based on the total number of orders for that month. Upon completion of these reviews, the tailored logistics support program manager/IST chief shall forward the results to the Director of supplier operations for review and approval. Pricing review tools include but are not limited to the tools found in PGI 17.9507(c)(ii) mandatory guidance. In addition, each activity shall perform a monthly review on the progress and completion of corrective actions planned as a result of J73 procurement management review and center of excellence for pricing report findings. The CCO or designee shall provide a consolidated report on the status of open corrective actions to J73, including a copy to the local Center of Excellence for Pricing on-site representative, on or before the last day of each month.

(ii) The contract administration and compliance division or the contract review division shall perform contract audits for vendors' compliance with non-pricing contract terms on a semi-annual basis (or quarterly at the discretion of the supply chain), and shall furnish a copy of the contract audit report to J73 no later than 45 days after the end of the semi-annual period, or no later than 45 days after the end of the quarter if quarterly reviews are conducted in lieu of semi-annual.

(iii) The J73 center of excellence for pricing (COEP) will examine the sufficiency of the contracting officer's price documentation and the vendor's adherence to the pricing methodology as required by the contract terms, the contract management plan and the approved PV pricing model, on a semi-annual basis. The COEP shall perform one review concurrently with the prime vendor PMR, if one is scheduled. The subsequent COEP review shall be performed six months following the previous

review. The COEP shall furnish a copy of the semi-annual contract pricing audit report to J7 within 21 days of the last day of the review for reviews conducted in conjunction with the PV PMR, and no later than 45 days after the end of the semi-annual period for subsequent reviews. J7 shall furnish a copy of the final COEP report to the PLFA HCA or designee.

(iv) The COEP shall perform annual audits for each fiscal year, examining the vendor's adherence to contractual pricing methodology. The annual audit is a risk assessment targeted to specific vendors who were chosen for inclusion based on contract dollar value, audit results in paragraph (iii) of this section, previous annual audits, or other criteria. A minimum of 12 vendors per year shall be reviewed. Low risk programs may be subjected to limited review, including deferral of the review. The determination for limited review, including deferral, will be made by J73. Indicators of low risk include programs operating under multiple award ID/IQ type contracts where competition at the PV level drives the prices, the government does not rely on the vendor's purchasing system, prices are firm fixed and are determined fair and reasonable prior to order issuance, and there are no opportunities for rebates or refunds. For those supply chains with fewer than 12 TLS contracts, the COEP shall conduct an annual audit of all TLS vendors. The COEP shall furnish a copy of the annual audits to J7 no later than 45 days after the close of the fiscal year. J7 shall furnish a copy of the final COEP report to the PLFA HCA or designee.

(2) Management tools used for oversight as appropriate to the program shall include but are not limited to the tools found in PGI 17.9507(c)(v).

**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 17.96 – NON-ECONOMY ACT INTERAGENCY ACQUISITIONS

**17.9600 Scope of subpart.**

(a) Agency-specific coverage on use of non-DoD contracting activities and vehicles may be found in Subpart 7.90. Such acquisitions may only be made under appropriate statutory authority.

(b)(1) DoD policy guidance on use of non-Economy Act orders (USD(C) Memorandum dated October 16, 2006, subject: "Non-Economy Act Orders") applies to assisted acquisitions using non-DoD contracting activities. This policy is not directly applicable to DLA customers' relationships with DLA.

(2) DLA normally receives a requirement from a requesting activity and executes that requirement by one of three methods: 1) delivery from DLA stock; 2) individual DLA procurement or ordering against a DLA contract; or 3) 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. The coverage in 17.9601 through

17.9605 implements the DoD policy and is applicable to non-Economy Act orders executed as assisted acquisitions by non-DoD contracting activities.

**17.9601 Justification for use.**
DLA may place a non-Economy Act order as an assisted acquisition, as defined in 2.101, including orders to fill DLA's own internal needs, with a non-DoD activity if all 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 contracting office, 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 DoD competition requirements and other 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.

**17.9602 Ordering procedures.**
See mandatory procedures at PGI 17.9602 for the procedures and the elements to consider with regard to, non-Economy Act ordering from another department or agency.

**17.9603 Contracting officer review.**
DoD policy requires DoD-warranted contracting officer review of all non-Economy Act orders over $500,000. DLA policy, at 1.690 and as stated in 7.90, 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, DFARS, and DLAD Part 7. Requirements will not be split into smaller amounts in order to avoid contracting officer review.

**17.9604 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 17.9603, 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.

**17.9605 Follow-up procedures for non-Economy Act transactions.**
See PGI 17.9605 for mandatory procedures and other considerations pertaining to oversight, fund status monitoring, payment, and close-out of non-Economy Act transactions.

## 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.

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**19.001 Definitions.**

"Fair market price" as defined in the FAR is a price DLA would expect to pay under "normal competitive conditions," which means under full and open competitive conditions (without a reservation, set-aside, preference, or the like).

## SUBPART 19.1 – SIZE STANDARDS

**19.102 Size standards.**

(f) The nonmanufacturer rule may be restated as follows. When an acquisition has been set aside for award to small business, and a small contractor proposes to furnish to the Government items made by an entity other than itself, both the offeror and the manufacturer/producer of the items must be small businesses, and the items must be produced in the United States. This rule is subject to waiver and exception, as provided below.

(4) When the particular product or class of products being acquired is not currently produced by small domestic businesses (as determined authoritatively by the SBA), the SBA may grant a class waiver. In this case, the small nonmanufacturer/offeror will not have to furnish the product of a small business; it may provide any firm's product. The contracting officer may initiate action with the SBA to have the nonmanufacturer rule waived for a class of products.

(5) The contracting officer may also request a waiver of the nonmanufacturer rule for a specific solicitation if no small domestic manufacturer/processor can reasonably be expected to fulfill the requirement at that time.

(7) An "exception" (rather than a waiver) to the nonmanufacturer rule applies when: the procurement is accomplished using the simplified procedures of Part 13; the buy is set aside for small business; and the anticipated dollar value will not exceed $25,000. Even though the small business offering on this procurement is not obligated to provide the product of another small concern, the items themselves must have been manufactured or produced in the United States.

(90) In simplified acquisitions for supplies having a total value of less than $25,000, an exception to the nonmanufacturer rule takes precedence over a waiver of the rule. Under these circumstances, a nonmanufacturer is expected to provide the end-product of a domestic producer.

## SUBPART 19.2 – POLICIES

**19.201 General policy.**

(b)(90) DLA small business specialists are guided by process in the DLA issuance, DLAD 5025.30, DLA 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.

(d)(10)(A)(i) DLA contracting and small business personnel have been granted a deviation (FARS DEV 2004-01) to forego this review for transactions with a value less than or equal to the simplified

acquisition threshold (SAT) when such transactions are accomplished or initiated electronically via the Standard Automated Material Management System (SAMMS) Procurement by Electronic Data Exchange (SPEDE); SAMMS Automated Simplified Procurement System, Phase Two (SASPS II); or procurement automated contract evaluation (PACE) systems.

(d)(10)(A)(ii) DLA contracting and small business personnel are also permitted via FARS DEV 2004-01 to forego this manual review for transactions with a value less than or equal to the SAT when such transactions are accomplished or initiated via automated processing within the Business Systems Modernization (BSM) environment.

(d)(10)(B) Whenever the deviations in (d)(10)(A), above, are used, an individual or blanket DD Form 2579, Small Business Coordination Record, shall be included in the contract file.

(d)(10)(90)(a) Periodic reviews of automated awards to which either the legacy or the BSM 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 Central Contractor Registration (CCR) listed HUBZone or service-disabled veteran-owned small business concerns or 8(a) suppliers (for legacy and BSM 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 $10,000, 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 the DFARS 219.201(d)(10) review threshold, do not proceed with the acquisition until a DD Form 2579 review is conducted.

(d)(11) See subsections 7.170-2 and -3 and paragraph 10.001(a) 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, paragraphs 10.001(a) and (c), and subparagraphs 15.304(c)(3) and 15.305(a)(5) 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

**19.307 Solicitation provisions.**

(90) When the provision at FAR 52.219-1, Small Business Program Representations, is used in solicitations issued via electronic means, one of the following provisions shall be used to record information required by FAR 52.219-1, paragraph (b). For purchases below the simplified acquisition threshold (SAT), use the provision at 52.213-9004, Offeror Representations, Certifications, and Fill-in Information--Electronic Commerce; for purchases above the SAT, use 52.219-9004, Small Business Program Representations. See 13.101(b)(2)(91).

## SUBPART 19.5 – SET-ASIDES FOR SMALL BUSINESS

*(Revised on July 20, 2012 through PROCTLR 2012-43)*

### 19.502-1 Requirements for setting aside acquisitions.

(b)(S-90) Notwithstanding FAR 19.501(a) and 19.502-1(b), Federal Prison Industries (FPI) may also compete for, and could receive award of, set-aside acquisitions of items listed on the FPI schedule(s). Accordingly, insert the provision at 52.219-9001, Set-Asides of Acquisitions of Items Listed in the Schedule of Products Made in Federal Penal and Correctional Institutions, in acquisitions of such items whenever a comparability determination leads to a competitive acquisition (see FAR and DLAD 8.602) and an individual FAR set-aside clause is used. Whenever any of the combined/cascading set-aside clauses (i.e., 52.219-9008 through 52.219-9016) is used in accordance with 19.590, allow FPI to participate; see 19.508 (90), below.

### 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.

### 19.502-3(90) Partial small business set-asides.

Use 52.219-9017, Small Business Set-Aside Portion – Equal, in solicitations involving partial small business set-asides. See FAR 19.502-3. Use the base provision for solicitations involving partial small business set-asides when the set-aside portion is equal to the unrestricted portion. Use 52.219-9017 Alternate I, Small Business Set-Aside Portion – Unequal, when the partial small business set-aside portion differs from the partial non-set-aside portion.

### 19.503 Setting aside a class of acquisitions for small business.

(d) The DD Form 2579, Small Business Coordination Record, shall be used to give written notice of a withdrawal from a class set-aside to the procurement center representative (PCR). The form shall be sent through the office of the small business specialist (SBS). The basis for the withdrawal shall be documented in the remarks section.

**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 supply chain HCA. If the supply chain 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 business systems modernization (BSM) 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)(ii)(90) and 19.502-1(b)(90), as well as FAR 19.504, 19.508(c), and 52.219-6, Alternate II.

(a) Insert the clause at 52.219-9008, Combined HUBZone/Small Business Set-Aside Instructions – Type 1, in automated solicitations and contracts in BSM applications (and legacy systems having the capability to apply cascading logic) 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 BSM applications (and legacy systems having the capability to apply cascading logic) 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 BSM applications (and legacy systems having the capability to apply cascading logic) 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 BSM applications (and legacy systems having the capability to apply cascading logic) 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 BSM applications (and legacy systems having the capability to apply cascading logic) 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 BSM applications (and legacy systems having the capability to apply cascading logic) 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 business systems modernization (BSM) applications and legacy systems having the capability to apply "cascading logic."**

(a) The systems logic used in BSM automated procurements and certain legacy systems 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 BSM software and the programming for applicable legacy systems 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 BSM and applicable legacy systems 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 BSM and applicable legacy systems 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 BSM and applicable legacy systems 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 BSM and applicable legacy systems 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

### 19.602 Procedures.

### 19.602-1 Referral.

(a)(2) Prior to referring a potential contractor to one of the SBA's area offices in accordance with FAR 19.602-1 and DFARS 219.602-1, the contracting officer shall thoroughly review all the pertinent facts available, including the preaward survey (PAS), and make a determination of responsibility in accordance with FAR 9.105-2.

(i) This determination should so thoroughly consider all pertinent data and the circumstances of the acquisition that, barring substantial evidence refuting the specific elements for which the contractor was determined nonresponsible, it represents the contracting officer's intention to pursue an appeal if the SBA Headquarters notifies the contracting officer of its intent to issue a certificate of competency (CoC).

(ii) Evidence to refute the identified elements of nonresponsibility may come from the SBA, the contractor, contract administration office (CAO) personnel, or any credible source, as long as the information uncovered specifically addresses the deficient elements cited in the nonresponsibility determination.

(iii) Recognizing that valuable lead time may be lost if the CoC procedure is delayed, the contracting officer may initiate the CoC process pending resolution of the type of correctable deficiencies that may have been identified in the PAS.

(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).**

(a) The contracting officer shall request the SBA to specifically address those elements considered to be unsatisfactory and document the file accordingly. The reconciliation of differences should include, as appropriate, requests for updates and additional data from the CAO personnel responsible for the PAS.

(S-90) If the SBA notifies the contracting officer of its intent to issue a CoC, the contracting officer shall either:

(1) Appeal the issuance of the CoC in accordance with DFARS 219.602-3(c)(i), as detailed below; or,

(2) Using the information currently available, determine the contractor to be responsible, document the file, and proceed with contract award; or,

(3) Determine to accept the CoC, without determining the contractor to be responsible. This alternative allows consideration of the circumstances of an individual acquisition which may make accepting the CoC the most reasonable alternative. Notice of the award shall be provided to the division chief (or another appropriate level above the contracting officer), to the activity postaward monitor, and to the contractor general file (see FAR 4.801(c)(3)).

(c)(S-90) If the contracting officer intends to appeal the issuance of the CoC, the contracting officer shall request the small business specialist (SBS) to notify the SBA Headquarters of the intent to appeal the CoC in accordance with DFARS 219.602-3(c)(i).

(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

**19.705 Responsibilities of the contracting officer under the subcontracting assistance program.**

**19.705-2 Determining the need for a subcontracting plan.**
Use clause 52.219-9018, Notification of Subcontracting Plan, in solicitations and awards estimated to exceed $650,000 (inclusive of option value) except solicitations set-aside for small business concerns; or when requirements is to be acquired through the section 8(a) program; or in accordance with FAR 19.705-2 (c) where the determination has been made that there are no subcontracting possibilities.

**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.

**19.790 Responsibility for reviewing the subcontracting program.**
When administration of contracts containing the small business, small disadvantaged business, women-owned small business subcontracting plan clause is retained by the contracting office, the procedures in 42.202(e)(90) apply.

## 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.

**19.804-2 Agency offering.**

(a)(1) The SBA notification, if required (see DFARS 219.804-2(2)), shall be provided in writing through the SBS and a copy provided to the local SBA PCR. If no response is received from SBA by the applicable due date, (i.e., within 10 working days of receipt of the offering in accordance with FAR 19.804-3(a) or within 5 working days of receipt in accordance with DFARS 219.804-3), the requirement may be withdrawn or the time extended at the option of the contracting office.

**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 SBS 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 SBS on each item stating the DLA estimated fair market price (FMP), the SBA final offered price, and the final contract price.

**19.806 Pricing the 8(a) contract.**

(b) Although an 8(a) supplier may be able to justify a price exceeding the FMP, award at a price that exceeds FMP is prohibited (see section 921 of P.L. 99-661). Occasionally, cost and price analysis discloses that award should be made at a price below FMP. But in most cases, the analysis supports the FMP as fair and equitable to both parties and the award is consummated at that 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 on April 18, 2012 through PROCTLR 2012-32)*

**19.1405-90 Service-disabled veteran-owned small business (SDVOSB) set-aside procedures.**

See PGI 19.1405-90 for detailed procedures on system reporting, market research, and withdrawal of an SDVOSB set-aside.

**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).

## SUBPART 19.71 – PILOT MENTOR-PROTEGE PROGRAM

**19.7100 Scope.**
The Mentoring Business Agreements (MBA) Program (see Subpart 19.90) is a DLA variation on the DoD Pilot Mentor-Protege Program, which was established under Section 831 of the National Defense Authorization Act for Fiscal Year 1991, Public Law 101-510, as amended. The DLA program is not intended to supersede the DoD program.

## SUBPART 19.90 – DLA MENTORING BUSINESS AGREEMENTS (MBA) PROGRAM

**19.9001 General.**
The mentoring business agreements (MBA) program is a DLA variation on the DoD Pilot Mentor-Protege Program (although it does not supersede the latter). Under the DLA program, experienced (generally large business) entities serve as mentors to selected proteges in reciprocally rewarding relationships. The protege is ordinarily a small, small disadvantaged, or women-owned small business; however, it may also be a “AbilityOne”, (formerly called Javits-Wagner-O’Day Act (“JWOD”))-qualified nonprofit agency for the blind or other severely disabled, approved by the Committee for Purchase from People Who Are Blind or Severely Disabled. This Agency program differs from the DoD Mentor-Protege Program in that it:

(a) is not statutorily mandated;

(b) will remain in effect so long as it achieves the purposes for which it is intended;

(c) permits the selection of any small business or “AbilityOne”-qualified nonprofit agency as a protege;

(d) does not require potential mentors to undergo a substantial approval process in order to qualify for that role, or to identify intended proteges "up front";

(e) is determined successful more by the establishment of long-term business relationships between mentors and proteges (and perhaps the latter's improved business processes and penetration into new markets) than by numbers and dollar values of subcontracts with SDBs or any other category of small entity; and

(f) offers no direct monetary incentives to contractors. (Instead, it relies on a market-based incentive consisting of the extension of favorable consideration to the mentor under the instant and future source selections, and within the context of option exercise or order placement under multiple-award contracts.)

**19.9002 Policy.**
Through the DLA MBA Program, experienced prime contractors, large or small, including "AbilityOne" entities, extend developmental assistance, with Government encouragement, to small, small disadvantaged, and women-owned small businesses or "AbilityOne" entities in return for the recipient's providing value-added services and/or products. The mentor provides the benefit of its managerial expertise, technical capabilities, market knowledge and penetration, and economies of scale. The protege provides a distinctive proficiency or capability (such as a specialized product, service, or, potentially, admission into its own market) which supports the mentor's business objectives.

**19.9003 Scope.**
Contractor participation in the DLA MBA program shall be the focus of an evaluation factor to be included in all solicitations or other announcements for long-term contracting arrangements expected to exceed $500,000. This requirement shall not be mandatory for contracts for commercial items, unless logistics services in support of those items are also being acquired under the same contract. Any other exception to this requirement must be approved by the chief of the contracting office, without power of delegation. An explanation for the exception must be included in the solicitation file, and a copy must accompany the report required in 19.9006(e). Inclusion of the program coverage in solicitations below $500,000, though optional, is encouraged in all appropriate circumstances.

**19.9004 Purpose and approach.**

(a) There are three purposes served by the DLA MBA Program. It is intended to:

(1) Provide maximum opportunity to the small business/"AbilityOne" community to participate in DLA's reengineered business processes at either the prime or subcontract level.

(2) Remove the tendency on the part of some small businesses to depend on doing business with the Government exclusively, and to lead them to new opportunities that are chiefly available today in the commercial marketplace.

(3) Foster private-sector, mutually beneficial mentor-protege relationships that transcend performance under specific contracts. These long-term relationships can lead to equally long-term stability and opportunities for growth.

(b) The Government benefit realized is the establishment of stronger, better sources - the large or experienced and the small or disadvantaged entity - in whose abilities there can be greater confidence than ever before. The mentoring process strengthens the likelihood of a small firm's being able to compete for DLA contracts at either the prime or the subcontract level, and provides another outlet, vision, and opportunity to those whose prior range of operations was unnecessarily limited.

(c) A typical approach to MBA could be an arrangement between two entities who are both in similar business lines, with the prime contractor providing the advantage of its experience, technical capabilities, and business networks to the protege. Another could involve a prime from the warehousing/distribution business sector teaming with one or more proteges - not only in product lines, but also in software development, management of hazardous materials, transportation, electronic communications, and other

such areas. The DLA MBA Program can be applied across the entire spectrum of DLA commodities and required services (but see 19.9003 for the commercial-item supply contract exception to mandatory inclusion).

**19.9005 Contracting officer responsibilities and program considerations.**

(a) DLA contracting offices will work together with their respective small business offices as catalysts and facilitators, identifying entities willing to participate as mentors. Prospective prime contractors are responsible for selecting small, small disadvantaged, and women-owned small businesses (or "AbilityOne" entities) for participation with them in the program. However, when requested, the DLA contracting office and/or small business office will assist prospective prime contractors in the process of locating small entities as potential proteges. The prime must establish for itself the parameters of its involvement under the program; its proposal for participation, identifying the assistance already undertaken or to be rendered, shall be incorporated into its contract with the Government. The prospective contractor is obligated, as part of its contractual undertaking, to enter into a written, binding mentoring business agreement with a protege based on this plan. (Thus, the MBA, by its being expressly contemplated by the mentor's proposal and by the latter document's incorporation into the prime contract with DLA, binds the mentor firm to both the protege and the Government.)

(b) Even though the Government does not enjoy privity of contract with the protege (and therefore cannot be a party to, or require a copy of, the MBA), the contracting officer shall inform the prospective offeror/mentor that the future agreement must reflect the plan included with the latter's offer.

(1) Notwithstanding that the agreement is not made a deliverable under the contract, or that a copy cannot otherwise be demanded by the contracting officer, he or she shall nevertheless request that the agreement be made available to the Government. The contractor shall be advised that any agreement so provided will be compared with the proposal contained in the contract with DLA, to ensure that it adequately reflects the mentor's obligations expressed within that contract.

(c) DLA contracting offices shall lead by example in this mentoring concept by placing greater emphasis on assisting small, small disadvantaged, and women-owned small businesses through their business counseling center services and other functions/specialists throughout the activity. These contracting offices will actively promote and participate in industry-sponsored conferences and organizational seminars/meetings, using the events as a forum to discuss and forward program goals.

(d) To promote program participation, the DLA MBA program shall (as stated in 19.9003) be included as an evaluation factor in best-value acquisitions that meet applicability standards. Prospective offerors shall be asked to include, as part of their overall proposal, a plan to participate in the Program as a mentor; each plan must delineate the assistance already undertaken or to be rendered to a protege. The factor is an element in the overall award decision, and the proposal provided by a successful offeror shall be incorporated into the resulting contract and monitored during performance by the contracting officer and other pertinent parties.

(1) Participation in the MBA program is entirely elective; however, proposals that demonstrate a strong commitment to affording small, small disadvantaged, and women-owned small businesses a real opportunity to compete in the reengineered business environment will ordinarily receive a more favorable rating for this evaluation factor than those that demonstrate a lesser or no such commitment.

(i) Examples of this type of "real opportunity" include the mentor's developing the protege into a stronger competitor by designating the latter a "valued supplier," or by permitting it to perform part of the contract work in conjunction with the prime through a type of teaming arrangement.

(ii) There is no limit to the type of assistance the prime contractor may provide to achieve its program objectives. The "helping hand" that any firm can extend necessarily depends upon unique variables, including its business sector, range of market penetration, capitalization, competition, location, etc.

(iii) The Government shall determine the adequacy of the contractor's proposal, but shall not dictate the kind of assistance to be provided.

(e) For applicable contract actions, the contracting officer shall provide incentives for prime contractors to establish and administer MBA arrangements. These include:

(1) evaluation of current or proposed participation in the MBA program as an independent factor (separate from any overall past performance evaluation factor) in source selection;

(2) use of MBA performance under previous contracts as part of the overall past performance evaluation factor in source selection;

(3) evaluation of present MBA performance in determining placement of orders under multiple-award contracts; and/or

(4) consideration of contractor present and past MBA performance in the exercise of options for the follow-on years of long-term contracts.

(f) The DLA MBA program shall be monitored, and performance under it analyzed, by the contracting officer and the cognizant small business specialist(s) to ensure the intended purposes of the program are being achieved. Because activity must be evaluated specifically in terms of the contractor's commitment to the advancement and viability of a protege, and because oversight reviews must be conducted in accordance with the plan contained in the prime's contract with the Government, rather than in accordance with the agreement (see 19.9006(a) through (c)), care must be taken not to assess intentions, without regard to outcomes. The value of both effort expended and results achieved must be considered in each individual mentoring situation.

**19.9006 Reporting.**

(a) Participating mentors shall be required to submit periodic progress reports on the fulfillment of their proposals. Furthermore, when a mentor voluntarily furnishes a copy of the MBA to the Government, the contracting officer shall compare the later agreement to the mentor's earlier proposal.

(b) All accomplishments against MBA proposals shall be reviewed semi-annually with the mentor and the protege by the contracting officer and the cognizant small business specialists from the buying activity and the DCMA component(s). (Administration of contracts containing the MBA provision/clause should ordinarily be delegated to DCMA; however, when overall administration is retained, supporting administration by DCMA must nevertheless be requested for purposes of Program oversight. See 42.202(e)(90). Activity or component Commanders or their Deputies are strongly encouraged to

participate in such reviews. DLA HQ Director, DLA Acquisition (J7) and DDAS shall also be afforded an opportunity to participate.

(c) Not only shall small business specialists monitor contractor activity under the plan, but they shall also, at least implicitly, oversee and report on performance under the agreement, when that document has been provided to the Government. Even if activity in accordance with the agreement is able to be monitored, such information cannot be used as the basis for any contractual determination (including source selection, option exercise, or order placement), because the mentor's contractual duties to DLA extend only to the contents of the plan. Similarly, a formal assessment of the protégé's fulfillment of its undertakings (as set forth in the MBA) cannot be made, because that party's contractual obligations extend only to the prime. Despite this, the general monitoring of all aspects of performance is one of the Government's primary duties under the MBA Program. A proper balance must be maintained between the demands occasioned by legitimate Government interests, and respect for a contractual relationship to which the Government is not a party.

(d) Wherever possible, this program will utilize existing reporting mechanisms to evaluate prime contractor compliance.

(e) A reports control system (RCS) number has been established for reporting the number of MBAs in place each fiscal quarter. Additionally, indicate whether, for the applicable buys, offers were received from both small/"AbilityOne" and large entities, whether the successful offeror chose to participate in the MBA program, and, if so, whether the successful offeror was a small/"AbilityOne" or a large business. The RCS number remains DLA(Q)2609(MM). These reports are mandatory, and are due from the corporate contract policy office at each Center to DLA HQ, attention: J71, by the 10th working day of the month following the end of the quarter.

(f) Notification of a mentor's and protégé's arrangements regarding signing ceremonies for these MBA agreements shall, whenever practicable, be provided to DLA HQ, Small Business and J71, at least two weeks prior to the planned event so that DLA executives may attend, at their election. Formal ceremonies with appropriate publicity are encouraged.

**19.9007 Solicitation provision and contract clause.**
A provision substantially the same as the one at 52.219-9002 shall be inserted in all solicitations meeting the criteria in 19.9003, above. Additionally, a clause substantially the same as the one at 52.219-9003 shall be included in all solicitations and contracts containing provision 52.219-9002.

## PART 22 – APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS
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# PART 22 – APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

**22.001 Definition.**
DLA's "Agency labor advisor," defined at FAR 22.1001 as an individual responsible for advising contracting agency officials on Federal contract labor matters, is DLA's Acquisition Policy Division, J71. See DOL website for a list of all Agency labor advisors.

(1) DLA Acquisition (J7) is responsible for all agency labor advisor matters except those involving contracts administered by DCMA;

(2) DCMA's contracts directorate (DCMA-AQ ) is responsible for agency labor advisor matters involving contracts administered by DCMA.

## SUBPART 22.1 – BASIC LABOR POLICIES

**22.101 Labor relations.**

**22.101-1 General.**

(a) For contracts not administered by DCMA, contact the Agency labor advisor for support concerning contractor labor issues.

(90) Whenever labor representatives request permission to enter a DLA installation on which private contract employees are engaged in contract work to conduct union business during working hours, the commanding officer may admit such representatives, provided: the presence and activities of the labor representatives will not interfere with the progress of the contract work involved; and the entry of such representatives to the installation shall not violate pertinent safety or security regulations. Commanding officers shall take all necessary action to enforce the above policy and facilitate ready access to worksites within military installations. One method which has met with success in appropriate situations is the maintenance by commanding officers of a list of labor representatives who have been cleared with regard to safety and security considerations and who may be admitted into respective installations to conduct union business. The determination as to who are appropriate labor representatives should be made by the commanding officer on recommendation of the contracting officer and after consultation with local union officials. Business offices or desk space for labor organizations for solicitation of membership, collection of dues, or other business of the labor organization not directly connected with the contract work, shall not be permitted on the installation except for the routine functions of the working steward whose union duties are incidental to the steward's assigned job. In the event that a commanding officer of an installation or the contracting officer or representative of the contracting officer denies entry to a labor representative for any reason, such officer shall notify, through channels, DLA HQ, attention: J71. Such notification shall include the reasons for denial, including names, addresses of representatives denied entry, and union affiliation, if known, of such representatives.

**22.103-4 Approvals.**

(a) The approving official for contractor's requests for overtime is the chief of the contracting office.

**22.103-5 Contract clauses.**

(90) The clause at 52.222-9000, Davis-Bacon Act - Price Adjustment shall be included in contracts for installation support and maintenance and repair containing option or multiyear provisions.

## SUBPART 22.4 – LABOR STANDARDS FOR CONTRACTS INVOLVING CONSTRUCTION

### 22.404-3 Procedures for requesting wage determinations.

(b) The office responsible for the preparation of specifications or award of contracts shall initiate the request. Send the original SF 308, Request for Wage Determination and Response to Request, to the Department of Labor with a copy to DLA HQ, attention: J71.

## SUBPART 22.15 – PROHIBITION OF ACQUISITION OF PRODUCTS PRODUCED BY FORCED OR INDENTURED CHILD LABOR

### 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

*(Revised November 18, 2011 through PROCLTR 2012-10)*

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# PART 23 – ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

## SUBPART 23.1 – POLLUTION CONTROL AND CLEAN AIR AND WATER

**23.107 [Reserved.]**

## SUBPART 23.3 – HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA SHEETS

**23.303 Contract clauses.**

**23.303-90 Material safety data sheets and hazard warning labels.**
In addition to the clauses set forth at FAR 52.223-3 and DFARS 252.223-7001, the contracting officer shall insert a clause substantially the same as 52.223-9000, Material Safety Data Sheets and Hazard Warning Labels, in solicitations and contracts for items described in FAR 23.302(c).

(a) Notwithstanding paragraph 4 of the latest version of Federal Standard (FED-STD) 313, the apparently successful offeror will be required to submit copies of the material safety data sheets (MSDSs) and hazard warning labels (HWLs) to the contracting officer for review and approval prior to award, in accordance with 52.223-9000. The contracting officer, after approving the MSDS and HWLs, shall provide a copy of each MSDS received from the successful offeror(s) to the address below for entry into the DLA hazardous material information system:

DLA Aviation
Attention: VBA
8000 Jefferson Davis Highway
Richmond, Virginia 23297-5670

**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 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.

**23.303-94 Hazardous chemical exposure (DLA Maritime).**
Insert the clause in full text at 52.223-9008, Hazardous Chemical Exposure, in DLA Maritime-Norfolk firm-fixed-price contracts where contractor employees may be required to visit or perform work at properties under the cognizance of Norfolk Naval Shipyard.

## SUBPART 23.4 – USE OF RECOVERED MATERIALS AND BIOBASED PRODUCTS

### 23.406 Solicitation provisions and contract clauses.

**23.406-90 Re-refined oil content.**
Use 52.223-9001, Estimate of Re-Refined Oil Content, in solicitations when the Purchase Order Text (POT) specifies a minimum re-refined oil content. Provision 52.223-4 is also used when this provision applies.

## SUBPART 23.7 – CONTRACTING FOR ENVIRONMENTALLY PREFERABLE AND ENERGY-EFFICIENT PRODUCTS AND SERVICES

### 23.705 Contract clauses.

**23.705-90 Procurement of timbers.**
Use 52.223-9002, Anti-Stain Treatment (Untreated Wood Products), in all solicitations and awards for the procurement of timbers.

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## SUBPART 25.1 – BUY AMERICAN ACT – SUPPLIES

**25.103 Exceptions.**

(b)(1)(S-90) The fact that an item to be procured is on the list at FAR 25.104(a) does not eliminate the buying activity's responsibility to conduct market research appropriate to the circumstances, to include seeking domestic sources, before soliciting offers. (See 10.001(a)(2)(93)).

(b)(i) Prepare nonavailability determinations in a determination and findings (D&F) form.

(b)(i)(C) For contracting offices where the Director, DLA Acquisition (J7) is the HCA, submit waiver requests to DLA HQ, attention: J72.

(b)(ii) For purposes of determining the approval level, do not add option totals to basic award amounts. Prior to exercising an option, however, a new determination of nonavailability for the option total only must be made.

**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

*(Revised August 2, 2011 through PROCLTR 2011-22)*

**25.802-71-90 End Use Certificates.**

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. )

(a) End use certificates (EUCs) are written agreements in connection with the transfer of foreign military equipment or technical data to the United States that restrict the use or transfer of that item by the United States. EUCs are divided into three categories, Category I, II, and III, and each category has specific signature approval authorities.

(b) For military service managed items at depot level repairable and supply storage and distribution 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)(1) Contracting officers are encouraged to find an alternate supply source or negotiate an alternate delivery method to avoid the necessity of an EUC. Procedures are available, however, if other alternatives are not feasible and it is in the best interests of the United States to purchase foreign products subject to an EUC.

(2) When requesting an EUC, plan sufficiently in advance to preclude any need for a request to expedite. Processing timelines, especially with coordination external to DLA, expressly limit DLA's ability to expedite EUCs.

(d) Contracting officers should consult with the local Office of Counsel for assistance in determining the appropriate category of the EUC request. EUC requests can vary in their language and format since foreign countries establish their own security requirements, and there can be also be variation in format within a country's export offices.

(e) 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 (e), (f), or (g) below for EUC procedures.

(f) Category I EUCs.

(1) Category I EUCs are for items that the United States may use for defense purposes. See paragraph 3.2 of DODD 2040.3 for the definition of "defense purposes". The United States may make direct use of such Category I EUC items in any part of the world and may transfer these items by means of grant aid, International Military Education and Training (IMET) programs, Foreign Military Sales (FMS), and other security assistance and armaments cooperation authorities. Items are designated as Category I EUCs for security purposes by the foreign government, or based upon nonproliferation agreements to which the U.S. is a party. This category of EUCs may apply to the procurement of missile technology.

(2) The Director, DLA may authorize execution of the individual Category I EUC and then delegate signature to the Component Acquisition Executive. See PGI 25.802-71(90)(e) for processing procedures for Category I EUCs and a template. Contracting officers should provide the request to J7for a signed Category I EUC no less than 30 days before it is needed.

(g) Category II EUCs. Category II EUCs are any EUCs that are not either Category I or III.

(1) 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. These procedures require a minimum of 21 days advance notification to the Office of the Under Secretary of Defense (OUSD)(AT&L) who may coordinate with the U.S. Department of State. Unless DLA is contacted by OUSD(AT&L) with specific instructions during this time frame, concurrence may be assumed after expiration of the 21 day period.

(2) The Director, DLA must determine that notwithstanding any use or transfer limitations, the purchase of the item is in the U.S. national interest. The Director, DLA may authorize execution of the individual Category II EUC and then delegate signature to the Component Acquisition Executive. See DLAD PGI 25.802-71(90)(g) for processing procedures for Category II EUCs and a template. Provide the package requesting approval of a Category II EUC to J7 no less than 60 days before it is needed.

(h) Category III EUCs. Category III EUCs are those that limit the right of the U.S. Government to use the item in any part of the world, or limit the right of the U.S. Government to provide the item to allies engaged with the U.S. in armed conflict with a common enemy.

(1) The military service secretaries and the Directors of Defense Agencies are prohibited from approving EUCs in this category, and only OUSD may grant a waiver to this prohibition.

(2) With this waiver, the agency is then authorized to execute an EUC with the requesting government for the specific acquisition. OUSD will likely require that the agency establish procedures to ensure that any possible re-transfer of the equipment does not occur without obtaining prior approval from the country that requested the EUC.

(3) With the waiver from OUSD, the Director, DLA would then be authorized to 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 multiyear or multiple year contracts) under the resulting EUC would not necessitate a further EUC. DLA activities should specify whether the procurement involves a multi-year contract or task/delivery orders in the package for OSD consideration.

(5) See DLAD PGI 25.802-71(90)(g) for instructions and a waiver template for Category III EUCs. Provide the request to J7 no less than 90 days before it is needed.

(i) All EUC requests or requests for waivers must be sent thru J7 for processing and approval by the Director, DLA. See PGI 25.802-71 (90) for coordination procedures.

(j) J71 will promptly forward copies of signed EUCs of all three categories to OUSD(AT&L).

**25.870 Contracting with Canadian contractors.**

**25.870-1 General.**

(e)(S-90) See 15.403-3(a)(4)(S-90) for price analysis and price reasonableness determination requirements for offers from Canadian Commercial Corporation.

## 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 PGI 225.903(b)(i)(A)(2)

## SUBPART 25.70 – AUTHORIZATION ACTS, APPROPRIATIONS ACTS, AND OTHER STATUTORY RESTRICTIONS ON FOREIGN PURCHASES

*(Revised August 2, 2011 through PROCLTR 2011-23)*

**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) Other proposed waivers of this restriction will be processed using the format, content, and procedures prescribed by DLAD PGI 25.7002-2(90)(b) and (c), modified to reflect that the waiver relates to the restriction in 10 U.S. C. 2534(a) and providing detailed factual support for the appropriate basis for waiver in 10 U.S.C. 2534(d). 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 specialty metals.**

**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 buying activity 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 10.001(a)(2)(93) and 25.104(b)(90)).

**25.7002-2-90) Domestic nonavailability validation.**
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 buying activity shall verify, through market research, that the article should remain on the list and thus, still be exempt from the Berry Amendment restriction. The contract file is to be documented accordingly. (See 10.001(a)(2)(93) and 25.104(b)(90)).

(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. See PGI 25.7002-2 for guidance in requesting a domestics non-availability determination (DNAD).

(b) Requests for DNADs will specify the appropriate period to which the DNAD should apply. Market research will be used to substantiate whether the nonavailability is temporary or permanent. If the nonavailability is temporary, contracting activities will document consideration of alternatives to a DNAD and why these are not adequate, and will submit the DNAD to cover only the temporary period of nonavailability. Otherwise, the DNAD's time length should be made indefinite until such time as market research establishes there are sufficient domestic sources that can provide the item or a satisfactory alternative as and when needed in satisfactory quality, sufficient quantity, and at U.S. market prices.

(c) Each activity that has been granted a domestic non-availability determination (DNAD) is required to annually report to 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.

## SUBPART 25.73 – ACQUISITIONS FOR FOREIGN MILITARY SALES

**25.7302-90 Foreign military sales (FMS) shipping instructions.**

(a) With release of SAP R2.2.2.b, all line items in new outline agreements/contracts that support FMS customers should be awarded as free on board (f.o.b.) origin. This ensures that cargo is recognized as U.S. Government property when shipped, in accordance with Security Assistance Management Manual (SAMM) guidance in DoD 5105.38-M, paragraph C.7.5.1. 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 a FMS shipment.

(b) The ability to include FMS requirements in contracts may still be limited by preservation and packing requirements. Marking must comply with military standard (MIL-STD) 129 and the security assistance management manual for FMS requirements. In addition, FMS shipments should be by traceable means.

(c) In order to reduce misdirected shipments of FMS materiel, do not place shipping addresses on FMS contracts. Orders and contracts assigned to DCMA for administration shall include a notice to require the contractor to refer to DCMA and the enterprise transportation officer (ETO), DLA Distribution, for the applicable Government shipping document/instructions. DCMA uses the shipping information request (SIR) web based application available through http://www.DCMA.mil; rather than the prior DD Form 1659, Application for U.S. Government shipping documentation/instructions. The ETO DLA Distribution is contacted via delivery@dla.mil or 1-800-456-5507.

(d) Additional contract provisions may be appropriate to satisfy unique requirements for requisitions that contain a "Z" or "Y" in card column 46. These offer and release codes require notification to the designated country representative or freight forwarder prior to release of shipment of hazardous, oversized, or overweight items. However, do not list the freight forwarder or embassy addresses in the contract.

(e) Under the terms of the letters of offer and acceptance (LOA) negotiated with foreign governments, title transfers to the foreign government at the contractor's loading dock.

(f) Inspection and acceptance procedures for FMS. Since all FMS orders will be now be shipped f.o.b. origin, acceptance and inspection shall also be performed at origin. Requiring a certificate of conformance from the supplier is in the Government's best interest for FMS orders. See also 46.601-91 and the prescribed clause, 52.246-9020 Distribution of Material Inspection and Receiving Report, which requires the contractor to include a hard copy of the DD250/WAWF-RA Receiving Report in the exterior and interior shipping documentation for each package being shipped. Alert suppliers of this condition, as FMS orders without the hard copies are frequently delayed or detained.

For suppliers who qualify for DCMA's alternate release procedures (ARP), acceptance will be accomplished by the electronic signature of the DCMA Quality Assurance Representative on the electronic DD250 form found in wide area work flow. For suppliers who do not qualify for ARP, DCMA will perform inspection/acceptance manually, if needed. Certificates of Conformance shall be required of suppliers for each FMS line item being shipped.

(g) Solicitation provisions and contract clauses.

For non-energy FMS orders and contracts, use DLAD clause 52.225-9002, FMS Shipping Instructions (Nov 2009) in solicitations/contracts with FMS line items.

## SUBPART 25.74 – DEFENSE CONTRACTORS OUTSIDE THE UNITED STATES

### 25.7402 Contractor personnel authorized to accompany U.S. armed forces deployed outside the United States.

### 25.7402-90 Policy.

(a) When contracting for requirements for delivery to or performance in the CENTCOM AOR, Contracting Officers shall, in addition to complying with existing requirements in DFARS and DFARS PGI Subpart 225.74:

(1) (i) Implement the Synchronized Predeployment and Operational Tracker (SPOT) requirements of DoD Class Deviation 2007-O0010 and/or DFARS 252.225-7040. (Note that both may be applicable depending on the circumstances of a particular contract.)

(ii) See the OUSD(AT&L)/DPAP memo of January 28, 2008, that mandates contractor data input into SPOT in six timed phases, culminating in the inclusion of all contractors employed on DoD funded contracts being performed in support of contingency operations anywhere in the world.

(iii) DFARS 225.301-4 also designates SPOT as the appropriate automated system to use for the list of contractor personnel in FAR clause 52.225-19, Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission Outside the United States.

(iv) The FAR clause is used when performance is in a contingency area or diplomatic/consular mission other than in the CENTCOM AOR and contractor personnel are not authorized to accompany the force.

(2) Follow the requirements specified in OUSD(AT&L)/DPAP Policy Memo, November 26, 2007, Iraq/Afghanistan Theater Business Clearance (TBC) (applicable to Iraq and Afghanistan only; also, note the exception to the TBC requirement in (f) below.).

(3) If private security contractors (PSC) are authorized for the contract, follow CENTCOM/JCC-I/A requirements relating to PSCs in the JCC-I/A Contracting Officer's Guide to Special Contract Requirements for Iraq/Afghanistan Theater Business Clearance, November 25, 2007. (See Contracting Officer's Guide on CENTCOM website) and follow the procedures in PGI 25.7402-90(a). After local Office of Counsel review and approval of an awarded contractor's private security plan, submit the contractor's private security plan to the DLA HQ Office of General Counsel for approval; once approved internally, DLA General Counsel will in turn submit the plan to CENTCOM (MNC-I or CJTF-82). See PGI 25.7402-90(a)(3) for procedures to submit updates to previously approved PSC plans.

(4) Contracting officers shall check the CENTCOM contracting office website for the most current mandatory language before issuing a solicitation.

(b) The CENTCOM/JCC-I/A policies and requirements for SPOT, TBC, and PSC, as supplemented below, shall also be applied to contracts with foreign governments, representatives of foreign governments, or foreign corporations wholly owned by foreign governments, if performance of the contract, even if only delivery, will wholly or partially occur within Iraq or Afghanistan.

(c) The DLA Senior Procurement Executive (SPE) has been delegated authority by JCC-I/A to approve Theater Business Clearances (TBC)s for all DLA contracts for delivery to or performance in Iraq or Afghanistan that do not include a requirement for a PSC. (See Delegation of Authority memorandum dated December 24, 2007).

(1) The TBC approval procedures specified in OUSD(AT&L)/DPAP Policy Memo, November 26, 2007, Iraq/Afghanistan Theater Business Clearance, requiring submission of a TBC package to JCC-I/A, are applicable when a contract or subcontract at any level involves a PSC requirement. See PGI 25.7402-90 (a) for procedures for submission of PSC plans to DLA HQ.

(2) The arming requirements, procedures, and references for a PSC can be found in AI 52.6, Arming of Contractors: Iraq/Afghanistan, in the Contracting Officer's Guide to Special Contract Requirements for Iraq/Afghanistan Theater Business Clearance.

(3) The USCENTCOM PSC policy for civilian and contractor arming and delegation of authority for Iraq and Afghanistan is also found in the November 6 and 7, 2007, USCENTCOM messages.. See the mandatory procedures for submission of private security plans at PGI 25.7402-90(a).

(d) The SPE shall review and approve any acquisition or modification of an existing contract that includes requirements for performance within or for delivery to Iraq or Afghanistan prior to solicitation or modification to ensure compliance with the OSD, CENTCOM, and JCC-I/A requirements in (a) above. As a reminder, in accordance with the OUSD (AT&L)/DPAP memos of December 20, 2007, and February 26, 2008, contracts subject to TBC review and approval are ones that have contractor personnel in Iraq or Afghanistan; or will deliver material to Iraq or Afghanistan under free on board (f.o.b.) destination terms using commercial transportation outside the Defense Transportation System (DTS); or authorize contractor personnel, including subcontractors, to carry weapons in Iraq or Afghanistan.

An appropriate level of review by the submitting contracting organization is required commensurate with the dollar value and complexity of the acquisition, as established by DLAD and the Supply Chain's/Contracting Activity's solicitation/contract review thresholds for supply and service contracts, to include concurrence of its cognizant Office of Counsel.

To obtain DLA HQ J7 review and approval of the theater business clearance see elements in (1) below that must be addressed for JCC-I/A. Contracting Officers shall submit both the JCC-I/A spreadsheet and the CENTCOM TBC review sheet with tracker as part of the submission package to J7, with the fourth column of the TBC review sheet with tracker filled in to indicate the location for each mandatory requirement in the supply chain's solicitation.

(1) Ensure the submitted TBC contains the following elements, in accordance with JCC-I/A and DPAP requirements:

(i) Statement of work and terms and conditions

(ii) Acquisition milestones for award

(iii) Number of contractor's/subcontractor's employees projected to support contract

(iv) Name of customer/requirement POC, e-mail, phone number

(v) Name of PCO, e-mail, phone number

(2) Of utmost importance is the requirement to coordinate any contractor requests for billeting, dining, morale, welfare, and recreation (MWR), and medical requirements with the location where the contractor is performing the contract. Ensure the entry on the TBC Request Form "Name of FOB official who approved billeting, dining, MWR, etc. if authorized" represents a valid approval before submitting the TBC.

(3) TBC submission is required at both the pre-award and post-award stages.

(e) Contract administration. In accordance with DFARS 242.202(a)(i), contract administration functions remain at DLA for Class I (Subsistence) and DLA Energy products/services being provided/performed in Iraq or Afghanistan. For all others, the OUSD(AT&L)/DPAP memo of February 26, 2008, provides JCC-I/A's instructions for delegating contract administration functions to them for that portion of the contract that will require performance in theater. In most cases, the quality assurance and property management functions will be the only functions that are delegated. Unless otherwise indicated in writing by JCC-I/A, these actions will be further delegated to DCMA-Iraq/Afghanistan.

A sample delegation letter, a contract administration tracker, data package for contract delegation, sample SF30 for further assignment of contract administration to DCMA if indicated by JCC-I/A, and a matrix version of 42.302(a) can be found in PGI 25.7402-90(e) and on the CENTCOM website.

Previous memos concerning contract administration can also be found in the OUSD/DPAP Memo of October 25, 2007, and the USD Memo of October 19, 2007. See PGI 225.7402-90 (e) for procedures and notification of contract administration delegations.

(f) TBC is not required for commodity contracts that provide for shipment of supplies into either Iraq or Afghanistan through the DTS, although it is applicable if the DLA contractor is responsible for delivery following its receipt of supplies from DTS unless their sole means of delivery uses military convoys escorting commercial shipments in the AOR (as these are considered part of the DTS system). It is also applicable if DLA contractor personnel will perform incidental services related to the supplies within Iraq or Afghanistan.

(g) J7 will provide JCC-I/A with periodic reports of DLA contracts for which the DLA SPE has approved the TBC, pursuant to the delegation of authority.

(h) Notification. Proper notification of approved TBCs to affected DLA organizations is required as these organizations are liaisons with the forward operating bases (FOBs).

(1) For approved TBCs (either with or without PSC requirements), DLA HQ J7 will provide the TBC package to JCC-I/A Principal Assistant Responsible for Contracting (PARC) in accordance with the JCC-I/A memorandum of December 24, 2007. DLA HQ J7 will also provide the approved package to DLA-C and to the cognizant DLA contingency support team (DCST- Kuwait, Iraq, or Afghanistan).

(2) The DCST will be the contracting officer's liaison with the FOB Commander and will ensure that the requests for billeting, dining, MWR, and medical requirements are provided to the proper FOB points of contact and various approval authorities (force refinement board (FRB), installation facilities utilization board (IFUB), and any local entities required). Contact points for DCSTs are:

DCST-Afghanistan (DCST-AF) Ops Officer, DSN: 318-431-4125/4694
DCST-Kuwait (DCST-KU) Support Ops NCO, DSN: 318-430-5434
DCST-Iraq (DCST-IZ) Operations Officer, DSN: 318-822-2992

(i) Expedited requests for a TBC

(1) TBC with or without a PSC element. For expedited performance of a TBC in conjunction with an expedited contract action to modify an existing contract or award a new contract, the contracting officer shall certify that all required TBC provisions are contained within the existing or proposed new contract, as applicable, via an e-mail notification to the DLA HQ J7 Deputy Director. Within 96 hours of the initial notification of the requirement for a TBC on an expedited procurement, the contracting officer shall provide the documentation required for a TBC to DLA HQ J7. DLA HQ J7will review/approve the TBC and provide a copy of the final package to JCC-I/A-PARC, DLA-C (commercial 813-827-3066 or DSN 651-3066) and the cognizant DCST.

**25.7402-4 Contract clauses**.

(a) See DFARS PGI 25.7402-4(a) for guidance on use of the DFARS clause 252.225-7040 and on use of DoD Class Deviation 2007-O0010, Implementation of the Synchronized Predeployment and Operational Tracker (SPOT) to Account for Contractor Personnel Performing in the United States Central Command Area of Responsibility, issued on October 17, 2007. Special procedures and instructions regarding the input into SPOT of the required data on contractor personnel employed on security and translator /linguist service contracts can be found in the DPAP Guidance for the Implementation of the SPOT program, dated September 28, 2007, as well as the clauses contained in the Contracting Officer's Guide on the CENTCOM contracting office website see September 28, 2007, memo

## 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 activities shall submit their request in the form of a proposed D&F to DLA HQ, attention: 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

**25.7799-2 Determination requirements.**

**25.7799-2(b)(1)(ii)(A)** For any determination that applies to an individual acquisition with a value of $78.5 million or more or to a class of acquisitions, provide the package requesting CAE approval to J72 at least 10 working days prior to the projected date for issuing the solicitation. This also applies to individual acquisitions below $78.5 million for activities without a supply chain HCA. The DLA competition advocate shall also review the determination. The package shall contain:

*(1)* Memorandum or staff summary sheet from the supply chain HCA (CCO for activities without a supply chain HCA) requesting approval and reflecting local coordination, including by the servicing Office of Counsel and local 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

*(Revised October 18, 2012 through PROCLTR 2013-01)*

### 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 orders, or blanket purchase agreements 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 CENTCOM Joint Theater Support Contracting Command (C-JTSCC) acquisition instruction (AI) dated 1 September 2011, paragraph 25.7704-120 Vendor Vetting (Iraq and Afghanistan) (unclassified). See mandatory procedures in PGI 15.7801-90 (c) concerning vendor registration and vetting.]

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**27.000 Scope of section.**

**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

**27.203 Patent indemnification of Government by contractor.**

**27.203-6 Waiver of indemnity by the Government.**
Specific patents may be excluded in accordance with FAR 27.203-6 only with the prior approval of DLA General Counsel.

**27.204 Reporting of royalties - anticipated or paid.**
Counsel for the contracting activity concerned will forward to DLA General Counsel, a copy of each royalty report received in accordance with FAR 27.204 which indicated that royalties in excess of $250 have been paid or are to be paid to any person or firm.

**27.205 Adjustment of royalties.**
The report required by FAR 27.205 shall be made to counsel for the contracting office concerned who shall forward the report to DLA General Counsel for appropriate action.

## SUBPART 27.3 – PATENT RIGHTS UNDER GOVERNMENT CONTRACTS

**27.302 Policy.**

**27.302-90 Processing of infringement claims.**

(a) 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.

(b) DLA General Counsel is hereby authorized to make acquisitions in accordance with 10 U.S.C. 2386 and to enter into agreements in settlement of claims under the Foreign Assistance Act of 1961 (22 U.S.C. 2356) and 35 U.S.C. 181-188. DLA General Counsel shall coordinate with the Departments of the Army, Navy, and Air Force in the processing and final disposition of each claim.

**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. Use with DFARS 252.227-7025.

**27.409-90 Solicitation provisions and contract clauses - rights in data.**
Insert the clause 52.227-9002, Data – English Language, in all solicitations and in awards when rights in data is used.

**27.409-91 Solicitation provisions and contract clauses - in plant equipment (IPE) contract Data Requirements.**
Insert the clause 52.227-9003, In Plant Equipment (IPE) Contract Data Requirements, in RFQs for CRC FSG 34 IPE. The buyer will insert the number of days for approval as cited on the DD Form 1423. If contract data is not to be furnished by the contractor, insert “not applicable”.

**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.

## SUBPART 27.71 – RIGHTS IN TECHNICAL DATA

**27.7102 Commercial items, components, or processes.**

**27.7102-3 Contract clause.**

(a)(90) The contracting officer may use the clause at 52.227-9001, Evaluation of Manuals, in acquisitions that require the procurement of commercial manuals.

(a)(91) Commercial manuals for naval shipboard use items. The clause at 52.227-9000, Commercial Manuals for Naval Shipboard Use Items, may be used in solicitations, purchase orders, and negotiated contracts for items in FSCs 4110 and 73XX when the PR trailer: 1. cites a "1" in the TMC field and/or indicates that a commercial manual is required and 2. the PID indicates that the item is for naval shipboard use. DD Form 1423, DD Form 1664, and Commercial Manual Distribution Form must also be included when clause 52.227-9000 is used.

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# PART 28 – BONDS AND INSURANCE

## SUBPART 28.1 – BONDS AND OTHER FINANCIAL PROTECTIONS

**28.101 -- Bid Guarantees.**

**28.101-2 (90) Performance bond or a performance and payment bond required.**
Use clause 52.228-9001, Bid Guarantee for Use in Negotiated Acquisitions, in solicitations and awards for DLA Aviation items when a performance bond or a performance and payment bond is also required. Do not use 52.215-5 (Sec L) when this clause is used. Use in solicitations when a bid guarantee is required (see FAR Subpart 28.1). The buyer shall determine the amount of the bid guarantee for insertion in paragraph (c). The bid guarantee amount shall be at least 20% of bid price but shall not exceed $3 million.

**28.101-2 (91) Additional bond security for DLA Aviation items.**
Use clause 52.228-9002, Additional Bond Security, in solicitation and awards for DLA Aviation items that include FAR clause 52.228-2.

**28.103 Performance and payment bonds for other than construction contracts.**

**28.106 Administration.**

**28.106-90 Review of bonds and consent of surety.**
All bonds and all consents of surety shall be reviewed by local counsel for legal sufficiency. The original signed bond shall subsequently be retained with the original copy of the contract when practical.

## SUBPART 28.3 – INSURANCE

**28.305 Overseas workers' compensation and war-hazard insurance.**

(d)(90) Contracting offices shall consider FAR 28.305 and DPAP memo, subject: Inclusion of Defense Base Act Clause in DoD Overseas Contracts, dated December 8, 2003, when contracts involving performance outside the United States are anticipated. For Defense Base Act waivers, see the mandatory procedures at DLAD PGI 28.305. Consult the servicing Office of Counsel concerning applicability to particular acquisitions.

**28.307 Insurance under cost-reimbursement contracts.**

**28.307-1 Group insurance plans.**

(90) For the Defense Logistics Agency, submit insurance policies under the Defense Department Group Term Insurance Plan to the Commander, Defense Contract Management Agency (DCMA), for approval.

**28.310 Contract clause for work on a Government installation.**
Use the clause 52.228-9000 Insurance in solicitations and contracts when FAR 52.228-5 is included.

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## SUBPART 29.2 – FEDERAL EXCISE TAXES

**29.2 Clauses.**

**29.2 (90) Supplies for export on a federal excise tax-inclusive basis.**
Use clause 52.229-9003, Excise Tax Included (No Proof of Export), in solicitations and awards when acquiring supplies for export on a federal excise tax-inclusive basis.

**29.2 (91) Clause for exemption from Federal manufacturers' excise tax.**
Use clause 52.229-9004, Federal Excise Tax, in solicitations and awards for Construction and Equipment items when exemption from Federal Manufacturers' Excise Tax is taken based on exportation to a foreign country or shipment to a possession of the U.S. or Puerto Rico. When this exemption is taken, the following notation must be inserted in the contract or purchase order immediately following the description of the supplies: "For Export or Shipment to a Possession".

**29.2 (93) Clause for procurement of benzol, benzene, naphtha, or lubricating oil.**
Use clause 52.229-9005, Federal Excise,State, Local Taxes Excluded from Contract Price, in solicitations and awards for non-commercial packaged petroleum products when procuring benzol, benzene, naphtha, or lubricating oil.

## SUBPART 29.3 – STATE AND LOCAL TAXES

**29.3 Clauses.**

**29.305 (90) Contract clause for procurement of benzol, benzene, naphtha, or lubricating oil.**
Use clause, 52.229-9006, Tax exemption forms, in solicitation and awards for packaged petroleum products when procuring benzol, benzene, naphtha, or lubricating oil.

## SUBPART 29.4 – CONTRACT CLAUSES

**29.4 (90) Contract clause for tax-free ethyl or denatured alcohol.**
Use clause 52.229-9007, U.S. Department of Treasury Tax-Free Ethyl and Denatured Alcohol Permit, in solicitations and awards for tax-free ethyl or denatured alcohol. The contractor must have the proper Department of Treasury permit to be eligible.

**29.401 Domestic contracts – provisions and clauses.**

**29.401-3 Federal, state, and local taxes.**

(90) Use 52.229-9001, United States (U.S.) Department of Treasury Tax-Free Ethyl and Denatured Alcohol Permits, in Solicitations for tax-free ethyl or denatured alcohol. (Reference: U.S. Department of Treasury letter, 22 Apr 75) The contractor must have the proper Department of Treasury permit to be eligible.

(91) Use 52.229-9002, Tax Exemption Forms, with packaged petroleum products when procuring benzol, benzene, naphtha, or lubricating oil.

**29.490 Kentucky sales and use tax - application for exemption.**

(a) The commonwealth of Kentucky provides procedures for obtaining an exemption to the Kentucky sales and use tax for sales made directly to the Federal Government under Kentucky regulation 103 KAR 30:235. DLA activities may apply for this exemption. Requests for copies of the application forms should be directed to:

Department of Revenue
Sales and Severance Tax Division
Annex Building
Frankfort, Kentucky 40601

Copies are also available from the Department's regional offices.

(b) The regulation and instructions on the reverse side of the application form require each administrative division within a Federal unit, which makes purchases in its own name, to file a separate application. Kentucky will then issue an exemption authorization letter to that unit. Each contractor in Kentucky doing business with that unit will then request a copy of this exemption authorization letter. Once DLA furnishes a copy to contractors, they should retain it in their files for use in connection with claiming deductions in their state sales and use tax returns with respect to sales to the Federal Government.

(c) Solicitations which anticipate responses from firms in the Commonwealth of Kentucky should include the clause at 52.229-9000.

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## SUBPART 30.2 – CAS PROGRAM REQUIREMENTS

### 30.201 Contract requirements.

### 30.201-1 CAS applicability.

Refer to 30.201-3(a) in determining whether the exemption at 9901.201-1(b)(2) applies for negotiated contracts and subcontracts not in excess of $650,000.

### 30.201-3 Solicitation provisions.

(a) The provision at 52.230-1, Cost Accounting Standards Notices and Certification, shall be included in negotiated solicitations expected to result in contracts exceeding $650,000, as specified in 48 CFR 9903.201. To qualify, the "net award" calculated at the time of contracting action must be expected to exceed the CAS $650,000 threshold. The calculation shall include yet-to-be-provided incremental funding and the potential value of orders expected to be issued over the life of the contract, including options, excluding any not likely to be exercised. The reason for any exclusions shall be documented.

(c) Insert the provision 52.230-9001, Disclosure Statement Form (TACOM DLR – DLA Land and Maritime), in all solicitations which contain FAR 52.230-1, Cost Accounting Standards Notices and Certification, and do not include Disclosure Statement, Form CASB-DS-1, as a part of the solicitation package.

### 30.201-4 Contract clauses.

(90) Refer to 30.201-3(a) to determine whether the award meets the $650,000 threshold and thus should retain the solicitation provision specified at FAR 30.201-3(a) and the clauses specified at FAR 30.201-4(a)-(e).

### 30.201-5 Waiver.

(S-90) Prior to referral by the HCA or chief of the contracting office for those DLA activities not designated as a contracting activity, to DLA HQ, attention: J73, of a proposed waiver of the CAS requirements, the Commander/Director shall personally negotiate with the proposed contractor and attempt to obtain the required statement(s). When it is determined that the Commander/Director should not personally conduct negotiations, a detailed memorandum setting forth the rationale shall be forwarded with the referral to DLA HQ.

## SUBPART 30.6 – CAS ADMINISTRATION

### 30.602-2 Noncompliance with CAS requirements.

(c)(2) and (d)(2) For information on the interest rate specified at this FAR cite, see 15.407-1(b)(7)(i).

## SUBPART 30.70 – FACILITIES CAPITAL EMPLOYED FOR FACILITIES IN USE

### 30.7001 Use of DD Form 1861.

**30.7001-2 Completion instructions.**

(e) The interest rate cited in the corresponding FAR paragraph is determined by the Secretary of the Treasury under the criteria established by the Renegotiation Act of 1971, and used pursuant to the Contract Disputes Act of 1978 and the Prompt Payment Act. The annual rate for the forthcoming semi-annual period is published in the Federal Register during the fourth week of December and June. The rate and information on its application is available on the worldwide web at http://www.treasury.gov/Pages/default.aspx. This information may also be obtained from the local cost and price analysis branch/element.

**30.7004 Administrative procedures.**

**30.7004-1 Forms CASB-CMF.**

(c) The provision at 52.230-9000 Submission of Data on Facilities Capital Cost of Money shall be included in solicitations expected to exceed $650,000 which require submission of cost or pricing data.

**30.7004-2 DD Form 1861.**

(b)(3) The provision at 52.230-9000 Submission of Data on Facilities Capital Cost of Money shall be included in solicitations expected to exceed $650,000 which require submission of cost or pricing data.

**30.7100 Definitions.**

(c)(1) For information on the interest rate specified at this DFARS cite, see 30.7001-2(e).

**30.7101 Calculations.**

**30.7101-1 Cost of money.**

(a) For information on the interest rate specified at this DFARS cite, see 30.7001-2(e).

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## SUBPART 31.1 – APPLICABILITY

### 31.109 Advance agreements.

### 31.109(h)(4)(90) Pre-contract costs.

(a) Pre-contract cost agreement (also see FAR 31.205-32) may be used when:

(1) The prospective contractor elects to incur costs, at its own risk, before the effective date of a resulting contract in order meet the delivery schedule and requests pre-contract cost recognition; and

(2) The contracting officer agrees the government shall recognize pre-contract costs to the same extent as if incurred after the effective date of any resulting contract.

(b) Pre-contract cost agreements are approved at the same level and in the same manner as an undefinitized contract action (UCA) (see 1.690-6(h)) at that dollar level and must be reviewed for legal sufficiency. Whenever possible, include the request for pre-contract cost agreement in the request for contract clearance.

(c) Obtain legal review before issuing the agreement. As a condition precedent to the use of a pre-contract cost agreement, the correct type of funds must be available upon issuance of the pre-contract cost agreement. While not legally necessary, prudent business acumen would dictate, that to the maximum extent possible, agreement on terms and conditions also be established prior to issuance of a pre-contract agreement.

(d) Obtain CCO approval, and, as applicable, legal review if the conditions in (4) apply, if the contracting officer plans to advise a prospective contractor of the government's intent to use an effective date before the contract mailing (award) date.

(1) Approval level for the use of an early effective date is the CCO. After reaching agreement on terms, conditions, price, and if funds are available, the contracting officer may advise a prospective contractor in writing of the Government's intent to use an effective date before the contract mailing (award) date. The early effective date shall not be earlier than the price agreement date.

(2) State in the notice to the contractor that any costs recognized in a resulting contract shall be limited to those allowable, allocable and reasonable costs that would normally be recognized if incurred after contract award. Also state that if there is no contract, all incurred costs shall be at the contractor's own risk.

(3) Provide contractual coverage with a letter contract, or other appropriate undefinitized contractual action, if the Government intends to direct a prospective contractor, accept benefits of efforts, or make payments before definitive contract mailing date.

(4) Obtain legal review for early effective dates established more than 30 days prior to the envisioned contract award date.

(e) Insert a pre-contract cost clause substantially the same as at 52.231-9000, Pre-Contract Costs (Air Force DLR – DLA Aviation), in any resulting contract.

## SUBPART 31.2 – CONTRACTS WITH COMMERCIAL ORGANIZATIONS

**31.205-7 Contingencies.**

(c)(2)(S-90) When a negotiated fixed price type contract (including indefinite delivery, labor-hour, or time-and-materials contracts) is contemplated, whether to be awarded on a firm-priced or flexibly priced basis (includes economic and award fee bases), the following techniques should be considered to overcome contingencies described in FAR 31.205-7(c)(2) which present a substantial uncertainty and financial risk to the contractor and/or the Government:

(i) Applying a decrement factor for contingencies involving materials (see 15.401);

(ii) Delaying the award so that the contingent effect may reasonably be determined or the contingency resolved, and the contract priced accordingly;

(iii) Using a cost reimbursable type contract;

(iv) Segregating the contingency as a cost reimbursable line; or,

(v) When the contracting officer documents why each of the preceding techniques will not suffice, incorporating a reopener clause in the contract (see Subpart 17.92).

**31.205-10 Cost of money.**

(a)(1)(ii)(C) For information on the interest rate specified at this FAR cite, see 30.7001-2(e).

**31.205-19 Interest and indemnification.**

(a)(3)(i) For information on the interest rate specified at this FAR cite, see 30.7001-2(e).

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**32.004 Contract performance in foreign countries.**

(a) Foreign currencies owned by the U.S. Government shall be used, when feasible, to make payments under contracts in foreign countries. The provisions of DODD 7360.11, Use of Foreign Currencies, will govern.

(b) Insert the clause at 52.232-9007, Contractor's Remittance Address (TACOM DLR – DLA Land and Maritime), in all solicitations and contracts for depot level repairable items managed by TACOM if award is to be made to a foreign vendor for work performed outside the U.S. This is also available for SPS/PD2 users.

**32.006 Reduction or suspension of contract payments upon finding of fraud.**

**32.006-1 General.**

(b) Level IV of the Executive Schedule is the Under Secretary of Defense (Acquisition and Technology).

**32.006-2 Definitions.**

(a) DLA's remedy coordination official is the Associate General Counsel, Fraud Remedies Program.

**32.006-3 Responsibilities.**

(b) Instances of suspected fraud shall be promptly forwarded by the chief of the contracting office to local fraud counsel for appropriate action.

**32.006-5 Reporting.**
The DLA remedy coordination official shall prepare the report which shall be submitted by memorandum by the Director, DLA or his deputy to the Under Secretary of Defense (Acquisition and Technology) through the Director of Defense Procurement.

**32.071 Contract finance committee.**

(b)(2) Deviations. Requests for authority to deviate from the provisions of FAR Part 32, DFARS Part 232, or Part 32 of this directive shall be submitted to DLA HQ, attention: J73.

## SUBPART 32.1 – NON-COMMERCIAL ITEM PURCHASE FINANCING

**32.111 Contract clauses for non-commercial purchases.**

**32.111(a)(7)(90) Clause – invoicing instructions.**
The clause at 52.232-9005, Invoicing Instructions (Time-and-Materials or Labor-Hour Task Order Contract), may be used in solicitations and contracts when a time-and-materials or labor-hour task order contract is contemplated. The contracting officer should consider using this clause when assurance of proper invoice verification is needed. If this clause is used, all subcontracts must be approved in writing by the contracting officer. Use this clause with FAR 52.211-2 and DFARS 252.232-7003.

**32.114 Unusual contract financing.**
If an alternative financing arrangement other than PBP is being contemplated, the contracting officer shall submit the proposed arrangement through J72 to obtain J7 coordination prior to submission to DPAP for review and concurrence.

## SUBPART 32.2 – COMMERCIAL ITEM PURCHASE FINANCING

**32.206 Contract clauses for non-commercial purchases.**

**32.206-90 Vendor rebate program (VRP).**
The vendor rebate program (VRP) is a program whereby a contractor (vendor) is required to submit a "rebate" to the DLA Land and Maritime for a percentage of sales made directly against a DLA Land and Maritime contract by other Government entities via the Government-wide Commercial Purchase Card.

The clause 52.232-9004, Purchase Card Purchases – Vendor Rebate Program (VRP), will be included in solicitations and awards of long-term contracts, such as prime vendor and corporate contracting, in which DLA Land and Maritime has, or is likely to develop, a vendor rebate program (VRP) with its suppliers.

## SUBPART 32.3 – LOAN GUARANTEES FOR DEFENSE PRODUCTION

**32.304 Procedure.**

**32.304-1 Application for guarantee.**

(a) In the event Congressional authority to use guaranteed loans again becomes available (see DFARS 232.302(a)), any application based on a contract which cites or will cite DLA funds shall be forwarded by the chief of the contracting office (not delegable) to DLA HQ, attention: J8, with a copy to DLA HQ, attention: J73. This procedure will be used regardless of the office responsible for administration of, or payment under, the contract.

## SUBPART 32.4 – ADVANCE PAYMENTS FOR NON-COMMERCIAL ITEMS

**32.402 General.**

(e)(1) Authority for approving advance payments has been retained at the OSD level (see DFARS 232.070(a)).

**32.407 Interest.**

(a)(2) and (b) For information on the interest rate, see 30.7001-2(e).

(a)(2) and (b) For information on the interest rate specified at these FAR cites, see 30.7001-2(e).

**32.409 Contracting officer action.**

**32.409-1 Recommendation for approval.**

The contracting officer's report, containing all the information specified in FAR 32.409-1, shall be forwarded by the chief of the contracting office (not delegable) to DLA HQ, attention: J8, with a copy to DLA HQ, attention: J73. The items indicated in FAR 32.409-1(b) and (c) require submission and investigation of all information cited in FAR 32.408. Information on how advance payments, in lieu of all other financing methods, are necessary for performance of the contract, and how the authorization of advance payment is in the public interest or, as applicable (see FAR 32.402), will facilitate the national defense, shall be included in documentation to be furnished pursuant to FAR 32.409-1(d).

**32.409-2 Recommendation for disapproval.**
If the contracting officer determines that the request should be disapproved, the determination shall be forwarded for approval by the chief of the contracting office (not delegable). The response to the contractor should include suggestions as to alternate financing methods. If the contract cites DLA funds, an information copy of the documents should be transmitted to DLA HQ following the distribution cited in 32.409-1 above. (The office administering or making payments under the contracts or maintaining the allotment records to which the payment will finally be charged is not pertinent.)

## 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 forwarded by the chief of the contracting office (not delegable) for coordination and approval to DLA HQ, attention: J8, with a copy to DLA HQ, attention: J73, if the request concerns a contract which cites DLA funds.

**32.502 Preaward matters.**

**32.502-1 Use of customary progress payments.**
The use of a progress payments clause in orders with the Federal Prison Industries (FPI) and in orders with the workshops of AbilityOne shall be based on the criteria in FAR 32.502-1. These entities shall be afforded the same privileges for and rate of progress payments as are permitted for large business concerns.

**32.502-3 [Reserved.]**

**32.502-4 Contract clauses.**

(90) When FAR 52.232-16 is used in solicitations and/or contracts, the clause at 52.232-9000 may be included to specify additional terms as necessary.

## SUBPART 32.6 – CONTRACT DEBTS

**32.610 Demand for payment of contract debt.**

(b)(2) For information on the interest rates specified at this FAR cite, see 15.407-1(b)(7)(i) or 30.7001-2(e) as applicable.

**32.613 Deferment of collection.**

(h)(3) and (i) See 32.610 (b)(2).

**32.614 Interest.**

**32.614-1 Interest charges.**

(c) For information on the interest rate specified at this FAR cite, see 30.7001-2(a).

**32.690 Claims processing.**
Follow directions contained in the DoD Financial Management Regulations (FMR).

## SUBPART 32.7 – CONTRACT FUNDING

**32.703 Contract funding requirements.**

**32.703-2 Contracts conditioned upon the availability of funds.**
It is recognized that there may be instances, other than those described in FAR 32.703-2, when it may be necessary to initiate a purchase prior to the availability of funds. In such instances, the action will only be taken after the facts concerning the proposed solicitation are forwarded by the chief of the contracting office (not delegable) to DLA HQ, attention: J73, for review as to the necessity for such action and the obtaining of the required FAR deviation permitting use of the provisions set forth in FAR 52.232-18.

## SUBPART 32.9 – PROMPT PAYMENT

*(Revised July 2, 2012 through PROCLTR 2012-42)*

**32.906 Contract financing payments.**

(a) The DFARS 232.906(a) requirement that the contracting officer coordinate payment terms with offices involved in the payment process applies only when a timeframe longer than the normal 7 or 14 day requirements specified in the Prompt Payment clause at FAR 52.232-25(a)(6) and at FAR 52.232-25(b)(2) is used.

(S-90) Solicitation provisions and contract clauses.

(1) Contracting officers shall include clause 52.232-9010, Accelerated Payments to Small Business, in all solicitations and resulting contracts, regardless of dollar value, if award is possible to a small business.

**32.907 Interest penalties.**

**32.907-1 Late invoice payment.**

(d) and (e) For information on the interest rate specified at this FAR cite, see 30.7001-2(e).

## 32.908 Contract clauses.

### 32.908-90 Clause for tare.

Tare is the weight of a vehicle or container when it is empty. This weight is used in calculations of net weight for tasks which range from properly charging customers for consumer goods to taxing laden trucks as they cross borders. To calculate the net weight of a load, the container is weighed to establish the tare weight and then weighed again for the gross weight, and the tare is subtracted from the gross to find out how heavy the load is.

Insert 52.232-9002, Tare Included or Excluded, in solicitations and/or contracts that discuss tare. IFBs, RFPs, and RFQs for fiber rope, cordage or twine when purchase is on a per pound basis and weight of tare is included would select the first paragraph, while those that exclude tare would select the second paragraph.

### 32.908-90 Clause for distribution of commercial manuals.

52.232-9001, Invoice Confirmation – Commercial Manuals, may be used when the contractor will be required to distribute commercial manuals. Do not use if the requirement for commercial manuals is waived in the purchase order.

### 32.908-91 Clause for acquisitions of carbon steel sheets or steel plates/sheets.

Insert 52.232-9003, Billing Weight and Payments for Carbon Steel or Steel Plate/Sheets, in solicitations and/or contracts acquiring carbon steel sheets or steel plates/sheets.

### 32.908-92 Clause for constructive acceptance.

Use clause 52.232-9008, Constructive Acceptance in procurements not subject to FAR Part 12 when the requisitioning activity recommends and/or the contracting officer determines that a longer (more than 7 days) constructive acceptance is required in accordance with FAR 32.904(b)(1)(ii)(B)(4) to perform inspection or testing. Use with FAR 52.232-25. Contracting officers must document the contract file with justification for extending the constructive acceptance period beyond 7 days. See PGI 32.908-92 for guidance in determining the number of days needed. This clause shall not be used for routine supplies that do not require unusual inspection procedures.

# PART 33 – PROTESTS, DISPUTES, AND APPEALS
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## SUBPART 33.1 – PROTESTS

### 33.103 Protests to the agency.

(d)(4)(90) 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 such 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 at a level above the CCO. This shall be the Director, Contract and Acquisition Management, at activities where such a position has been established; or, where there is either no such position, the decision-maker shall be the Deputy Commander. This independent review above the contracting officer level is not available as an appeal of a contracting officer's decision regarding a protest. Rather, it is an alternative to filing a protest directly with the contracting officer. Solicitations must indicate that this independent review is available as an alternative to consideration by the contracting officer, rather than as an appellate procedure.

(91) Legal review is required on all protest decisions, whether the protest was submitted to the contracting officer or was submitted under EO 12979.

(92) 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.

(93) 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 GAO.

### 33.104 Protests to GAO.

(a) General procedures.

(1) [Reserved.]

(2) Interested parties must be provided notice of a protest filed at GAO in accordance with FAR 33.104(a)(2). The Office of Counsel for the supply chain or activity involved is responsible for ensuring that the required notice is provided. The notice can be provided by either the contracting activity or by the Office of Counsel.

(3)(90) After receiving a protest, the chief counsel of the field activity (see (a)(7), below) 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 supply chain.

(4)(i) The attorney assigned to handle the protest is responsible for ensuring that DLA General Counsel receives an electronic copy of the agency report by the day the report is due to GAO. For DLA Disposition Services -G and DLA Distribution-G, a draft agency report must be provided to DLA General Counsel 5 days before the report due date. A full copy with attachments may be forwarded immediately by mail.

(90) Offices of Counsel that have not been delegated the authority and responsibility to represent DLA in protests filed with GAO shall provide both redacted and unredacted documents described in 33.104(a)(4) to DLA General Counsel.

(5)(iv) If an assigned protest attorney believes that a party has violated the terms of a protective order, the attorney shall immediately notify GAO and DLA General Counsel.

(6) Counsel assigned to protests shall promptly forward to DLA General Counsel a copy of any comments received from the protester or any interested party, as well as copies of any substantive communications among the parties.

(7)(S-90) DLA General Counsel has provided GAO the name, title, and telephone number of DLA General Counsel's senior procurement attorney as the designated DLA contact for protests.

(i) DLA General Counsel is the administrative focal point for all DLA protests filed with GAO. Immediately after receiving written notice from GAO of a protest, DLA General Counsel will notify the office of counsel for the supply chain or activity involved that a protest has been filed with GAO. That office of counsel shall promptly assign an attorney to the protest and shall notify DLA General Counsel 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 counsels of the following offices have been delegated the authority and responsibility to represent DLA in bid protests filed with GAO for their respective supply chains: 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, DLA General Counsel 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 DLA General Counsel 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 DLA General Counsel to establish a report due date. That office shall also furnish the names and addresses of any interested parties. DLA General Counsel 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.

(v) Contracting offices, through their legal staff, shall promptly inform DLA General Counsel of any protests that concern significant or unsettled legal issues or high visibility acquisitions.

(vi) It is DLA policy not to allow requests for extension of time to file an agency report. In unusual circumstances or when ADR procedures are pending, DLA General Counsel may approve requests to petition GAO for short extensions of time. Prior approval from DLA General Counsel is required before asking GAO for an extension of time.

(b) Protests before award.

(1) If the contracting activity 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 the concurrence of the chief counsel, shall make the written finding required by FAR 33.104(b)(1). Counsel must send a copy of the finding to DLA General Counsel.

(90) Contracting offices for which the Director, DLA Acquisition (J7) is the HCA (see 2.101) shall submit the proposed finding through their chief counsel to DLA General Counsel for concurrence. If DLA General Counsel concurs, DLA General Counsel will then forward the proposed finding to the Director, DLA Acquisition (J7) for approval. After the Director, DLA Acquisition (J7) has signed the finding, J7 shall immediately notify DLA General Counsel and shall provide DLA General Counsel a copy of the signed determination.

(2) Before the contracting activity awards the contract, the attorney handling the protest shall notify GAO of the finding made under FAR 33.104(b)(1). For contracting offices where the Director, DLA Acquisition (J7) is the HCA, DLA General Counsel will notify GAO of the finding made under FAR 33.104(b)(1).

(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 shall suspend performance of the order. This determination shall be coordinated with the Office of Counsel handling the protest.

(2) If the contracting activity 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 the concurrence of the Chief Counsel for the supply chain or activity involved. After the HCA has signed the authorization to continue performance, the Chief Counsel shall notify DLA General Counsel of the HCA's finding and immediately provide DLA General Counsel a copy.

(90) Contracting offices for which the Director, DLA Acquisition (J7) is the HCA (see 2.101) shall submit the proposed finding through their chief counsel to DLA HQ General Counsel for concurrence. If DLA General Counsel concurs, DLA HQ General Counsel will then forward the proposed finding to the Director, DLA Acquisition (J7) for approval. After the Director, DLA Acquisition (J7) has signed the finding, J7 shall immediately notify DLA General Counsel and shall provide DLA General Counsel a copy of the written determination.

(3) Before the contracting activity 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 Director, DLA Acquisition (J7) is the HCA, DLA General Counsel 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 supply chain or activity involved shall notify DLA General Counsel 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 Director, DLA Acquisition (J7), with the concurrence of DLA General Counsel. If the Director, DLA Acquisition (J7) determines, after coordinating with DLA General Counsel, not to follow the GAO recommendation, DLA General Counsel 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 and submitted to GAO within 65 days of receipt of the GAO recommendation.

(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 DLA General Counsel. DLA General Counsel, 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 supply chain or activity 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 -3, DFARS 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) The notice of final decision required by FAR 33.211 advises the contractor that it may submit a notice of appeal directly to either the Board of Contract Appeals (BCA) or the United States Court of Federal Claims (COFC). When the contracting officer receives a copy of a notice of appeal, all records pertaining to the appeal will be held for review until final resolution.

(91) 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 supply chain HCAs or, the Commanders or Directors of DLA Distribution, Defense Media Activity, DLA Disposition Services, and DLA Document Services. For those DLA activities not designated as a contracting activity (see DFARS 202.101, the determination to use the Alternate I, as provided in DFARS 233.215, shall be forwarded to DLA Procurement (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.

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35.016 Broad Agency Announcements.

## SUBPART 35.016 – BROAD AGENCY ANNOUNCEMENTS

**35.016 Broad agency announcement.**

(a) General. Use of a broad agency announcement (BAA) should be considered when the Government is seeking unique, creative solutions or advances in knowledge, understanding, technology, or the state-of-the-art, and is only able to state its requirements in terms of general areas of need or interest, rather than by means of a common statement of work with specific solutions or outcomes. If supply or service requirements can be adequately described to industry in a statement of work, proposals should be solicited by an invitation for bids or request for proposals.

(1) Provide the maximum practicable opportunity for participation in the acquisition process by small business/small disadvantaged business concerns, historically black colleges and universities (HBCUs), and minority institutions (MIs). Normal set-aside policies and procedures among qualified HBCUs/MIs apply. More specific guidance is provided at DFARS 205.207, 226.70, and 235.016.

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## SUBPART 36.5 – CONTRACT CLAUSES

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Use provision 52.236-9000, Saftey, Fire Prevention, and Security Requirements, in solicitations when contractor installation is required at a DLA activity.

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## SUBPART 37.1 – SERVICE CONTRACTS – GENERAL

**37.102 Policy.**

(e) Refer to 1.170 for Defense Procurement and Acquisition policy (DPAP) peer review requirements for service contracts valued at $1 billion and greater (inclusive of options and surge).

(90) For Defense Logistics Agency (DLA) peer review program procedures, see PGI 1.170-90.

**37.105 Competition in service contracting.**

(90) See DFARS 216.505-70, Orders for services under multiple award contracts, for competition and "fair opportunity" requirements for all services exceeding $150,000 acquired under these vehicles, and 8.404-70(c)(1) and DFARS 208.404-70, Additional ordering procedures for services, regarding use of orders against GSA Federal Supply Schedules for services valued at greater than $150,000. See subpart 7.90 for additional requirements for services acquired via non-DoD contract vehicles. See 16.601 (90) for additional requirements concerning use of time and material/labor hour CLINS, contracts, or task orders for services.

**37.110 Solicitation provisions and contract clauses.**

**37.110(a)(90)**
Use 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 buyer shall check off which contact information applies. To be used in conjunction with 52.237-1.

**37.110(a)(91)**
Use 52.237-9004, Evaluation – Contractor Installation or Verification of Installation, when contractor installation of equipment or contractor verification of installation at destination is required. Always use when clause 52.246-9040 is included.

**37.110-90**
Use 52.237-9001, Contractor Personnel Changes and Key Personnel Requirements, in cost type contracts for both supply and service contracts, as appropriate. If the contract does not require key personnel, fill in "No Key Personnel Positions Identified" in Paragraph 2. (c).

**37.110(91)**
Use 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 37.2 – [RESERVED]

## SUBPART 37.5 – MANAGEMENT OVERSIGHT OF SERVICE CONTRACTS

*(Revised September 19, 2012 through PROCLTR 2012-49)*

## 37.590 Management oversight structure within DLA.

### 37.590-1 Background.

(a) Section 801 of the FY 2002 National Defense Authorization Act (P.L. 107-107) called for a program review structure, similar to the one pertaining to procurement of weapon systems (i.e., "the DoD 5000 series"), for service acquisitions. The section also addressed standards for determining which procurements should be subject to review, key decision points, and specific matters to be considered. Similar requirements were imposed by Section 812 of the National Defense Authorization Act for FY 2006.

(b) The Under Secretary of Defense (Acquisition, Technology and Logistics) (USD(AT&L)), released policy memoranda on May 31, 2002 and October 2, 2006 that fulfilled the statutory requirements. The current requirement calls for notification of the USD(AT&L) for potential review of service acquisitions valued at $1 billion or more, or "special interest" acquisitions (e.g., A-76 cost comparisons; high Congressional interest; etc.) of any dollar value. Acquisition of information technology (IT) services shall similarly be referred to the Assistant Secretary of Defense for Networks and Information Integration/Chief Information Officer (ASD(NII)/CIO). Other service acquisitions below the $1 billion threshold are to be managed under component-level review structures established in accordance with Departmental guidelines; see 37.590-4, below.

(c) This section (with field-level supplementation, where indicated and appropriate) fulfills the mandate of the USD(AT&L) policy cited above by establishing a more strategic and integrated approach to the acquisition of services.

### 37.590-2 Purpose.

The purpose of this policy is to ensure:

(a) that sufficient attention is paid to fulfillment of the Departmental goal that 50% of service acquisitions shall be performance-based (see Subpart 37.6);

(b) that acquisitions of services are based on clear, performance-based requirements (whether or not formally designated "performance-based");

(c) that required outcomes are identified and measurable;

(d) that there is a consistent review and approval process for service acquisitions; and

(e) that acquisitions are properly planned and administered to achieve the intended results.

### 37.590-3 Policy.

(a)(i) Create a documented acquisition strategy in support of each proposed service acquisition valued above ths simplified acquisition threhold, to be updated when changes occur. This strategy should ensure that services are acquired by business arrangements that are in the best interests of the Department and DLA, that reflect a strategic approach, in terms of overall spending on services, and that are entered into or issued and managed in compliance with applicable statutes, regulations, directives, and other requirements. It should also guarantee enterprise-wide approaches to procurement and development of new ways of doing business. Approval of the appropriate decision authority (see 37.590-4, below) shall

be obtained for each acquisition strategy prior to the contracting office's initiating any action to commit the Government to the strategy. In addition to the following, see Subparts 7.1, 7.90, and 90.11 for guidance in preparing this documentation.

(ii) The acquisition strategy shall address the following (modified, as appropriate, on the basis of complexity and dollar value of the acquisition):

(1) Requirement — Include the outcomes to be satisfied; whether these outcomes are performance-based; measures of success for the service acquisition; and, for other than newly identified requirements, how it was previously satisfied.

(2) Risks — Include current and potential cost; schedule and performance risk; and a risk mitigation plan.

(3) Competition - Include either an explanation of how full and open competition will be provided, or a statutory citation for the authority permitting less than full and open competition; include a similar explanation or citation for procurements subject to DFARS 208.405-70 and 216.505-70. Address plans for competition for foreseeable follow-on acquisitions.

(4) Small business and related considerations - Include a discussion of how the acquisition will affect achievement of small business goals/targets, and how it will support any other applicable directed programs.

(5) Business arrangements — Include details on funding; type of contract; duration (including option periods); total cost estimate; and pricing arrangements.

(6) Special considerations for multi-year contracts. If the acquisition strategy calls for a multi-year service contract under authority of 10 USC 2306c, the strategy must address DLA's plans for budgeting for termination liability. For further guidance on multiyear contracting for services, see DFARS Section 217.171.

(iii) Further guidance on acquisition strategy for information technology acquisitions may be found in FAR Part 39 and DFARS Part 239. In addition, all IT acquisitions for services will be processed in accordance with J-6's Issuances, "Information Technology Acquisition Requirements Planning" and "IT Portfolio Management Process."

(iv) For actions described in 37.590-4(c), see also 1.690 for documents required to be submitted for integrated acquisition review board (IARB) review and approval.

(b) Establish metrics for each proposed service acquisition. These should generally pertain (as appropriate) to cost, schedule, and performance. The cognizant decision authority (see 37.590-4, below) will approve the metrics selected, and will conduct execution reviews to assess outcomes against requirements. These will occur at certain milestone points; see 37.590-5, Milestone Reviews, below.

(c) Accurately report required data regarding each service acquisition having a value greater than the micro-purchase threshold via the FPDS system; this requirement includes services pertaining to information technology. Applicable data to be collected via the FPDS include the following:

(1) Services purchased.

(2) Total dollar amount.

(3) Form of contracting action.

(4) Whether the purchase was performance—based and fixed price; performance—based, other than fixed price; or not performance-based.

(5) For a purchase made through an agency other than the Department of Defense, the agency through which it was made. Separately maintain (via other than FPDS reporting) a listing of any assisted acquisition and the service charge associated with each. See 7.9003(b)(7).

(6) Extent of competition provided, and whether there was more than one offer.

(7) Whether the purchase was made from a small business concern; a small disadvantaged business concern; or a woman-owned small business concern.

**37.590-4 Decision authority.**
The decision authority for review and approval level associated with each dollar range for service acquisitions, as depicted in Table 1 in 1.690 and described in this section, shall ensure that each such acquisition is reviewed and approved at the required level. To ensure the appropriate level of interest and strategic decision-making, local procedures should require that service acquisitions greater than the simplified acquisition threshold be reviewed and coordinated at the highest levels practicable.

(a) The decision authority for services acquisitions with a total value of $1 billion and above is retained by the Director, Defense Procurement, Acquisition Policy and Strategic Sourcing, Office of the Under Secretary of Defense, Acquisition, Technology and Logistics (DPAPSS, OUSD(AT&L)) except for Information Technology (IT) services acquisitions valued at $500 million and above, for which the ASD(NII)/CIO retains decision authority.

(1) Submit documentation for these acquisitions to DLA HQ J72 for review and coordination in accordance with the procedures specified in 1.690 concerning the acquisition strategy review panel (ASRP) and IARB. Review and approval levels and criteria for service acquisitions subject to an ASRP and IARB are stated in 1.690; refer also to 90.1502.

(2) Following review and approval by the IARB and SPE, the DLA HQ J71 peer review manager on behalf of the DLA HQ J7 will forward notification to DPAP and notify DLA HQ J72 of receipt and the time-frame for conducting the review. (Refer to 1.170.)

(b) The decision authorities for all other service acquisitions are specified in 1.690.

**37.590-5 Milestone reviews.**

(a) Milestone review and approval levels and criteria for service acquisitions subject to an ASRP and IARB are stated in 1.690; refer also to 90.1502. If an ASRP and IARB are required then, at each decision point, the ASRP or IARB shall either permit the acquisition to proceed, modify the strategy, or terminate the process.

(b)(1) For acquisitions not subject to ASRP and IARB review, milestone reviews and approvals shall be established and conducted in accordance with local procedures. These procedures should ensure that the procurement is continuously reviewed and assessed.

## SUBPART 37. 6 – PERFORMANCE-BASED CONTRACTING

### 37.601-90 General.

(a) It is Department of Defense and Federal Government-wide policy that a minimum of 50 percent of the components' service acquisitions, measured in dollars, will be performance-based. In order to fulfill this directive, contracting personnel shall be aware of performance-basing criteria. Consult the Performance Based Services Acquisition (PBSA) home-page http://www.dla.mil/Acquisition. accessible from the DLA Regulatory home-page, for assistance and considerations. The web site may be especially helpful in establishment of performance metrics for cost, schedule, and performance.

(b) In order to receive credit toward fulfilling the goals mentioned above, the contracting officer shall ensure that performance-based service acquisitions are recorded correctly on the Contracting Action Report; see 37.590-3(c). See DFARS PGI 253.204-70(b) (1) (v) for instructions for the correct coding of a performance based service contract. Note that a contract may be considered performance-based if at least 50% of its value is for work that is performance-based.

(c) Although these will not be considered for inclusion in the reporting required above, the contracting officer make every effort to performance-base the services aspects of acquisitions that are primarily considered supply contracts, such as prime vendor arrangements.

## SUBPART 37.90 – SERVICES OF GRIEVANCE EXAMINERS/EQUAL EMPLOYMENT OPPORTUNITY (EEO) INVESTIGATORS

### 37.9001 General.

(a) Requirements for services of grievance examiners/EEO investigators shall be satisfied by the most appropriate FAR/DFARS prescribed contracting procedure.

(b) The contracting officer shall be responsible for selection of the contracting procedure and for administration of the resulting contract(s).

(c) Small purchase contracts for these services shall be placed only with sources identified in the qualified pool of estimators/examiners list maintained by the DLA HQ Office of Equal Employment Opportunity, Defense switched network (DSN) 284-7192.

(d) Contracting officers shall contact the DLA HQ Office of Equal Employment Opportunity to obtain a current required source list for soliciting in accordance with FAR 13.106 procedures.

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## SUBPART 39.1 – GENERAL

### 39.106 Year 2000 compliance (Y2K).

(a) (90) All solicitations and contracts for non-IT items (non-IT items are those items that contain embedded microcircuit chips with a clock mechanism, timing device, or control device) that are required to perform date/time processing involving dates subsequent to December 31, 1999, shall require the deliverables to be Year 2000 compliant or be upgraded to Y2K compliant.

(91) Orders for IT shall not be placed against a contract or other acquisition instrument unless the contract instrument requires Y2K compliance or the order itself requires Y2K compliance.

(92) The contracting officer must insert the clause 52.239-9000, Y2K Compliance Notice, in all solicitations and contracts for items, including items acquired under Part 12, containing embedded microchips with a clock mechanism, timing device, or control device required to perform date/time processing involving dates subsequent to December 31, 1999, to describe the Y2K compliance requirement.

(93) Exception or waiver requests to Y2K compliance must be approved by the DoD Chief Information Officer (DoD CIO). All requests for exception or waiver shall be submitted to the DLA CIO for review and approval prior to submission to the DoD CIO. The exception or waiver request must be supported with a written commitment from the contractor to provide the Y2K enhancement by a specific date in the future, no later than December 31, 1999.

(94) Contracting officers should consider requiring testing for Y2K compliance based on the complexity of the IT requirement. Testing procedures should allow for a representative sampling of the IT delivered to be tested for Y2K compliance and the results should be documented in writing, either by the supplier or the acquiring activity.

## SUBPART 39.2 – ELECTRONIC AND INFORMATION TECHNOLOGY (E & IT)

### 39.201 Scope.

(a) Assuring purchases are Section 508 compliant requires two-way communication with the requirements community prior to the contracting action. The specific responsibilities of each organization are detailed in the Standard Operating Procedures for Section 508. However, the Exhibits contained in this link are examples of how the Federal Aviation Administration operates and should not be considered absolute requirements for DLA contracting officers.

(b) 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. See PGI 39.9003 for information on GSA.

(c) Further information on Section 508 is available via the internet and on the intranet in eWorkplace under J6.

### 39.204 Exceptions.

Consult with the local 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 the provision at DFARS 239.7402 (b)(4) for the necessary property through J71, who will coordinate with the Director, DLA Acquisition (J7) for the necessary authorization.

## SUBPART 39.90 – PROCEDURES, APPROVALS AND TOOLS

### 39.9000 Scope.

This subpart prescribes policies and procedures for the acquisition of information technology (IT) and telecommunications.

### 39.9001 Procedures for IT procurement.

(a) All mid-tier requirements must be coordinated with J-6 and other business offices as needed, e.g., J-8 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) The DLA Contracting Services Office (DCSO) is responsible for acquiring IT services and supplies for DLA. Non-DCSO contracting offices may award contracts or orders for IT if any of the following conditions applies:

(1) The total value of the contract or order (including options) does not exceed $500,000.

(2) The contract or order is for IT supplies, training, or subscriptions.

(c) 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 contracting offices 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 contracting office or DCSO based on the facts presented.

(d) 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.

(e) 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. See 7.90 for additional information.

(f) Refer to section 4.1302 when acquiring personal identity verification products and services.

(g) 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). See PGI 39.9003 for additional information.

(h) 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.

(i) Consult the DLA Information Technology Solutions Document to ensure that there are no existing IT solutions that can meet the acquisition requirement. See PGI 39.9003 for additional information on this document.

(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 8.405-6), brand name situations (see FAR 11.105), economies of scale and scope of the listed source(s). See PGI 39.9003 for additional information.

(2) Contact J6 to request the addition of a new solution to the document.

(j) 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.

**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). See PGI 39.9003 for additional information; and

(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.

**39.9003 IT miscellaneous portal and tools.**
See PGI 39.9003, Procedures, Approvals, and Tools, for a portal to IT laws, regulations, policy and procedures. In addition, various IT tools are located there.

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## SUBPART 42.2 – ASSIGNMENT OF CONTRACT ADMINISTRATION

*(Revised December 23, 2011 through PROCLTR 2012-15)*

### 42.202 Assignment of contract administration.

**42.202(a)(S-92)**
Use 52.242-9009, Correspondence Regarding Meal, Ready-to-Eat (MRE) and Tray Pack Contracts, in Subsistence acquisitions for MRE and tray pack semi-perishable items.

(a)(2)(S-90) When, in the contracting officer's judgment, a contract or order requires special attention by a field CAO that cannot be adequately conveyed by a criticality designator, this need will be communicated in writing by the contracting officer to the ACO. Drawing the attention of field CAOs to special contracting officer area(s) of concern should normally be accomplished during the assignment process, or as soon as possible thereafter. (See (a)(2)(S-92) below.)

(a)(2)(S-91) Contracting officers shall provide a complete purchase history to the CAO with the delegation of all unpriced orders for definitization.

(a)(2)(S-92) The letter of delegation required by (a)(90) below will state that the award is the first to the SDB (or the first for the item being procured) and request that a postaward orientation conference be conducted in accordance with FAR Subpart 42.5, Postaward Orientation (see especially FAR 42.501(b)). The letter should highlight any specific areas the contracting officer believes should be covered in the conference. It should also indicate that a letter or other form of written communication can be utilized in lieu of a postaward conference, provided that a copy is furnished to the contracting officer, and the CAO has performed a recent postaward conference with the SDB.

(a)(S-90) When a contracting activity makes an award having a dollar value of $25,000 or more to a small disadvantaged business (SDB), whether for the first time or for an item not previously purchased from the SDB, the award will be assigned for administration to the appropriate contract administration office (CAO).

(S-91) To implement the direction of the Secretary of Defense, December 6, 1995, and the Under Secretary of Defense (Acquisition and Technology), December 8, 1995, concerning single process/block changes, such changes to technical or management requirements in DoD contracts shall be accomplished as follows:

(1) When a contractor volunteers to participate in the single process initiative, the ACO shall organize a management council consisting of CAO, DCAA, key DoD customers (notionally defined as those representing 80% of the total dollar value of affected DoD contracts at the contractor's facility), and contractor personnel to perform an initial review of the adequacy and reasonableness of the contractor's single process concept with regard to that facility. Technical feasibility (including the impact on quality, maintenance, schedule, etc.), cost effectiveness, and program risk will be addressed during the council's preliminary review. A "rough order of magnitude" cost-benefit analysis will then be performed, sufficient to permit a determination whether the proposed changes can be approved, and contracts modified, on a no-cost, block change basis. The formal, single process proposal shall be reviewed and approved by the management council prior to the issuance of block modifications to existing contracts by the ACO.

(2) When DLA has contracts at a contractor's facility where a single process proposal has been submitted by the contractor, the following procedure shall be followed:

(i) If an ICP has a sufficient dollar value of contracts to warrant its participation as a key customer in the management council established to review single process proposals at a contractor's facility, or if its participation in the management council is otherwise considered necessary and appropriate, the ACO shall request, and the ICP shall designate, in writing, an individual to serve as its representative on the management council. The representative shall be a senior member of the acquisition workforce. The ICP's management council representative shall be empowered to speak on behalf of the ICP's contracting officers having cognizance of affected contracts. The representative shall request assistance, as necessary, from technical and other subject matter experts whenever a concept paper or proposal is submitted.

(ii) Each ICP shall also designate, in writing, a senior member of its acquisition workforce as its team leader for single process initiative issues, i.s., an SPI team leader.

(A) In the absence of ICP representation on the management council, the SPI team leader shall be responsible for reviewing and making recommendations on the acceptability of concept papers or proposals referred to the ICP by the ACO. (This will typically occur when there are contracts with one or more DLA ICPs at the affected facility, but the Agency is not considered a "key customer," as defined above.)

(B) The SPI team leader shall be presumed to provide a coordinated delegation of authority for effecting block changes to the applicable DCMA component from cognizant contracting officers. Additionally, he/she may consult, as necessary, with appropriate technical and other subject matter experts prior to providing the ICP's concurrence with the proposed single process change. The SPI team leader shall be authorized to resolve disputes among that activity's contracting officers regarding concurrences/nonconcurrences with concept papers or proposals.

(iii) If an ICP has the largest total dollar value of, but not the only, DLA contracts with a contractor submitting a concept paper or proposal, its management council representative (or, if the ICP has no representation on the management council, its SPI team leader) will be considered the DLA component team leader with regard to the process proposal. The individual must brief, solicit recommendations from, and achieve consensus with the other affected ICPs' SPI team leaders on the acceptability of the single process concept and proposal. This individual shall then speak on behalf of the entire Agency. When consensus cannot be reached between and among the affected ICPs, disagreements shall be elevated by the DLA component team leader, and shall be resolved by Director, DLA Acquisition (J7).

(iv) Notwithstanding that the single initiative/block change process is strongly supported at the highest levels of DoD, appointment of a DLA component team leader, ICP SPI team leader or ICP management council representative does not relieve the contracting officer of accountability for programs and contracts under his/her cognizance. Therefore, a contracting officer may appeal to Director, DLA Acquisition (J7) any single process proposal decision he/she considers antithetical to the Government's best interests, and, if necessary, may carry that appeal Director, DLA Acquisition (J7) to the Defense Acquisition Executive or designee.

(b)(10)(90) Responsibility for administration and inspection. Insert the clause at 52.242-9013, Responsibility For Administration And Inspection, in awards, contracts, or orders for medical, clothing/textile and subsistence items when inspection is at source. Do not use in acquisitions for perishable subsistence items.

(c)(S-90) Responsibility for negotiation and execution of modifications to definitize undefinitized BOA orders or unpriced purchase orders shall not be delegated by the contracting office when a ceiling unit price is 125 percent or more of the lowest price paid within the 12 months preceding the effective date of the undefinitized BOA order or unpriced purchase order.

(e)(S-90) When contracts containing the Small Business, Small Disadvantaged Business and Women-owned Small Business Concerns Subcontracting Plan clauses are retained for contract administration by the contracting office, the contracting office shall request support from the cognizant CAO to administer the program imposed by these clauses.

(1) Section C of these contracts shall contain a statement substantially as follows: "The Small Business, Small Disadvantaged Business and Women-owned Small Business Concerns Subcontracting Plan clauses in this contract will be administered by the cognizant Contract Administration Office."

(2) Assignment for supporting administration will be made to the cognizant CAO of the geographical area in which the prime contractor is located.

(3) Three copies of the contract and the Small Business, Small Disadvantaged Business and Women-owned Small Business Subcontracting Plan shall be forwarded to the cognizant CAO with a request for supporting contract administration of these clauses in accordance with FAR 42.202(e) and DFARS 242.204. The CAO will monitor the prime contractor's small business, small disadvantaged business, and women-owned small business concerns subcontracting programs and accomplish the periodic reviews required by FAR 42.302(a)(55).

(e)(S-91) When assignments of supporting contract administration are made to a field CAO under the administrative retention provisions of DFARS 242.203(a)(i) for either contracts and orders subject to a Master Solicitation Agreement, or large purchase awards that are not subject to a Master Solicitation Agreement, the following otherwise-optional functions should be delegated:

(1) Cancellations - Modifications to cancel contract line item numbers (CLINs) not shipped, when requested by the contracting officer.

(2) Diversions - Modifications effecting diversion when notice from the contracting officer provides shipping instructions.

(3) Excusable delays (e.g., strikes, floods, etc.) - Modifications to extend delivery date when delinquencies will result because of excusable delays.

(4) Nonexcusable delays - modifications, to revise delivery time up to 90 days, issued for consideration.

**42.203 Retention of contract administration.**

(a)(i)(S-90) DLA Energy may retain administration of contracts for coal or bulk petroleum.

(S-90) If the contracting officer retains administration of a contract or order and a need subsequently arises to delegate any aspect of contract administration to a CAO, the contract or order shall be assigned for performance of all contract administration functions, except as stated in paragraph 42.204 above.

**42.205 Designation of the paying office.**

(2) All contracts assigned to a service plant cognizance representative for administration shall designate the disbursing office supporting the contracting office as disbursing office for the contract except for contracts resulting from MIPRs, which shall cite the disbursing office in accordance with DLAR 4115.3, Implementing Procedures for Purchase of Supplies Assigned to DLA Under the DoD Coordinated Procurement Program, paragraph (VI)(A)(13).

## SUBPART 42.3 – CONTRACT ADMINISTRATION OFFICE FUNCTIONS

**42.302 Contract administration functions.**

(b)(2) See 42.202(c)(90).

(b)(7) The authority to negotiate and definitize adjustments to contract prices resulting from exercise of an economic price adjustment clause should be delegated to the contract administration office except in exceptional circumstances. If a decision is made to retain this function in the contracting office, the reason for retention shall be documented.

## 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

**42.1103-90 Policy.**

(a) 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)).

(1) For all contracts, the post-award acquisition specialist is responsible for the actions shown below (also see 11.401-90, 11.401-92, 43.103(a)(90)(1)(i), and 49.101(c)).

(i) Performing analysis and resolving post-award requests from the supply planner for DLA direct items or customer account specialist (CAS) for customer direct items, to ensure correct products are delivered and to achieve current timeline, accuracy, customer satisfaction and administrative and production lead time (ALT/PLT) targets;

(ii) Negotiating settlements for contractual changes that are beneficial to the Government in terms of costs and conditions within current timeline targets;

(iii) Monitoring vendor performance to ensure compliance with terms and conditions of award;

(iv) Taking action for non-compliance with current timeline targets; and

(v) Applying DLA business practices, in coordination with the supply planner for DLA direct items or customer account specialist for customer direct items, in contract termination decisions for convenience or default if requirements change or vendors fail to perform.

(2) For all contracts that involve a shift to commercial practice or other change in the method of customer support (i.e., including corporate contracts, prime vendor and virtual prime vendor contracts), the post-award acquisition specialist shall monitor contractor performance (price, delivery, etc.) to assure a satisfactory level of performance is achieved and maintained and is consistent with the planned levels throughout the contract period, including options.

**42.1106 Reporting requirements.**

(a) Submission of DD Form 375, Production Progress Report, will be required under the following circumstances, as a minimum:

(1) Items required to satisfy requisitions bearing UMMIPS priority 01 through 06.

(2) Items that have been designated by the DSC Commanders as being in a critical supply position.

(3) Items on the DoD, military service, or DLA critical list.

(4) Items in direct support of the DoD master urgency list (MUL) categories.

(5) Contractors on the military services contractor experience lists.

(6) When requested by the DoD project manager.

**42.1107 Contract clauses.**

(a) The contracting officer shall insert the clause at 52.242-9000, Production Progress Reports, when FAR clause 52.242-2 is used and production progress reporting is required.

(b) Use 52.242-9005, Report of Shipment (Repship) of Perishable Medical Items, 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.**

(a) When it is determined that a customer's need date may require a shorter delivery period than initially projected, the supply planner for DLA direct items or the customer account specialist for customer direct items will follow the policies and processes for expediting delivery in Director, DLA Acquisition (J7) Cross-Process Policy Memorandum 05-002, Expedite Policy and Processes.

(b) As part of the investigation and resolution process, the supply planner for DLA direct items or the customer account specialist for customer direct items, may ask the post-award acquisition specialist (AS) to attempt to expedite delivery. (See mandatory guidance in DLAD PGI at 11.402(a)(90).) 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)).

## SUBPART 42.13 – SUSPENSION OF WORK, STOP-WORK ORDERS, AND GOVERNMENT DELAY OF WORK

### 42.1305 Contract clauses.

**42.1305-90**
Use 52.242-9006, Delay of Installation for Medical and Laboratory Instrumentation, in solicitations and contracts for medical equipment requiring installation at destination.

## SUBPART 42.14 – TRAFFIC AND TRANSPORATION MANAGEMENT

**42.14(90)**
Use the clause at 52.242-9001 in solicitations and awards for Federal supply group (FSG) 34, industrial plant equipment (IPE), whether for new procurements or rebuild/remanufacture/retrofit.

**42.14(91)**
Use the clause at 52.242-9002, Manufacturing Directive Number (MDN) for Use in Identifying Government-furnished Property (GFP) Transactions, only in subsistence acquisitions for meals read to eat (MRE) and tray pack semi perishable items.

**42.14-92 Notice of availability.**
Use clause 52.242-9012, Notice of Availability, in clothing and textiles, medical and subsistence acquisitions with shipments to the Federal Republic of Germany for foreign military sales where a notice of availability is required. The contract specialist shall fill-in needed text.

## SUBPART 42.15 – CONTRACTOR PERFORMANCE INFORMATION

*(Revised September 14, 2011 through PROCLTR 2011-40)*

[Reserved.]

## SUBPART 42.71 – VOLUNTARY REFUNDS

### 42.7101 Solicited refunds.

(S-90) Overpricing.

(1) Before any recoupment action is taken, the contractor shall be contacted for any explanation of the basis of its price, and whether a pricing error has occurred. A determination shall then be made as to the existence of overpricing.

(2) If it is determined that overpricing has occurred, the contract should be canceled or a price reduction/voluntary refund requested, as applicable. Voluntary refund requests of $50,000 or more shall be approved by the chief of the contracting office (CCO). This approval authority may be delegated for up to a 2-year period, to one level below the CCO, (not redelegable, except at DSCs, where it may be redelegated, for requests does not exceed $500,000), to the chief of the pricing element and to a level no lower than the level above the contracting officer.

(3) The refund requests with supporting rationale should be made in writing to an appropriate contractor official, and should include amounts related to any previous awards by the contracting office for the item for which a voluntary refund is also requested. Awards to other suppliers of the same item should also be reviewed for apparent overpricing, and any appropriate corrective action pursued in accordance with DFARS 242.71 and this subpart. Apparent overpricing on any award made by any other contracting office should be referred thereto for resolution.

(3) In the event efforts to secure a voluntary refund are unsuccessful, voluntary refund requests to the company head shall be referred for coordination/issuance by the approving official cited in (2), above.

(91) Nonconformance. Voluntary refunds for contractor-caused nonconformances discovered after Government acceptance shall be handled in accordance with procedures set forth in 46.407(f)(92) through (95).

**42.7102 Disposition of voluntary refunds.**

(S-90) Overpricing. The contract shall be modified, canceled, or terminated, or a voluntary or contractual refund request issued, as appropriate. The price recorded in the contract technical data file shall be revised to reflect the price reduction, or the recoupment, and advice of corrective actions initiated or completed shall be forwarded to the center comptroller with a request for immediate revision of the standard price, if applicable. This section does not apply to voluntary refunds for contractor-caused nonconformances.

## SUBPART 42.72 – CONTRACTOR MATERIAL MANAGEMENT AND ACCOUNTING SYSTEM.

**42.7204 Contract clause.**

**42.7204(90)**
Use 52.242-9010, Title of Containers and Packaging Materials, in subsistence acquisitions for MRE and tray pack semi-perishable items.

## SUBPART 42.74 – TECHNICAL REPRESENTATION AT CONTRACTOR FACILITIES

**42.7400 General.**

**42.7400(a)(90)**

Use 52.242-9008, Technical Direction, in C&T solicitations and contracts for research and development conducted under the DLA apparel research network (ARN) program when the contracting officer's technical representative (COTR) will be authorized to issue technical direction letters (TDL) to the contractor.

# PART 43 – CONTRACT MODIFICATIONS
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**SUBPART 43.1 – GENERAL**
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## SUBPART 43.1 – GENERAL

**43.102 Policy.**

(b)(S-90) See 17.74 when issuing a UCA.

**43.103 Types of contract modifications.**

(a) Bilateral.

(S-90) Delivery schedule extension - modifications.

(1)(i) It is the Government's express expectation that contractors will make all deliveries in accordance with contractual terms. DLA's policy is neither to endorse nor condone delivery extensions for the convenience of the contractor. There are times, however, (as, for example, when dealing with sole source suppliers, or when DLA's supply position for a particular item will not permit the time and effort necessary for termination and reprocurement) when the post-award acquisition specialist, in coordination with the supply planner for DLA direct items or customer account specialist for customer direct items, will determine that extending a delivery schedule at the contractor's request via contract modification is in the Government's best interest (but also see 11.401-92 for policy on potential alternative sourcing strategies). Decide on the form of consideration that is most acceptable under the circumstances. The most appropriate form of consideration is a monetary adjustment to the contractual total. When this is so, the post-award acquisition specialist for all supply chains except DLA Energy may use the following guidance. Any contractually-binding decisions made by the post-award AS are subject to contracting officer approval if the post-award acquisition specialist has no warrant (see 11.401-90(a)(2)). (DLA Energy is not included since delivery delays are governed by demurrage procedures.)

(ii) For supply contracts other than for direct vendor delivery or base support, contracting officers at the centers listed above are encouraged to use the calculation provided at (2), below, when a delivery schedule has to be extended for monetary consideration due to contractor-caused delay. The result should be used as a guide in determining the amount of consideration to assess the contractor for a contractor-requested delivery extension/delay.

(2) As a consequence of the Government's cost incurrence associated with a contractor's delinquent delivery, the following formula will generally be used to determine the basis for an adequate amount of consideration for a delivery schedule extension, when that schedule is extended as a result of contractor caused delay:

Amount of consideration = D + [R * L * V]

Where - D = Direct costs for the particular supply center, as detailed in DLA-DORRA report entitled "Cost of Late Contract Delivery Update";

DLA Land and Maritime (Construction) = $ 76
DLA Land and Maritime (Electronics) = $ 76
DLA Aviation (General) = $ 73
DLA Troop Support (C & T) = $ 175
DLA Troop Support (Medical) = $ 115
DLA Troop Support (Subsistence) = $ 85

DLA Troop Support (Industrial) = $ 84
Contracts Administered by DCMA = $ 291

R = Day/Cost ratio (the cost per day of lateness of additional inventory resulting from increased production lead time triggered by late delivery expressed as a proportion of overall contract cost) for the particular supply center, as follows (see details in the report):

DLA Land and Maritime (Construction) = .00118
DLA Land and Maritime (Electronics) = .00256
DLA Aviation (General) = .00079
DLA Troop Support (Industrial) = .00077
DLA Troop Support (C&T) = .00017
DLA Troop Support (Medical) = .00004
DLA Troop Support (Subsistence) = .00017

L = Total number of days the delivery schedule is extended;

V = Dollar value of the extended portion of the contract.

Step One: Multiply the total number of days the contract delivery schedule is being extended by the "day-cost ratio" for the appropriate center.

Step Two: Multiply the result from step one, above, by the contract dollar amount of the supplies being extended. This is the total variable cost component for delinquent delivery.

Step Three: Add the direct cost to the DLA component of the delinquent delivery (the $100 in the formula) to the result of step two. This is the total amount of consideration which should be used as a guide in determining the adequacy of the contractor's final offer of compensation for the extension.

(3) It is important to note that, whether or not the post-award acquisition specialist chooses to use the guidance at 43.103(a)(90)(2) or another method for determining an appropriate amount of consideration, when the post-award acquisition specialist is unable to obtain agreement with the contractor on a reasonable (vice a token) consideration amount, the Government is not obligated to accept a lesser amount merely for the sake of reaching that agreement and restoring the contractor to a "current status." Any contractually-binding decisions made by the post-award AS are subject to contracting officer approval, if the post-award acquisition specialist has no warrant (see 11.401-90(a)(2)).

(S-91) Modifications for waivers and deviations are discussed at 46.407(f)(91).

**43.104 Notification of contract changes.**

**43.104(a)(90) Design change- supply items.**
Use 52.243-9000, Design Change- Supply Items (AMCOM DLR – DLA Aviation), in all DLA Aviation basic ordering agreements when engineering changes are anticipated.

## SUBPART 43.2 – CHANGE ORDERS

**43.201 General.**

(90) The requirements of DFARS 217.74 and DLAD 17.74 shall be met when an undefinitized change order (UCO) which involves a Government directed change to the design/manufacturing drawings or specifications is issued by a DLA contracting office.

**43.204-70 Definitization of change orders.**

**43.204-70-1 Scope.**

(90) Unpriced change orders with an estimated value exceeding $5 million require approval by the Director, DLA before issuance or contractor performance. See 17.74 and PGI 17.7404-3 for applicable requirements.

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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

**45.102 Policy.**

(90) It is DLA policy to rely on the private sector to furnish all the production equipment needed to produce the contracted item. Where property is unique to the production of an item and it is not economical for contractors to own such equipment, DLA may be required to acquire and retain this production equipment.

(a) 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. For that property in the hands of contractors, steps should also be taken to ensure proper accountability of the property.

(b) Property will be retained in the DLA industrial equipment reserve (DLAIER) to meet current and future production requirements and will be disposed of when no longer justified. Retention of DLAIER equipment will require a biennial certification. Detailed guidance and procedures on management of GP are contained in DLAI 4215.4, Acquisition and Management of Industrial Resources.

**45.103 Responsibility and liability for Government property.**

(90) Management of property associated with CIT.

(a) Each supply center that has Government property will establish a property focal point who will:

(1) Verify the location, quantity, type, and condition of property being transferred to DLA. DCMA personnel can be used to assist in this process.

(2) 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.

(91) Management of property in DLAIER.

(a) The property focal point will:

(1) Ensure that a copy of the record for each set/piece of equipment under the Center's cognizance is available for authorizing its use on contracts as needed.

(2) Provide verification of availability and authorization to use equipment to contracting officers.

(3) Review the items in the DLAIER for continued retention or disposal. If continued retention is required, a biennial certification should be prepared for those items at the end of each even fiscal year in accordance with the retention criteria in DLAI 4215.4.

(b) Supply management personnel are responsible for storage and accountability functions for GP.

**45.105 Records of Government property.**

(90) The property focal point will document additions and deletions to the DLAIER of idle and active equipment to ensure availability of this information and serve as the basis for the biennial certification signed by the chief of the contracting office.

(91) The supply management function will maintain the accountable inventory record of property under a center's cognizance and report the property into DLA's accountable record.

**45.106 Government property clauses.**

**45.106(90) Evaluation of use of government furnished property in solicitations.**
Use 52.245-9001, Evaluation of Use of Government Furnished Property, in solicitations when the Government offers to supply Government furnished property as defined in FAR 45.101. Fill in item number, identification of government property, etc., in paragraph (b) and time when the property would be delivered to the contractor in paragraph (c).

**45.106(91) Government property furnished to the contractor.**
Use the clause at 52.245-9002, Use of Government Furnished Property, in awards when Government property (tooling, molding, or other than Government material) is to be furnished to the contractor, and where FAR 52.245-2 or 52.245-4 are used. Fill in the blanks as appropriate. Paragraph (b), the "period of use" should normally be completed by insertion of the phrase "duration of contract".

**45.106(92)(a) GFP shipped to the contractor at Government expense.**
Use the clause at 52.245-9003, Transportation Costs of GFP, in all solicitations and awards to describe evaluation procedures when any type of GFP (material, special tooling, test equipment) is to be shipped to the contractor at Government expense, and where FAR 52.247-55 and the Government Furnished Property clause FAR 52.245-2 or 52.245-4 are used, except when Government-furnished precious metals are to be provided (DLAD 90.404 ) or special tooling is to be provided which is managed by a center. Buyer should complete paragraphs (a), (c), and (e). The offeror should complete paragraph (b).

**45.106(93) GFP provided to a contractor in the performance of a contract for DLA Land and Maritime.**

Use the clause at 52.245-9009, Government-furnished Property (GFP), when GFP will be provided to a contractor in the performance of a contract for DLA Land and Maritime by the DLA Contracting Services Office, Columbus (DCSO-C). Enter a brief description of the property, quantity involved, and estimated value.

**45.106(94) Government-furnished property in clothing and textiles solicitations and awards.**
Use the clause at 52.245-9010, Government-furnished Property (GFP): Hubs, Dies, Molds, Shaping Blocks, Guide Samples, and Inspection Gauges, in clothing and textiles solicitations and awards when hubs, dies, molds, inspection gauges, shaping blocks, and/or guide samples for metal insignia are to be furnished to the successful offeror.

**45.106(95) Government-furnished Material in clothing and textiles solicitations and contracts.**
Use the clause at 52.245-9011, Government-furnished Material (GFM) (Bailment System) and Property Administration, in clothing and textiles (C&T) solicitations and contracts when Government material (cloth) will be provided on a bailment (i.e. where ownership of material remains with the Government) basis. Do not use when Government material will be provided on a loan basis or for servicing (e.g. dyeing or finishing.) Use is also authorized in medical acquisitions where Government material (cloth) will be provided in accordance with the C&T bailment system procedures. Insert appropriate fill-in data for paragraphs (a)(1), (e), (f) and (g). Purchase orders must be assigned to DCMA for property administration.

**45.106(96) Government-furnished property cloth in C&T solicitations.**
Use the provision at 52.245-9012, Government-furnished Property Cloth Only, in C&T solicitations where cloth is furnished under non-bailment procedures.

**45.106(97) Provisions relating to materials to be furnished by the Government.**
Use the clause at 52.245-9013, Provisions Relating to Materials to Be Furnished by the Government (Non-Bailment)- Footwear, in clothing and textiles solicitations and contracts for footwear items where GFP (Non-Bailment) is involved. Insert entries in paragraphs (a), (b), and (f)(2)(ii thru iv).

**45.106(98) Government-furnished property (GFP) provisions – dyeing & finishing contracts, in C&T solicitations and contracts.**
Use the clause at 52.245-9014, Government-furnished Property (GFP) Provisions – Dyeing & Finishing Contracts, in C&T solicitations and contracts for dyeing and/or finishing of textiles. Also, use FAR 52.247-55 with this clause. In paragraph (a), identify the material to be furnished by the Government. In paragraph (c), insert the number of days after date of award within which the contractor can expect delivery of GFP.

**45.106(99) Dyeing and finishing of textiles**.
Use the clause at 52.245-9015, Dyeing and Finishing of Textiles, in C&T solicitations for services involving the dyeing and finishing of griege (i.e. fabric not yet dyed or finished) goods. Insert the appropriate percentages in paragraph(s) (a) and/or (b).

**45.106(100) Availability of clothing patterns.**
Use the clause at 52.245-9016, Availability of Clothing Patterns, in C&T solicitations and contracts when the Government will furnish clothing patterns.

**45.106(101) Solicitations and contracts that provide for GFP.**

Use the clause at 52.245-9017, Ownership of Overruns Containing Government-furnished Property, in C&T solicitations and contracts that provide for GFP, except dyeing and finishing contracts.

**45.106(102) Government-furnished material – NIB and NISH.**
Use the clause at 52.245-9018, Government-furnished Material – NIB and NISH, in Clothing and Textiles delivery orders involving GFM for NIB and NISH. In paragraph (a) insert nomenclature, unit price, allowance per unit, and value of allowance per unit of the GFM provided.

**45.106(103) Government-owned property (bulk storage contract).**
Use the clause at 52.245-9019, Government-Owned Property (Bulk Storage Contract), in medical bulk storage solicitations and contracts for vaccine. The Government-owned property under these acquisitions is manufactured by the contractor, inspected and accepted by the Government, stored in bulk form at the same contractor's plant, and is subsequently used to fill orders placed by the Government for finished product.

**45.106(104) Cartoons and guide samples for embroidered insignia.**
Use the clause at 52.245-9020, Cartoons and Guide Samples for Embroidered Insignia, in clothing and textiles solicitations for embroidered insignia.

**45.106(105) Government Samples - clothing and textiles solicitations.**
Use the clause at 52.245-9021, Government Samples, in clothing and textiles solicitations when there are no end item samples available for loan to bidders, but a sample is available at the supply center for inspection.

**45.106(106) Sized Items - clothing and textiles solicitations and contracts.**
Use the clause at 52.245-9022, Sized Items, in clothing and textiles solicitations and contracts for sized items.

**45.106(107) Firm and flexible sizes - clothing and textiles solicitations and contracts.**
Use the clause at 52.245-9023, Firm and Flexible Sizes, in clothing and textiles solicitations and contracts for cotton or woolen sized items involving GFM.

**45.106(108) Special measurements - clothing and textiles solicitations and contracts.**
Use the clause at 52.245-9024, Special Measurements, in clothing and textiles solicitations and contracts for all personal use sized items, including sewn leather items, but exclusive of non-sewn leather items, blocked (i.e. shaped over a mold) hats, and knitted items.

**45.106(109) Contractor control of Government-furnished property – subsistence acquisitions.**
Use the clause at 52.245-9025, Contractor Control of Government-furnished Property (GFP), in subsistence acquisitions for MRE, semi-perishable items.

**45.106(110) Special instructions for compressed gas requirements.**
Use the clause at 52.245-9026, Special Instructions for Compressed Gas Requirements (including FSCs 6830 and 8120), in solicitations and awards for refurbishment/refill of compressed gas cylinders (includes FSCs 6830 and 8120). If the contractor has indicated they will pick up the cylinders from the Depot, the buyer will annotate “contractor pick-up” on the FL226.

**45.106(111) Government-furnished property (GFP) mechanical gauges (loaned).**

Use the clause at 52.245-9027, Government-Furnished Property (GFP) Mechanical Gauges (Loaned) (includes FSCs 5995 and 6150), when the PID requires use of Government-furnished mechanical gauges (including FSCs 5995 and 6150), managed by U.S. Army TMDE Support Center, Tobyhanna, Pennsylvania. Insert data regarding gauges in paragraph (a) of 52.245-9003 under "identification of property".

**45.106(112) Allowable losses – subsistence solicitations and contracts for MRE and tray pack semi perishable items.**
Use the clause at 52.245-9028, Allowable Losses for Meal, Ready-to-Eat (MRE) and Tray Pack Government-furnished Property (GFP), in subsistence solicitations and contracts for MRE and tray pack semi perishable items.

## SUBPART 45.2 – COMPETITIVE ADVANTAGE

### 45.205 Solicitation requirements.

(b) The preferable evaluation procedure is to use rental equivalents and authorize rent-free use of GFP because the resulting award price will be lower. This conserves DLA's funds because rental monies flow back into the U.S. Treasury at the expense of the DLA budget. Charging the contractor rent shall be used only when absolutely necessary.

## SUBPART 45.3 – PROVIDING GOVERNMENT PROPERTY TO CONTRACTORS

### 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 HQ, attention: 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 of inability or unwillingness to own facilities essential to contract performance, the following certification must be made by a contracting official at least one level above the contracting officer:

(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.

(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.

**45.302-6(90) Provisions and clauses – Government-owned facilities.**

(a) Insert the clause at 52.245-9008, Use of Government Facilities on a No Charge Basis, in awards when Government-owned facilities are to be used. Check subparagraph (a) to provide that the facilities may be used on a rent-free basis and insert applicable facilities' contract number. If the offeror does not furnish with its offer permission from the facilities contracting officer to utilize the facilities on a rent-free basis, the offeror must secure approval for such use prior to award.

(b) Under provision 52.245-9001, Evaluation of Use of Government Furnished Property, offerors desiring to use Government facilities in their possession must secure a letter (and attach to offer) from the facilities contracting officer agreeing to use of property in performance of proposed contract and specify rent to be charged or an evaluation factor to be used.

(1) If the offeror fails to provide information required by provision 52.245-9001, Evaluation of Use of Government Furnished Property, in its offer, the offer must be rejected as nonresponsive if in response to an IFB, or may be rejected as not acceptable or be noted to have a deficiency, if in response to an RFP.

(c) For FMS requirements, FAR 45.405 provides that Government facilities can be used by the contractor provided that rent is paid for use thereof. If this is applicable, upon receipt of the information required by 52.245-9001, secure contractor's agreement to pay rental and, if that offeror receives award, include this clause 52.245-9008 and check paragraph (b) to identify facilities contract and insert the monthly rental to be paid.

**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.

**45.306-5(91) Government owned special tooling.**
Use the clause at 52.245-9005, Government-Owned Tooling, when Government owned special tooling is mentioned in the PID or in the manufacturer's part number data field of the PR trailer. The buyer should coordinate with the appropriate supply center special tooling coordinator to obtain availability information and data for paragraph (a). Use 52.245-17, 52.245-19, 252.245-7001 (Sec I), 52.245-9006, and 52.245-2 or 52.245-4, as appropriate, with this clause. Purchase orders containing this clause will be bilateral. The buyer shall indicate on distribution schedule that one copy of award be furnished to special tooling coordinator.

**45.306-5(92) Use of Government-owned tooling.**

Use the clause at 52.245-9006, Use of Government-Owned Tooling, in contract section I, Representations and Certifications, when Government owned special tooling is mentioned in the PID or in the manufacturer's part number data field of the PR trailer. If Government tooling is used, the rental equivalency evaluation factor will be calculated in accordance with the Use and Charges clause set forth in FAR 52.245-9. Use 52.245-9005 with this clause.

**45.306-5(93) Uncertainty regarding the existence of Government-owned special tooling or test equipment.**

Insert the clause at 52.245-9007, Use of Government-Owned Special Tooling or Test Equipment, in contract section I, Representations and Certifications, when FSCs 1560, 1670, 1680, FSGs 28 or 29 are used, when there is uncertainty regarding the existence of Government-owned special tooling or test equipment which could be used in producing the items. If Government owned special tooling or special test equipment will be furnished, ensure FAR Clause 52.245-2 or 52.245-4, as appropriate, is included in Section I of the award.

**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 Director, DLA Acquisition (J7) serves as HCA, shall forward requests for approval to DLA HQ (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 be based upon known requirements under the gaining contract or other appropriate justification. Approval for transfer, and the justification upon which it is based, will be placed in the contract file of the gaining contract. 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 the approval 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 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 HQ, attention: J74.

(90) The use of no cost or no direct cost storage agreements is prohibited. Individual activities justifying retention of the property are responsible for funding storage agreements. Consideration of storage costs should be included in retention and/or disposition decisions.

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## SUBPART 46.1 – GENERAL

### 46.101 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.

*Latent defect*. One which cannot be ascertained from a reasonable inspection; not readily discernible.

*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.

*Patent defect*. One which is ascertainable from a reasonable inspection at time of acceptance.

*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

### 46.102-90 Consideration of quality in contractual decision-making.

The Government shall consider the use of:

(a) Contractual means for encouraging excellence in the conduct of contractor-responsible quality efforts;

(b) Incentive fee arrangements for achieving quality goals;

(c) Reduced Government surveillance when contractor's quality performance so indicates; and

(d) Other noncontractual motivation techniques.

**46.103 Contracting office responsibilities.**

(a) [Reserved.]

(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.

**46.103-90 [Reserved.]**

**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;

(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 (3)(ii) 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 contracting office'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.

**46.105 Contractor responsibilities.**

**46.105-90 Operational check of equipment items.**
Use 52.246-9033, Operational Check of Equipment Items, in solicitations and awards for medical items except when the item is Federal Supply Classes 6505, 6510, 6532, or Federal Supply Group 68.

## SUBPART 46.2 – CONTRACT QUALITY REQUIREMENTS

*(Revised December 23, 2011 through PROCLTR 2012-16)*

**46.202-3 Standard inspection requirements.**

(90) Use 52.246-9022, Inspection System Requirement – Foreign Manufactured Items, in medical solicitations and awards when higher-level contract quality requirements apply; excluding acquisitions of drugs, pharmaceuticals, biologicals, or items in FSCs 6505 or 6810.

(91) 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.

(92) 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.

(93) Use 52.246-9026, Inspection Fees – Petroleum Products, in acquisitions for petroleum products only.

(94) Use 52.246-9027, Inspection of Bulk Deliveries – Petroleum Products, in solicitation and awards for bulk petroleum products when source inspection is required.

**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.

**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.

(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 9001:2000 is required, check the block next to the International Organization for Standardization (ISO) 9001:2000 in the clause at FAR 52.246-11; or

*(2)* When a quality standard other than ISO 9001:2000 is required, complete the clause at FAR 52.246-11 as follows:

*(i)* Do not check the block next to ISO 9001:2000;

*(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 9001:2000;

(B) Check the next block down; and

(C) Enter the alternative quality standard approved for the award.

**46.202-4-90 Manufacturing process controls and in-process inspections.**

(1) Except for conditions cited immediately below, the clause at 52.246-9001, Manufacturing Process Controls and In-Process Inspections, shall be used in solicitations that require higher-level contract quality requirements, when a need exists to strengthen manufacturing process controls and in-process inspections to assure the integrity of the product.

(2) The clause at 52.246-9001 shall be used in all clothing and textile (C&T) solicitations that require higher-level contract quality requirements in accordance with FAR 46.202-4. The clause at FAR 52.246-11, Higher-Level Contract Quality Requirement (Government Specification) and the clause at 52.246-9001 shall be used in C&T solicitations for Government-furnished material (GFM), and shall flow down to the finisher when contractor-furnished material is a solicitation requirement. C&T solicitations for GFM shall contain coverage to ensure that higher-level contract quality requirements and the clause at 52.246-9001 are applicable to the finisher in the event a converter is awarded the prime contract.

## SUBPART 46.3 – CONTRACT CLAUSES

*(Revised December 30, 2011 through PROCLTR 2012-20)*

**46.300(97) Drawings for inspection (LOGCOM DLR – DLA Land and Maritime).**
Insert the clause at 52.246-9071 Drawings for Inspection (LOGCOM DLR – DLA Land and Maritime) in all solicitations and contracts for DLA Land and Maritime acquisitions of depot level repairable items managed by LOGCOM when Government inspection will be conducted at source and drawings will not be furnished by the Government, except when the acquisition is conducted using FAR Part 12.

**46.302(90) Government inspection (DLA Disposition Services).**
Insert the clause at 52.246-9072, Government Inspection (DLA Disposition Services), in all solicitations and awards for DLA Disposition Services acquisitions of hazardous waste disposal services.

**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.

**46.311-95 Acquisition of liquids in bulk quantities.**

Use **52.246-9050**, Acquisition of Liquids in Bulk Quantities, in acquisitions for FSCs 6810 and 6850 when the POT reflects the following statement: "The quantity of material loaded into the transportation vehicle shall be determined in accordance with the applicable paragraph of clause 52.247-9050 referenced to degrees Fahrenheit."

**46.312 Construction contracts.**

**46.312-90 Inspection of construction.**
Use 52.246-9028, Inspection of Construction, in solicitations and awards when construction will be performed on a center.

**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 (but need not) 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 Contractor clauses for product verification testing (PVT) and production lot testing (PLT).**

(a) Product verification testing (PVT). The contracting officer shall insert the clause at 52.246-9004, Product Verification Testing (PVT), 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 PVT will not be invoked for that award. Use the clause with its Alternate I for non-part numbered packaged petroleum

products falling within FSCs 9110, 9116, 9150 and 9160. Use the clause with its Alternate II for heat and die number requirements. Use the clause with its Alternate III for Instrument Bearings. The clause may also be used in combination with the clause at 52.246-9000, Certificate of Quality Compliance.

(b) Production lot testing.

(1) Policy. The product specialist determines whether production lot testing (PLT) will be required.

(i) The acquisition specialist shall refer any requests for waivers or deviations from PLT requirements to the product specialist, who will evaluate the request and furnish recommendations to the acquisition specialist.

(ii) PLT conducted by contractor. The contractor is responsible for producing PLT samples and for conducting the testing. PLT 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 PLT CLIN, in which case there will be no separate charge to the Government for conducting PLT, or separately pricing PLT under the PLT CLIN. If PLT is offered as a separate price under the PLT CLIN, the acquisition specialist shall insert the offered price for conducting PLT into the PLT CLIN at time of award, if the acquisition specialist determines the contractor's offered price for PLT is reasonable. If in doubt about the reasonableness of the offered price, the acquisition specialist shall consult with the product specialist. The product specialist will evaluate the PLT report and furnish the acquisition specialist with a recommendation of approval or disapproval. The acquisition specialist shall notify the contractor in writing whether its PLT report is approved or disapproved. Samples approved as a result of contractor-conducted PLT may be included with the shipment of the production quantity of the same lot, unless the samples are damaged or destroyed during PLT.

(iii) PLT conducted by Government. 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 material is to be returned to the contractor upon completion of testing for delivery with the production quantity of the same lot. The PLT CLIN will only be used to pay for approved samples that are consumed, destroyed, or otherwise rendered unusable during Government PLT. 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 PLT samples are approved or disapproved.

(2) Clauses.

(i) Insert the clause at 52.246-9085, Production Lot Testing (PLT) – Government, in solicitations and awards requiring Government testing of a production lot quantity, including when the acquisition is conducted using FAR Part 12. Prior to invoking PLT on a Part 12 contract, compliance with FAR 12.302(c) is required to verify whether market research has established that PLT is or is not consistent with customary industry practice, and whether a waiver is required. When the DPACS PR trailer includes the statement, "Production Lot Testing Required – Government Testing," complete the

fill-ins in 52.246-9085 with information as shown in the DPACS PR trailer or with information found in the material master, classification, product assurance tab, services for object.

(ii) Insert the clause at 52.246-9086, Production Lot Testing (PLT) – Contractor, in solicitations and awards requiring contractor testing of a Production Lot quantity, including when the acquisition is conducted using FAR Part 12. Prior to invoking PLT on a Part 12 contract, compliance with FAR 12.302(c) is required to verify whether market research has established that PLT is or is not consistent with customary commercial practice, and whether a waiver is required. When the DPACS PR trailer includes the statement, "Production Lot Testing Required – Contractor Testing," complete the fill-ins in 52.246-9086 with information as shown in the DPACS PR Trailer or with information found in the material master, classification, product assurance tab, services for object. Use the clause at 52.246-9086 with its Alternate I when the authority to approve or disapprove the PLT report is delegated to DCMA by the product specialist.

**46.393 Solicitation provisions and contract clauses for aircraft launch and recovery equipment (ALRE).**

**46.393(a) ALRE clause**.
Ensure the ALRE clause 52.246-9005 is included in both the solicitation and award for all ALRE requirements with an SPC code of "01".

**46.394 Solicitation provisions and contract clauses for oil and gases.**

**46.394(a) Lubricating oil purchased under MIL-L-9000.**
Use 52.246-9009, Lubricating Oil, Internal Combustion Engine MS9250 A Qualified Product, when purchasing lubricating oil purchased under MIL-L-9000.

**46.394(b) Acquisitions for lubricating oil, engine.**
Use 52.246-9010, Determination of Quantity Specific to Lubricating Oils, in acquisitions for Lubricating Oil, Engine, Grade OE/HDO 40, MIL-L-2104E.

**46.394(c) Liquefied petroleum gases.**
Use 52.246-9011, Liquefied Petroleum Gases Quality Assurance, when liquefied petroleum gases specified in the purchase order text (POT).

**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 September 13, 2011 through PROCLTR 2011-37)*

**46.401 General.**

**46.401-90 Solicitations and contracts for medical items.**
Use 52.246-9034, Testing at Government Laboratory, in solicitations and contracts for medical items, unless otherwise indicated by cognizant technical personnel.

**46.401-91 Quality assurance solicitation provisions and contract clauses.**

(a) Insert the clause at 52.246-9064, Quality Conformance Inspection Requirements, in solicitations and awards when manufactured parts are being acquired and the item description states that quality conformance inspection is required; including when the acquisition is conducted using FAR Part 12.

(b) 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.

(c) Use 52.246-9032, Identification of Qualified Laboratory and Source Sampling, in DLA Troop Support clothing and textile (C&T) solicitations and contracts for items that require sampling of contractor furnished material at textile finishing plants for verification testing at a contractor's laboratory or at the appropriate inventory control point (ICP) location.

**46.401-92 Use of commercial concerns to perform inspection of services and facilities (DLA Disposition Services).**
Insert the clause at 52.246-9073, Use Of Commercial Concerns to Perform Inspection of Services and Facilities (DLA Disposition Services), in all solicitations and awards for DLA Disposition Services' acquisitions of hazardous waste disposal services.

**46.402 Government contract quality assurance at source.**

(a) Except as provided in 46.402(S-90)(2)-(3) and 42.402(S-91), DLA buying activities shall not delegate contract administration to the Defense Contract Management Agency (DCMA) when a contract, purchase order, or delivery order is valued below $250,000 and requires Government contract quality assurance at source, unless –

(1) Mandated by DoD regulation; or

(2) Required by a memorandum of agreement between the acquiring department or agency and the contract administration agency; or

(3) The contracting officer determines that –

(i) Contract technical requirements are significant (e.g., the technical requirements include drawings, test procedures, or performance requirements);

(ii) Critical product characteristics, specific product features, or specific acquisition concerns have been identified; and

(iii) The contract is being awarded to –

(A) A manufacturer or producer; or

(B) A non-manufacturer or non-producer and specific Government verifications have been identified as necessary and feasible to perform (except as provided in 46.402(S-90)(3)).

(S-90) Under normal circumstances, 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) Conversely, when a sole source or best value quote/offer is contingent on source I/A and/or free on board (f.o.b.) origin for items that were solicited on the basis of destination I/A, buying activities shall attempt to negotiate destination I/A terms to the extent practicable and document results (see 46.402(S-91)(1)).

(3) 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) The sole source or best value quote/offer is contingent on source I/A and/or f.o.b. origin for items that were solicited on the basis of destination I/A; and efforts to award on the basis of destination I/A are either impracticable or unsuccessful.

(2) Destinations are unknown (see 47.305-5, 47.304-1(f), and 47.302(c)(1)).

(3) Direct vendor delivery (DVD), including foreign military sales, and stock CLINs are combined on the same award.

(4) When the prospective awardee is currently identified (e.g., on a contractor alert list) as requiring source I/A.

(5) When otherwise mutually agreed by the buying activity/contracting officer and DCMA.

**46.402-90 Acquiring quality assurance support on contracts awarded to contractors located overseas.**
When the solicitation designates quality assurance at source and the award is anticipated to be made to a contractor located overseas, the contracting officer will obtain a commitment from the cognizant overseas DCMA component or host nation Government quality assurance authority prior to the award of the contract to perform the requested contract administration services. Contracting activities are authorized to deviate from this requirement when acquisition history provides confidence that adequate technical/quality customer account specialist for a specific contract commodity is available in an applicable overseas geographical area.

**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.

**46.402-93 Source inspection provisions in solicitations and awards for DLA Aviation.**

(a) Use 52.246-9021, Source Inspection Provisions, in solicitations and awards for DLA Aviation items when one of the following conditions applies:

(1) The item is non-critical and described solely by part number;

(2) Destination inspection would normally apply, but successful awardee will only accept source inspection and thw cognizant product specialist has approved source inspection;

(3) Source inspection is required solely because the requirement is for a foreign military sale (FMS), and the awardee will not accept quality assurance provision (QAP) 001; or

(4) Source inspection is required due to awardee quoting f.o.b. origin on a non-fast pay RFQ that was solicited f.o.b. destination, inspection/acceptance at destination.

(b) 52.246-9021 shall not be used with a QAP or fast pay.

(c) Always include FAR 52.246-15, Certificate of Conformance, in the award when 52.246-9021 is used.

**46.403 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--

(90) Depot or receiving activity has the technical ability to perform quality assurance;

(91) 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

(92) Equipment required to perform quality assurance is available at the receiving point.

(93) Use 52.246-9038 in solicitations and contracts for medical equipment requiring installation at destination.

(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.

**46.404 Government contract quality assurance for acquisitions at or below the simplified acquisition threshold.**
DLA buying activities shall not delegate contract administration to DCMA when a contract, purchase order, or delivery order is valued at or below the applicable simplified acquisition threshold or below $250,000, whichever amount is greater, and requires Government contract quality assurance at source, unless the applicable criteria at 46.402 have been met.

**46.405 Subcontracts.** [Reserved.]

**46.406 Foreign Governments.** [Reserved.]

**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)(90), below.

(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 shall ascertain whether the contractor's request for waiver was forwarded through the ACO and includes the ACO's recommendations for approval or disapproval. 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 contracting office 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 contracting office 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 contracting office, 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) The hardware centers and DLA Troop Support 's medical and clothing and textile commodities are strongly encouraged to use the calculation provided below 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.

These costs are taken from the DLA report, cost of nonconforming supplies update. The overall DLA average cost associated with a product quality deficiency report, or PQDR, amounted to $501 in administrative costs plus 3.55 percent of the contract value for holding costs. The DLA average administrative cost is $868; holding cost percentages have been separately established by center, as follows (DLA Troop Support subsistence and DLA Energy are not included):

| | |
|---|---|
| DLA Land and Maritime | =5.64% (or 0.0564) |

| | |
|---|---|
| DLA Aviation | =5.14% (or 0.0514) |
| DLA Troop Support | =12.81% (or 0.1281) |
| DLA Troop Support (C&T) | =0.07% (or 0.0007) |
| DLA Troop Support (medical) | =1.47% (0.0147) |

(i) Calculation: Amount of consideration = $868 + [H x proposed contract value].

Where - $868 represents the total administrative costs to the Government; H represents the center average holding cost proportion of the overall contract cost, expressed as a decimal, rather than as a percentage.

Step one: Multiply H for the individual center by the contract dollar amount of the supplies covered by the waiver or deviation. This is the total holding (variable) cost component for nonconforming supplies.

Step two: Add $868 (the fixed, or administrative, cost to the Government of dealing with nonconformances) to the result of step one. This is the total amount of consideration which should be used as a guide in determining the adequacy of the contractor's final offer of compensation for the waiver or deviation.

(ii) It is important to note that, if the contracting officer chooses to use this guidance, but is unable to obtain agreement with the contractor on a reasonable (vice a token) consideration amount, the Government is not obligated to accept a lesser amount merely for the sake of reaching that agreement and restoring the contractor to a "conforming" or satisfactory status. In such situations (and assuming the proper notification has been made in writing to the contractor), it may be preferable to leave the contract in a nonconforming status than to modify it for an insignificant amount, or at no cost to the contractor. Either course of action, modifying the contract or refusing to restore the contractor to a satisfactory status in the event of its failure to make a good-faith offer of adequate consideration, will still preserve the Government's right to maintain a record of the deficiency, and to consider future business with the contractor in light of this poor performance. Concern about the possibility of failure to reach agreement with the contractor should, therefore, not affect the contracting officer's decision to use this means of determining the adequacy of the contractor's offer.

(f)(S-92) Subparagraphs (f)(S-92) through (f)(S-95) do not apply to contracts containing express warranty provisions. Nothing in this section shall be construed to require the contractor to make restitution to the Government for patent nonconformances discovered after Government inspection and acceptance in accordance with FAR clause 52.246-2, Inspection of Supplies - Fixed Price, or any other standard inspection clause. Nevertheless, in each instance of a contractor-caused, post-acceptance nonconformance, the contracting office that defective product or service, and request repair or replacement. This does not prohibit local procedures which allow for the quality element to discuss quality and technical issues with contractors in the investigation of contractor-caused defective material prior to transmittal of the case to the contracting officer for formal notification to the contractor. After the formal notification, the contractor must decide how to 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.

(S-93) If the contractor fails to respond to the notice of nonconformance, follow-up letters should be sent, as necessary. If the contractor also refuses to acknowledge the follow-ups, the contracting officer

has other options, including assigning the contractor to the contractor alert list or ensuring that a preaward survey is performed on the contractor prior to award of any future contract. (Furthermore, whether or not the Government is provided consideration, the fact of that poor performance should still be considered in best-value decisions.)

(S-94) When workload constraints preclude following up on every initial post-acceptance nonconformance notification, priority should be placed where: the nonconformance is major or critical; the number or dollar amount of the items potentially affected is high; and/or the contractor has a history of tendering defective supplies to the Government.

(S-95) The contracting officer cannot "hold out" for a specific amount of money when the contractor volunteers a refund or contractual offset in lieu of repair or replacement. He or she may, though, determine whether the amount offered is a realistic alternative to the other ways in which the contractor could rectify the problem. If the refund amount is less than the contract price of the nonconforming items for which it is offered, it may or may not be characterized as a full voluntary refund, because it may only be a partial mitigation of damages. That is, it may not represent the full value of the Government's loss. On the other hand, where the contractor decides that repair is the appropriate form of recoupment, and such repair is less expensive to the contractor than replacement or monetary reimbursement of the full contractual price of the defective items, the Government may nevertheless have been fully compensated for the value of its loss. The contracting officer must determine whether the method of recompense provided is full mitigation for loss; that determination will affect the reporting of the recoupment. See subparagraph (96)(iv), below:

(S-96) At any time, the centers should be able to ascertain the number and dollar value of all reported contractor-caused item nonconformances and their disposition. The Agency overall should be provided information on dollar totals associated with these nonconformances and with the corrective actions taken.

(1) All contracting activities exclusive of DLA Energy shall compile and report to DLA HQ J72 on a quarterly basis, no later than 30 days after the end of a fiscal quarter, and cumulatively. Additionally, up to eleven previous quarters should also be reported. There should eventually be twelve separate quarterly records (three complete fiscal years' worth of data) and one overall total reported in this fashion; the earliest quarter should drop off with each new reporting cycle. If there are remaining unresolved nonconformances from such a "retired" quarter, they should be written off, unless they are the subject of litigation, or a resolution is imminent. The totals requested below should be provided for all reported contractor-caused nonconformances able to be identified by contract by fiscal quarter in which notice of the nonconformance is received by the contracting officer (via PQDR or other means), rather than by contract year.

(2) Aggregated totals for collections will be maintained by quarter according to the date the nonconformance is received by the contracting officer, regardless of the date of receipt of the reimbursement. If the contracting officer receives a PQDR for resolution in the second quarter of FY95 on a 1992 contract, the record of the nonconformance will be established in FY95, second quarter. If collections against that nonconformance are received in installments, the first one in the third quarter of that fiscal year and the next in FY 96, these reimbursements will both be reported against the FY 95 second quarter total. In order to do this, the contract identity of the records comprising the total of the nonconformances for any quarter will have to be maintained at the center; collections will need to be "credited" against the appropriate complaint. Only totals need be reported to J72, as indicated below. A sample report is provided at 90.14.

(i) For the immediately preceding fiscal quarter, up to eleven previous fiscal quarters, and cumulatively, of the total number of validated complaints for which the Government should seek recompense (i.e., nonvoluntary and voluntary recoupments), except for items covered by warranty or fraudulently-tendered items covered under the counterfeit material/unauthorized product substitution (CM/UPS) program, the contracting activity should report:

(A) total dollar value [see (iv), below];

(B) total dollars demanded/requested;

(C) total dollars recouped.

(ii) For the immediately preceding fiscal quarter, up to eleven previous fiscal quarters, and cumulatively, of the total number of defects discovered after acceptance that are covered by express warranty, the contracting activity should report:

(A) total dollar value (see (iv) below);

(B) total dollar demanded;

(C) total dollars recouped.

(iii) For the immediately preceding fiscal quarter, up to eleven previous fiscal quarters, and cumulatively, of the total dollars recouped, categories (i) and (ii), the contracting activity should report:

(A) total dollars - monetary reimbursement (including, where used, contract offsets; this may also include repairs to defective items that have been retained by the Government, to the extent these can be quantified. See (f)(95), above, and (IV), below):

(B) total dollars - replacements.

(iv) In order to establish a record of nonconformance against which a voluntary or nonvoluntary recoupment can be applied, the contracting officer must make an initial evaluation of the extent of the Government's loss. In so doing, he/she will likely use the contract price of the defective items as the amount of that loss. However, this may or may not ultimately be determined the correct amount to be collected from a nonconforming contractor.

(A) If, either as a result of independent research or in response to a contractor's offer of consideration for less than the contract price, the contracting officer finds that the Government's loss would be satisfied by a lesser amount than originally indicated, the contracting officer should revise the total for nonconformance and the total requested/demanded ((A) and (B) in (i) and (ii), above) downward to what he/she considers a realistic and appropriate amount.

(B) On the other hand, total dollars recouped ((C) in (i) and (ii), above) must exactly reflect what has been collected "in cash or in kind." If the amount the contractor offers is less than the contract price but is considered adequate restitution for the nonconformance, the total for the nonconformance and the amount demanded/requested should be identical to the amount received.

(C) If the contractor's offer is less than the contract price and the contracting officer does not consider it adequate compensation for the Government's loss, the total for the nonconformance and the total demanded/requested, whether or not these are revised downward from the original record, should not be made equivalent to the contractor's inadequate recompense.

(S-90) No part of section 46.407 pertains to the deliberate intent on the part of the contractor to provide off-specification product, or otherwise to make a fraudulent tender to the Government. When quality assurance or other personnel discover evidence indicating that the contractor deliberately failed to honor its contractual undertaking, all cognizant parties, including the administrative contracting officer, should confer with PLFA fraud counsel in accordance with DLAR 5500.10, Combating Fraud in DLA Operations. Recoveries for fraud should continue to be reported as collections by the Office of General Counsel; however, they should not be included in the recoupment reporting scheme set forth in (f)(96), above.

**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 Planning.**

(90) 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 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 buying activities 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 (preaward and/or postaward) 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 (postaward) 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 buying activities 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);

(iii) Policies and requirements are being established for acquiring the identified FSGs/FSCs/NSNs, as appropriate; such as the following:

(A) FAR/DFARS/DLAD provisions and clauses;

(B) Quality assurance requirements, such as documentation of traceability, quality requirement (QML/QPL), quality assurance provisions (QAPs) or first article testing; and/or

(C) Policies requiring specified post-award actions, such as product verification testing or a quality assurance letter of instruction (QALI).

(iv) Requirements are being documented in the material master and/or by standard text object (STO) in the purchase order text (POT), as appropriate; and

(v) FSGs, FSCs, and/or NSNs are being identified as excluded from PACE automated evaluation and award.

(2) Training and oversight. DLA buying activities shall ensure that

(i) All activity personnel are being adequately trained to apply the policies in this section;

(ii) All acquisition personnel are being adequately trained to apply the requirements established for acquisitions of items identified in accordance with 46.490(b) (e.g., enforcing requirements for traceability documentation; evaluating traceability documentation to determine its adequacy and validity; etc.);

(iii) Internal controls are in place, and periodic reviews/audits are being conducted to ensure compliance with the policies in this section; and

(iv) 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, when the buying activity has (1) identified the FSGs/FSCs/NSNs being acquired as requiring additional risk mitigation; and (2) 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 July 28, 2011 through PROCLTR 2011-21)*

### 46.502 Responsibility of acceptance.

(90) Use 52.246-9035, Acceptance of Medical and Laboratory Instrumentation, in equipment solicitations and awards when acceptance at destination is required.

(91) Use 52.246-9036, Acceptance of Installation for Medical and Laboratory Instrumentation, in capital equipment solicitations and contracts for x-ray equipment when installation at destination is required.

### 46.503 Place of acceptance.

(a) Use 52.246-9007, Inspection and Acceptance at Destination, as needed, to indicate destination inspection and acceptance in solicitations and contracts for supplies.

(b) Use 52.246-9008, Inspection and Acceptance at Origin, as needed, to indicate origin inspection and acceptance points in solicitations and contracts for supplies. Use alternate I for acquisitions above the SAT whenever subsequent shipments will undergo inspection and acceptance at destination.

(c) When a contract provides for Government contract quality assurance at source, the place of manufacture (if different from the prime contractor) will be designated for each contract line or subline item. This is necessary to provide for automatic distribution of contract documents to QARs cognizant of plant locations other than the prime contractor.

**46.503-90**

Insert the clause at 52.246-9029, Inspection and Acceptance Points, as needed, to indicate mixed inspection and acceptance points in solicitations and contracts for energy and supplies.

**46.503-90**
Use 52.246-9040, Inspection and Acceptance - Supervision of Installation, when supervision by contractor of equipment installation at destination is required. Use 52.237-9004 with this clause.

**46.503-91**
Use this clause, 52.246-9080, Points of Inpection and Acceptance (DLA Energy), in solicitations/contracts at the contracting officer's discretion. Primarily for use by, but not limited to, bulk lubes and aerospace energy for propellants, cryogenics and gases.

**46.504 Certificate of Conformance.**

**46.504-90**
Use 52.246-9014, Certificate of Conformance, in subsistence solicitations and awards except perishable Indefinite Delivery Type Contracts (IDTC) (other than pork items), brand name resale, fresh fruits and vegetables, warehouse services and non-food components of operational rations.

**46.504(a)(90)**
Use 52.246-9042, Documentation of Traceability - QPL/QML Integrated Circuits, Hybrid Microcircuits, and Semiconductor Devices, in all solicitations and awards (regardless of point of inspection) for QPL or QML integrated circuits or hybrid microcircuits procured in accordance with MIL-M-38510, MIL-PRF-38534 or MIL-PRF-38535, and semiconductor devices procured in accordance with MIL-PRF-19500.

**46.504-91 Solicitations and awards for DLA Energy acquisitions of bulk lubes, overseas PC&S, and aerospace energy.**
Insert the clause at 52.246-9081, Certificate of Conformance (DLA Energy), in solicitations and awards for DLA Energy acquisitions of bulk lubes, overseas PC&S, and aerospace energy. Use when the conditions at FAR 46.504 apply.

**46.504-92 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 46.6 – MATERIAL INSPECTION AND RECEIVING REPORTS

**46.601 General.**

**46.601-90**
Use 52.246-9018, Shipping Documents Supplied to Assembly Contractors, in acquisitions for MRE and other tray pack semi-perishable items.

**46.601-91**
Use 52.246-9019, Material and Inspection Report, with DFARS 252.246-7000 when a Material Inspection and Receiving Report (DD Form 250) is required.

**46.601-92**

Use 52.246-9020, Distribution of Material Inspection and Receiving Report, in all solicitations and contracts for foreign military sales.

**46.601-93**
Insert the clause at 52.246-9070, Commercial Bills Of Lading (Bulk)(DLA Energy), in DLA Energy solicitations and awards for bulk fuels.

## SUBPART 46.7 – WARRANTIES

**46.706-90**
Use 52.246-9056, Warranty Period for Overseas Shipments, in acquisitions for overseas shipment.

**46.708-90**
Use 52.246-9057, Warranty of Data, in acquisitions when a warranty for technical data, excluding computer software and data incidental to contract administration is required.

**46.709-90**
Use 52.246-9053, Commercial Warranty, in solicitation for items that may have a commercial warranty available from the manufacturer. If a contractor responds there is a commercial warranty available, obtain a copy from the contractor to include as an attachment to award.

**46.709-91**
Use 52.246-9059, Warranty of Supplies (Commercial Items), in medical supply chain solicitations and contracts for standard commercial items instead of 52.246-9058, such as brand name, brand name or equal.

**46.709-92**

(a) Use 52.246-9060, Warranty of Supplies (Commercial Items), in medical supply chain solicitations and contracts for supplies when acquiring commercial items, such as brand name, brand name or equal, and fill-in required information

(b) Use 52.246-9037, Orders for Repair of Medical Equipment, in purchase orders for repair of medical equipment.

(c) 52.246-9052, Warranty of Supplies, may be used in solicitations, contracts and purchase orders for biomedical equipment.

**46.710-91**
Use 52.246-9054, Warranty – Acceptance of Supplies, in all solicitations and in awards for any one of the following: when purchasing surplus, when E46A17 (52.246-15, Certificate of Conformance) is in the award, or when acceptance is at destination.

**46.710-92**
Use 52.246-9055, Warranty of Supplies and Virtual Prime Vendor, in solicitations for virtual prime vendor contracts which contain an order to ship time (OST) or contractor processing time (CPT) performance metric.

**46.710-93**
Use 52.246-9058, Warranty of Supplies, in solicitation and contracts when acquiring medical items which contain chemicals, drugs, pharmaceuticals, biologicals, antibiotics, cosmetics and any other items which are used in or on the body or for which the integrity of each original lot and the separate identification of each such lot must be maintained from moment of manufacture until final complete usage or disposal. Do not use for commercial items.

**46.710-94**
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 new procurements, repair or rebuild/remanufacture/retrofit.

**46.710-95**
Use 52.246-9063, Warranty of Supplies, Extended (66 Months), in solicitations and contracts for NSNs 6110-01-246-7177 and 6110-01-246-7178 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.

## SUBPART 46.8 – CONTRACT LIABILITY FOR LOSS OF OR DAMAGE TO PROPERTY OF THE GOVERNMENT

*(Revised September 26, 2012 through PROCLTR 2012-52)*

**46.805 Solicitation provisions and contract clauses.**

(a)(90) Use 52.246-9041, Government Loss or Damage, in solicitations when contractor installation of equipment is required.

(a)(S-91) Liability for warehouse charges for perishable cold storage items due to receipt of defective supplies. Insert the clause at 52.246-9083, Liability for Warehouse Charges for Perishable Cold Storage Items Due to Receipt of Defective Supplies, in all solicitations and awards for perishable subsistence

items delivered to cold storage warehouses. The contract specialist shall insert the required delivery days and times.

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## SUBPART 47.2 – CONTRACTS FOR TRANSPORTATION OR FOR TRANSPORTATION-RELATED SERVICES

**47.207-5(90) Blanket purchase agreements (BPAs) for fresh fruit and vegetables.**
Use 52.247-9020, Advance Notice of Late, Short or Non-Shipment of Supplies, in blanket purchase agreements (BPAs) for fresh fruits and vegetables (FF&V).

**47.207-5 (91) Utilization of transportation assets in Korea.**
**I**nsert the clause at 52.247-9042, Wartime Utilization of Contract Vehicles (Contingency Contract) (Republic of Korea) in DLA Energy solicitations and contracts for locations in Korea where transportation assets are utilized in the performance of the contract.

## SUBPART 47.3 – TRANSPORTATION IN SUPPLY CONTRACTS

*(Revised September 26, 2012 through PROCLTR 2012-52)*

**47.303 Standard delivery terms and contract clauses.**

**47.303-6 Free on board (f.o.b.) destination.**

**47.303-6(c) Free on board (f.o.b.) destination clause.**
Insert the clause at 52.247-9016, Free on Board (f.o.b.) Destination Contractor Transshipment, in solicitations and awards when solicited on an f.o.b. destination basis with inspection and acceptance at origin. Insert FAR 52.247-48 with this clause.

**47.303-6-90 Alaskan, Hawaiian or Puerto Rican Requirements.**
Insert the clause at 52.247-9045, Alaskan, Hawaiian or Puerto Rican Requirements, in solicitations, contracts, and purchase orders for wood products managed by the DLA Troop Support construction and equipment supply chain, which require delivery to Alaska, Hawaii, or Puerto Rico, where the contractor is in the same state or territory as the delivery site, specifically, Alaska, Hawaii, or Puerto Rico.

**47.303-10(90) Shipments direct to port terminals for export clause.**
Use 52.247-9019, Shipments Direct to Port Terminals for Export, in solicitations and awards involving shipment of subsistence items to port terminals for export (not applicable to brand name resale or fresh ruits and vengetables (FF&V)).

**47.304-4 Shipments originating outside CONUS.**
Use 52.247-9024, F.o.b. Origin by Non-CONUS or Non-Canadian offerors for delivery to consignees within CONUS or Canada, in large purchase whenever offers are invited on a f.o.b. origin basis for CONUS deliveries and it is anticipated that foreign offers (other than Canadian) will be received. If offers are invited on both f.o.b. origin (a) and f.o.b. destination (b) basis, immediately following the title the buyer will insert the words “applicable to f.o.b. origin bids/offers (a) only”. This will facilitate evaluation and expedite the award process by eliminating the necessity of securing foreign land transportation rates as well as ocean rates to CONUS or Canada.

**47.304-4(91) Provision for offers on an f.o.b. origin or f.o.b. port of loading basis**.
Use 52.247-9025, F.O.B. Origin by non-CONUS or non-Canadian offerors for delivery to consignees outside CONUS or Canada, this provision in solicitations inviting offers on an f.o.b. origin or f.o.b. port of loading basis, for supplies to be delivered to consignees located outside CONUS or Canada. Buyers

will add applicable CLINs and overseas destination in paragraph (a) of this provision. This provision should be used for any overseas distribution (including Army post office (APO) and fleet post office (FPO)) except for foreign military sales (FMS) shipments that are treated as domestic.

**47.305-1 Solicitation requirements.**

(c)(S-90) Compliance with International Plant and Protection Committee (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. 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 and/or is acquired by DoD. 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.

(c)(91) Contract clause. Insert the clause at 52.247-9012 in all solicitations and contracts for supplies or services. The clause shall also be used in acquisitions conducted using FAR Part 12.

**47.305-2(b)(90) Evaluation of offers invited for both f.o.b. origin and f.o.b. destination.**
The contracting officer may insert the provision at 52.247-9026, Evaluation of offers invited for both f.o.b. origin and f.o.b. destination, in solicitations for indefinite delivery contracts where offers are requested for both f.o.b. origin and f.o.b. destination and separate prices are not solicited for different quantity increments. Use Alternate I when separate prices are solicited for different quantity increments.

**47.305-3 F.o.b. origin solicitations.**

(90) When the solicitation includes the requirement for minimum size of shipments or guaranteed maximum shipping weights (and dimensions, if applicable) and an award is made f.o.b. origin, insert the clause at 52.247-9000, Guaranteed Maximum Shipping Weights or Dimensions, in solicitations and contracts (see 14.408-1(96)).

(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.

(92) Use 52.247-9015, Loading Capabilities for Bulk Shipments, in all acquisitions when bulk shipments of packaged petroleum products will be made.

(93) The contracting officer may use the provision at 52.247-9027, Evaluation of Offers for Quantity Increments, 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(94) Perishable foodstuffs clause in a blanket purchase agreements (BPA).**
Insert the clause at 52.247-9017, Perishable Foodstuff Transportation, in BPAs for perishable foodstuffs. 52.247-9017 is to be used only with the DLA Troop Support subsistence supply chain.

**47.305-3-95 Addendum to FAR 52.247-29 Free on Board (f.o.b.) Origin.**
Use 52.247-9056, Addendum to FAR 52.247-29 Free On Board Origin, in solicitations and contracts to allow contractor to specify the shipping point.

**47.305-3-96 Shipment of Government property, Government and contractor responsibility.**
Use 52.247-9057, Shipment of Government Property Government/Contractor Responsibility, in solicitations and contracts when property is shipped at Government expense.

**47.305-3 F.o.b. origin solicitations (DEVIATION).**

(a)(4)(ii) DLA Energy is authorized to use provisions 5452.247-9F12, Offers of Multiple Crude Oils (DEVIATION) and 5452.247-9F13, Evaluation of F.O.B. Origin and Destination offers (DEVIATION) in lieu of FAR provision 52.247-46 when purchasing crude oil for the strategic petroleum reserve (SPR) program.

**47.305-4 F.o.b. destination solicitations and contracts.**

(a) Automated business systems modernization (BSM) simplified acquisitions shall use the following clauses:

Overseas and Navy ship direct vendor delivery (DVD) shall use the clause at 52.247-9006.

CONUS DVD shall use the provision at 52.247-9007.

Foreign military sales shall use the clauses at 52.247-9008 or provision 52.247-9009 as applicable.

Shipments to depots shall use the provision at 52.247-9010.

**47.305-4(90) Acquisitions for engine lubricating oil.**
Use 52.247-9032, Delivery Conditions for Transport Trucks, Trucks and Trailers or Tank Wagons, in acquisitions for lubricating oil, engine, grade E/HDO 40, MIL-L-2104E.

**47.305-4(91) Clauses, delivery and evaluation.**

Use 52.247-9041, Delivery Times, in solicitation and awards for Aviation items for FSG 34 IPE parts.

For shipments to ports and air terminals, as needed, use 52.247-9014, Evaluation of Offers via Export Aerial Ports, for supplies destined overseas via air freight.

(e) When needed to supplement FAR 52.247-51, use 52.247-9013, F.O.B. Origin and/or F.O.B. Port(s) of Loading (Destination) in Offer Evaluation.

**47.305-6(i)(90) Award which may result in an f.o.b. origin contract.**
Insert 52.247-9021 in solicitations when award may result in an f.o.b. origin contract. 52.247-9021, F.O.B. Origin Contract for Supplies Originating Outside the United States, should be used with 52.247-52, Clearance and Documentation Requirements-Shipments to DoD Air or Water Terminal Transshipment Points (APR 1984). For partial set-asides, the provision is only applicable to the unrestricted portion.

**47.305-7(b)(90) Quantity analysis, direct delivery, and reduction of crosshauling and ackhauling.**
15.304(c)(90) 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 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, acquisition 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, F.O.B. Origin,

Prepaid Freight – Small Package Shipments). Ensure that "T" is not used in the transportation charges reimbursable code in DPACS. 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 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.

(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. 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); and

(vii) Contracts for service, except shipments of Government furnished equipment (GFE)/ Government furnished material (GFM)

(3) Transportation office notification/requirement. Contracts that are administered under the above-mentioned exceptions at (c)(1)(i thru vi) may contain the statement: "Contact the transportation office at the administration office specified in block 7."

(i) For DLA administered contracts, vendors must contact the supply chain transportation office helpdesk at (800) 456-5507.

(ii) For contracts administered by DCMA, vendors must contact the DCMA transportation office listed on the award document in lieu of using VSM.

**47.305-8(90)(a) Contract clause – Alaska remote resupply.**
Use 52.247-9039 in solicitations and contracts when Project Code 175-Alaska remote resupply is cited in the PR.

(a) For deicing fluids;

(1) Paragraph (b) of the clause has been pre-filled with a delivery date of 1 June. This will ensure fluids are received at the final destination no later than 1 July.

(2) Immediate acquisition action should be initiated in order that delivery of cargo may be made. Shipments that cannot meet delivery dates shall be referred to 833 U.S. Army Transport Battalion, USAF water port logistics office (WPLO) in Seattle, Washington, phone 206-764-6531. for disposition.

(3) Bulk freight shipping instructions:

(i) Shipments will be solicited to:

4DL 833 United States Army Transport Battalion
Attention: MTWSE-TM
4735 East Marginal Way South
Seattle, Washington 98134-2391

(ii) Current stations with deadlines for bulk deicing fluid are:

| Station | Activity Add Code | Deicing fluid must arrive |
|---|---|---|
| King Salmon | FG5026 | No later than (NLT) 1 July |
| Eareckson | FG5027 | NLT 1 July |
| Galena | FG5024 | NLT 1 July |

(4) Bulk deicing fluid is normally the only bulk liquid handled by WPLO. All bulk shipments will be coordinated with WPLO prior to shipment and will be shipped in commercial rail tank cars only.

(b) For all other supplies: No deadline date is applicable for "other supplies."

(1) Freight shipping instructions:

(i) Shipments will be solicited to: Tacoma, Washington.

(ii) Current stations are:

| Station | Activity Add Code |
|---|---|
| Barter Island | FG5023 |
| Cold Bay | FG5018 |
| Eareckson | FG5027 |
| Galena | FG5024 |
| King Salmon | FG5026 |
| Kotzbue | FG5012 |
| Lizburne | FG5010 |
| Newenham | FG5011 |
| Oliktok | FG5022 |
| Point Barrow | FG5021 |

| | |
|---|---|
| Point Lay | FG5019 |
| Romanzof | FG5014 |
| Tatalina | FG5015 |
| Tin City | FG5017 |

(2) Small package shipments/carriers are not accepted at Tacoma, Washington.

**47.305-8(90)(b)**
Use 52.247-9040 in solicitations and contract when Project Code Y31- Pacer Goose or 145-Pacer North is cited in the purchase request.

(a) Immediate acquisition action should be initiated in order to meet deadline delivery date of 2 June. Shipments that cannot meet this date shall be referred to the military ocean terminal (MOT) in Norfolk, Virginia, phone (757) 444-4170, facsimile (757) 444-2352 or -3087, for disposition. Shipments will not be accepted at MOT Norfolk after the deadline delivery date.

(b) Shipping instructions:

(1) When Project Code Y31-Pacer Goose is cited in the PR, use FAR 52.247-52 (Section F) and solicit shipments to Norfolk, Virginia.

(2) When Project 145-Pacer North is cited in the PR, use FAR 52.247-52 (Sec F) and solicit shipment to: McGuire Air Force Base (AFB), New Jersey.

(3) Consignees for Pacer Goose and Pacer North:

| Station | Activity Add Code |
|---|---|
| 12 SWS/LGS Thule | FB2507 |
| | FE2507 |
| | FF2507 |
| | FJ2507 |
| | FL2507 |
| | FP2507 |
| | FS2507 |
| Det 3, 22SOPS, Unit 82501 Thule | FY1977 |
| 12 SWS/MAO, Thule | FY7556 |
| 12 SWS/SCX Small Computer Service Center Thule | FU2514 |
| 12 SWS SVM Thule | FT9249 |
| 12 SWS SVF Thule | FT9906 |
| Troop Issue Facility Thule | OL BI FCS HQCZZZ |

| | |
|---|---|
| (if not cleared for air movement) | |
| USAF Hospital Thule | FY8306 |
| AAFES, Bldg 251, Thule | HXFTSK |
| AAFES, C6 Orders, Thule | HXFAC6 |

(4) Parcel post shipments shall be mailed to applicable APO cited on the purchase request.

(5) Shipments exceeding parcel post limitations will be shipped to either MOT Norfolk or McGuire AFB, as applicable.

(6) Small package shipments/carriers (RPS, UPS, etc.) should not be sent to MOT Norfolk.

**47.305-10(90) Packing, marking, and consignment instructions.**
Insert the clause at 52.247-9029, Shipping Instructions, in long term solicitations and contracts. Do not use in indefinite delivery purchase orders (IDPOs).

**47.305-10(91) Commercial shipping documents in purchase orders and long term contract (LTC) basic contracts.**
Use 52.247-9030, Commercial Shipping Documents, in purchase orders and LTC basic contracts (when delivery orders will be under $100,000) provided the purchase order or delivery order is assigned to the defense supply center for administration and inspection and acceptance is destination or in accordance with fast pay procedures, or when the offeror has been otherwise authorized to use commercial shipping documents.

**47.305-10(92) Shipping instructions (domestic) in solicitations and awards.**
Use 52.247-9035, Shipping Instructions (Domestic), in solicitations and awards when the contractor will ship supplies to a CONUS destination (48 contiguous states), a Canadian destination, or a stock location. It is not to be used for overseas shipments. Overseas shipments include parcel post shipments directly 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). Use of an FMS freight forwarder does not apply to this clause.

**47.305-10(93) Shipping instructions - export.**
Use 52.247-9036, Shipping Instructions (Export),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).

**47.305-10(94) Trans-shipment of material through DLA containerization and consolidation points.**
Use 52.247-9037, Trans-shipment of Material Through DLA Containerization and Consolidation Points (CCP), when supplies are to be shipped via surface freight, Consolidation and Containerization Point 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.

**47.305-10(95) Shipping instructions for DLA direct acquisitions.**
Use 52.247-9038, Shipping Instructions for DLA Direct Acquisitions, in all acquisition that involve DLA direct lines.

**47.305-13(90) Point of contact for transportation instructions.**
Use 52.247-9034, Point of Contact for Transportation Instructions, in all awards.

**47.305-14 Mode of transportation.**

**47.305-14(90) Premium transportation - urgent requirements.**
Insert the clause at 52.247-9028, Premium Transportation, in purchase orders only when premium transportation is to be authorized for urgent requirements.

**47.305-14-91 Transportation of Wood Products.**
Insert the clause at 52.247-9044, Transportation of Wood Products, in solicitations, contracts and purchase orders for wood products managed by the DLA Troop Support construction and equipment supply chain. If the DLA Troop Support transportation office indicates that a mode of transportation other than a flatbed truck for forklift unloading is required, the contract specialist will fill-in the required mode of shipment. The contract specialist shall fill-in required text.

**47.305-15 Loading responsibilities of contractors.**

**47.305-15(90) Clauses, non-commerical acquisitions and lubricating engine oil.**

(a) Use clause 52.247-9031, Manufacturer's Loading Practices, for non-commercial acquisitions exceeding the micro purchase threshold. For micro purchases, use in acquisitions when more than one NSN is being procured. For commercial acquisitions, use in acquisitions in excess of the micro-purchase threshold when more than one NSN is being procured.

(b) Use clause 52.247-9033, Transport Truck And/Or Truck and Trailer Free Time and Detention Rates, in Acquisitions for Lubricating Oil, Engine, Grade OE/HDO 40, MIL-L-2104E.

**47.306 Transportation factors in the evaluation of offers.**

**47.305-16(90) Guaranteed shipping characteristics.**
Insert the clause at 52.247-9048, Guaranteed Shipping Characteristics, in awards for medical, subsistence and construction and equipment when FAR 52.247-60 is used in the solicitation and the award is made on f.o.b. origin basis or f.o.b. port of loading basis. The contracting officer will also use clause 52.247-9000, Guaranteed Maximum Shipping Weights or Dimensions.

**47.306-1(d)(90) Transportation cost determinations.**
Use 52.247-9022, Evaluation of Transportation Costs – Order Quantity, in solicitations for RTCs or IQCs when an f.o.b. origin delivery term is included in the solicitation. Upon request, ETO DLA Distribution will furnish, for each origin offer received, the unit transportation costs based on the minimum order quantity.

**47.306-1(d)(91) Evaluation of transportation costs – bulk shipment.**
Use 52.247-9023, Evaluation of Transportation Costs – Bulk Shipment, in solicitations for Anti-icing, Defrosting De-icing Fluid (Federal Supply Class 6850) to be purchased in bulk on an f.o.b. origin basis.

**47.306-1(d)(92) Evaluation – free on board (f.o.b.) origin – special condition.**
Insert the provision at 52.247-9047, Evaluation – Free on Board (f.o.b.) Origin – Special Condition, in all DLA Troop Support solicitations that exceed the SAT where supplies originating in Canada, Alaska or Hawaii are offered f.o.b. origin outside the contiguous 48 states of the United States and the District of Columbia and the destination is within the United States excluding Alaska and Hawaii.

**47.306-1(d)(93) Evaluation- free on board (f.o.b.) origin - shipments originating in Puerto Rico.**
Insert the provision 52.247-9049, Evaluation – Free on Board (f.o.b.) Origin - Shipments Originating in Puerto Rico, in f.o.b. origin solicitations for construction and equipment, clothing and textile, medical, and subsistence when supplies originate in Puerto Rico. When this provision is used, do not use FAR 52.247-47, Evaluation-F.O.B Origin, or FAR 52.247-51, Evaluation of Export Offers.

**47.306-1(d)(94) Evaluation – palletized shipments.**
Insert the provision at 52.247-9050, Evaluation – Palletized Shipments, in subsistence semi-perishable solicitations when palletization is required. Refer to FAR 14.201-5(c), 15.204-5(c).

## SUBPART 47.5 – OCEAN TRANSPORTATION BY U.S.-FLAG VESSELS

**47.507(c) Subsistence items involving overseas destinations.**
Use 52.247-9018, Utilization of Containers (Seavans) for Export Shipments, in solicitations and awards for subsistence items involving overseas destinations (not applicable to brand name resale).

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# PART 48 – VALUE ENGINEERING

## SUBPART 48.1 – POLICIES AND PROCEDURES

**48.101 General.**
Policies and procedures for using and administering value engineering change. Proposals are contained in Parts 48 and 52.248-1, 2, and 3, Value Engineering, of the FAR. For DLA, all contracts $25,000 or more shall contain a value engineering (VE) incentive clause. The VE incentive clause may be included in contracts less than $25,000, if the contracting officer or the VE program manager believes there is a potential savings or benefit to the Government.

(90) Parts purchase or borrow program. see guidance on this DLA program in the DLA Issuance 3220 on value management.

## SUBPART 48.2 – CONTRACT CLAUSES

**48.201 Clauses for supply or service contracts.**

**48.2(90) Solicitations with an accepted VECP.**
Use provision 52.248-9000, Evaluation of Offers Using Alternate Value Engineering Change Proposals (VECPs) Method, in solicitations whenever an accepted VECP is incorporated into a solicitation as one of two or more alternate methods.

**48.2(91) First article testing requirements and value engineering.**
Use clause 52.248-9001, Exemption from Value Engineering, in solicitations and contracts that include first article testing requirements and FAR 52.248-1 Alternate III, Value Engineering, is also present.

**48.2(92) Offers using alternate value engineering change proposals (VECPS) method and specifications/drawings.**
Use clause 52.248-9002, Offers Using Alternate Value Engineering Change Proposals (VECPs) Method and Specifications/Drawings, when provision 52.248-9000 was included and the offeror indicates they will be using both the specification/drawing method and the alternative VECP method.

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## SUBPART 49.1 – GENERAL PRINCIPLES

### 49.101 Authorities and responsibilities.

(b) Notwithstanding a change in requirements, a contract is not to be terminated for convenience (except at no cost to the Government as provided in FAR 49.402-4(c)) if the contractor is in unexcusable default and the Government has a legal right to terminate such contract for default.

(c) The undelivered balance of $5,000 is to be used as a guideline by the post-award acquisition specialist when other cost evaluation measures are not available. When termination decision model (TDM) data indicate that a termination (whole or partial) would be cost effective, such information shall be considered, along with other relevant information, in making a sound termination decision by the post-award acquisition specialist, in coordination with the supply planner for DLA direct items or customer account specialist (CAS) for customer direct items. Accordingly, unless termination is clearly not in the Government's best interest (see 43.103(a)(90)(1)(i)), all contract due-ins with positive potential savings shall be considered for cancellation/reduction regardless of the dollar value when workload permits. 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)).

## SUBPART 49.4 – TERMINATION FOR DEFAULT

*(Revised August 15, 2011 through PROCLTR 2011-31)*

### 49.402 Termination of fixed price contracts for default.

### 49.402-3 Procedure for default.

(S-90) Procedure for default of delivery orders against Federal supply schedule (FSS) contracts. Ordering offices shall furnish to the GSA contracting center responsible for the particular commodity the details concerning all material instances of unsatisfactory performance by the contractor, whether or not properly adjusted and settled. Ordering offices also shall report, as may be directed by the Federal supply service, all purchases made against the account of a contractor placed in default by that service.

### 49.402-6 Repurchase against contractor's account.

(b) The defaulted contractor shall not be solicited for the repurchase and award shall not be made to the defaulted contractor when the authority for the repurchase is the Default clause, unless the contracting officer determines that there are overriding concerns in the public interest which dictate solicitation of, or award to, the defaulted contractor of the repurchase quantity. When the defaulted contractor submits the low, acceptable offer at a price not higher than the defaulted contract price, the contracting officer shall make a public interest determination if the defaulted contractor is determined to be responsible on the repurchase action. Public interest determinations shall state the contracting officer's reasons for solicitation of, or award to, the defaulted contractor for the repurchase quantity. In such cases, the contracting officer must determine that the defaulted contractor has taken corrective action and is responsible. Authority for approval of all such public interest determinations is delegated, without redelegation authority to the chief of the contracting office at the Defense supply centers. The CCO at DLA Aviation may further delegate to the deputy director, supplier operations, contracting, and to:

(1) Commanders of DCMDs and Commander, DCMAI.

(2) Commander, DLA Distribution.

(3) Commander, DLA Disposition Services.

(4) Headquarters Complex Command, DLA Installation Support.

(5) Administrator, DLA Strategic Materials.

(6) Director, Defense Media Activity.

In the event that the low offeror is the defaulted small business or another small business and the contracting officer cannot find that small business responsible, the matter shall be referred to DLA, Director, DLA Acquisition (J7), prior to any referral to SBA for a certificate of competency.

(S-90) Consideration of administrative costs of reprocurement after termination for default. Contracting officers may insert a clause substantially the same as at 52.249-9000, Administrative costs of reprocurement after termination for default, in solicitations and contracts. Inclusion of this clause will place contractors on notice that, subsequent to reprocurement after termination for default, the Government reserves the right to assess specific administrative costs and make written demand for these costs in addition to other costs as addressed in FAR 49.402-6(c) and FAR 49.402-7(b).

**49.402-8 Reporting information.**

(S-90)(a) If the reporting requirements in FAR 42.1503(f)(1)(iii) or (iv) is applicable, contracting officers are responsible for ensuring the termination is reported in the FAPIIS module of the PPIRS using the procedures at PGI 49.402-8(90).

**49.403 Termination of cost reimbursement contracts for default.**

(c)(S-90) The reporting procedures at 42.402-8(90) and PGI 49.402-8(90) shall be followed for reporting terminations for default of a cost-reimbursement contract.

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## SUBPART 50.1 – GENERAL

### 50.105 Records.

(1)(iii)(a) Records required by DFARS 250.305-70 and 250.306-70 shall be forwarded to the DLA General Counsel, which shall maintain them as required by DFARS 250.105(1)(iii).

## SUBPART 50.2 – DELEGATION OF AND LIMITATIONS ON EXERCISE OF AUTHORITY

### 50.201 Delegation of authority.

(b)(S-90) Authority to approve actions under FAR Subpart 50.4, Residual powers, and DFARS Subpart 250.4 obligating $50,000 or less has been delegated to the DLA General Counsel and Deputy General Counsel.

### 50.201-70 Delegations.

(b) Defense agencies.

(1)(i) Authority to approve requests to obligate the Government in the amount of $50,000 or less and authority to disapprove proposed actions in any amount under the Act and the Executive Order, has been delegated to the DLA General Counsel and Deputy General Counsel.

(1)(ii) The following authority has been delegated to HCAs. This authority may be redelegated only to a staff official reporting directly to the HCA. Two copies of any redelegation shall be furnished to the DLA General Counsel, 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 50.203, 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 50.302-2 and 50.302-3, including, when necessary thereto, authority to modify, release, rescind, or cancel obligations of any sort and to extend delivery and performance dates.

## SUBPART 50.3 – CONTRACT ADJUSTMENTS

### 50.305 Processing cases.

(b) 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, DLA, shall have such responsibility after any case is forwarded for further processing.

### 50.306 Disposition.

**50.306-70 Record of disposition.**
In addition to the documents required to be submitted to the General Counsel, DLA, by DFARS 250.306(70)(a) and (b), when a contracting office denies a request, a copy of the letter of explanation to the contractor shall also be submitted.

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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 (direct vendor delivery, non-stocked items); and, Z (numeric stockage objective (NSO) items).

**51.101 Policy.**

(a)(4) A class deviation permits DLA contracting officers to authorize DLA contractors access to DLA-managed items under other-than cost-reimbursement contracts.

**51.102 Authorization to use Government supply sources.**

(a)(i) A class deviation to FAR Part 51.101(a) permits DLA contractors to access DLA sources of supply when such use is specifically authorized in their DLA contracts. This access will integrate advantageous pricing and/or delivery terms into DLA's new business arrangements.

(a)(ii) This deviation shall not apply to commodities where contractor access to discounted or favorable pricing is prohibited by law, such as pharmaceuticals.

(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. 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. DLA contractors will be authorized access to DLA sources of supply for NSN(s) or P/N(s) only when the contracting officer can clearly demonstrate a benefit to the Government as outlined in FAR 51.102(a). The rationale supporting this decision will be coordinated with the managing inventory control point (ICP), documented in writing for each NSN or P/N, signed by the contracting officer, approved by the procuring ICP director of contracting, and included in the contract file.

(f)(1)(a)(i) The authorizing ICP 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.

(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. In the case of improper use, the contracting officer shall determine the appropriate corrective action.

The contract shall include language requiring the contractor to ensure 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. The contracting officer should also monitor performance to ensure this is not occurring. 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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| 52.216-9062 | Economic Price Adjustment (EPA) Unitized Group Ration (UGR). |
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| 52.216-9065 | Economic Price Adjustment – Actual Material Costs for Subsistence Product Price Business Model. |
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| 52.216-9077 | [Reserved.] |
| 52.216-9078 | [Reserved.] |
| 52.216-9079 | [Reserved.] |
| 52.216-9080 | [Reserved.] |
| 52.216-9081 | [Reserved.] |
| 52.216-9082 | [Reserved.] |
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| 52.217-9002 | Conditions for Evaluation and Acceptance of Offers for Part Numbered Items. |
| 52.217-9003 | Manufacturing or Production Information. |
| 52.217-9004 | Reopener Clause - Cost of Specified Direct Materials/Other Direct Cost Item. |
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| 52.217-9008 | Surge and Sustainment (S&S) Evaluation. |
| 52.217-9009 | Surge and Sustainment (S&S) Pricing. |
| 52.217-9010 | Limitations on Use of Surge and Sustainment (S&S) Government Investment. |
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| 52.217-9023 | Restriction of Alternate Offers for Source Controlled Items. |
| 52.217-9024 | Special Provisions for Bulk Milk Dispensing Equipment (DLA Troop Support). |

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| 52.217-9029 | Exercise Quantity Options. |
| 52.219-9001 | Set-Asides of Acquisitions of Items Listed in the Schedule of Products Made in Federal Penal and Correctional Institutions. |
| 52.219-9002 | Defense Logistics Agency (DLA) Mentoring Business Agreements (MBA) Program. |
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| 52.219-9004 | Small Business Program Representations. |
| 52.219-9005 | [Reserved.] |
| 52.219-9006 | [Reserved.] |
| 52.219-9007 | [Reserved.] |
| 52.219-9008 | Combined Historically Underutilized Business Zone (HUBZone)/ Small Business Set-Aside Instructions – Type 1. |
| 52.219-9009 | Combined HUBZone/Small Business Set-Aside Instructions – Type 2. |
| 52.219-9010 | [Reserved.] |
| 52.219-9011 | [Reserved.] |
| 52.219-9012 | [Reserved.] |
| 52.219-9013 | Combined Set-Aside Instructions – Type 1. |
| 52.219-9014 | Combined Set-Aside Instructions – Type 2. |
| 52.219-9015 | Combined Service-Disabled Veteran-Owned Small Business/Small Business Set-Aside Instructions – Type 1. |
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| 52.219-9017 | Small Business Set-Aside Portion – Equal. |
| 52.219-9018 | Notification of Subcontracting Plan. |
| 52.222-9000 | Davis-Bacon Act - Price Adjustment. |
| 52.223-9000 | Material Safety Data Sheets and Hazard Warning Labels. |
| 52.223-9001 | Estimate of Re-Refined Oil Content. |
| 52.223-9002 | Anti-Stain Treatment (Untreated Wood Products). |
| 52.223-9003 | Marking Dangerous or Hazardous Materials. |
| 52.223-9004 | Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). |
| 52.223-9007 | Permission for Mercury (DLA Maritime). |
| 52.223-9008 | Hazardous Chemical Exposure (DLA Maritime). |
| 52.225-9000 | [Reserved.] |
| 52.225-9001 | [Reserved.] |
| 52.225-9002 | Foreign Military Sales (FMS) Shipping Instructions. |
| 52.225-9003 | Customs Clearance Procedures for United States (U.S.) Subsistence in the European Union. |
| 52.227-9000 | Commercial Manuals for Naval Shipboard Use Items. |
| 52.227-9001 | Evaluation of Offers for Manuals. |
| 52.227-9002 | Data – English Language. |
| 52.227-9003 | In Plant Equipment (IPE) Contract Data Requirements. |
| 52.227-9004 | Demilitarization – Small Arm Weapons and Parts and Accessories (Category I – Munitions List Items). |
| 52.227-9005 | Restrictions on Use of Boeing Rights Guard Technical Data. |
| 52.227-9006 | Use of Colt Industries Restricted Technical Data. |
| 52.227-9007 | Restrictions on Use of OTO Melara-Limited Rights Technical Data. |
| 52.227-9008 | Restriction on Use of FN Herstal Technical Data. |
| 52.228-9000 | Insurance. |
| 52.228-9001 | Bid Guarantee for Use in Negotiated Acquisitions. |
| 52.228-9002 | Additional Bond Security. |

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| 52.229-9000 | Kentucky sales and use tax exemption. |
| 52.229-9001 | United States (U.S) Department of Treasury Tax-Free Ethyl and Denatured Alcohol Permits. |
| 52.229-9002 | Tax Exemption Forms. |
| 52.229-9003 | Excise Tax Included (No Proof of Export). |
| 52.229-9004 | Federal Excise Tax. |
| 52.229-9005 | Federal Excise, State, Local Taxes Excluded from Contract Price. |
| 52.229-9006 | Tax Exemption Forms. |
| 52.229-9007 | United States (U.S) Department of Treasury Tax-Free Ethyl and Denatured Alcohol Permit. |
| 52.230-9000 | Submission of Data on Facilities Capital Cost of Money. |
| 52.230-9001 | Disclosure Statement Form – (Tank-Automotive and Armaments Command (TACOM) Depot Level Repairable (DLR) – DLA Land and Maritime). |
| 52.231-9000 | Pre-Contract Costs (Air Force Depot Level Repairable (DLR) – DLA Aviation). |
| 52.232-9000 | Progress Payment Data. |
| 52.232-9001 | Invoice Confirmation – Commercial Manuals. |
| 52.232-9002 | Tare Included or Excluded. |
| 52.232-9003 | Billing Weight and Payments for Carbon Steel or Steel Plate/Sheets. |
| 52.232-9004 | Purchase Card Purchases – Vendor Rebate Program (VRP). |
| 52.232-9005 | Invoicing Instructions (Time-and-Materials or Labor-Hour Contract). |
| 52.232-9006 | [Reserved.] |
| 52.232-9007 | Contractor's Remittance Address (Tank-Automotive and Armaments Command (TACOM) Depot Level Repairable (DLR) – DLA Land and Maritime). |
| 52.232-9008 | Constructive Acceptance. |
| 52.232-9009 | [Reserved.] |
| 52.232-9010 | Accelerated Payments to Small Business. |
| 52.233-9000 | Agency Protests. |
| 52.233-9001 | Disputes: Agreement to Use Alternate Disputes Resolution (ADR). |
| 52.236-9000 | Saftey, Fire Prevention, and Security. |
| 52.237-9001 | Contractor Personnel Changes and Key Personnel Requirements. |
| 52.237-9002 | Key Personnel – Fixed Price Service Contracts. |
| 52.237-9003 | Site Visit Coordinator. |
| 52.237-9004 | Evaluation – Contractor Installation or Verification of Installation. |
| 52.239-9000 | Y2K Compliance Notice. |
| 52.242-9000 | Production Progress Reports. |
| 52.242-9001 | Notification of Shipment. |
| 52.242-9002 | Manufacturing Directive Number (MDN) for Use in Identifying Government-Furnished Property (GFP) Transactions Property (GFP) Transactions. |
| 52.242-9003 | [Reserved.] |
| 52.242-9004 | [Reserved.] |
| 52.242-9005 | Report of Shipment of Perishable Medical Items - DLA Troop Support – Medical. |
| 52.242-9006 | Delay of Installation for Medical and Laboratory Instrumentation DLA Troop Support – Medical. |
| 52.242-9008 | Technical Direction. |
| 52.242-9009 | Correspondence Regarding Meal, Ready-to-Eat (MRE) and Tray Pack Contracts. |
| 52.242-9010 | Title of Containers and Packaging Materials. |
| 52.242-9011 | [Reserved.] |
| 52.242-9012 | Notice of Availability. |
| 52.242-9013 | Responsibility for administration and inspection. |

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| 52.243-9000 | Design Change - Supply Items (Army Aviation and Missile Command (AMCOM) Depot Level Repairable (DLR) – DLA Aviation). |
| 52.245-9001 | Evaluation of Use of Government Furnished Property (GFP). |
| 52.245-9002 | Use of Government Furnished Property (GFP). |
| 52.245-9003 | Transportation Costs of Government Furnished Property (GFP). |
| 52.245-9005 | Government-Owned Tooling. |
| 52.245-9006 | Use of Government-Owned Tooling. |
| 52.245-9007 | Use of Government-Owned Special Tooling or Test Equipment. |
| 52.245-9008 | Use of Government Facilities on a No Charge Basis. |
| 52.245-9009 | Government-Furnished Property (GFP). |
| 52.245-9010 | Government-Furnished Property (GFP): Hubs, Dies, Molds, Shaping Blocks, Guide Samples, and Inspection Gauges. |
| 52.245-9011 | Government-Furnished Material (GFM) (Bailment System) and Property Administration. |
| 52.245-9012 | Government-Furnished Property (GFP) - Cloth Only. |
| 52.245-9013 | Provisions Relating to Materials to Be Furnished by the Government (Non-Bailment) - Footwear. |
| 52.245-9014 | Government-Furnished Property (GFP) Provisions – Dyeing and Finishing Contracts. |
| 52.245-9015 | Dyeing and Finishing of Textiles. |
| 52.245-9016 | Availability of Clothing Patterns. |
| 52.245-9017 | Ownership of Overruns Containing Government-Furnished Property (GFP). |
| 52.245-9018 | Government-Furnished Material – National Industries for the Blind (NIB) and National Industries for the Severely Handicapped (NISH). |
| 52.245-9019 | Government-owned Property (Bulk Storage Contract). |
| 52.245-9020 | Cartoons and Guide Samples for Embroidered Insignia. |
| 52.245-9021 | Government Samples. |
| 52.245-9022 | Sized Items. |
| 52.245-9023 | Firm and Flexible Sizes. |
| 52.245-9024 | Special Measurements. |
| 52.245-9025 | Contractor Control of Government-Furnished Property (GFP). |
| 52.245-9026 | Special Instructions for Compressed Gas Requirements (Includes Federal Supply Classes (FSCs) 6830 and 8120). |
| 52.245-9027 | Government-Furnished Property (GFP) Mechanical Gauges (Loaned) (Includes Federal Supply Classes (FSCs) 5995 and 6150). |
| 52.245-9028 | Allowable Losses for Meal, Ready-to-Eat (MRE) and Tray Pack Government-Furnished Property (GFP). |
| 52.246-9000 | Certificate of Quality Compliance. |
| 52.246-9001 | Manufacturing Process Controls and In-process Inspections. |
| 52.246-9002 | Product Certification and Test Report(s) (Metals). |
| 52.246-9003 | Measuring and Test Equipment. |
| 52.246-9004 | Product Verification Testing. |
| 52.246-9005 | Note to Contractor for Inspection (Air Launch and Recovery Equipment) (ALRE)). |
| 52.246-9006 | [Reserved.] |
| 52.246-9007 | Inspection and Acceptance at Destination. |
| 52.246-9008 | Inspection and Acceptance at Origin. |
| 52.246-9009 | Lubricating Oil, Internal Combustion Engine MS9250 (A Qualified Product). |
| 52.246-9010 | Determination of Quantity Specific to Lubricating Oils. |
| 52.246-9011 | Liquefied Petroleum Gases Quality Assurance. |
| 52.246-9012 | Preparation for Delivery and Inspection of Fresh Fruits and Vegetables. |
| 52.246-9013 | Contractor and Government Samples at Origin. |

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| 52.246-9014 | Certificate of Conformance. |
| 52.246-9015 | [Reserved.] |
| 52.246-9016 | [Reserved.] |
| 52.246-9017 | [Reserved.] |
| 52.246-9018 | Shipping Documents Supplied to Assembly Contractors. |
| 52.246-9019 | Material and Inspection Report. |
| 52.246-9020 | Distribution of Material Inspection and Receiving Report. |
| 52.246-9021 | Source Inspection Provisions. |
| 52.246-9022 | Inspection System Requirement-Foreign Manufactured Items. |
| 52.246-9023 | General Inspection Requirements. |
| 52.246-9024 | Alternative Inspection Requirements for Selected Items. |
| 52.246-9025 | Reinspection of Nonconforming Supplies. |
| 52.246-9026 | Inspection Fees – Petroleum Products. |
| 52.246-9027 | Inspection of Bulk Deliveries – Petroleum Products. |
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| 52.246-9029 | Inspection and Acceptance Points. |
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| 52.246-9031 | Shade Evaluation. |
| 52.246-9032 | Identification of Qualified Laboratory and Source Sampling. |
| 52.246-9033 | Operational Check of Equipment Items. |
| 52.246-9034 | Testing at Government Laboratory. |
| 52.246-9035 | Acceptance of Medical and Laboratory Instrumentation. |
| 52.246-9036 | Acceptance of Installation for Medical and Laboratory Instrumentation. |
| 52.246-9037 | Orders for Repair of Medical Equipment. |
| 52.246-9038 | Installation of Medical and Laboratory Instrumentation. |
| 52.246-9039 | Removal of Government Identification from Non-Accepted Supplies. |
| 52.246-9040 | Inspection and Acceptance - Supervision of Installation. |
| 52.246-9041 | Government Loss or Damage. |
| 52.246-9042 | Documentation of Traceability - QPL/QML Integrated Circuits, Hybrid Microcircuits, and Semiconductor Devices. |
| 52.246-9043 | Higher-level Contract Quality Requirement (Non-manufacturers). |
| 52.246-9044 | Sanitary Conditions. |
| 52.246-9045 | Federal Food, Drug and Cosmetic Act-Wholesale Meat Act. |
| 52.246-9046 | Phytosanitary Certificates for Export Shipments of Produce. |
| 52.246-9047 | Entry into Plant by Government Employees for Meal, Ready-to-Eat (MRE) and Tray Pack Items. |
| 52.246-9048 | Packed Cracker Packets. |
| 52.246-9049 | Storage of Semi-perishable Components for Meal, Ready-to-eat (MRE) and Tray Pack. |
| 52.246-9050 | Acquisition of Liquids in Bulk Quantities. |
| 52.246-9051 | Repackaging of Hazardous Material. |
| 52.246-9052 | Warranty of Supplies. |
| 52.246-9053 | Commercial Warranty. |
| 52.246-9054 | Warranty – Acceptance of Supplies. |
| 52.246-9055 | Warranty of Supplies and Virtual Prime Vendor. |
| 52.246-9056 | Warranty Period for Overseas Shipments. |
| 52.246-9057 | Warranty of Data. |
| 52.246-9058 | Warranty of Supplies. |
| 52.246-9059 | Warranty of Supplies (Commercial Items). |
| 52.246-9060 | Warranty of Supplies (Commercial Items) (Fill-In). |

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| 52.246-9061 | Warranty of Industrial Plan Equipment (IPE) – Federal Supply Group (FSG) 34. |
| 52.246-9062 | Repackaging to Correct Packaging Deficiencies. |
| 52.246-9063 | Warranty of Supplies, Extended (66 Months). |
| 52.246-9064 | Quality Conformance Inspection Requirements. |
| 52.246-9065 | Protection from Degradation due to Electrostatic/Electromagnetic Forces. |
| 52.246-9066 | Documentation of Traceability. |
| 52.246-9070 | Commercial Bills of Lading (Bulk) (DLA Energy). |
| 52.246-9071 | Drawing for Inspection (Logistics Command (LOGCOM) Depot Level Repairable (DLR), DLA Land and Maritime. |
| 52.246-9072 | Government Inspection (DLA Disposition Services). |
| 52.246-9073 | Use Of Commercial Concerns to Perform Inspection of Services and Facilities (DLA Disposition Services). |
| 52.246-9080 | Points of Inspection and Acceptance (DLA Energy). |
| 52.246-9081 | Certificate of Conformance (DLA Energy). |
| 52.246-9082 | [Reserved.] |
| 52.246-9083 | Liability for Warehouse Charges for Perishable Cold Storage Items Due to Receipt of Defective Supplies. |
| 52.246-9084 | [Reserved.] |
| 52.246-9085 | Production Lot Testing (PLT) – Government. |
| 52.246-9086 | Production Lot Testing (PLT) – Contractor. |
| 52.246-9087 | [Reserved.] |
| 52.246-9088 | [Reserved.] |
| 52.246-9089 | [Reserved.] |
| 52.246-9090 | [Reserved.] |
| 52.246-9091 | [Reserved.] |
| 52.246-9092 | [Reserved.] |
| 52.246-9093 | Inspection Standards Wood Products. |
| 52.246-9094 | Level I Material Certification (DLA Maritime-Norfolk). |
| 52.247-9000 | Guaranteed Maximum Shipping Weights or Dimensions. |
| 52.247-9001 | Port Handling and Ocean Costs in Bid Evaluation. |
| 52.247-9003 | [Reserved.] |
| 52.247-9004 | [Reserved.] |
| 52.247-9005 | [Reserved.] |
| 52.247-9006 | Free on Board (F.o.b.) Destination Price Quoting Instructions -- Overseas Direct Vendor Delivery (DVD) and Navy Ships. |
| 52.247-9007 | Free on Board (F.o.b.) Destination Price Quoting Instructions – Contiguous United States (CONUS) Direct Vendor Delivery (DVD). |
| 52.247-9008 | Free on Board (F.o.b.) Destination Price Quoting Instructions – Foreign Military Sales (FMS). |
| 52.247-9009 | Free on Board (F.o.b.) Destination Price Quoting Instructions -- Canadian Foreign Military Sales (FMS). |
| 52.247-9010 | Free on Board (F.o.b.) Destination Price Quoting Instructions – Shipment to Depot. |
| 52.247-9011 | Vendor Shipment Module (VSM). |
| 52.247-9012 | Requirements for Treatment of Wood Packaging Material (WPM). |
| 52.247-9013 | Free on Board (F.o.b.). Origin and/or F.o.b. Port(s) of Loading (Destination) in Offer Evaluation. |
| 52.247-9014 | Evaluation of Offers via Export Aerial Ports. |
| 52.247-9015 | Loading Capabilities for Bulk Shipments. |
| 52.247-9016 | Free on Board (F.o.b.). Destination Contractor Transshipment. |

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| 52.247-9017 | Perishable Foodstuff Transportation. |
| 52.247-9018 | Utilization of Containers (Seavans) for Export Shipments. |
| 52.247-9019 | Shipments Direct to Port Terminals for Export. |
| 52.247-9020 | Advance Notice of Late, Short or Non-Shipment of Supplies. |
| 52.247-9021 | Free on Board (F.o.b.). Origin Contracts for Supplies Originating Outside the United States. |
| 52.247-9022 | Evaluation of Transportation Costs – Order Quantity. |
| 52.247-9023 | Evaluation of Transportation Costs – Bulk Shipments. |
| 52.247-9024 | Free on Board (F.o.b.). Origin by Non-CONUS or Non-Canadian Offerors for Delivery to Consignees Within Contiguous United States (CONUS) or Canada. |
| 52.247-9025 | Free on Board (F.o.b.). Origin by Non-Contiguous United States (CONUS) or Non-Canadian Offerors for Delivery to Consignees Outside CONUS or Canada. |
| 52.247-9026 | Evaluation of Offers Invited for Both Free on Board (F.o.b.). Origin and F.o.b. Destination. |
| 52.247-9027 | Evaluation of Offers for Quantity Increments. |
| 52.247-9028 | Premium Transportation. |
| 52.247-9029 | Shipping Instructions. |
| 52.247-9030 | Commercial Shipping Documents. |
| 52.247-9031 | Manufacturer's Loading Practices. |
| 52.247-9032 | Delivery Conditions for Transport Trucks, Trucks and Trailers or Tank Wagons. |
| 52.247-9033 | Transport Truck and/or Truck and Trailer Free Time and Detention Rates. |
| 52.247-9034 | Point of Contact for Transportation Instructions. |
| 52.247-9035 | Shipping Instructions (Domestic). |
| 52.247-9036 | Shipping Instructions (Export). |
| 52.247-9037 | Trans-shipment of Material through DLA Containerization and Consolidation Points (CCP). |
| 52.247-9038 | Shipping Instruction for DLA Direct Acquisitions. |
| 52.247-9039 | Alaska Remote Supply (Project Code 175). |
| 52.247-9040 | Greenland Remote Supply (Project Codes Y31 and 145). |
| 52.247-9041 | Delivery Times. |
| 52.247-9042 | Wartime Utilization of Contract Vehicles (Contingency Contract) (Republic of Korea). |
| 52.247-9043 | [Reserved.] |
| 52.247-9044 | Transportation of Wood Products. |
| 52.247-9045 | Alaskan, Hawaiian or Puerto Rican Requirements. |
| 52.247-9046 | [Reserved.] |
| 52.247-9047 | Evaluation – Free on Board (F.O.B.) Origin –Special Condition. |
| 52.247-9048 | Guaranteed Shipping Characteristics. |
| 52.247-9049 | Evaluation - Free on Board (F.O.B.) Origin - Shipments Originating in Puerto Rico. |
| 52.247-9050 | Evaluation -- Palletized Shipments. |
| 52.247-9056 | Addendum to FAR 52.247-29 Free on Board (f.o.b.) Origin. |
| 52.247-9057 | Shipment of Government Property Government and Contractor Responsibility. |
| 52.248-9000 | Evaluation of Offers Using Alternate Value Engineering Change Proposals (VECPs) Method. |
| 52.248-9001 | Exemption from Value Engineering. |
| 52.248-9002 | Offers Using Alternate Value Engineering Change Proposal (VECP) Method and Specifications/Drawings. |
| 52.249-9000 | Administrative Costs of Reprocurement after Default. |

## 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).

(f) Dates. Provisions and clauses in this directive that were formerly in the Defense Logistics Procurement Regulation (DLPR) bear the DLPR date when the provision or clause was transferred verbatim to this directive or when only editorial changes were made. If significant editorial changes were made to clauses or provisions in this edition, for example, under Procurement Letter (PROCLTR) 2012-11, the date has been changed.

### 52.102 Incorporating provisions and clauses.

(b)(S-90) The following web addresses shall be inserted in the spaces provided for this purpose in the provision at FAR 52.252-1, Solicitation Provisions Incorporated by Reference, and the clause at FAR 52.252-2, Clauses Incorporated by Reference: http://www.dla.mil/Acquisition and http://farsite.hill.af.mil/. The web pages referenced will provide links to all provisions and clauses (Federal Acquisition Regulation (FAR), Defense Federal Acquisition Regulation Supplement (DFARS), and Defense Logistics Acquisition Directive (DLAD)) that are incorporated by reference in Defense Logistics Agency (DLA) solicitations and awards. J71 shall maintain the web page and the DLAD provisions and clauses. Buying activities shall maintain their local provisions and clauses.

Buying activities shall also ensure that quality assurance provisions (QAPs), contract data requirements lists (CDRLs), and other similar contract requirements can be accessed electronically and are incorporated by reference. If the electronic address where these documents can be accessed is other than the Web page referenced above, that address shall also be identified in FAR 52.252-1 and 52.252-2.

Archive databases of provisions, clauses, and other contract requirements that are incorporated by reference and have been superseded within the last three years (or longer period, if determined appropriate by the buying activity) shall also be maintained and made accessible electronically. The archive database shall identify a point of contact who can provide older documents that are not available in the archive database. J71 and the buying activities shall maintain the DLAD and local archives, respectively.

Buying activities may identify reasonable circumstances when incorporation in full text is appropriate, such as the following:

For approximately the first six months after a significant new policy is issued (e.g., Central Contractor Registration);

When incorporation by reference is not practical, effective, or efficient (e.g., when a provision or clause is almost entirely composed of fill-ins);

When noncompliance with contract terms is significantly reduced by incorporation in full text; or

When incorporation in full text is more suitable to the nature of the business segment (e.g., for commodities subject to voluminous technical requirements that change frequently).

## SUBPART 52.2 – TEXTS OF PROVISIONS AND CLAUSES

*(Revised March 22, 2012 through PROCLTR 2012-31)*

**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.

**52.201-9001 Ordering Officers under the Contract.**
As prescribed in 1.603-90(b), insert the following clause:

ORDERING OFFICERS UNDER THE CONTRACT (NOV 2011)

(a) Ordering officers are authorized to place and sign delivery orders that are expressly within the terms and conditions of this contract. Ordering officers, however, are not authorized to sign purchase orders or contracts and cannot take any action to charge the account of the Contractor unless they are also Contracting Officers.

(b) Ordering officers are authorized to modify delivery orders and perform all administrative functions pertaining to such orders including termination of the order for late deliveries and other product nonconformances.

(c) In the case of a termination, the applicable agency, commissary, or activity may reprocure the supplies locally. The ordering officer shall also notify the Defense Logistics Agency (DLA) Contracting Officer of all terminations and repurchase actions which were processed under the indefinite delivery contract.

(d) Delivery orders outside the expressed terms and conditions of the contract shall be signed by the DLA Contracting Officer. Further limitations on the authority of the ordering officer may be stated elsewhere in the contract or in the letter of appointment.

(e) [ ] If checked, the following individuals are appointed ordering officers under this contract:

**Appointed Ordering Officer(s) for Contract (Number)**

| Name | Title |
|---|---|
| | |

(End of Clause)

**52.204-9000 Contractor Personnel Security Requirements.**

As prescribed in 4.1303-90, insert the following clause:

CONTRACTOR PERSONNEL SECURITY REQUIREMENTS (MAR 2012)

(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) or other DLA field activity office(s), with physical access to a Federally-controlled facility. Prior to beginning work on a contract, DLA and its field activity offices require all contractor personnel working on the Federally-controlled facility to have a favorably adjudicated National Agency Check with Written Inquiries (NACI) or NACI equivalent.

(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 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, 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 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 Personnel Security Office will relay this information to the Contractor and Contracting Officer for further action.

(3) The Contracting Officer will ensure that the respective DLA Personnel Security Office initiates the investigation for the required clearance level(s) of the Contractor personnel.

(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 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 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 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 Personnel Security Office at the time of fingerprinting or prior to the DLA Security Office releasing the investigation to the Office of Personnel Management.

(h) Upon completion of the NACI, NACLC, SSBI, or other sufficient, appropriate investigation, the results of the investigation will be forwarded by the office performing the investigation to either the appropriate adjudication facility for eligibility determination or the DLA Intelligence Security Division 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 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 the office performing the investigation to the Defense Industrial Security Clearance Office (DISCO) or DLA Intelligence Personnel Security Office.

(i) A waiver for an IT-I or IT-II position 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 request for a waiver must be approved by the Commander/Director or an authorized representative of the site. The cognizant DLA Personnel Security Office reserves the right to determine whether a waiver request will be forwarded for processing, however, there will be no waiver for an IT-III position. 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 as provided by the DLA site Information Systems Security Officer. 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 is also required to obtain a common access card (CAC) for each contractor employee in accordance with procedures established at the DLA HQ or field activity office. When a CAC is required, the Contracting Officer will ensure that the contractor follows the requirements of Homeland Security Presidential Directive 12.

(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 Contractor shall notify the contracting officer in writing, within 12 hours, when a Contractor employee working on this contract resigns, is reassigned, 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 Security Office 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) 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 set forth in the contract, or waive the delivery schedule in any way. The Contractor shall meet the required delivery schedule 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)

**52.204-9002 Solicitation Provisions and Contract Clauses Statement.**
As prescribed in 4.502-90 insert the following clause:

SOLICITATION PROVISIONS AND CONTRACT CLAUSES STATEMENT (NOV 2011)

Full text of all Defense Logistics Acquisition Directive (DLAD) clauses listed within this individual solicitation are contained in the Part 52 – Solicitation Provisions and Contract Clauses, current version found at http://www.dla.mil/Acquisition. Also, the full text of Federal Acquisition Regulation

(FAR)/Defense Federal Acquisition Regulation Supplement (DFARS) clauses incorporated by reference may be accessed.

(End of Clause)

**52.204-9003 [Reserved.]**

**52.204-9004 Administrative Deselect.**
As prescribed in 4.103-90, insert the following clause:

ADMINISTRATIVE DESELECT (NOV 2011)

The following clause(s) included in the solicitation if checked has been determined not applicable for this award.

( ) Federal Acquisition Regulation (FAR) 52.232-33 - Payment by Electronic Funds Transfer - Central Contractor Registration

( ) Defense Federal Acquisition Regulation Supplement (DFARS) 252.242-7004 - Material Management and Accounting System

(End of Clause)

**52.204-9005 Distribution of Contract to Agent.**
As prescribed in 4.202-90, insert the following provision:

DISTRIBUTION OF CONTRACT TO AGENT (AUG 2008)

Foreign Contractors that require a copy of contract to be mailed to an agent in the United States will insert agent's name and address below:

_____

_____

(End of Provision)

**52.205-9000 Federal Business Opportunities (FedBizOpps.gov).**
As prescribed in 5.207-90, insert the following provision:

FEDERAL BUSINESS OPPORTUNITIES (FedBizOpps.gov) (JUL 2008)

Based upon market research, the Government is not using the policies contained in Part 12, Acquisition of Commercial Items, in its solicitation for the described supplies or services. However, interested persons may identify to the Contracting Officer their interest and capability to satisfy the Government's requirement with a commercial item prior to the solicitation closing date.

(End of Provision)

**52.206-9000 Domestic or Canadian Source Performance Restriction (DLA Energy).**
As prescribed in 6.302-3-70(90), insert the following clause:

DOMESTIC OR CANADIAN SOURCE PERFORMANCE RESTRICTION (DLA ENERGY) (NOV 2011)

(a) The Contractor hereby agrees, by submission of its offer, that each end product furnished under this contract shall be manufactured or produced in the United States (U.S.), its outlying areas, or Canada. The Contractor agrees to furnish product only from the source(s) identified below:

| Source | Location |
|---|---|
| | |
| | |

(b) The Contractor shall not change the source of supply without express written consent from the Contracting Officer.

(End of Clause)

**52.208-9000 Price Adjustment on Federal Prison Industries, Incorporated (FPI) Contracts/Orders.**
As prescribed in 8.604(c)(90)(i), insert the following clause:

PRICE ADJUSTMENT ON FEDERAL PRISON INDUSTRIES, INCORPORATED (FPI) CONTRACTS/ORDERS (NOV 2011)

The unit price in this contract/order is subject to later adjustment if necessary to incorporate the results of agreement between the Commissioner of FPI and the Director, DLA Acquisition (J7), DLA Headquarters (HQ), or their authorized representatives. The arbitration provision of Section 4124 of Title 18, United States Code, shall not be exercised except in the case of a disagreement on the part of the Commissioner, FPI and the Director, DLA Acquisition (J7), DLA HQ.

(End of Clause)

**52.208-9001 Acquisition of Federal Prison Industries, Incorporated (FPI) items.**
As prescribed in 8.602(a)(i)(90), 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)

**52.208-9002 Defense Logistics Agency Mandatory Source Requirements.**
As prescribed in 8.406-1(90), insert the following clause:

DEFENSE LOGISTICS AGENCY (DLA) MANDATORY SOURCE REQUIREMENT (NOV 2011)

The virtual prime vendor (VPV) is required to use DLA as the source of supply to fill customer requirements for all items identified on the contract as DLA mandatory source items. DLA mandatory source items are defined as those items, which have been placed on long term requirements contracts (Federal Acquisition Regulation (FAR) clause 52.216-21, Requirements) or are from a statutorily authorized or required source such as UNICOR / Federal Prison Industries, Incorporated (FPI). Each VPV will establish direct order and payment procedures with the long-term requirements contract holder.

(End of Clause)

**52.208-9003 Precious Metals Not Furnished.**
As prescribed in 8.7305(a)(S-90), insert the following clause:

PRECIOUS METALS NOT FURNISHED (MAR 2012)

No precious metals or other property will be furnished by the Government for performance of this contract; therefore, Federal Acquisition Regulation (FAR) clause 52.245-1 is not applicable to this contract.

(End of Clause)

**52.208-9007 Precious Metals (Government-Furnished Property).**
As prescribed in 8.7305(a)(1), insert the following clause:

PRECIOUS METALS (GOVERNMENT-FURNISHED PROPERTY) (MAR 2012)

(a) Government-furnished (GF) precious metal: The Government intends to furnish precious metal, which for the purposes of this clause is defined as [Contracting Officer to insert type of precious metal]. The following conditions governing Government-furnished precious metal shall apply:

(1) Only the type of precious metal described herein, in the quantity cited in paragraph (b)(1) of this clause, will be furnished by the Government at the Government's expense;

(2) Government-furnished precious metal will be valued for all purposes at $[Contracting Officer to insert dollar value] per troy ounce of precious metal in the initial year of the contract, and any adjustments required by this clause will be computed on such basis except as noted hereafter;

(3) The yearly valuation may change in subsequent years of the contract as directed by the Government’s precious metals recovery program, and any adjustments required by this clause will be computed on the basis of the valuation in effect at the time of the adjustment; and

(4) Valuation and adjustments in evaluation are solely at the discretion of the Government.

(b) Provisions relating to materials to be furnished by the Government:

(1) The contract unit price is based on Government-furnished precious metal being provided by the Government. The Government will provide to the Contractor within sixty (60) days after award a total of [Contracting Officer to insert number] troy ounces of precious metal with a minimum purity of 99.90 percent and a per troy ounce dollar value as indicated in paragraph (a)(2) of this clause. The quantity of precious metal to be furnished will be determined by the number of troy ounces of 99.90 percent pure precious metal (or fraction thereof) in each end item (as indicated by the end item percentage of precious metal cited in the procurement item description, Government specifications, or other technical data), multiplied by the total number of end items (which contain precious metal) to be delivered under the contract. (The quantity of precious metal to be furnished does not include any additional percent deliverable under a variation in quantity clause, if such a clause is contained in the contract.)

(2) Only the type of precious metal described herein, in the quantity cited in paragraph (b)(1) of this clause, will be furnished by the Government at the Government's expense; and

(3) The yearly valuation may change in subsequent years of the contract as directed by the Government's precious metals recovery program, and any adjustments called for will be computed on such basis.

(4) Government-furnished precious metal will be delivered to the Contractor free on board (f.o.b.) at or near the Contractor's plant; or a Subcontractor's plant, if the Contractor elects to identify a Subcontractor to receive the Government-furnished precious metal. The Contractor shall be responsible for the Government-furnished precious metal upon arrival at the plant designated by the Contractor in the space provided below. Any subsequent forwarding of the Government-furnished precious metal from the subcontractor's plant to the prime Contractor's plant shall be the full responsibility of the prime Contractor. The offeror shall insert in the space below the name and complete address of the plant to which the Government-furnished precious metal is to be delivered and a point of contact with phone number:

Plant: _____
Location: _____
Point of contact with phone number: _____

(5) The delivery date(s) for supplies to be furnished by the Contractor under this contract are based upon the expectation that Government-furnished precious metal will be provided and that such precious metal, suitable for use, will be delivered to the Contractor within sixty (60) days after award. If Government-furnished precious metals are not received within sixty (60) days, the Contractor shall notify the Contracting Officer.

(i) If Government-furnished precious metal in the quantity called for in paragraph (b)(1) of this clause is not delivered to the Contractor, the contract unit price shall be increased by an amount computed based on the amount of Government-furnished precious metal not supplied, multiplied by the dollar value of a troy ounce of precious metal as provided in paragraph (a)(2) of this clause, and then divided by the total number of end items (which contain precious metal) being procured.

(ii) If the Government-furnished precious metal provided does not meet the purity standard specified in paragraph (b)(1) of this clause, or if the purity standard of the Government-furnished precious metal is not adequate for the Contractor's use, the Contractor shall, upon receipt of the Government-furnished precious metal, notify the Administrative Contracting Officer (ACO) of such fact. If the ACO directs the Contractor to return the Government-furnished precious metal, the contract unit price shall be

increased by an amount computed based on the amount of Government-furnished precious metal returned, multiplied by the dollar value of a troy ounce of precious metal as provided in paragraph (a)(2) of this clause, and then divided by the total number of end items (which contain precious metal) being procured.

(6) The Contractor shall establish and maintain property control records, either manual or automated, in a manner that adequately reflects and maintains accountability for the amount of Government-furnished precious metal for which it is accountable, in accordance with FAR 52.245-1(f)(1). These Contractor-maintained records shall be the official contract property record. If any Government-furnished precious metal is in the possession of a subcontractor, the prime Contractor shall bear the responsibility of ensuring that adequate records are created and maintained by the subcontractor in accordance with this requirement and FAR 52.245-1.

(7) Use of Government-furnished precious metal: When authorized by the Contracting Officer in accordance with FAR 52.245-1(c)(1), the Government-furnished precious metal provided under this contract may be commingled with the Contractor's property and used in the manufacture of items or supplies.

(8) Risk of loss: The Government shall at all times have title to Government-furnished precious metal in the Contractor's possession in a quantity equal to that supplied as Government-Furnished property, less the quantity contained in the item(s) already delivered to the Government. Unless otherwise provided in this contract, the Contractor assumes the risk of, and shall be responsible for, any loss of or damage to Government-furnished precious metal provided under this contract upon delivery of the precious metal to the plant specified by the Contractor in subparagraph (b)(4)of this clause. The Contractor shall be responsible for delivery of Government-furnished precious metal to the Government in the quantity supplied as Government-furnished property, less the quantity contained in the end items already delivered to the Government, computed based on the amount of precious metal in each end item, multiplied by the total number of end items (that contain Government-furnished precious metal) already delivered to the Government.

(9) Access: The Government, and any persons designated by it, shall at all reasonable times have access to the premises wherein any Government-furnished precious metal is located, and to the Contractor-maintained property control records as required in paragraph (b)(6) of this clause, for the purpose of inspecting the Government property and any records pertaining thereto.

(10) Final accounting and disposition of Government-furnished precious metal: Upon completion of this contract, or at such earlier dates as may be fixed by the ACO, the Contractor shall submit, in a form acceptable to the ACO, inventory schedules covering the quantity of Government-furnished precious metal not consumed in the performance of the contract or not theretofore delivered to the Government in the end item(s), computed based on the total amount of Government-furnished precious metal furnished, less the total number of end items (which contain Government-furnished precious metal) delivered to the Government, and then multiplied by the amount of precious metal in each end item; and shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property, as may be directed by the ACO.

(11) Communications. All communications issued pursuant to this clause shall be in writing.

(12) The Contractor shall include this clause in any subcontract where the Contractor may furnish the subcontractor with Government-furnished precious metal provided to the Contractor pursuant to this clause.

(End of Clause)

**52.208-9008 Evaluation of Offers for Items Containing Precious Metals.**
As prescribed in 8.7305(a)(2), insert the following provision:

EVALUATION OF OFFERS FOR ITEMS CONTAINING PRECIOUS METALS (MAR 2012)

(a) The Offeror shall submit two prices for each contractually deliverable item containing precious metal: one based on Government-furnished (GF) precious metal and one based on Contractor-furnished precious metal. Failure of the Offeror to submit two prices may result in a determination that the offer is unacceptable. The cost of Government-furnished precious metal stated in 52.208-9007(a)(2) will be considered in evaluating offered prices based on the Government furnishing precious metal. Award will be made for the price determined to be in the best interest of the Government, except that use of Government-furnished precious metal is mandatory when the quantity required is one hundred (100) troy ounces or more.

(b) If it is deemed in the best interest of the Government to provide Government-furnished precious metal, which for the purposes of this provision is defined as [Contracting Officer to insert type of precious metal], the accepted offered price will be that which does not include the cost of Contractor-furnished precious metal.

(c) Subject to the Government's approval, the quantity of Government-furnished precious metal to be furnished will be determined by the offeror's precious metal requirement as indicated in paragraph (b) of the clause at DFARS 252.208-7000 of its offer (see Section M). The Government estimates a total of [Contracting Officer to insert number] troy ounces of precious metal are needed to produce all the end items being procured. This estimate is based on the amount of precious metal in each end item (as indicated by the end item percentage of precious metal cited in the procurement item description, Government specification, or other technical data), multiplied by the total number of end items (which contain precious metal) to be delivered under the contract.

(End of Provision)

**52.209-9000 Qualified Products List (QPL) Connector Assemblies and QPL Electrical Contacts.**
As prescribed in 9.203(a)(90), 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 9.290(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)

**52.209-9003 Pre-Award Sample(s).**
As prescribed in 9.308-2(90), insert the following provision:

PRE-AWARD SAMPLE(S) (NOV 2011)

(a) The submission of samples of supplies proposed to be furnished by the successful offeror may be required prior to making any award under this solicitation. The following item(s), in the quantity/quantities specified, is (are) subject to this pre-award sample provision:

| Item Number | Number of Units Required |
|---|---|
| | |

(b) Any offeror who has not previously furnished to the Government the items called for under this solicitation, or substantially similar items, may be requested to submit samples to the Government prior to award at no cost to the Government. Samples must be submitted within the time specified by the Government and must be produced by the offeror or its designated subcontractor at the place of performance identified by the offeror in this solicitation. Together with the pre-award samples, the offeror shall submit its protocol consisting of an analysis of materials and test data which establishes that the offered item conforms to all design and performance characteristics specified in this solicitation. Additional pre-award samples and Contractor-supplied protocol will not be accepted or requested if the original samples and protocol are not satisfactory.

(c) Samples will be shipped to DLA Troop Support, Directorate of Medical Materiel Laboratory, attention: Code MQA, 700 Robbins Avenue, Philadelphia, Pennsylvania 19111-5092, unless otherwise directed by the Contracting Officer. In the submission of samples:

(1) Samples and protocol, consisting of test data and analysis of materials, shall be submitted at no cost to the Government within 15 calendar days after receipt by the offeror of the Government's request for such samples.

Note: Offerors are cautioned that the submission time is vital to the Government in making a timely award. Offerors must be prepared to submit samples and protocol timely, as late receipt may render the offer ineligible for award.

(2) The Contracting Officer shall advise the offeror of the results of the evaluation by written notice within _____calendar days after receipt of the sample.

(d) The samples referred to in the preceding paragraphs are not bid samples; rather, these samples are for the purpose of establishing the offeror's capability, if awarded a contract, to produce items conforming to the specifications. Failure to furnish the requested number of samples within the time specified above, failure to furnish samples conforming to the specifications, or failure to furnish the protocol, consisting of test data and analysis of materials required by the preceding paragraph, may result in rejection of the offer. Offerors are cautioned that upon receipt of any award hereunder, they are obliged to deliver supplies which comply with the specifications regardless of whether any sample submitted hereunder deviates in any way from the specification requirements.

(End of Provision)

**52.209-9004 Sources for Clothing/Textile Components - National Industries for the Blind (NIB) and National Industries for the Severely Handicapped (NISH).**
As prescribed in 9.404-90, insert the following clause:

SOURCES FOR CLOTHING/TEXTILE COMPONENTS – NATIONAL INDUSTRIES FOR THE BLIND (NIB) AND NATIONAL INDUSTRIES FOR THE SEVERELY HANDICAPPED (NISH) (NOV 2011)

The Contractor shall insure that no purchase of any cloth or textile components, for use in the performance of this order, shall be made from any firm appearing on the current list of parties excluded from Federal procurement and nonprocurement programs.

(End of Clause)

**52.209-9005 Identification of Sources for All Components for Clothing/Textile Items.**
As prescribed in 9.404-91, insert the following provision:

IDENTIFICATION OF SOURCES FOR ALL COMPONENTS FOR CLOTHING/TEXTILE ITEMS (APR 2008)

(a) The offeror shall indicate below the names and addresses of those suppliers from whom each component will be obtained for use in the performance of any resultant contract. In addition, for each component, the offeror shall also identify the name of the item's manufacturer and the address of the manufacturing location. Failure to furnish this information with the offer may result in rejection of the offer.

(b) No change in the supplier(s) or manufacturer(s) listed below shall be permitted between the opening/closing date of the offer and the award, except where time permits and then only upon receipt of the Contracting Officer's written approval.

(c) Any change in the supplier(s) or manufacturer(s) listed below, and in any resultant contract, is prohibited unless it is specifically approved in advance by the Contracting Officer.

| Component and Quantity | Name and Address of Supplier | Address of Manufacturer |
|---|---|---|
| | | |

(End of Provision)

**52.209-9012 Qualified Suppliers List for Manufacturers/Qualified Suppliers List for Distributors.**
As prescribed in 9.203(a)(91), 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 Supplies 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/Qualified Manufacturers List (QPL/QML) Items.**
As prescribed in 9.203(a)(92), 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)

**52.209-9014 Vehicle Registration and Operations.**
As prescribed in 9.104-1(e)(90), insert the following provision:

VEHICLE REGISTRATION AND OPERATIONS (JUL 2008)

(a) Privately owned vehicles to be operated on the military reservation must be registered at the command security office within forty-eight hours after arrival at the installation. Evidence of compliance with the following automotive liability coverage must be provided upon application for vehicle registration.

MINIMUM REQUIREMENTS FOR THE STATE OF VIRGINIA

(b) Privately owned vehicles operating on this military installation are required to comply with all applicable registration and inspection laws. This includes, without limitation, safety inspections as required by the state in which the vehicle is registered.

(c) All vehicles operating on this military installation are subject to the traffic code, copies of which are available in the Command Security Office.

(End of Clause)

**52.209-9015 Waiver - First Article Test – Simplified Acquisitions.**
As prescribed in 9.306(c)(90)(i), insert the following clause:

WAIVER – FIRST ARTICLE TEST - SIMPLIFIED ACQUISITIONS (NOV 2011)

(a) The technical specifications for this item indicate that first article testing is required. However, in view of the small dollars involved in this acquisition and the increase in delivery time and considerable cost to the Government required to perform and/or process first article testing, this procurement shall be limited to consideration of offers for items produced by the sources identified below (except as specified in paragraph (b)), which are currently eligible for waiver of first article testing requirements. If the successful awardee offered an item produced by one of the sources identified below, the item supplied shall be of the same design and manufactured by the same method at the same facilities as the item previously approved.

[The Contracting Officer shall insert name(s) and commercial and Government entity (CAGE) code(s) of sources currently approved for waiver.]

(b) At the Government's discretion, offers for items produced by sources other than those identified above may be considered for award, if supporting documentation is provided with the offer in accordance with 52.209-9019. [The offeror shall insert the required information in the space provided in 52.209-9019, attach documentation to quote, or provide documentation under separate cover to Contracting Officer].

(End of Clause)

**52.209-9016 Evaluation of Offers – First Article Testing.**
As prescribed in 9.306(i)(90), 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)

ALTERNATE I (MAR 2009) As prescribed at 9.306(i)(91), insert the following paragraph in lieu of the basic provision:

The cost to the Government to review the Contractor's first article test report shall be a factor in evaluating offers. The Government's review cost will be added to the offered price of the applicable item. Unless cited elsewhere in this solicitation, the costs are as follows: $200.00 for an internal review plus $950.00 for each engineering support activity (ESA) review. ESA reviews are required if the items being acquired are identified as critical application items or critical safety items.

**52.209-9017 First article – Contractor Testing – Additional Requirements.**
As prescribed in 9.308-1(a)(91)(ii)(A), insert the following clause:

FIRST ARTICLE – CONTRACTOR TESTING – ADDITIONAL REQUIREMENTS (NOV 2011)

(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

DLA Land and Maritime FAT Monitor, BPI
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
Test Coordinator 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 I (NOV 2011) As prescribed in 9.308-1(a)(91)(ii)(A)(1), add the following paragraphs (c)(1)-(2) to in the basic clause:

(c)(1) Notice to Contractor: The Defense Contract Management Agency (DCMA) Administrative Contracting Officer (ACO) is delegated (in accordance with Federal Acquisition Regulation (FAR) 42.202(c)) the authority to approve/disapprove the First Article Test Report submitted in accordance with the requirements in this contract (52.209-9017 and FAR 52.209-3). Any reference to the Contracting Officer as it relates to submission of and approval/disapproval of the FAT Report shall be deemed to mean the DCMA ACO.

(2) Notice to ACO: The DCMA ACO shall forward a copy of the First Article Test Report and the DCMA ACO's letter of approval/disapproval to the Contracting Officer at the buying activity and to the buying activity test coordinator (see paragraph (a)(3)(iii)(D) of this clause.

ALT II (NOV 2011) As prescribed in 9.308-1(a)(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) 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(a)(91)(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(a)(91)(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(a)(91)(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(a)(91)(ii)(A), insert the following clause:

FIRST ARTICLE – GOVERNMENT TEST – ADDITIONAL REQUIREMENTS (NOV 2011)

(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
FAT Monitor, BPI
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
Test Coordinator 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(a)(91)(ii)(B), 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(a)(91)(ii)(C),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 III (NOV 2011) As prescribed in 9.308-2(a)(91)(ii)(D), insert the following paragraphs (a)(2)(i)-(iii) in lieu of paragraph (a)(2) in the basic clause:

(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 unites, 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) For medical devices requiring FDA approval, all documentation, to include first article examination and testing reports, shall be submitted to the following at least ten (10) calendar days prior to presentation of the first article:

(A) Food and Drug Administration
Medical Products Quality Assurance Staff
Device Section (HFC-122)
5600 Fisher Lane
Rockville, Maryland 20857;

(B) Food and Drug Administration
Analytical Center
109 Holton Street
Winchester, Massachusetts 01890; and

(C) DLA Troop Support
Directorate of Medical Materiel
Quality Assurance Division (MQ)
700 Robbins Avenue
Philadelphia, Pennsylvania 19111-5092

(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 IV (SEP 2008) As prescribed in 9.308-2(a)(91)(ii)(E), insert the following paragraphs (a)(2)(i)-(iii) in lieu of paragraph (a)(2) in the basic clause:

(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 unites, 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) This acquisition is for Meal, Ready-To-Eat (MRE), and Tray Pack Items. In addition to any other requirements in this clause that apply, samples of first article production, for examination and testing, will be randomly selected by the USDA employee in the quantity required by the quality assurance provisions of the item specification. In addition, the USDA employee will randomly select and hold 270 samples for use by USDA and 32 more samples for use by Natick. Once the USDA passes the lot for all examination and test requirements as specified in the item specification, the set of 32 samples will be forwarded to Natick for evaluation of overall appearance and palatability. Should the Contractor at any time plan to, or actually produce the product using different raw material or process methodologies from the approved first article, the Contractor shall arrange for a new or additional first article sample approval. Any resubmission of first article samples shall be in accordance with the above. In any event, all product produced under this contract must meet all requirements of the specification, including first article comparison.

(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 V (NOV 2011) As prescribed in 9.308-2(a)(91)(ii)(F), insert the following paragraph (a)(2)(i)-(ii) in lieu of paragraph (a)(2) in the basic clause:

(a)(2)(i) Military standard (MIL-STD) 1525B (USAF) applies. Laboratory testing of items will be performed on samples of materials selected and submitted by a Government Quality Assurance Representative (QAR) in accordance with paragraph 5.2 of MIL-STD-1525B (USAF). Such samples, along with a copy of the Contractor's test report(s) for the lot of material represented by the sample, shall be packed, marked and shipped by the Contractor to:

77AESG
648AESS/TAT
Attention: First Article/Textile Monitor
7980 Lindbergh Landing (Building 578)
Brooks City Base, Texas 78235-5119

(a)(2)(ii) The Contractor shall submit initial textile samples with a Department of Defense (DD) Form 1222, Request for and Results of Tests. If the textile sample is disapproved, the Contractor, upon Government request, shall resubmit within the time period specified textile samples from a different lot for testing. Samples shall not be submitted from a failed lot without prior Government coordination and approval.

ALT VI (SEP 2008) As prescribed in 9.308-2(a)(91)(ii)(G), 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: _____

ALT VII (SEP 2008) As prescribed in 9.308-2(a)(91)(ii)(H), 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 VIII (NOV 2011) As prescribed in 9.308-2(a)(91)(ii)(I), insert the following paragraphs (b)(1)-(2) in lieu of paragraph (b) in the basic clause:

(b)(1) 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 article units. 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)" CLIN," shall be evaluated under the presumption that there is no separate charge for manufacturing and testing the first article units.

(2) The Government may determine that a quote is unacceptable if the prices proposed for first articles and first article tests are materially unbalanced in relation to production quantities. A quote is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and there is reasonable doubt that the quote will result in the lowest overall cost to the Government, even though it may be the low evaluated quote; or it is so unbalanced as to be tantamount to allowing an advance payment.

**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)(2)(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 |
|---|---|---|
| | | |

**52.209-9020 First Article Testing Requirement – Waiver Approved.**
As prescribed in 9.308-1(a)(93)(iii)(A) and 9.308-2(a)(93)(ii)(A), insert the following clause:

FIRST ARTICLE TESTING REQUIREMENT – WAIVER APPROVED (SEP 2008)

First article testing requirements are waived for this procurement. Item supplied must be of same design and manufactured by same method at same facilities as item previously approved.

(End of Clause)

**52.209-9021 Drawing Approval Prior To Production.**
As prescribed in 9.306(c)(2)(ii), insert the following clause. Complete the fill-ins with information from the Material Master, Product Assurance tab:

DRAWING APPROVAL PRIOR TO PRODUCTION (NOV 2011)

(a) The Contractor shall forward [Contracting officer shall insert number of copies required] copies of the drawings required by specification [Contracting Officer shall insert title; number; and date of specification] to the Government agency identified below within 30 calendar days of the date the contract is awarded: [Contracting officer shall insert name of Government agency and mailing address in space provided below.}

Government agency:
Mailing address:

(b) The Contractor shall submit a copy of any letter forwarding drawings to another Government agency to the Contract Administrator (see “Issued By” block on page 1 of award document). Such letter shall cite the contract number to which the drawings are applicable.

(c) By written notice to the Contractor within 45 calendar days from receipt of the drawings, the Government shall either accept, conditionally accept, or disapprove the drawings. Notice of acceptance or conditional acceptance shall not relieve the Contractor from complying with all requirements of the specification and all other provisions of the contract. A notice of conditional acceptance shall state any further action required of the Contractor.

(d) Within 5 calendar days after receipt of written notice from the Government, the Contractor shall forward a copy of any correspondence from the approving agency and a cover letter citing the applicable contract number and the Defense Contract Management Agency (DCMA) office as cited on the contract; and to the Contract Administrator (see “Issued By” block on page 1 of award document).

(e) If the drawings are disapproved, the Government may terminate for default, as stipulated in paragraph (f) below; or may request the Contractor to submit revised drawings to the Government agencies identified in paragraph (a) of this clause within a time specified by the Government. In addition, the Government may require the submission or resubmission of other drawings and documents which may be required for reference. The Government shall take action with respect to the revised drawings within 10 calendar days of receipt thereof. The Government reserves the right to require an equitable reduction in the contract price for any extension of the delivery schedule(s) and/or any additional costs to the Government related to revised drawing submissions. The Contractor shall make no changes to any accepted drawings.

(f) If the Contractor fails to deliver any drawings as required by this clause within the time(s) specified by this clause, or if the Government disapproves any drawings, the Contractor shall be deemed to have failed to make delivery within the meaning of the "Default" clause of this contract; and this

contract shall be subject to termination for default, provided that failure of the Government in such event to terminate this contract for default shall not relieve the Contractor of his responsibility to meet all other specified delivery dates.

(g) Before drawing approval, the acquisition of materials or components for, or the commencement of production of the first article (if required) and/or the contract quantity is at the sole risk of the Contractor. Before drawing approval, the costs thereof shall not be allocable to this contract for (1) progress payments, or (2) termination settlements, if the contract is terminated for the convenience of the Government.

(h) The Government reserves the right to waive the requirement for submission of drawings and other data, as stated in paragraph (a) of this clause, upon receipt of satisfactory evidence that the Government has previously reviewed and approved identical drawings. Previous Government approval of drawings does not constitute waiver of any requirements set forth in this clause. Offerors who wish to request a waiver shall furnish evidence that prior Government approval is presently appropriate. This evidence shall include the contract(s) under which drawings for the identical item acquired in accordance with this specification were approved by the Government; a copy of the prior letter of approval; and any additional information as may be requested by the Contracting Officer. [Offeror shall insert information in space provided below, attach documentation to offer, or provide under separate cover to Contracting Officer.]

Prior Governmental acceptance of identical drawings
Contract number:
Contracting activity:
Contract date:

(i) If the Government waives the requirement for submission of drawings and other data as described in paragraph (a) of this clause, the delivery schedule for submission of the first article, if any, and the delivery schedule for the production quantity shall be reduced by the number of calendar days allotted for submission and acceptance of such drawings and data. The earlier delivery schedule(s) shall not be a factor in evaluation for award.

(End of Clause)

**52.209-9022 Compatibility Testing Requirements.**
As prescribed at 9.390, insert the following clause,

COMPATIBILITY TESTING REQUIREMENTS (SEP 2008)

(a) Compatibility testing is required and shall be performed by the Government.

(b) All units shall be sent by traceable means. If the material is going through the U. S. Postal Service, it shall be mailed as Certified or Registered mail with a notification of receipt registered.

(c) All transportation charges incurred in shipping compatibility units to and from Government facilities shall be paid by the Contractor.

(d) The Contractor shall immediately bring to the attention of the Contracting Officer any irregularity or discrepancy in specifications, drawings or test requirements. The specific problem must be identified

in writing even though the initial communication, in the event of urgency, may be verbal. Any failure of the Contractor to act promptly in identifying contract specification problems, to request waivers or deviations, or to set forth the reasons for requesting action by the Government, which causes delays or prevents evaluation by the Government in a timely manner, shall be considered a delay attributable to the Contractor.

(e) When both first article testing and compatibility testing are required:

(1) The Contractor must successfully complete and receive approval of the first article test sample or the first article test report, as applicable, before compatibility testing commences. Before both first article approval and compatibility test approval, the acquisition of materials or components for, or commencement of production of, the balance of the contract quantity is at the sole risk of the Contractor, and costs thereof shall not be allocable to this contract for (i) progress payments or (ii) termination settlements, if the contract is terminated for the convenience of the Government.

(2) If first article testing can or will result in the possibility of units being damaged or not being fully operational, the number of units required for compatibility testing will be in addition to the quantity required for first article testing and shall be from the same lot. If however, first article testing does not affect the operational capability nor damage the units, the first article units may be used to conduct compatibility testing.

(3) When different Government activities will be conducting the first article testing and the compatibility testing, the activity conducting the first article testing will, upon completion of the testing, return the units to the Contractor, who in turn will forward the units to the Government activity conducting the compatibility testing.

(4) After both first article testing and approval, the Government shall evaluate and test the compatibility test units for compliance to the contract requirements, including form, fit and function compatibility testing in the end item equipment. Units shall comply with any stated contract requirements and/or test parameters, if any, in addition to passing and/or complying with the form, fit and function compatibility testing.

(5) When both first article testing and compatibility testing are required and only the first article test units and/or first article test report are approved but the units fail compatibility testing, the Government has the right to terminate the contract for default. The Contractor shall be liable for all costs associated with the compatibility testing requirement.

(f) Conditions for waiver of compatibility testing:

(1) The Government reserves the right to waive the requirements for compatibility testing for those offerors of a product which:

(i) Has been previously accepted by the Government, and has not been found to be unsatisfactory;

(ii) Has previously met the compatibility testing requirements, has been accepted by the Government, and has not been found to be unsatisfactory; or

(iii) Has previously been approved by the original equipment manufacturer (OEM), providing the Offeror can demonstrate OEM approval and will certify it has no evidence of subsequent difficulty or disapproval by the OEM or any Government agency. (Note: Evidence of a prior purchase of test quantities by the OEM will not be considered acceptable evidence of approval.)

(2) Offerors who desire to be considered for waiver, including those previously approved, are to furnish the following information at time of offer under separate cover:

(i) Applicable contract numbers(s);

(ii) Previous purchaser (Government Agency);

(iii) Identity of item of production furnished (part number, type and model number, etc.);

(iv) Federal stock class of item furnished;

(v) Engineering control document and change number of item furnished;

(vi) Quantity and unit price of item furnished;

(vii) Evidence of prior qualification approval;

(viii) Evidence of subsequent difficulty or disapproval by the OEM or any Government agency, if applicable; and

(ix) Statement that the item offered will be of the same design and manufactured by the same methods and at the same facilities as the item previously approved.

(3) Material manufactured for stock by a manufacturer otherwise eligible for waiver of compatibility test requirements and manufactured subsequent to the time supplier achieved eligibility for said waiver need not be subjected to compatibility testing, provided the Offeror as a part of its offer (prior to opening time in the event of an advertised procurement) submits evidence establishing:

(i) The material was manufactured after the date the manufacturer received waiver of preproduction tests or was otherwise accepted by the Government as a qualified supplier without preproduction testing; and

(ii) The material was manufactured in accordance with the procurement data cited in the solicitation.

(End of Clause)

**52.209-9023 Compatibility Testing Approval – Government Testing.**
As prescribed in 9.390, insert the following clause:

COMPATIBILITY TESTING APPROVAL – GOVERNMENT TESTING (NOV 2011)

(a) The Contractor shall deliver [Contracting Officer insert number of units] units of Lot/Item [Contracting Officer insert Lot/Item number] within [Contracting Officer insert number of days] calendar

days from the date of this contract to the Government at [Contracting Officer insert name and address of testing facility] for the purpose of compatibility testing.

(b) Any packages containing compatibility testing units shall be marked in bold letters, below and to the left of the address, as follows:

Compatibility units
Contract Number [Contractor insert contract number]
Lot/Item number: [Contractor insert Lot/Item number.].

(c) Within [Contracting Officer insert number of days] calendar days after the Government receives the units, the Contracting Officer shall notify the Contractor, in writing, of the results of compatibility testing, e.g., approval, conditional approval or disapproval. The notice of approval or conditional approval shall not relieve the Contractor from complying with all requirements of the specifications and all other terms and conditions of this contract. A notice of conditional approval shall state any further action required of the Contractor. A notice of disapproval shall cite reasons for the disapproval.

(d) If the units fail compatibility testing, the Contractor, upon Government request, shall submit additional units for testing. After each request, the Contractor shall make any necessary changes, modifications, or repairs to the units, or provide necessary changes, modifications, or repairs to the units, or provide other units for testing. All costs related to these tests are to be borne by the Contractor, including any and all Government costs for additional tests following disapproval. The Contractor shall furnish all additional units to the Government under the terms and conditions and within the time specified by the Government. The Government shall act on units within the time limit specified in paragraph (c) above. The Government reserves the right to require an equitable adjustment of the contract price for any extension of the delivery schedule or for any additional costs to the Government related to these tests.

(e) If the Contractor fails to deliver any units on time, or the Contracting Officer disapproves any units, the Contractor shall be deemed to have failed to make delivery within the meaning of the default clause of this contract, and the contract may be terminated for default with no liability on the Government's part. If units fail compatibility testing and this requirement was the sole item on the contract, the Contractor shall be deemed to have failed to perform, and the contract may be terminated for default with no liability on the Government's part.

(f) If the Government does not act within the time specified in paragraph (c) above, the Contracting Officer shall, upon timely written request from the Contractor, equitably adjust the delivery or performance dates and/or the contract price, and any other contractual term affected by the delay.

(g) The Contractor shall produce the first article units (if applicable), the compatibility test units, and the production quantity at the same facility and shall submit to the appropriate quality assurance specialist a statement to this effect with each unit.

(h) Upon completion of the testing, compatibility test units submitted for Government testing will be:

(1) Retained by the Government. At least one approved test unit shall be returned to the Contractor and held at the production facility until all production quantities have been produced and accepted. This compatibility unit can be referred to as a production or manufacturing standard and

baseline for examination when defects are reported on delivered material or problems are uncovered during production;

(2) Returned to the Contractor as production standards and baseline for examination when defects are reported on delivered material or problems are uncovered during production, but shall not be submitted for acceptance as part of the order quantity; or

(3) Other: [The Contracting Officer shall insert disposition information].

(End of Clause)

**52.209-9024 Government Fit Verification Testing.**
As prescribed at 9.391, insert the following clause:

GOVERNMENT FIT VERIFICATION TESTING (SEP 2008)

(a) This contract includes a requirement for Government fit verification testing, which consists of testing the unit on the aircraft for form, fit, and function.

(b) All units shall be sent by traceable means. If the material is going through the United States (U. S.) Postal Service, it shall be mailed as Certified or Registered mail with a notification of receipt registered.

(c) All transportation charges incurred in shipping Government fit verification testing units to and from Government facilities shall be paid by the Contractor.

(d) The Contractor shall immediately bring to the attention of the Contracting Officer any irregularity or discrepancy in specifications, drawings or test requirements. The specific problem must be identified in writing even though the initial communication, in the event of urgency, may be verbal. Any failure of the Contractor to act promptly in identifying contract specification problems, to request waivers or deviations, or to set forth the reasons for requesting action by the Government, which causes delays or prevents evaluation by the Government in a timely manner, shall be considered a delay attributable to the Contractor.

(e) When both first article testing and Government fit verification testing are required:

(1) The Contractor must successfully complete and receive approval for the first article testing and/or the first article test report before Government fit verification testing commences. Before both first article approval and Government fit verification test approval, the acquisition of materials or components, or the commencement of production of, the balance of the contract quantity is at the sole risk of the Contractor, and costs thereof shall not be allocable to this contract for (i) progress payments or (ii) termination settlements, if the contract is terminated for the convenience of the Government.

(2) If first article testing can or will result in the possibility of units being damaged or not being fully operational, the number of units required for Government fit verification testing will be in addition to the quantity required for first article testing and shall be from the same lot. If however, first article testing does not affect the operational capability nor damage the units, the first article units may be used to conduct Government fit verification testing.

(3) After both first article testing and approval, the activity conducting the first article testing will return the units to the Contractor, who in turn will forward the units to the Government activity conducting the Government fit verification testing.

(4) When both first article testing and Government fit verification testing are required and only the first article test units and/or first article test report are approved but the units fail Government fit verification testing, the Government has the right to terminate the contract for default. The Contractor shall be liable for all costs associated with the Government fit verification testing requirement.

(End of Clause)

**52.209-9025 Government Fit Verification Testing Approval.**
As prescribed in 9.391, insert the following clause:

GOVERNMENT FIT VERIFICATION TESTING APPROVAL (SEP 2008)

(a) The Contractor shall deliver [Contracting Officer insert number of units] units of Lot/Item [Contracting Officer insert Lot/Item number] within [Contracting Officer insert number of days] calendar days from the date of this contract to the Government at [Contracting Officer insert name and address of testing facility] for the purpose of fit verification testing.

(b) Any packages containing Government fit verification testing units shall be marked in bold letters, below and to the left of the address, as follows:

Government fit verification units
Contract Number [Contractor insert contract number]
Lot/Item Number: [Contractor insert lot/item number].

(c) Within [Contracting Officer insert number of days] calendar days after the Government receives the units for testing on the aircraft, the Contracting Officer shall notify the Contractor, in writing, of the results of Government fit verification testing, e.g., approval, conditional approval or disapproval. The notice of approval or conditional approval shall not relieve the Contractor from complying with all requirements of the specifications and all other terms and conditions of this contract. A notice of conditional approval shall state any further action required of the Contractor. A notice of disapproval shall cite reasons for the disapproval.

(d) If the units fail Government fit verification testing, the Contractor, upon Government request, shall submit additional units for testing. After each request, the Contractor shall make any necessary changes, modifications, or repairs to the units, or provide necessary changes, modifications, or repairs to the units, or provide other units for testing. All costs related to these tests are to be borne by the Contractor, including any and all Government costs for additional tests following disapproval. The Contractor shall furnish all additional units to the Government under the terms and conditions and within the time specified by the Government. The Government shall act on units within the time limit specified in paragraph (c) above. The Government reserves the right to require an equitable adjustment of the contract price for any extension of the delivery schedule or for any additional costs to the Government related to these tests.

(e) If the Contractor fails to deliver any units on time, or the Contracting Officer disapproves any units, the Contractor shall be deemed to have failed to make delivery within the meaning of the Default

Clause of this contract, and the contract may be terminated for default with no liability on the Government's part. If units fail Government fit verification testing and this requirement was the sole item on the contract, the Contractor shall be deemed to have failed to perform, and the contract may be terminated for default with no liability on the Government's part.

(f) If the Government does not act within the times specified in paragraphs (c) and (d) above, the Contracting Officer shall, upon timely written request from the Contractor, equitably adjust the delivery or performance dates and/or the contract price, and any other contractual term affected by the delay.

(g) The Contractor shall produce the first article units (if applicable), the Government fit verification testing units, and the production quantity at the same facility and shall submit to the appropriate quality assurance specialist a statement to this effect with each unit.

(h) Test units submitted to the Government for Government fit verification testing will not be returned to the Contractor to be shipped as part of the contract quantity.

(End of Clause)

**52.209-9026 [Reserved.]**

**52.209-9028 Qualified Suppliers List of Distributors (QSLD) – Federal Supply Classes (FSC) 5961 and 5962.**
As prescribed at 9.203(a)(93), insert the following clause:

QUALIFIED SUPPLIERS LIST OF DISTRIBUTORS (QSLD) – FEDERAL SUPPLY CLASSES (FSC) 5961 AND 5962 (NOV 2011)

(a) Only the following sources shall be eligible for award (except as provided in paragraph (f) of this clause):

(1) Sources that are listed, or are qualified for listing, on the applicable qualified products list/qualified manufacturers list (QPL/QML) at the time of award;

(2) Approved sources as specified in the solicitation/contract item description; or

(3) Distributors that are listed, or qualified for listing, on the DLA Land and Maritime qualified suppliers list of distributors (QSLD) for QSLD FSC 5961 and 5962 at the time of award.

(b) 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) By writing to:

DLA Land and Maritime
QSLD Monitor
Post office (P.O.) Box 3990
Columbus, Ohio 43218-3990

(c) The requirement in this clause for distributors to be listed on the QSLD at time of award is in addition to, and does not abrogate, any requirement for an Offeror to provide a QPL or a QML item from a currently approved/qualified source when a QPL or QML requirement is specified. In addition, a distributor listed on the QSLD must furnish the product of a currently approved/qualified source as specified in the solicitation/contract Item Description whether the item is governed by a QPL/QML or not.

(d) The Contracting Officer may recommend termination of 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 distributor 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 distributor's failure to maintain such status.

(e) Distributors that are listed on the QSLD are exempt from any requirement to submit traceability documentation to the Contracting Officer on or before the date that quotes/offers are due as specified elsewhere in the solicitation.

(f) In the event no approved manufacturers or QSLD distributors offer on this solicitation, the Government reserves the right to make an award based on offers received that comply with the traceability requirements found elsewhere in the solicitation.

(End of Clause)

**52.209-9029 Notice of First Article Requirement and Conditions for Waiver (Logistics Command (LOGCOM) Depot Level Repairable (DLR), DLA Land and Maritime).**
As prescribed in 9.306(c)(1)(iii), insert the following clause:

NOTICE OF FIRST ARTICLE REQUIREMENT AND CONDITIONS FOR WAIVER (LOGISTICS COMMAND (LOGCOM) DEPOT LEVEL REPAIRABLE (DLR), DLA LAND AND MARITIME) (NOV 2011)

(a) Provided no test requirements are depicted in the drawing/specification, First Article requirements in Section I shall be deemed to mean First Article Inspection. The waiver of First Article Inspection if required by Section I does not waive first piece inspection by lot if called out in the technical data package.

(b) In the event the first article test requirements are waived prior to award, item(s) covering the First Article testing and related data (e.g., test plan, test reports, etc.) will not appear in any award resulting from this solicitation.

(c) First article test requirements may be waived by the Contracting Officer under the following conditions:

(1) A bidder/offeror is currently in production, under a Government contract or a subcontract to a Government prime Contractor, of end items identical or similar to those specified in this solicitation.

(2) A bidder/offeror not presently in production of the item has previously satisfactorily furnished, under a Government contract or a subcontract to a Government prime Contractor, end items identical or similar to those specified in this solicitation. When more than twelve (12) months have elapsed (as of the date set for receipt of bid/proposal) since the delivery of identical or similar end items, first article test may be required.

(d) Bidder/offeror shall set forth in the space below contract numbers, if any, under which identical or similar items were previously accepted from the bidder/offeror by the Government and attach a copy of first article approved documents.

| Contract number | Date of last delivery of end item |
|---|---|
| | |
| | |

(e) For purposes of this clause, a “similar end item” means an end item produced in accordance with an earlier version of the specification(s) set forth in the description of the end item(s) covered by this solicitation. Test requirements may be waived only where the specification requirements of this solicitation do not significantly differ from specification requirements applicable to the bidder's/offeror's previous contract. The determination as to whether current specification requirements differ from previous specification requirements sufficiently to warrant first article test shall rest solely with the Government.

(End of Clause)

**52.209-9030 First Article Evaluation Factors (Logistics Command (LOGCOM) Depot Level Repairable (DLR), DLA Land and Maritime).**
As prescribed in 9.306(i)(92)(A)(1), insert the following provision:

FIRST ARTICLE EVALUATION FACTORS (LOGISTICS COMMAND (LOGCOM) DEPOT LEVEL REPAIRABLE (DLR) – DLA LAND AND MARITIME) (NOV 2011)

(a) In the event the offeror does not qualify for waiver of first article testing under provisions set forth elsewhere in this solicitation, the costs of first article testing shall be a factor in evaluating offers.

(b) If the offeror fails to furnish a separate offered price for the first article line item in section “b”, the bid or proposal shall be evaluated under the presumption that there is no separate charge for first article testing, and the offeror agrees to perform such tests in accordance with terms of the resulting contract at no additional cost to the Government.

(End of Provision)

ALT I (FEB 2010) As prescribed in 9.306(i)(92)(A)(2), add the following paragraphs (c) and (d) to the basic provision:

(c) It is estimated that Government costs incidental to first article test/evaluation will be $[Contracting Officer shall insert dollar amount]. For purposes of evaluation only, this amount will be

added to those bids/proposals which do not qualify for waiver of first article under provisions set forth elsewhere in this solicitation.

(d) If a first article is disapproved and resubmission is authorized, the Government costs of $[Contracting Officer shall insert dollar amount] related to additional approval tests will be deducted from the contract amount for each submittal in accordance with Federal Acquisition Regulation (FAR) clause 52.209-4(c). This amount is in addition to any consideration flowing to the Government for extension, if such applies.

(End of Provision)

**52.209-9031 Definitive Responsibility Criteria (DLA Energy).**
As prescribed in 9.104-2(b)(90), insert the following clause:

DEFINITIVE RESPONSIBILITY CRITERIA (DLA ENERGY) (NOV 2011)

(a) Offerors must provide fill-in (-1-) as part of any proposal/bid.

(b) This requirement is a precondition of award, and any offeror who does not meet this requirement will be found non-responsible and therefore will be ineligible for award. Any small business found non-responsible for failing to meet this requirement will be referred to the Small Business Administration in accordance with Federal Acquisition Regulation (FAR) Part 19.

(End of Clause)

**52.209-9032 Responsibility Criteria for Support to Overseas Contingency Contracts.**
As prescribed in 9.105-1(90)(b), insert the following clause:

RESPONSIBILITY CRITERIA FOR SUPPORT TO OVERSEAS CONTINGENCY CONTRACTS (AUG 2011)

(a) A Contracting Officer may request an offeror to provide total company ownership information prior to award of any overseas contingency operation support contract in excess of $10 million per year.

(b) The Federal Acquisition Regulation (FAR 9.104-1) requires the Contracting Officer to make a present responsibility determination prior to the contract award. This includes consideration of a number of factors, such as an offeror's financial resources, business practices, business ethics, and other relevant information.

(End of Clause)

**52.211-9000 Government Surplus Material.**
As prescribed in 11.304-91(a), insert the following clause:

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 Offeror agrees to complete this clause and provide supporting documentation as necessary 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; or within the timeframe specified by the Contracting Officer, if additional documentation is requested after submission of the offer. Failure to provide the requested information and supporting documentation within the timeframe requested 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.

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 __

a) 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 __

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)

**52.211-9001 Market Acceptance.**
As prescribed in 11.103(a), insert the following provision:

MARKET ACCEPTANCE (FEB 1996)

The offeror shall provide with its offer the following information to establish that the offer meets the market acceptance criteria in the requirements document: [The Contracting Officer shall insert the specific documentation requirements.]

(End of Provision)

Alternate I (FEB 1996). The Contracting Officer may substitute the following paragraph for the basic provision to obtain documentation after offers are received:

The Government reserves the right to request information to establish that the offer meets the market acceptance criteria in the requirements document.

**52.211-9002 Priority Rating.**
As prescribed in 11.604(90), insert the following clause:

PRIORITY RATING (NOV 2011)

This contract is assigned a priority rating under the Defense Priorities and Allocations System (DPAS) regulations (15 Code of Federal Regulations (CFR) 700) which requires Contractors to utilize the assigned rating in obtaining the products, materials, and supplies needed to fill their contracts. In the event the Contractor is unable to obtain the necessary products, materials, and supplies to complete the contract, the Contractor shall immediately advise the Defense Contract Management Agency (DCMA) or the appropriate Defense Supply Center (DSC) DPAS officer through the cognizant Administrative Contracting Officer or Procuring Contracting officer. The DPAS officer or the DCMA plant representative will provide necessary assistance or provide the necessary instructions to complete Department. of Commerce, Bureau of Industry and Security Form BIS 999, Request for Special Priorities Assistance. This form will be processed through appropriate channels to the Department of Commerce who will review and take action to make the needed supplies available to the applicant when deemed appropriate.

(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 2008)

(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 ($200 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 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.

(End of Provision)

**52.211-9004 Priority Rating For Various Long-Term Contracts.**
As prescribed in 11.604(90), insert the following clause in prime vendor, corporate, and other long term contracts:

PRIORITY RATING FOR VARIOUS LONG-TERM CONTRACTS (NOV 2011)

This contract is assigned a priority rating under the Defense Priorities and Allocations Systems (DPAS) regulation (15 Code of Federal Regulations (CFR) 700) which requires Contractors to utilize the assigned rating in obtaining the products, materials, and supplies needed to fill their contracts.

Because this contract does not have a specified delivery date, the basic contract is not rated; however, orders placed against it that include a delivery date are considered rated orders as of the date of receipt by the supplier.

In the event the Contractor is unable to obtain the necessary products, materials, and supplies to complete the contract, the Contractor shall immediately advise the Defense Contract Management Agency (DCMA) representative or the appropriate Defense Supply Center DPAS officer through the cognizant Administrative Contracting Officer or Procuring Contracting Officer.

The DPAS officer or the DCMA plant representative will provide necessary assistance or the necessary instructions to complete Department of Commerce (DoC) BXA Form 999, Request for Special priorities Assistance.

This form will be processed through appropriate channels to the DoC who will review and take action to make the needed supplies available to the applicant when deemed appropriate.

(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 (NOV 2011)

(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 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 AID (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 acquisition identification description (AID) 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 AID and is (or will be) manufactured by an approved source cited in the AID, modified (if necessary) to conform to any additional requirements set forth in the AID, and is (or will be) manufactured by or under the direction of an approved source cited in the AID. Additionally, if the Offeror manufactures the offered item for an approved source cited in the AID, 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 AID; and

(ii) An original, hard copy of quotation received by Offeror from approved source cited in AID; 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 AID 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 AID 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 AID, specifically identifying Offeror as authorized to distribute or manufacture the exact item cited in the AID 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 AID for an approved source cited in the AID.

(4) When the AID specifies a revision number --

(i) Documentation establishing that the offered item was (or will be) made in accordance with the revision cited in the AID. (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 AID); or

(ii) Documentation identifying the revision offered and the differences between the revision offered and the revision cited in the AID.

(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 (JUL 2002)

(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 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)

**52.211-9008 [Reserved.]**

**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 (MAR 2012)

(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 Bahrain (DDZZ) | SW3107 |
| Defense Depot Sigonella Italy (DDSI) | SW3170 |
| Defense Depot Guam (DDPH) | SW3147 |
| Defense Depot Korea (DDDK) | SW3105 |
| Defense Depot Kuwait (DDKS) | SW3109 |

(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
S9P – DLA Troop Support - perishable subsistence
S9S – DLA Troop Support - semi-perishable subsistence
SMP – DLA Maritime – Norfolk
SMT – DLA Maritime - Puget Sound
SMF – DLA Maritime - Portsmouth
SMG – DLA Maritime - Pearl Harbor

(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 Columbus Ohio (DDCO) | SW0700 |
| 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), insert the following:

Subparagraph (c)(3)(i)(C) of the basic clause is replaced with the following:

(C) ICP routing identifier code (RIC). The RIC for all procuring activities is "SMS."

**52.211-9011 Business Systems Modernization (BSM) Delivery Terms And Evaluation.**
As prescribed in 11.404-90, insert the following provision:

BUSINESS SYSTEMS MODERNIZATION (BSM) DELIVERY TERMS AND EVALUATION (MAY 2006)

(a) This acquisition is being conducted under business systems modernization (BSM). Quotes/offers in response to this solicitation will be evaluated as specified in the solicitation.

(b) Delivery shall be quoted/offered in terms of a number of days after date of order (ADO). The number of delivery days requested in this solicitation is calculated based on the Government's planned need and customer requirements. Unless delivery is identified elsewhere in the solicitation as an evaluation factor, Quoters/Offerors are encouraged to conform their delivery terms as closely as possible to the delivery days requested. If delivery is not identified as an evaluation factor, there will be no evaluation preference, or penalty, for quotes/offers of fewer delivery days than the number of delivery days requested by the Government. Quoting/offering a greater number of delivery days than requested may result in the quote/offer not being considered

(End of Provision)

**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 (NOV 2011)

(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/ps/publications/9065.htm.

(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)

**52.211-9015 Preference for Recycled Toner and Cartridges.**
As prescribed in 11.304-93 (d), insert the following clause:

PREFERENCE FOR RECYCLED TONER AND CARTRIDGES (JUL 2008)

(a) When purchasing toner cartridges for use in laser printers, photocopiers, facsimile machines, or micrographic printers, the Government will give preference to those Contractors offering remanufactured toner cartridges and recycled toner cartridges unless--

(1) Remanufactured or recycled toner cartridges for the type of equipment used by the Government does not exist,

(2) The price of such cartridges is higher than the original equipment manufacturer's new cartridge, or

(3) Remanufactured or recycled toner cartridges are not available in quantities needed within the timeframes required.

(b) The offered product [ ] is [ ] is not a remanufactured or recycled cartridge.

(c) Unless the Contracting Officer determines one of the conditions set forth in paragraph (a) above exists, the Contractor shall furnish either remanufactured or recycled cartridges in performance of the award.

(End of Clause)

**52.211-9018 Availability of Mylar Drawings.**
As prescribed in 11.201(b), 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, 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)

**52.211-9020 Time of Delivery – Accelerated Delivery.**
As prescribed in 11.404(a)(1)(91) insert the following clause:

TIME OF DELIVERY – ACCELERATED (JUN 2008)

Unless otherwise authorized in the award, accelerated delivery is acceptable only if there is no additional cost or obligation to the Government for accelerated delivery.

(End of Clause)

**52.211-9021 Variation in Quantity.**
As prescribed in 11.703(a), insert the following clause:

VARIATION IN QUANTITY (NOV 2011)

This increase or decrease shall apply separately by item to the total number of feet and/or to the total spools to be delivered or shipped to each destination provided that the limitation stated in Federal Acquisition Regulation (FAR) clause 52.211-16 is not exceeded for either.

Nothing herein shall be construed to vary, alter or modify any specification requirement for the supplies described herein. Accordingly, this provision does not authorize shipment of supplies in other than the specified unit pack or of supplies which do not conform to tolerances and the variation limitation imposed by specification requirements.

However, to the extent consistent with specification requirements, the variation, if any, stated in FAR 52.211-16 shall also apply separately to the length of each spool.

(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 for Federal supply group (FSG) 91 Fuels, Lubricants, Waxes and Oils.**
As prescribed in 11.304-93, insert the following clause:

SHELF-LIFE ITEMS MANUFACTURING RESTRICTIONS FOR FEDERAL SUPPLY GROUP (FSG) 91 FUELS, LUBRICANTS, WAXES AND OILS (AUG 2012)

(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 (AUG 2012)

(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)

**52.211-9025 Compliance with National Sanitation Foundation (NSF) Requirements.**
As prescribed in 11.304-93, insert the following clause:

COMPLIANCE WITH NATIONAL SANITATION FOUNDATION (NSF) REQUIREMENTS (NOV 2011)

(a) Successful offeror(s) shall be required to provide evidence that the item to be furnished meets the required NSF standards cited in the item description and/or specification. Provide the following information regarding items offered:

Manufacturer's name_____
Make_____
Model number_____

(b) Acceptable evidence shall be either certification from the NSF or an independent testing laboratory. If item is pending NSF approval, evidence of NSF approval shall be furnished by the Contractor to the Contracting Officer prior to or at the time of submission of the first article test report (FATR). If FATR is waived, NSF approval must be received within 90 days after contract award. (See paragraph (d)(5) below).

(c) Offeror check one:

[ ] Product has NSF approval. A copy of approval is attached.

[ ] Product currently is being tested or will be tested by NSF for compliance with the applicable NSF standards.

[ ] Results of tests for compliance with applicable NSF standards by independent testing laboratory have been approved by the Government. A copy of the Contracting Officer's approval is attached.

[ ] Product currently is being tested or will be tested for compliance with applicable NSF standards by an independent testing laboratory in accordance with this clause.

[ ] NSF testing has been waived due to the following: _____

(d) When the Contractor elects to use an independent testing laboratory to demonstrate compliance with the applicable NSF standards the following shall apply:

(1) Satisfactory evidence of compliance shall be a test report, acceptable to the Contracting Officer, with the advice of the Army Surgeon General, from an independent testing laboratory, indicating that the item has been tested and conforms to the applicable NSF standards. The test report shall address all requirements of the NSF standards and contain all quantitative data generated as a result of the examinations and tests. These quantitative data shall show the exact measurement value regardless of whether a failure occurred, and where averages are reported, shall show the individual values as well as the averages.

(2) The Contracting Officer shall be notified of the time and location of all tests at least 10 days prior to commencement so that the Government may witness the tests if it so elects; provided however that if such testing begins before award, the Contractor shall give written notice of such to the Contracting Officer not later than three days after award.

(3) The test report shall be delivered to the Contracting Officer, DLA Troop Support, Construction and Equipment (C&E), 700 Robbins Avenue, Philadelphia, Pennsylvania 19111-5096 within 90 days after contract award if FATR is waived or prior to or at the time of required delivery of FATR. The Contractor will be notified in writing of the approval or disapproval of the test report within 75 days after receipt of the report. A notice of approval shall not relieve the Contractor from complying with applicable specification(s), NSF standards, and all other terms and conditions in any resulting contract.

(4) If the test report is disapproved, the Contractor may be required, at the option of the Government, to repeat any or all of the tests, and deliver another report to the Government 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 NSF standards shall be borne by the Contractor, including any and all costs for additional testing which may be required following approval of any test report.

(5) If the Contractor fails to deliver any test report on time, or the Contracting Officer disapproves any test, the Contractor shall be deemed to have failed to make delivery within the meaning of the default clause in any resulting contract.

(6) If the Government does not act within the time specified in paragraph (3) above, the Contracting Officer shall, upon timely written request from the Contractor, equitably adjust the delivery of performance dates and/or the contract price.

(7) Prior to approval of test report, 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 of test report, the costs thereof shall not be allocable to this contract for (i) progress payments, or (ii) termination settlement if the contract is terminated for the convenience of the Government.

(End of Provision)

**52.211-9026 Delays in Shipment of Products Requiring United States Department of Agriculture (USDA) Laboratory Analysis.**
As prescribed in 11.404-91, insert the following clause:

DELAYS IN SHIPMENT OF PRODUCTS REQUIRING UNITED STATES DEPARTMENT OF AGRICULTURE (USDA) LABORATORY ANALYSIS (NOV 2011)

The specifications of this contract require a USDA laboratory analysis of samples of the product to be delivered. Offerors should consider this requirement when submitting offers so that appropriate consideration is given to planning production schedules. If there are delays in performing the USDA analysis of the samples, or if there are delays in receiving the USDA analysis due to the postal service, the Contractor shall so notify the Contracting Officer. An extension in shipping time may be authorized when the conditions of (a) below, and if applicable, (b) below are satisfied.

(a) When all production lots intended in offered units were produced at least 12 calendar days in advance of the required delivery date (RDD) specified in the contract, and the laboratory results for the samples taken from these production lots are not made available to the Contractor by the estimated shipping date (defined as date scheduled to ship in order to meet the RDD), the RDD will be extended by that number of days that receipt of the results by the Contractor exceeds the estimated shipping date. (The adjusted RDD will be computed beginning with the day following receipt of the analysis from the USDA laboratory.)

Example:

| RDD | Shipping date | Receipt of analysis | Adjusted RDD |
|---|---|---|---|
| 30 Nov | 27 Nov | 28 Nov | 1 Dec |

(b) If provisions in (a) above are met and the Contractor elects to use a reserve sample for any production lot, an added extension to the RDD will be made on the formula provided above when the following conditions are met:

(1) The Contractor notifies the USDA Inspector to mail the reserve sample within one day after the Contractor is notified of results on the original sample (if notification is received on Saturday, the reserve sample is to be mailed no later than the next business day), and

(2) The reserve sample is in compliance with specifications.

(End of Clause)

**52.211-9030 Annotation of Shipping Documents for Lubricating Oil, Engine, Grade OE/HDO 40.**
As prescribed in 11.204-91, insert the following clause:

ANNOTATION OF SHIPPING DOCUMENTS FOR LUBRICATING OIL, ENGINE, GRADE OE/HDO 40 (APR 2008)

(a) For deliveries, when temperature compensating meters are used to determine quantity, the shipping document shall be annotated with the American Petroleum Institute (API) gravity (or density), net quantity, and a statement that a temperature compensating meter was used to determine quantity.

(b) For deliveries, when quantity is determined without volume correction to 60 degrees F (15 degrees C) as permitted in the clause entitled Determination Of Quantity, the shipping document shall be annotated with the API gravity (or density), gross quantity, and a statement that volume correction was not required.

(c) For all other deliveries, the shipping document shall be annotated with the gross and net gallons (or gross and net liters), the observed and corrected API gravity (or density), and the temperature at which the product was measured.

(End of Clause)

**52.211-9031 Marking Requirements for High and Low Pressure Cylinders.**
As prescribed in 11.204-91, 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 11.404-92, 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)

**52.211-9033 Packaging and Marking Requirements.**

As prescribed in 11.204-96, insert the following clause:

PACKAGING AND MARKING REQUIREMENTS (APR 2008)

See Section B for applicable packaging and marking requirements. Offers that do not comply with the packaging and marking requirements as specified in Section B of this solicitation may be subject to rejection as being technically unacceptable.

(End of Clause)

**52.211-9034 Packaging/Marking Requirements for Diminishing Manufacturing Sources (DMS) Buys.**
As prescribed in 11.204-93 insert the following clause:

PACKAGING/MARKING REQUIREMENTS FOR DIMINISHING MANUFACTURING SOURCES (DMS) BUYS – DLA MARITIME (NOV 2011)

Requirements apply only to line item ____ , PR _____ , 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 11.204-94, 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 11.404-90(b), 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)

**52.211-9038 Time of Delivery/Performance – Base Installation.**
As prescribed in 11.404-93, insert the following clause:

TIME OF DELIVERY/PERFORMANCE – BASE INSTALLATIONS (JUL 2008)

(a) Period of performance: The Contractor will be required to commence work under this Contract on _____. The Contractor shall prosecute said work diligently and complete the project including all required testing not later than _____.

(b) Time of performance: Unless otherwise requested by the Contractor and approved by the Contracting Officer in writing, any work performed under this contract at the site shall be during the following hours (local time), except holidays:

Monday through Friday, hours:

(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)

**52.211-9040 Amount of Liquidated Damages.**
As prescribed in 11.503(a)(90,) insert the following clause:

AMOUNT OF LIQUIDATED DAMAGES (NOV 2011)

(a) Unless the condition in paragraph (b) below is met, failure of the Contractor to deliver any item of supply within the time specified in the contract will result in a downward adjustment of the contract

price for that item in accordance with Federal Acquisition Regulation (FAR) clause 52.211-11, Liquidated Damages - Supplies, Services, or Research and Development.

(b) If this contract is awarded on the basis of delivery to other than the low offeror, the amount specified in FAR 52.211-11(a) will be replaced by a dollar figure calculated as follows:

Calculate the difference between the contract award price and the price of the low offeror. Calculate the difference in the number of days of the delivery schedule of the contract awardee and the number of days of the delivery schedule of the low offer. Divide the price difference by the delivery day difference, for the per day liquidated damage amount to use instead of the amount in FAR 52.211-11(a).

(c) Notwithstanding any other provision of the contract, the total amount of liquidated damages which the Contractor may be charged for any item of supply shall in no event exceed twenty-five percent (25%) of the contract price of the delinquent quantities of that item.

(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)

**52.211-9043 Medical Material Requiring Refrigeration.**
As prescribed in 11.304-93(c), insert the following clause:

MEDICAL MATERIAL REQUIRING REFRIGERATION – DLA TROOP SUPPORT - MEDICAL (NOV 2011)

(a) The Contractor shall assure that supplies which require refrigeration are properly packaged, packed, and marked with handling instructions so as to guarantee their arrival at destination in a usable condition.

(b) Supplies "damaged in transit" as referenced in the Fast Pay provision applicable to this purchase order, include supplies received in an unusable condition as a result of inadequate refrigeration and/or improper packaging, packing, or handling instructions.

(End of Clause)

**52.211-9044 New Drug Applications.**
As prescribed in 11.204-91, insert the following provision:

NEW DRUG APPLICATIONS - DLA TROOP SUPPORT MEDICAL (NOV 2011)

Offerors shall represent below information pertaining to United States Food and Drug Administration (FDA) approval of New Drug Applications (NDA) or Abbreviated New Drug Applications (ANDA), when such approval is a prerequisite to marketing, and container/closure system information relative to

product stability. (If additional space is needed, the required information may be provided in an attachment to the offer.)

(a) NDA/ANDA. Item _____, FDA Approval File Number _____, Date of FDA approval _____. Item _____, FDA Approval File Number _____, Date of FDA approval _____.

(b) Container/closure system materials.

(1) Container (e.g., clear glass, amber glass, high or low density polyethylene, etc.) _____.

(2) Container seal. specify substance (e.g., waxed paper) which would contact the drug. _____.

(3) Container closure and closure liner. specify cap type (e.g., metal, polypropylene, etc.), and the material used to line the closure (e.g., fiber liner, other liner, etc.) _____.

(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)

**52.211-9046 Food and Drug Administration (FDA) Compliance.**
As prescribed in 11.204-93, insert the following clause:

FOOD AND DRUG ADMINISTRATION (FDA) COMPLIANCE - DLA TROOP SUPPORT MEDICAL AND SUBSISTENCE (NOV 2011)

If any supplies acquired hereunder are recalled under the provisions of the Federal Food, Drug and Cosmetic Act, and regulations there under, the Contractor shall, at the Government's option, either reimburse the Government or repair/replace the recalled supplies. Additionally, the Contractor shall notify the Contracting Officer immediately when a firm decides to voluntarily recall or withdraw any product from the marketplace. Upon notification by the Contracting Officer that supplies acquired hereunder have been recalled, the Contractor shall either (a) accept certificates of destruction from the Government after the supplies have been properly disposed of, (b) request return of the supplies, or (c) if supplies may be repaired on site without transporting them from their location, furnish all materials necessary to effect repairs. Replacement or reimbursement will be accomplished by the Contractor immediately on receipt of Certificates of Destruction or returned supplies. The costs of replacement or repair of supplies, and transportation and handling costs for movement of returned, replaced or repaired supplies within the contiguous United States shall be paid by the Contractor. The provisions of this clause are applicable only when the value of the recalled supplies in the possession of the Government amounts to $100 or more. 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 in the contract.

(End of Clause)

**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)

**52.211-9049 Time of Delivery – Incremental Delivery.**
As prescribed in 11.404(a)(1)(92), when incremental delivery is requested.

TIME OF DELIVERY - INCREMENTAL DELIVERY (NOV 2011)

(a) Offers in response to this solicitation will be evaluated as specified in the solicitation. Delivery shall be offered in terms of a number of days after date of award. The number of delivery days required in this solicitation is calculated based on the Government’s planned need and customer requirements. Unless delivery is identified elsewhere in the solicitation as an evaluation factor, Offerors are encouraged to conform their delivery terms as closely as possible to the delivery days required, and there will be no evaluation preference, or penalty for faster delivery. Offering a greater number of delivery days than the required delivery schedule may result in the offer not being considered; however, the Government reserves the right to consider offered delivery times that exceed the number of delivery days required by the Government. Delivery is required by the Government in accordance with the following schedule:

Required delivery schedule

| Item number | Quantity | Within number days after date of award |
|---|---|---|

(Any balance shall be delivered at the rate of [Contracting Officer insert number of items] every [Contracting Officer insert number of days] days thereafter.)

The Government may elect to consider for award only those offers that comply with the required delivery schedule but reserves the right to consider offered delivery times that exceed the number of delivery days required by the government. the offeror may propose an alternative delivery schedule below. If the Offeror proposes no other delivery schedule, the required delivery schedule above will apply.

Offeror's Proposed Delivery Schedule

| Item Number | Quantity | Within Number Days After Date Of Award |
|---|---|---|
| _____ | _____ | _____ |

(Any balance shall be delivered at the rate of [Offeror insert number of items] every [Offeror insert number of days] days thereafter.)

(b) The Government will mail, or otherwise furnish to, the Offeror an award or notice of award not later than the day the award is dated. Therefore, the Offeror shall compute the time available for performance beginning with the actual date of award, rather than the date the written notice of award is received from the Contracting Officer through the ordinary mails. However, the Government will evaluate an offer that proposes delivery based on the Contractor's date of receipt of the award or notice of award by adding five calendar days for delivery of the award through the ordinary mails, or one working day if the solicitation states that the award or notice of award will be transmitted electronically. (The term "working day" excludes weekends and U.S. Federal holidays.)

(End of Clause)

**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)

**52.211-9051 Time of Delivery.**
As prescribed in 11.404(a)(1)(90), insert the following clause:

TIME OF DELIVERY (NOV 2011)

(a) Offers in response to this solicitation will be evaluated as specified in the solicitation. Delivery shall be offered in terms of a number of days after date of award. The number of delivery days required in this solicitation is calculated based on the Government’s planned need and customer requirements. Unless delivery is identified elsewhere in the solicitation as an evaluation factor, Offerors are encouraged

to conform their delivery terms as closely as possible to the delivery days required, and there will be no evaluation preference, or penalty for faster delivery. Offering a greater number of delivery days than the required delivery schedule may result in the offer not being considered, however the Government reserves the right to consider offered delivery times that exceed the number of delivery days required by the Government. Delivery is required by the Government in accordance with the following schedule:

Required delivery schedule

| Item number | Quantity | Within number of days after date of award |
|---|---|---|
| _____ | _____ | _____ |

(b) The Government may elect to consider for award only those offers that comply with the required delivery schedule but reserves the right to consider offered delivery times that exceed the number of delivery days required by the Government. The Offeror may propose an alternative delivery schedule below. if the offeror proposes no other delivery schedule, the required delivery schedule above will apply.

Offeror's proposed delivery schedule

| Item number | Quantity | Within number of days after date of award |
|---|---|---|
| _____ | _____ | _____ |

(c) The Government will mail, or otherwise furnish to, the Offeror an award or notice of award not later than the day the award is dated. Therefore, the Offeror shall compute the time available for performance beginning with the actual date of award, rather than the date the written notice of award is received from the Contracting Officer through the ordinary mails. However, the Government will evaluate an offer that proposes delivery based on the Contractor's date of receipt of the award or notice of award by adding: five calendar days for delivery of the award through the ordinary mails, or one working day if the solicitation states that the award or notice of award will be transmitted electronically. (The term "working day" excludes weekends and United States (U.S.) Federal holidays.)

(End of Clause)

**52.211-9052 Notification to Government of and Contemplated Production Phase-out.**
As prescribed in 11.9001-90, 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 11.604-91, 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)

**52.211-9054 Time of Delivery – Contracts.**
As prescribed in 11.404(a)(1)(93), insert the following clause:

TIME OF DELIVERY- CONTRACTS (NOV 2011)

(a) The time of delivery of supplies to be furnished under any delivery order issued under this contract shall be stated in the order. The Government reserves the right to request phased delivery within the limits of the applicable schedule set forth below.

(b) Delivery is required in accordance with the schedule set forth below.

Within the number of days stated below after date of delivery order

National Stock Numbers
(NSNS) Quantity (that may be ordered any calendar month)

Government required Offeror's proposed
_____ up to _____ each _____ _____
Each additional _____ each (or less) ADD: _____ _____

_____ Up to _____ each _____ _____
Each additional _____ each (or less) ADD: _____ _____

_____ Up to _____ each _____ _____
Each additional _____ each (or less) ADD: _____ _____

_____ Up to _____ each _____ _____
Each additional _____ each (or less) ADD: _____ _____

(c) Unless otherwise specified above, your proposal will be deemed to offer delivery in accordance with the required schedule. The Government may elect to consider for award only those proposals which comply with the required schedule but reserves the right to consider proposals which exceed the required schedule. You are therefore encouraged to submit a proposal even if you cannot comply with the required delivery schedule. If you can comply with the required delivery schedule but could offer better prices for a longer schedule, you may submit two (2) or more proposals on each item. The Government reserves the right to make awards on the basis of offerors' proposed delivery schedules.

(d) Delivery orders will be mailed or otherwise furnished to the Contractor on or before the day the order is dated. Therefore, in computing time available to perform each order, the Contractor must take into consideration the time required for the delivery order to arrive through ordinary mail.

(e) In the event this solicitation provides for a partial set-aside for Small Business, and the set-aside portion is awarded to the same firm that received the award of the non-set-aside portion, then the quantities shown above will be doubled.

(End of Clause)

**52.211-9057 Ordering/Time of Performance (Indefinite Delivery/Time and Material/Labor Hour Contract).**
As prescribed in 11.404-94, insert the following clause:

ORDERING/TIME OF PERFORMANCE (INDEFINITE DELIVERY/TIME AND MATERIAL/LABOR HOUR CONTRACT) (NOV 2011)

(a) Delivery orders will be issued by the Contracting Officer and shall specify a final date for completion of performance considering the following availability requirement regarding the Contractor's personnel:

(1) The Contractor shall have at least one approved employee available in each labor category with a maximum of five (5) calendar days' delay in availability from the issue date of any delivery order which orders use of that labor category.

(b) The Contractor may delay for fourteen (14) calendar days the availability of additional employees in any labor category to work on delivery orders or combinations of delivery orders requiring use of additional employees in that labor category.

(c) The final completion date will be as specified in the delivery order unless the Contractor formally requests an extension of the performance date under the delivery order modification procedures specified herein, provides an explanation for the extension beyond reasons provided for in this clause, and the request is granted in the form of a formal modification to the delivery order.

(End of Clause)

**52.211-9059 Time of Delivery – Alternate Delivery Schedules.**
As prescribed in 11.404-96, insert the following clause:

TIME OF DELIVERY – ALTERNATE DELIVERY SCHEDULES (NOV 2011)

(a) Delivery is desired as soon as possible. Therefore, offers are solicited on the basis of alternate delivery schedules, as set forth below. With respect to each item/sub-item/lot, bids offering delivery within the same alternate delivery schedule will be evaluated equally as regards time of delivery, and award will be made within the earliest alternate delivery schedule possible, subject to price and other factors considered.

(b) More specifically, award will be made within the earliest alternate delivery schedule for which a responsive bid is received from a responsible bidder, provided the price offered is determined by the Contracting Officer, under all of the circumstances, to be reasonable, even if lower prices are received for delivery within a later alternate delivery schedule. If an award for delivery within the first alternate delivery schedule cannot be accomplished, bids in the second alternate delivery schedule will be evaluated for award. If an award within the first and second alternate delivery schedules is not possible, bids in the third alternate delivery schedule will be evaluated for award.

First alternate delivery schedule

| Item number | Quantity | Within number of days after date of Contract |
|---|---|---|

Second alternate delivery schedule

| Item number | Quantity | Within number of days after date of Contract |
|---|---|---|

Third alternate delivery schedule

| Item number | Quantity | Within number of days after date of Contract |
|---|---|---|

(c) The bidder is requested to insert in the space provided below, the delivery schedule which he is offering at the price shown in the schedule:

Item number Quantity Within number of days after date of contract

(d) With respect to each item (or sub-item or lot, as applicable), the bidder may submit a separate offer (by separate attachment to the solicitation and offer, if necessary) for each alternate delivery schedule shown in paragraph (a) above. If the bidder proposes alternate delivery schedules and a different price is to apply to each alternate delivery schedule offered, the bidder is advised to clearly set forth the price or prices applicable to each delivery schedule as offered. Failure to state otherwise will be construed to mean that the price shown in the schedule applies to each alternate delivery schedule offered. In this respect, the Government reserves the right, in accordance with Federal Acquisition Regulation (FAR) requirements, to reject any bid where the price is unreasonable. Accordingly, if the price bid includes substantial extras for delivery within an early alternate delivery period, it is recommended that the bidder also submit a price for a later alternate delivery period shown.

(e) If the delivery schedule offered as to any item (or sub-item or lot, as applicable) falls within two or more of the alternate delivery schedules shown under paragraph (a), then the following will apply:

(1) If a quantity offered within a single alternate delivery schedule is capable of separate award, that quantity will be separately evaluated.

(2) If a quantity offered within a single alternate delivery schedule is not capable of separate award, the entire quantity will be evaluated in the latest alternate delivery schedule in which any portion of the quantity falls.

(f) If a bidder fails to indicate the delivery schedule which he is offering, the last alternate delivery schedule shown under paragraph (a) shall be deemed to apply.

(g) If the delivery offered falls within an alternate delivery schedule, but is for a date prior to the last date shown in that alternate, the Government reserves the right to award either in accordance with the delivery schedule offered or in accordance with the alternate delivery schedule in which the offered delivery date falls.

(h) Quantities offered for delivery beyond the last alternate delivery schedule shown in paragraph (a) above will not be considered for award.

(i) The FAR provision 52.214-10 provides that a written award mailed or otherwise furnished to the successful bidder results in a binding contract. Any award hereunder, or a preliminary notice thereof, will be mailed or otherwise furnished to the bidder the day the award is dated. Therefore, in computing the time available for performance, the bidder should take into consideration the time required for the notice of award to arrive through the ordinary mails. However, a bid offering delivery based on date of receipt by the Contractor of the contract or notice of award (rather than the contract date) will be evaluated by adding five days for delivery of the award through the ordinary mails. If, as so computed, the delivery date offered is later than the delivery date required in the Invitation, the bid will be considered non-responsive and rejected.

Paragraphs (j) and (k) below apply where a bid price lower than the award price is received for a later alternate delivery schedule.

(j) Liquidated damages shall be imposed, in the manner set forth in paragraph (h) of the clause entitled "Default" (as shown under paragraph (k) of this clause), at a rate computed in accordance with (1) below, subject, however, to the maximum limitation stated in (2) below.

(1) The contract unit price, less the lowest unit price offered under the solicitation for delivery within an alternate delivery schedule later than the alternate delivery schedule for which the award is made, shall be divided by the number which represents the difference in number of days between the alternate delivery schedule for which said lowest price was offered and the alternate delivery schedule for which the award is made.

(2) As to any article, liquidated damages shall not exceed 100% of the difference between the contract unit price and the lowest unit price offered under the solicitation for an alternate delivery schedule later than for which the award is made. To the extent applicable, evaluation factors for transportation and discount will be included in the described computation.

(k) Paragraph (h) of the clause entitled "Default (Fixed-Price Supply and Service)," FAR 52.249-8 is redesignated as paragraph (i), and the following is added as paragraph (h):

"If the Contractor fails to deliver the supplies or perform the services within the time specified in this contract, or any extension thereof, the actual damage to the Government for the delay will be difficult or impossible to determine. Therefore, in lieu of actual damages, the Contractor shall pay to the Government as fixed, agreed, and liquidated damages for each calendar day of delay, the amount set forth elsewhere in this contract. Alternatively, the Government may terminate this contract in whole or in part as provided in paragraph (a) of this clause, and in that event the Contractor shall be liable, in addition to the excess costs provided in paragraph (c) above, for such liquidated damages accruing until such time as the Government may reasonably obtain delivery or performance of similar supplies or services. The Contractor shall not be charged with liquidated damages when the delay arises out of causes beyond the control and without the fault or negligence of the Contractor, as defined in paragraph (d) above, and in such event, subject to the "Disputes" clause, the Contracting Officer shall ascertain the facts and extent of the delay and shall extend the time for performance of the contract when in his judgment the findings of fact justify an extension."

(End of Clause)

**52.211-9060 Time of Delivery.**
As prescribed in 11.404-97, insert the following clause:

TIME OF DELIVERY (NOV 2011)

The following delivery schedule applies to this award. See applicable Time Of Delivery clause in Section F of the solicitation or see amendment number _____ for additional information.

Delivery Schedule

| Item number | Quantity | Days |
|---|---|---|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

Liquidated damages ( ) are ( ) are not applicable.

Note: Accelerated delivery is acceptable at no additional cost to the Government

(End of Clause)

**52.211-9061 Time of Delivery (Overlapping Orders (IDC).**
As prescribed in 11.404-98, insert the following clause:

TIME OF DELIVERY (OVERLAPPING ORDERS) INDEFINITE DELIVERY CONTRACT (IDC)
(NOV 2011)

The Government requires delivery to be made according to the following schedule:

Required Delivery Schedule

| Item number | Quantity | Within days after date of contract |
|---|---|---|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

(Any balance shall be delivered at the rate of _____ every _____ days thereafter.)

In the event of overlapping orders, the Contractor is not required to deliver any more than ___ in any _____ day period.

Offeror's Proposed Delivery Schedule

| Item number. | Quantity | Within days after date of contract |
|---|---|---|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

(Any balance shall be delivered at the rate of _____ every _____ days thereafter.)

In the event of overlapping orders, the Contractor is not required to deliver any more than _____ in any _____ day period.

(End of Clause)

**52.211-9062 Delivery Requirements.**
As prescribed in 11.404-99, insert the following clause:

DELIVERY REQUIREMENTS (NOV 2011)

(a) The Government will insist on delivery in strict accordance with the contractual delivery schedule. The dates specified for delivery are the dates required for arrival of the supplies at destination. When transportation terms are free on board (f.o.b.) origin, in order for this delivery to be satisfied, the Contractor should release shipment to the carrier 15 days prior to the date shown in the schedule.

(b) When Defense Logistics Acquisition Directive (DLAD) clause 52.211-9020 entitled "Time of Delivery - Accelerated Delivery" applies, the Contractor may deliver any time prior to, but no later than the specified delivery date as defined in paragraph (a) above.

(c) If accelerated delivery is not authorized, i.e., DLAD 52.211-9020 is not included in the award, the Contractor may deliver as follows without prior authorization of the Contracting Officer:

(1) For an f.o.b. origin award, the Contractor may release the shipment 15 to 30 days prior to the delivery date cited in the contract.

(2) For an f.o.b. destination award, the Contractor may deliver up to 15 days prior to the scheduled delivery date.

(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)

**52.211-9065 Special Notice of Contractor Responsibilities for Components and Tooling (Army Aviation and Missile Command (AMCOM) depot level repairable (DLR) – DLA Aviation).**
As prescribed in 11.204-101, insert the following clause:

SPECIAL NOTICE OF CONTRACTOR RESPONSIBILITES FOR COMPONENTS AND TOOLING (ARMY AVIATION AND MISSILE COMMAND (AMCOM) DEPOT LEVEL REPAIRABLE (DLR) – DLA AVIATION) (NOV 2011)

Offerors are cautioned to carefully review all specifications in order to identify required, restricted vendor components and sources. When such restrictions apply, only components from such approved sources, manufactured to the same quality standards required by the source approval activity, may be used in manufacturing the end item. It is the responsibility of the offeror to make arrangements for obtaining required components, forgings or castings, and any necessary tooling, including but not limited to permission from the owner to use any and all tooling, dies, fixtures and facilities necessary to produce the required components, forgings or castings. Before award, the offeror may be required to document provisions made for obtaining required components, forgings, castings and any other tooling.

(End of Clause)

**52.211-9066 Required Delivery for Orders (Army Aviation and Missile Command (AMCOM) Depot Level Repairable (DLR) – DLA Aviation).**
As prescribed in 11.204-102, insert the following clause:

REQUIRED DELIVERY FOR ORDERS (ARMY AVIATION AND MISSILE COMMAND (AMCOM) DEPOT LEVEL REPAIRABLE (DLR) – DLA AVIATION) (NOV 2011)

(a) The required delivery for order 0001 shall be [Contracting Officer shall insert number of days] days after issuance of the order for Contract Line-Item (CLIN(s)) [Contracting Officer shall insert appropriate CLIN number(s)].

(b) The required delivery date for subsequent orders (CLIN(s) [Contracting Officer shall insert appropriate CLIN number(s)]) shall be [Contracting Officer shall insert number of days] days after issuance of the order. In no event, however, will the Contractor be required to produce more than [Contracting Officer shall insert number of items] per month.

(c) Nothing herein shall preclude early delivery or delivery at a greater rate at the option of the Contractor at the unit prices set forth in the schedule unless so limited by the delivery order.

(End of Clause)

**52.211-9067 Deliveries or Performance – Time of Delivery (Naval Inventory Control Point (NAVICP) Depot Level Repairable (DLR) – DLA Aviation).**
As prescribed in 11.204-103, insert the following clause:

DELIVERIES OR PERFORMANCE - TIME OF DELIVERY (NAVAL INVENTORY CONTROL POINT (NAVICP) DEPOT LEVEL REPAIRABLE (DLR) – DLA AVIATION) (NOV 2011)

(a) The Government desires that delivery be made in accordance with the delivery schedule set forth below:

| Desired delivery schedule | | |
|---|---|---|
| [Contracting Officer insert specific details] | | |
| Item number | Quantity | Within days after date of Contract |
| | | |
| | | |
| | | |

(b) If the Offeror is unable to make delivery in accordance with this schedule, it shall set forth in its proposal the earliest delivery with which it can comply and the reason(s) why the Government's desired schedule cannot be met. Submission of such an alternate schedule will not prejudice the evaluation of that offer.

| Proposed delivery schedule | | |
|---|---|---|
| [Contractor insert specific details] | | |
| Item number | Quantity | Within days after date of Contract |
| | | |
| | | |
| | | |

Reasons why the Government’s desired schedule cannot be met: _____

(c) If this solicitation is an RFP, then the Offeror's failure to take exception the Government's desired delivery schedule set forth below shall cause this schedule to become the required contract delivery schedule in the event the Offeror is awarded the contract.

| Required delivery schedule |
|---|
| [Contracting Officer insert specific details] |

| Item number | Quantity | Within days after date of Contract |
|---|---|---|
| | | |
| | | |
| | | |

(d) Attention is directed to the contract award provision of the solicitation that provides that a written award or acceptance of offer mailed or otherwise furnished to the successful Offeror results in a binding contract. The Government will mail or otherwise furnish to the Offeror an award or notice of award not later than the day the award is dated. Therefore, the Offeror shall compute the time available for performance beginning with the actual date of award, rather than the date the written notice of award is received from the Contracting Officer through the ordinary mails. However, the Government will evaluate an offer that proposes delivery based on the Contractor's date of receipt of the contract or notice of award by adding five (5) days for delivery of the award through the ordinary mails.

(End of Clause)

**52.211-9068 Continuance of Performance During Any State of Emergency (Republic of Korea) (DLA Energy).**
As prescribed in 11.401(93), insert the following clause:

CONTINUANCE OF PERFORMANCE DURING ANY STATE OF EMERGENCY (REPUBLIC OF KOREA) (DLA ENERGY) (NOV 2011)

The Contractor shall be responsible for performing all functions of this contract during any state of emergency declared by the United States (U.S.) or Republic of Korea (ROK), within or affecting the ROK, or during internal strife, rioting, civil disturbance, declaration of war or perils of any other type in the ROK until released by the Contracting Officer. The Contractor shall assist and participate, as may be required by competent military authority, in any military or dependent evacuation plan. The Contractor shall participate at the direction of the ROK or U.S. local commander, in all local or site training exercises relating to U.S. Government preparation for any of the above incidents.

(End of Clause)

**52.211-9069 Time of Delivery – Ordering Office.**
As prescribed in 11.404-94, insert the following provision:

TIME OF DELIVERY – ORDERING OFFICE (NOV 2011)

Material ordered under the terms of this Contract shall be delivered within _____ days after the date of the order. Notwithstanding any other provisions or clauses of this Contract, no deliveries shall be made prior to issuance of the delivery order on Department of Defense (DD) Form 1155.

(End of Provision)

**52.211-9070 Relief from Diminishing Manufacturing Sources or Material Shortages Components (F-16 Program) (AF Program) AF- Hill Depot Level Repairable (DLR) – DLA Aviation.**
As prescribed in 11.9002-90(a), insert the following clause:

RELIEF FROM DIMINISHING MANUFACTURING SOURCES OR MATERIAL SHORTAGES COMPONENTS (F-16 PROGRAM) AIR FORCE (AF)-HILL DEPOT LEVEL REPAIRABLE (DLR) – DLA AVIATION (NOV 2011)

(a) A diminishing manufacturing sources or material shortages component ("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) 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) 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(e), 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)

**52.211-9072 General Receiving and Storing Conditions (DLA Energy).**
As prescribed in 11.404(a)(1)(94), insert the following clause:

GENERAL RECEIVING AND STORING CONDITIONS (DLA ENERGY) (NOV 2011)

Notice will be furnished to the Contractor of upcoming product receipts. The notice will include the method of receipt, the source, grade, or type of product, and any special instructions.

The Contractor shall transfer and store each grade of product in a manner that preserves the quality of the product and will prevent contamination. The responsibility for preventing contamination rests with the Contractor.

When requested, the Contractor will transfer product between tanks to consolidate like types or grades.

Whenever a product is to be removed from a tank to accomplish cleaning or repair of the tank, or to change product, or to affect the release of the tank to the Contractor, the Contractor shall strip such tank to preclude loss of recoverable fuel. The Contractor shall provide the quality assurance representative (QAR) with information pertaining to the amount of fuel deemed unrecoverable, the reason why the fuel cannot be recovered, and an analysis of the unrecovered fuel quality. All unrecoverable tank bottoms/line fill quantities will be reported to the Property Administrator for disposition instructions.

Contaminated/off-specification product will be reported to the QAR in order to obtain disposition instructions. Tanks out of service for repair shall be removed from revenue until such time as they are returned to Government service. Tanks out of service for cleaning shall be governed by the Inspection And Cleaning Of Bulk Petroleum Storage Tanks clause.

Custody of product received by pipeline, and risk of loss thereof, shall pass from the carrier to the Contractor when the product passes the flange connecting the carrier's pipeline and the Contractor's pipeline.

Custody of product received by transport truck, and risk of loss thereof, shall pass from the carrier to the Contractor when the product passes from the transport truck discharge hoses into the Contractor's receiving facilities.

Custody of product received by tank car, and risk of loss thereof, shall pass from the carrier to the Contractor when the tank car comes to rest on the Contractor's siding.

Custody of product received from tanker or barge, and risk of loss thereof, shall pass from the carrier to the Contractor when the fuel passes the vessel’s permanent hose connection.

The Contractor shall be held accountable for demurrage charges arising from delay(s) in receipt by tank cars or transport trucks, except when the delay(s) are caused by reason beyond the control and without the fault or negligence of the Contractor and its subcontractors.

The following subparagraphs apply only to barges and tankers.

Scheduled arrival date and basic allowed laytime.

The Contractor shall be notified in advance of the scheduled arrival date. Each notice will specify the quantity to be delivered, the cargo number, the name of the vessel, and the scheduled arrival date. For tankers, the notice will also include the size of the vessel and the expected time of arrival. For tankers, the notice of delivery will be furnished at least 72 hours in advance of the scheduled arrival date; for barges, at least 48 hours in advance of the scheduled arrival date.

The Government will provide the maximum notice practicable when the anticipated vessel transit time from the loading point is less than the 72/48 hours. Changes in the scheduled arrival date that will provide less than the 48 hours’ notice for barges and the 72 hours’ notice for tankers will require the verbal approval of the Contractor. This verbal approval is to be confirmed in writing as soon as practicable.

The Contractor shall provide a reachable berth, free of charge, where the vessel can be safely moored and afloat with necessary access thereto as soon as possible, but no later than, for barges, within 3 hours after issue of notice of readiness to unload, and, for tankers, within 6 hours after issue of notice of readiness, provided –

If the vessel is tendered for unloading on a date earlier than the last agreed scheduled arrival date, the Government's vessel shall be unloaded as soon as possible in its proper turn with other vessels, and laytime shall not commence until the vessel moors alongside or, for barges, 3:00 A.M. local time; for tankers, 6:00 A.M. local time, on the last agreed scheduled arrival date, whichever occurs first.

If the vessel is tendered for unloading later than 12:00 noon of the day following the last scheduled arrival date, the vessel shall be unloaded in its proper turn with other vessels. Laytime shall commence when the vessel moors alongside, provided a good faith effort is made by the Contractor to moor the vessel in its turn with other vessels as loading berths become available.

Laytime shall commence either (A) at the expiration of the notice period prescribed in subparagraph (ii) above, berth or no berth, or (B) immediately when the vessel moors alongside, with or without notice of readiness, whichever occurs first.

Laytime, once started, shall continue 24 hours per day, 7 days per week, without interruption, from its commencement until unloading of the barge or tanker is completed and hoses have been disconnected.

Unless otherwise provided in the Schedule, the Contractor shall be allowed and will complete unloading within laytime determined as follows:

For barges: One hour for each 2,000 barrels of product to be unloaded.

For tankers: Thirty-six hours of discharge of a full vessel cargo. When partial vessel cargoes are to be unloaded, the 36 hours will be prorated based on quantities discharged in each port.

Hoses and loading arms for unloading a barge or tanker will be furnished, connected, and disconnected by the Contractor.

Increases to basic allowed laytime.

If, after laytime commences, the conditions or facilities of the barge or tanker to be unloaded do not permit unloading, basic allowed laytime shall be increased by the duration of the delay.

If the vessel is delayed in reaching its berth and the delay is caused by the fault of the vessel, basic allowed laytime shall be increased by the duration of the delay.

If the vessel owner's or operator's regulations prohibit unloading at any time after laytime has commenced, the lost time shall be added to the basic allowed laytime.

If, for any reason, the Contractor is delayed in unloading the barge or tanker because of actions of a Government representative, acting under the contract, that arise through no fault or negligence on the part of the Contractor or its subcontractors, basic allowed laytime shall be increased by the duration of the delay.

There will be no increase to basic allowed laytime (nor other reductions to any resulting demurrage time) for saved laytime arising out of other loadings/discharges.

Delays, after commencement of laytime, attributed to causes beyond the control and without the fault or negligence of the Contractor or the U.S. Government will result in increasing the basic allowed laytime by one half of the delay time.

Payment of demurrage. For all hours of laytime which elapse in excess of the basic allowed laytime for unloading provided for by subparagraph (k)(1)(v), or as otherwise provided in the Schedule, the Contractor shall pay demurrage to the Government as follows:

USS, USNS, or time chartered vessels. At the demurrage rate for the vessel loaded computed to the nearest whole hour as published by the Military Sealift Command and in effect on the date the loading of the vessel is completed.

Voyage chartered vessels. At the demurrage rate cited in the charter, except that the demurrage payable by the Contractor shall in no event exceed the demurrage expense incurred by the Government under the Charter.

(End of Clause)

**52.211-9073 Determination of Quantity - DLA Energy.**
As prescribed in 11.703-91, insert the following clause:

DETERMINATION OF QUANTITY – DLA ENERGY (NOV 2011)

Quantity. The quantity of supplies furnished under this contract shall be determined as follows:

Free on Board (f.o.b.) origin. All invoice quantities shall be converted to net gallons at 60 degrees Fahrenheit (or liters at 15 degrees Celsius).

Deliveries into tanker or barge. On items requiring delivery at the Contractor's refinery, terminal, or bulk plant on an f.o.b. origin basis into a tanker or barge, the quantity shall be determined (at the Contractor's option) on the basis of calibrated meter; or

Shipping/shore tank measurement.

Deliveries into pipeline. On items requiring delivery at the Contractor's refinery, terminal, or bulk plant on an f.o.b. origin basis into a pipeline, the quantity shall be determined (at the Contractor's option) on the basis of calibrated meter; or shipping tank measurements.

Deliveries into rail tank car. On items requiring delivery at the Contractor's refinery, terminal, or bulk plant on an f.o.b. origin basis, the quantity shall be determined (at the Contractor's option) on the basis of calibrated loading rack meter; or, using calibrated scales; or certified capacity table for the rail tank car.

Deliveries into tank truck, truck and trailer, or tank wagon. On items requiring delivery at the Contractor's refinery, terminal, or bulk plant on an f.o.b. origin basis into a tank truck, truck and trailer or

tank wagon, the quantity shall be determined (at the Contractor's option) on the basis of calibrated loading rack meter; or weight, using calibrated scales; or certified capacity table for the conveyance or container.

Deliveries into intermodal container. On items requiring delivery at the Contractor's refinery, terminal, or bulk plant on an f.o.b. origin basis into an intermodal container, the quantity shall be determined (at the Contractor's option) on the basis of calibrated loading rack meter, loading either through top or bottom tank outlets (top loading requires loading gantry or "fall arrest" system), or certified capacity table for the container, or weight, using calibrated scales.

F.o.b. destination.

Deliveries by tanker or barge.

On items requiring delivery on an f.o.b. destination basis by tanker or barge, the invoice quantity shall be determined (at the Government's option) on the basis of calibrated meters on the receiving tank system; or receiving tank measurements. All invoice quantities shall be converted to net gallons at 60 degrees Fahrenheit (or liters at 15 degrees Celsius).

Deliveries by pipeline.

On items requiring delivery by pipeline on an f.o.b. pipeline junction or f.o.b. destination basis, the invoice quantity shall be determined (at the Government's option) on the basis of calibrated meters on the pipeline junction or the receiving tank system; or receiving tank measurements.

F.o.b. pipeline junction is defined as the junction between a Contractor-owned or controlled pipeline and a Government-owned or controlled pipeline.

All invoice quantities shall be converted to net gallons at 60 degrees Fahrenheit (or liters at 15 degrees Celsius).

Deliveries by rail tank car.

On items requiring delivery on an f.o.b. destination basis by rail tank car, the quantity of supplies furnished under this contract shall be determined (at the Government's option) on the basis of calibrated meter on the receiving tank system; or weight, using calibrated scales at the receiving location; or certified capacity table for the rail tank car; or receiving tank measurements.

All invoice quantities shall be converted to net gallons at 60 degrees Fahrenheit (or liters at 15 degrees Celsius).

Deliveries by tank truck/truck and trailer/tank wagon/intermodal container.

On items requiring delivery on a f.o.b. destination basis by tank truck, truck and trailer, tank wagon or intermodal container, the quantity shall be determined —in the following order of preference:

Calibrated temperature compensating meters on the receiving system (as identified in the schedule).

Calibrated temperature compensating meter on the delivery conveyance (as identified in the schedule).

Weight, using calibrated scales at the receiving location (as identified in the schedule).

Calibrated meters on the receiving system, requiring manual volume correction (as identified in the schedule).

Loading ticket mechanically imprinted with the volume corrected (net) quantity. The ticket must be generated at the time of loading and be based on a calibrated loading rack meter or calibrated scales.

Calibrated meter on the delivery conveyance, requiring manual volume correction.

Loading ticket, not volume corrected (requiring manual volume correction).

Invoice quantities for all residual fuels and lubricating oils and invoice quantities for other products that are in excess of 5,000 gallons (or 18,900 liters) shall be converted to net gallons at 60 degrees Fahrenheit (or liters at 15 degrees Celsius). Invoice quantities of nonresidual fuels which are less than 5,000 gallons (or 18,900 liters) do not require correction to net gallons (or liters). For this purpose, residual fuels are any products with a viscosity equal to or greater than a regular (not light) number 4 fuel oil (ASTM D 396).

Water bottoms.

Every delivery must be free of all water bottoms prior to discharge; and

The Contractor is responsible for their removal and disposal.

Measurement restrictions. All methods of measurement described in this clause are subject to government safety and environmental restrictions, foreign or domestic. Such restrictions may prohibit, or render ineffective, a particular method in some cases.

Measurement standards. All measurements and calibrations made to determine quantity shall be in accordance with the most recent edition of the API Manual of Petroleum Measurement Standards (MPMS). Outside the U.S., other technically equivalent national or international standards may be used. Certified capacity tables shall mean capacity tables prepared by an independent inspector or any independent surveyor to the aforementioned measurement and calibrations standards. In addition, the following specific standards will be used as applicable:

API MPMS Chapter 11.1, Temperature and Pressure Volume Correction Factors for Generalized Crude Oils, Refined Products, and Lubricating Oils (this chapter is an adjunct to ASTM D 1250, IP 200 and International Organization for Standardization (ISO) 91-1). Either the 2004 or 1980 version of the standard may be used. Either the printed tables (an adjunct to the 1980 version) or the computer subroutine version of the standard may be used. In case of disputes, the computer subroutine for the 2004 version of the standard will be the referee method.

For crude oils, JP4, and Jet B, use Volume I, Tables 5A and 6A; Volume VII, Tables 53A and 54A; or Volume IV, Tables 23A and 24A.

For lubricating oils, use Tables 5D and 6D, Tables 53D and 54D, or Tables 23D and 24D.

For all other fuels and fuel oils, use Volume II, Tables 5B and 6B; Volume VIII, Tables 53B and 54B; or Volume V, Tables 23B and 24B.

For chemicals/additives use Volume III, Table 6C (or Volume IX, Table 54C), or volume correct in accordance with the product specification.

Volume XII, Table 52, shall be used to convert cubic meters at 15 degrees Celsius to barrels at 60 degrees Fahrenheit. Convert liters at 15 degrees Celsius to cubic meters at 15 degrees Celsius by dividing by 1,000. Convert gallons at 60 degrees Fahrenheit to barrels at 60 degrees Fahrenheit by dividing by 42. Should foreign law restrict conversion by this method, the method required by law shall be used.

As an option to (b) (1) (v), liters may be converted to gallons using Table F1.09A (see below). If this option is used, it must be agreed upon by both parties and shall remain in effect for the duration of the contract. Should foreign law restrict conversion by this method, the method required by law shall be stated in the offer.

If the original measurement is by weight and quantity is required in U.S. gallons, then—

Volume XI, Table 8, shall be used to convert pounds to U.S. gallons at 60 degrees Fahrenheit.

Volume XII, Table 58, shall be used to convert metric tons to U.S. gallons at 60 degrees Fahrenheit.

API MPMS, Chapter 4, Proving Systems. All meters used in determining product volume shall be calibrated using this standard with the frequency required by local regulation (foreign or domestic). If no local regulation exists, then the frequency of calibration shall be that recommended by the meter manufacturer or every 12 months, whichever is more frequent. A meter calibration log/calibration certificates shall be maintained which as a minimum contains number/name of each meter; calibration frequency; date of the last calibration; due date for next calibration; name and signature of the person performing the calibration; traceability to master meter/prover used for calibration; and calibration report number.

Each meter shall be marked with the date of the last calibration and due date for the next calibration. All calibration meter records and logs/certificates shall be kept on file and made available upon request. All calibration records (including logs or certificates) shall be retained on file for a period of three years.

API MPMS Chapter 12, Calculation of Petroleum Quantities. All calculations of net quantities shall be made in accordance with this chapter. Outside the U.S., use of a tank shell correction factor is not required unless its use is a customary practice for custody transfer.

| Table F1.09a Conversion Factor Table | | |
|---|---|---|
| Density @ 15ºC | Gallons at 60ºF to Liters at 15ºC; Multiply by | Liters at 15C to Gallons at 60F, Multiply by |
| 0.723 – 0.768 | 3.78286 | 0.26435 |
| 0.769 – 0.779 | 3.78309 | 0.26433 |
| 0.780 – 0.798 | 3.78334 | 0.26432 |
| 0.799 – 0.859 | 3.78356 | 0.26430 |
| 0.860 – 0.964 | 3.78381 | 0.26428 |
| 0.965 – 1.074 | 3.78405 | 0.26427 |

Shipping documentation. When the Contractor's shipping document (such as a truck's metered ticket) is used to determine, or verify, the payment quantity under this contract, the following information shall be provided on that shipping document: gross and net quantity (gallons or liters, as required), observed and corrected API gravity/density, and the temperature (Fahrenheit or Celsius) at which the product was measured. This information shall be mechanically imprinted on the shipping document. Although this will apply primarily to the use of meters in various applications, it also applies to any other quantity determination method. The following exceptions apply:

Where Government documents are the sole basis for payment, such as Department of Defense (DD) Form 250/250-1s, the information is not required.

Where conveyances with temperature-compensating meters are used, the shipping document shall only be annotated with the corrected API gravity/density, the net quantity, and a statement that a temperature-compensating meter was used to determine net quantity.

Where conveyances with temperature compensating meters are not used, the shipping document shall be only be annotated with the API gravity (or density), gross quantity, and a statement that volume correction was not required.

Right to representative. For f.o.b. origin deliveries, the Government has the right to have a representative present to witness the measurement of quantity. For f.o.b. destination deliveries, the Contractor has the right to have a representative present to witness the delivery and measurement of quantity.

(End of Clause)

**52.211-9074 Deoxyribonucleic Acid (DNA) Marking on High Risk Items.**
As prescribed in 11.304-93(e), insert the following clause:

DEOXYRIBONUCLEIC ACID (DNA) MARKING ON HIGH RISK ITEMS (AUG 2012)

(a) This clause applies to items falling within Federal Supply Class (FSC) 5962, Electronic Microcircuits, when the item description in the contract schedule states that the item requires DNA marking.

(b) The Contractor shall provide items that have been marked with botanically-generated DNA produced by Applied DNA Sciences or its authorized licensees, if any. The Contractor shall obtain the DNA material from Applied DNA Sciences or an authorized licensee, and may contact them at militarymark@adnas.com, or as otherwise specified in the contract. The DNA marking can be applied with an invisible DNA mark on the part, or the Contractor's ink utilized for part marking can be mixed with the DNA marking material. The authentication DNA used shall be unique to the Contractor.

(c) The Contractor shall retain for 5 years after final payment under this contract traceability documentation that demonstrates the items provided under this contract have been marked with DNA material produced by Applied DNA Sciences or an authorized licensee, and that the DNA marking is unique to the Contractor. The Contractor shall provide the traceability documentation upon request by the Contracting Officer; at time of Government source inspection, if applicable; and/or during random or directed post-award audits.

(End of Clause)

**52.211-9083 Time of Delivery – Customer Oriented Delivery.**
As prescribed in 11.404(a)(1)(S-95), insert the following clause:

TIME OF DELIVERY – CUSTOMER ORIENTED DELIVERY (SEP 2012)

(a) Except as may be provided below, and subject to the maximum order limitation set forth in Federal Acquisition Regulation (FAR) 52.216-19, supplies or services ordered under the terms of this contract shall be delivered within the required delivery date (RDD) specified in each delivery order. In the event that an RDD is not cited in the delivery order, the minimum RDD for each order shall be _____ days.

(1) Within five working days of the date of each order, the Contractor shall notify the contracting officer in writing if it temporarily cannot meet the delivery schedule and provide a list of all affected orders. Affected orders include previous orders for items that might be impacted by the order, or orders over the maximum limitation for large quantities as described in paragraph (a) above. The Contractor shall include in this notification the following information for each order:

(i) Delivery order number,

(ii) Affected quantity,

(iii) National stock number (NSN),

(iv) Quantity on hand of finished products,

(v) Quantity in production, if the Contractor is a manufacturer, with scheduled completion date(s), and

(vi) The quantity due in, if the Contractor is not a manufacturer, with scheduled receipt date(s).

(2) Upon notification pursuant to subparagraph (1) above, the Contracting Officer will prioritize this list of orders for purposes of determining the order of delivery for any quantities which remain in the Contractor's stock or become available prior to complete recovery as described in subparagraph (3) below.

(i) Following notification and until such time as the Contractor has satisfied the Contracting Officer that it is able to meet the customer oriented delivery schedule, the Government reserves the right to order items from other sources and/or cancel any affected orders, and obtain the supplies outside this Contract.

(3) A revised delivery schedule may be agreed to by the Contractor and the Government or, if agreement cannot be reached, unilaterally established by the Contracting Officer.

(i) Any revised delivery schedule will be incorporated into a modification for all affected orders not cancelled pursuant to subparagraph (2) above, or any additional orders issued subsequent to the prioritization.

(ii) The Contractor agrees to an equitable adjustment in favor of the Government as consideration for the Government's agreement to revise the delivery schedule(s) for the impacted order(s). The amount of the equitable adjustment will be agreed to by the Contractor and the Contracting Officer, and may be unilaterally established by the Contracting Officer if agreement cannot be reached.

(b) Stocking up time. Delivery orders issued between the date of the award of the basic contract and a date ___ days after the date of the basic contract award shall require delivery at the specified destination within ___ days after date of order, or within ___ days after date of the award of the basic contract, whichever is later.

(c) The Contractor shall not make partial delivery of supplies under a delivery order unless instructed by the contracting officer to do so, nor shall the Contractor submit an invoice for any partially shipped order.

(d) The Contractor shall deliver the supplies to the destination(s) specified in the delivery order as close in time to the specified RDD as is practical without exceeding the RDD, however, the contractor will not ship material earlier than _____ days prior to the RDD.

(e) Contact with the Contractor may be necessary in order to ascertain the status of a delivery order. Accordingly, the Contractor shall insert, in the space provided below, an authorized representative that shall be the point of contact for such situations.

_____

Contractor representative name, title, telephone number

(f) If the Contractor fails to make timely delivery with respect to supplies covered by any order issued under this contract, the Government reserves the right, upon written notice to the Contractor, to obtain those supplies in the open market, and to credit the value of such procurement(s) against the guaranteed minimum ordering quantity in this contract, if the guaranteed minimum has not yet been satisfied. However, this shall not apply,

(1) If the reason for untimely delivery is due to an excusable delay within the meaning of the clause entitled "Default;" or

(2) For those orders which exceed the limitations on government ordering delineated under the clause, "Delivery Order Limitations," located elsewhere in this Contract.

(End of Clause)

**52.211-9084 Packaging, Packing, Marking and Labeling of Hazardous Material Shipments (DLA Maritime-Norfolk).**

As prescribed in 11.204-104, insert the following clause in full text:

PACKAGING, PACKING, MARKING AND LABELING OF HAZARDOUS MATERIAL SHIPMENTS (DLA MARITIME-NORFOLK) (NOV 2011)

(a) Packaging, packing, marking and labeling hazardous materials to be shipped by any mode or combination of transportation modes shall be prepared (properly classed, described, packages, marked,

labeled, placarded, etc.) for shipment in accordance with military standard (MIL-STD) 129 and all applicable Government and carrier regulations in effect at the time of shipment.

(b) Applicable regulations include, but are not necessarily limited to the following:

(1) Code of Federal Regulations (CFR) Title: 49 Transportation Parts 100-199.

(2) Official Air Transport Restricted Articles Tariff Number 6-D C.A.B.82.

(3) Official Air Transport Restricted Articles Circular Number 6-D.

(4) International Air Transport Association Restricted Articles Regulations.

(5) International Maritime Dangerous Goods Code.

(6) Air Force Regulation 71-4 Preparation of Hazardous Materials for Military Shipment.

(c) Export shipments are also subject to the domestic regulations indicated for the port of embarkation.

(End of Clause)

**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)

**52.211-9086 Deteriorative Material Marking (DLA Maritime-Norfolk and Puget Sound).**
As prescribed in 11.204-106, insert the following clause in full text:

DETERIORATIVE MATERIAL MARKING (DLA MARITIME-NORFOLK AND PUGET SOUND)
(NOV 2011)

(a) Deteriorative material shall be supplied with at least two-thirds of their shelf life remaining at the time of shipment. The Contractor will include as part of the marking, the following information:

(1) Expiration date, storage time period or maximum shelf life limitation from time of delivery.
(2) Required temperature, humidity or other storage conditions.
(3) Marking of the shelf life date shall be specified in military standard (MIL-STD) 129, for each unit of material, issue, package, intermediate container and exterior shipping container.

(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)

**52.211-9095 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)

**52.212-9000 Changes – Military Readiness.**
As prescribed in 12.302(b)(3)(91), insert the following clause:

CHANGES – MILITARY READINESS (NOV 2011)

The commercial changes clause at Federal Acquisition Regulation (FAR) 52.212-4(c) is applicable to this contract in lieu of the changes clause at FAR 52.243-1. However, in the event of a contingency operation or a humanitarian or peace keeping operation, as defined below, the Contracting Officer may, by written order, change 1) the method of shipment or packing, and 2) the place of delivery. If any such change causes an increase in the cost of, or the time required for performance, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract. The Contractor must assert its right to an adjustment within 30 days from the date of receipt of the modification.

"Contingency operation" means a military operation that-is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or results in the call or order to, or retention on, active duty of members of the uniformed services under 10 United States Code (U.S.C.) 688, 12301(a), 12302, 12304, 12305, or 12406, chapter 15 of U.S.C., or any other provision of law during a war or during an national emergency declared by the President or Congress (10 U.S.C. 101(a)(13)).

"Humanitarian or peacekeeping operation" means a military operation in support of the provision of humanitarian or foreign disaster assistance or in support of peacekeeping operation under Chapter VI or VII of the Charter of the United Nations. The term does not include routine training, force rotation, or stationing. (10 U.S.C. 2302 (8) and 41 U.S.C. 259(d)(2)(B)).

(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)

**52.212-9004 Reference to Uniform Contract Format (UCF) in Commercial Acquisitions.**
As prescribed in 12.204 (b), insert the following clause:

REFERENCE TO UNIFORM CONTRACT FORMAT (UCF) IN COMMERCIAL ACQUISITIONS (NOV 2011)

Acquisitions for commercial items under Federal Acquisition Regulation (FAR) Part 12 procedures do not follow the UCF prescribed in FAR 15.204-1. Therefore, whenever a clause in this solicitation or

award references a UCF section, it will be construed to mean the following (to the extent applicable in the particular acquisition):

Section B The Schedule

Section C Statement of work or performance work Statement

Sections F,G,H,I FAR clause 52.212-5; Defense Federal Acquisition Regulation Supplement (DFARS) clause 252.212-7001/ other non-Part 12 FAR,DFARS or Defense Logistics Acquisition Directive (DLAD) clauses included in the solicitation/contract

Section K FAR clause 52.212-3; DFARS Clause 252.212-7000

Section L FAR Clause 52.212-1 and any addendum thereto

Section M FAR clause 52.212-2 and any addendum thereto.

(End of Clause)

**52.213-9000 Quantity break.**
As prescribed in 13.101(a)(1)(90), insert a provision substantially as follows:

QUANTITY BREAK (NOV 2011)

If a larger quantity is obtainable at no additional total price due to a minimum order quantity/value or any other reason, the offeror agrees to record below the maximum quantity of the product cited in this request for quote (RFQ) which can be furnished for such total price, along with the lower unit price for such increased quantity. If yet lower unit prices are available for greater quantities, offerors are requested to enter the lower unit prices and quantity ranges to which such prices will apply. The Government may elect to accept such alternate quantity quotations not exceeding $150,000 without further solicitation or discussion:

| Quantity Range | Unit Price |
|---|---|
| _____ | _____ |
| _____ | _____ |

(End of Provision)

**52.213-9001 Evaluation Factor for Source Inspection.**
As prescribed in 13.106-90(a), 14.201 8(a)(90), and 15.304 (c)(94), 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)

**52.213-9002 [Reserved.]**

**52.213-9003 [Reserved.]**

**52.213-9004 Offeror Representations, Certifications, and Fill-In Information--Electronic Commerce.**
As prescribed in 13.101(b)(2)(90), insert the following provision.

OFFEROR REPRESENTATIONS, CERTIFICATIONS, AND FILL-IN INFORMATION--ELECTRONIC COMMERCE (NOV 2011)

(a) Offerors are required to provide the following socioeconomic and other data in a coded, rather than a fill-in, format. This provision consolidates, to the maximum extent practicable, most of the applicable representations and certifications (other than those provided on an annual basis) and fill-in portions of clauses and provisions from the Federal Acquisition Regulation (FAR), the Defense FAR Supplement (DFARS), and the Defense Logistics Acquisition Directive (DLAD).

(b) This provision constitutes a recordation of the representations, certifications, and other data requirements contained in the individual provisions incorporated herein by reference via the citation(s) at each numbered paragraph. It is not intended to supersede those provisions, except that the requirement for marking certain boxes or otherwise entering information individually into these cited provisions is hereby replaced by the requirement to complete this provision 52.213-9004. The offeror is reminded that all provisions incorporated herein by reference remain binding in their entirety. Any penalties for misrepresentation contained in the referenced provisions (e.g., penalties for misrepresentation of business status under FAR 52.219-1, paragraph (d)(2)**)** still apply. Furthermore, additional information required by the individual provisions to be provided "at the time of" or "with" the offer must be transmitted elsewhere

in your response or sent/faxed under separate cover (as appropriate) concurrently with your transmitting this transaction to the Government.

(c) The offeror may electronically access the full text of each referenced provision at, or through links provided at http://www.dla.mil/Acquisition. The offeror may also request that the Contracting Officer provide the hard-copy full text of any DLAD or local provision(s) referenced below.

(d) The following provision segments, identified, where necessary, to a specific line item number(s), shall be completed by the offeror.

01. Federal Acquisition Regulation (FAR) 52.204-3, Taxpayer Identification [also, FAR 52.212-3, Offeror Representations and Certifications - Commercial Items (paragraph (b)), when used for commercial items].

01A Enter one of the following: Taxpayer Identification Number (TIN) (without dashes); or the appropriate code from the list below; or state other basis why TIN is not required._____.

BA = TIN has been applied for.

TIN is not required because:

FO = Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States (U.S.), and does not have an office or place of business or a fiscal paying agent in the U.S.

FG = Offeror is an agency or instrumentality of a foreign government.

GT = Offeror is an agency or instrumentality of the Federal Government.

01B Select one code from the following list that identifies the offeror's type of organization. If other than those listed, provide identification: _____.

PM = Corporate entity (not tax-exempt).
OE = Corporate entity (tax-exempt).
SP = Sole proprietorship.
PA = Partnership.
GE = Government entity (Federal, State, or local).
FG = Foreign government.
WE = International organization per 26 Code of Federal Regulations (CFR) 1.6049-4.

01C If offeror is owned or controlled by a common parent, enter Common Parent Name. (Enter "NA" if not applicable.) .

01D If offeror is owned or controlled by a common parent, enter Common Parent TIN (without dashes). (Enter "NA" if not applicable.) .

02. FAR 52.209-1, Qualification Requirements.

(Applies only to an acquisition subject to a qualification requirement. When qualification applies, 02A and at least one of the items from 02B through 02F must contain an entry other

than "NA.")

02A Enter the individual line item number for which qualification information is applicable.

Enter "all" if, and only if, the responses to 02B through 02F are the same for all line items in your offer.
Enter "NA" if the solicitation does not contain a qualification requirement.
(Note: If information is being provided for individual line item numbers, segments 02A through 02F should be repeated as many times as necessary) _____.

02B Enter Manufacturer's Name or Commercial and Government Entity (CAGE) code. (Enter "NA" if clause not applicable.) _____.

02C Enter Source Name or CAGE code. (Enter "NA" if clause not applicable.) _____.

02D Enter Item Name. (Enter "NA," if clause not applicable.) _____. .

02E Enter Service Identification. (Enter “NA” if clause not applicable, or “NK” if service identification is not known)._____.

02F Enter Test Number. (Enter "NA" if clause not applicable, or "NK" if test number is not known_____.

RI = Reconditioned/Remanufactured Item

SU = New, Unused Government Surplus (If surplus material is offered, offeror must also complete the representation in clause 52.211-9000, Government Surplus Material.
NA = Not applicable

03. FAR 52.211-5, Material requirements.

03A Enter the individual line item number for which the offeror proposes to furnish "other than new" (used) material; or reconditioned/remanufactured material; or unused former Government Surplus property.

Enter "all" if, and only if, the response to 03B is the same for all line items in your offer.
Enter "NA" here and in 03B if the provision is not applicable.
(Note: If information is being provided for individual line item numbers, segments 03A and 03B should be repeated as many times as necessary.) _____.

03B Select one of the following codes to describe the material the offeror intends to furnish:_____. If any code other than "NA" is entered, the offeror shall provide a list under separate cover describing such material in accordance with paragraphs (c) or (d) of the cited clause.

ON = Other than new (used)

04. FAR 52.219-1, Small Business Program Representations/Type of Business

04a The offeror certifies as part of his offer that it is a _____ business type. (Select only one code from the list below.)

B = Small Business Concern (Use this code if your firm is a small business concern, as defined in FAR 52.219-1, paragraph (c), and no other code below applies.)

C = Nonprofit Institution. (Use this code if you are a business entity organized and operated exclusively for charitable or scientific purposes, and you are exempt from Federal income taxation under Section 501 of the Internal Revenue Code, as described in FAR 31.701.)

E = Educational Institution. (Use this code if you are an institution of higher education (i.e., college or university) other than a historically black college or university or minority institution.)

F = Historically Black College or University (HBCU). (Use this code if you are a historically black college or university, as defined in FAR 2.101.)

G = "AbilityOne" Participating Nonprofit Agency. (Use this code if you are a nonprofit agency-serving people who are blind, or those with other severe disabilities, as defined in FAR 8.701.)

P = Minority Institution. (Use this code if you are a minority institution, other than a historically black college or university, as defined in FAR 2.101.)

X = Intragovernmental. (Use this code if you are a Federal Agency, Government corporation, or other Government agency, such as Federal Prison Industries (UNICOR).)

M = Small Disadvantaged Business Concern (Use this code if your firm is a small disadvantaged business concern, as defined in FAR 52.219-1(b)(2)).

W = Woman-owned Small Business Concern (Use this code if your firm is a woman-owned small business concern, as defined in FAR 52.219-1, paragraph (c).)

T = Veteran-Owned Small Business Concern (Use this code if your firm is a veteran-owned small business concern, as defined in FAR 52.219-1, paragraph (c), and code R does not apply.)

R = Service-Disabled Veteran-Owned Small Business Concern (Use this code if your firm is a service-disabled veteran-owned small business concern, as defined in FAR 52.219-1, paragraph (c).)

U = Woman-Owned Small Disadvantaged Business Concern (Use this code if your firm is a both a woman-owned small business and a small disadvantaged business.) See citations for definitions at codes M and W, above.

K = Small Disadvantaged, Service-Disabled Veteran-Owned Small Business Concern (Use this code if your firm is both a small disadvantaged business and a service-disabled veteran-owned small business.) See citations for definitions at codes M and R, above.

L = Small Disadvantaged, Other Veteran-Owned Small Business Concern (Use this code if your firm is both a small disadvantaged business and a veteran-owned small business (but not a service-disabled veteran-owned small business).) See citations for definitions at codes M and T, above.

N = Woman-Owned, Service-Disabled Veteran-Owned Small Business Concern (Use this code if your firm is both a woman-owned small business and a service-disabled veteran-owned small business.) See citations for definitions at codes W and R, above.

V = Woman-Owned, Other Veteran-Owned Small Business Concern (Use this code if your firm is both a woman-owned small business and a veteran-owned small business (but not a service-disabled veteran-owned small business).) See citations for definitions at codes W and T, above.

Y = Woman-Owned, Small Disadvantaged, Service-Disabled Veteran-Owned Small Business Concern (Use this code if your firm is a woman-owned small business, a small disadvantaged business, and a service-disabled veteran-owned small business.) See citations for definitions at codes W, M, and R, above.

Z = Woman-Owned, Small Disadvantaged, Other Veteran-Owned Small Business Concern (Use this code if your firm is a woman-owned small business, a small disadvantaged business, and a veteran-owned small business (but not a service-disabled veteran-owned small business).) See citations for definitions at codes W, M, and T, above.

A = Large Business (Use this code if your firm is not included in any the above categories.)

04B Historically underutilized business zone (HUBZone) Small Business Concern. Enter "Y" to represent that your firm is a HUBZone small business concern whose name appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and as described in paragraph (c) of FAR 52.219-3 (Notice of Total HUBZone Set-Aside). Otherwise, enter "N." _____.

04C The offeror makes the following representation regarding its joint venture status:_____. If any code other than "NA" is entered, the offeror shall provide under separate cover a list of the names of participating HUBZone small business concerns.

JV = "Y" is entered in 04B, the offeror is a joint venture that complies with the requirements of 13 CFR Part 126, and the offeror's representation provided by entry of the "Y" in 04B is accurate for the HUBZone small business concern(s) participating in the joint venture. [Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.]

JN = "Y" is entered in 04B, but the offeror is not a joint venture within the requirements of 13 CFR Part 126.

NA = Not applicable. (Use this code if "N" has been entered in 04B.)

04D If 04A, above, contains a code other than "M," "U," "K," "L," "Y," or "Z," insert "NA" on the blank line. If 04A contains any of these codes, the offeror shall identify the category on which its small disadvantaged business status is based:_____. (Applies to offers exceeding

$25,000.)

BA = Black American.

HA = Hispanic American.

AI = Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).

AP = Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).

SC = Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).

SD = Small disadvantaged individual/concern, based on other than one of the preceding.

NA = Not applicable (04A contains a “B,” “W,” “T,” “R,”, “N,” or “V”).

05. FAR 52.222-22, Previous Contracts and Compliance Reports (Applies to offers exceeding $10,000 when FAR 52.222-26 applies.)

05A (Completion of segment 05A also serves as the offeror's representation that it will obtain, prior to subcontract awards, representations signed by proposed subcontractors indicating submission of required compliance reports.) Select one code from the following list that identifies the offeror's submission of required compliance reports:_____.

Y4 = Has participated in a previous contract subject to applicable Equal Opportunity coverage, and filed all required compliance reports.

Y5 = Has participated in a previous contract subject to applicable Equal Opportunity coverage, and has not filed all required compliance reports.

N4 = Has not participated in a previous contract requiring compliance reports.

NA = Not applicable.

06. FAR 52.222-25, Affirmative Action Compliance. (Applies to offers exceeding $10,000 when FAR 52.222-26 applies.)

06A The offeror represents as part of its offer that (select one code from the following list):_____.

Y6 = The offeror has developed and has on file required affirmative action programs.

N6 = The offeror has not developed and does not have on file required affirmative action programs.

NH = The offeror has not had previous contracts subject to the written affirmative action program requirements.

NA = Not applicable.

07. FAR 52.223-3, Hazardous Material Identification and Material Safety Data; Defense Federal Acquisition Regulation Supplement (DFARS) 252.223-7001, Hazard Warning Labels; DLAD 52.223-9000, Material Safety Data Sheets and Hazard Warning Labels. (Completion of segment 07 serves as the offeror's representation that it will submit for each item as required prior to award, a material safety data sheet (MSDS) prepared in accordance with paragraph (a)(2) of the cited DLAD clause and a copy of the Hazard Warning Label, in accordance with referenced Hazard Communication Standard, Federal Standard, and any other requirement contained in the cited clauses.)

07A Enter the individual line item number for which the labeling/MSDS requirements described above apply.
Enter "all" if, and only if, the response to 07B is the same for all line items in your offer.
Enter "NA" if the provisions are not applicable.
(Note: If information is being provided for individual line item numbers, segments 07A and 07B should be repeated as many times as necessary.) _____.

07B Select the code that indicates whether hazardous material(s) will be supplied: _____. If code Y7 is entered, in addition to the MSDS(s) and Hazard Warning Label(s), the offeror must provide under separate cover a list, in accordance with paragraph (b) of the cited FAR clause, of hazardous materials intended to be furnished. Also on that list, the offeror shall indicate the statute in accordance with which each such hazardous material will be labeled. (See paragraph (c) of the cited DFARS clause.) The offeror proposes to furnish hazardous material.

N7 = Hazardous material will not be furnished.

08. DFARS 252.225-7000, Buy American Act - Balance of Payments Program Certificate (applies only if the contract amount is expected to exceed $2,500 and DFARS 252.225-7001 is included in the solicitation); and DFARS 252.225-7035, Buy American Act - North American Free Trade Agreement Implementation Act - Balance of Payments Program Certificate. (Applies only if the contract amount is expected to exceed $25,000 and DFARS 252.225-7036 or its Alternate I is included in the solicitation.) [Either or both of these clauses may serve as the basis for this requirement.]

08A Select one of the following: .

Y8 = The offeror certifies that each end product is a domestic end product, and that components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

N8 = The offeror certifies that not all end products are domestic end products, and further certifies the identification of every non-domestic end product and its country of origin as provided in paragraphs 09 and 10, below.

NA= Not applicable.

09. DFARS 252.225-7000, Buy American Act - Balance of Payments Program Certificate.

(Applies only if the contract amount is expected to exceed $2,500 and DFARS 252.225-7001 is included in the solicitation.)

09A Enter the individual line item number of any end product that is not a domestic end product. Enter "all" if, and only if, the responses to 09B and 09C are the same for all line items in your offer. Enter "NA" if the response to 08A is coded "Y8," or if the provision is not applicable. (Note: If information is being provided for individual line item numbers, segments 09A through 09C should be repeated as many times as necessary.)

09B The offeror certifies that the end product identified in 09A, above, is a (select one code from the list below): .

QE = Qualifying Country End Product.
NQ = Non-qualifying Country End Product.
NA = Not applicable. (Insert "NA" if the response to 09A is coded "NA," or if the provision is otherwise inapplicable.)

09C The offeror certifies that the country of origin of the end product identified in 09A, above, is as follows. (Select one of the codes below for a Qualifying Country end product; enter the name of a non-qualifying country; otherwise, enter "NA" if the response to 09A is coded "NA," or if the provision is otherwise inapplicable.)_____.

| | |
|---|---|
| AS = Australia | NL = Netherlands |
| BE = Belgium | NO = Norway |
| CA = Canada | PO = Portugal |
| DA = Denmark | SP = Spain |
| EG = Egypt | TU = Turkey |
| GE = Federal Republic Germany | |
| UK = United Kingdom of Great Britain and Northern Ireland | |
| FR = France | |
| GR = Greece | AU = Austria |
| IS = Israel | FI = Finland |
| IT = Italy | SW = Sweden |
| LU = Luxembourg | SZ = Switzerland |

10. DFARS 252.225-7035, Buy American Act - Free Trade Agreements - Balance of Payments Program Certificate. (Applies only if the contract amount is expected to exceed $25,000 and DFARS 252.225-7036 or its Alternate I is included in the solicitation.)

10B The offeror certifies that the end product identified in 10A, above, is a (select one code from the list below):

QE = Is a qualifying Country (except Canada) End Product.
NE = Is a Free Trade Agreement Country End Product (applies to acquisitions from Canada for $25,000 or more; and from Mexico, Chile, and Singapore for $58,550 or more).
NN = Is an other Non-Free Trade Country End Product.
NA = Not applicable (Insert "NA" if the response to 10A is coded "NA," or if the provision is otherwise inapplicable.)

10C The offeror certifies that the country of origin of the end product identified in 10A,

above, is as follows. (Select one of the codes below for a Qualifying Country, U.S.-made, or Free Trade end product; enter the name of a non-qualifying country; otherwise, enter "NA" if the response to 10A is coded "NA," or if the provision is otherwise inapplicable.) _____.

AS = Australia
BE = Belgium
CA = Canada
CH = Chile
DA = Denmark
EG = Egypt
GE = Federal Republic Germany
UK = United Kingdom
FR = France
GR = Greece
IS = Israel
IT = Italy
LU = Luxembourg
MX = Mexico
NL = Netherlands
NO = Norway
PO = Portugal
SI = Singapore
SP = Spain
TU = Turkey
AU = Austria
FI = Finland
SW =Sweden
SZ = Switzerland

11. DLAD 52.217-9002, Conditions for Evaluation and Acceptance of Offers for Part Numbered Items. (In addition to providing the information required in 12A, 12B, 12C, 13A, 13B, 13C, 13D, and 13E, below, the offeror shall provide the manufacturer's name and part number in the appropriate segment of this transaction. “Exact product,” “alternate product,” “superseding part number” and “previously-approved product” are defined in 52.217-9002.)

11A Enter the individual line item number for which the offeror intends to provide the exact product (including manufacturer's name, CAGE code and part number) referred to in the acquisition identification description (AID) of this solicitation. Enter "ALL" if the exact product(s) as specified in the solicitation will be provided for all line items in your offer. Enter "NONE" if only alternate products to the products referred to in the AID of this solicitation will be provided for all line items. Enter "NA" if the solicitation does not pertain to part-numbered items. (NOTE: If information is being provided for individual line item numbers, segments 12A, 12B and 12C should be repeated as many times as necessary.)_____.

11B If 11A contains an entry other than “None” or “NA”, enter the CAGE Code which pertains to the exact AID part number being offered. Enter “NA” if the solicitation does not pertain to part-numbered items. Enter “None” if an alternate product to the product referred to in the AID of this solicitation is being offered._____

11C If 11A contains an entry other than “None” or “NA”, enter the exact AID part number which pertains to the item being offered. Enter “NA” if the solicitation does not pertain to part-numbered items. Enter “None” if an alternate product to the product referred to in the AID of this solicitation is being offered._____.

12. DLAD 52.217-9002, Conditions for Evaluation and Acceptance of Offers for Part Numbered Items. (See instructions in parentheses at 11. above.)

12A Enter the individual line item number for which the offeror intends to provide an alternate product to the product referred to in the AID of this solicitation. Enter "ALL" if

alternate products to the product referred to in the AID will be provided for all line items in your offer. Enter "none" if only the exact product(s) will be provided for all line items. Enter "NA" if the solicitation does not pertain to part-numbered items. (NOTE: If information is being provided for individual line item numbers, segments 13A through 13E should be repeated as many times as necessary.) _____.

12B If 12A contains an entry other than "none" or "NA", and if the alternate product specified has been previously furnished to the Government or otherwise evaluated and approved, enter the contract or solicitation number under which it was furnished or approved. If the alternate product has been previously approved outside of a solicitation/contract process, enter the name of the approving authority. Enter "NF" if the alternate product has not previously been furnished and approved. Enter "NONE" if the exact product is being offered. Enter "NA" if the solicitation does not pertain to part-numbered items. _____.

12C If 12A contains an entry other than "NONE" or "NA," enter the CAGE code which pertains to the part number being offered. Enter "NONE" if the exact product is being offered. Enter "NA" if the solicitation does not pertain to part-numbered items.
_____.

12D If 12A contains an entry other than "none" or "NA", enter the part number which pertains to the item being offered. Enter "none" if the exact product is being offered. Enter "NA" if the solicitation does not pertain to part-numbered items.
_____.

12E If 12A contains an entry other than "none" or "NA", enter "AB" if you are offering an alternate product that has not been previously approved (this includes a previously reverse-engineered product that is not currently cited in the AID), "PA" if this is a previously approved alternate product, or "SN" if this is a part number that supersedes the part number cited in the AID of the solicitation. Enter "none" if the exact product is being offered. Enter "NA" if the solicitation does not pertain to part-numbered items _____.

Note: For each alternate product to the product referred to in the AID of this solicitation, the offeror must furnish the drawings, specifications, and other data required by 52.217-9002. In addition, for items that have previously been reverse-engineered but are not currently cited in the AID, the offeror must provide with this offer the data package and other requirements established in paragraph (c)(2) of 52.217-9002.

13. DLAD 52.233-9001, Disputes: Agreement to Use Alternative Disputes Resolution (ADR).

13A. Select one of the following codes to indicate the offeror's position regarding the acceptability of this ADR clause:_____(enter code here).

A = The offeror accepts the clause.

B = The offeror opts out of this clause and does not desire to negotiate alternate wording.

14. FAR 52.222-18 Certification Regarding Knowledge of Child Labor for Listed End Products.

14A. Select one of the following codes to indicate the offeror's furnishing of any end product listed at http://www.dol.gov/ilab/regs/eo13126/main.htm :_____.

"Y15" The offeror will not supply any end product from the list provided above, that was mined, produced, or manufactured in a corresponding country as listed for that end product.

"M15" The offeror may supply an end product from the list provided above. The offeror certifies that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture such end product. On the basis of those efforts, the offeror certifies that it is not aware of any such use of child labor.

(End of Provision)

**52.213-9005 Contractor Past Performance Evaluation – Automated Systems.**
As prescribed in 13.106-2(b)(3)(ii)(D)(S-90) and 12.301(f)(S-95), insert the following provision:

CONTRACTOR PAST PERFORMANCE EVALUATION – AUTOMATED SYSTEMS
(SEP 2012)

(a) Past performance systems:

(1) The Defense Logistics Agency (DLA) will evaluate a Contractor's past performance, including, but 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. DLA utilizes the following information systems in evaluation of Contractor past performance: automated best value system (ABVS); past performance information retrieval system – statistical reporting (PPIRS-SR).

(2) The ABVS is the DLA legacy computerized past performance system that collects a contractor's existing past performance data and translates it into a numeric score. The Contracting Officer then uses the score as an additional evaluation factor when making best value award decisions.

(3) The PPIRS-SR is a web-enabled, government-wide application that collects quantifiable delivery and quality Contractor past performance information from the Department of Defense (DoD) contracting activities.

(4) Definitions:

(i) "Score(s)," as used in this provision, refers to the ABVS assessment of a contractor's delivery and quality performance on past DLA contracts.

(ii) "Classification(s)," as used in this provision, refers to the PPIRS-SR assessment of a contractor's delivery and quality performance on past DoD contracts, including DLA.

(5) ABVS scores:

(i) DLA assigns an ABVS score to each contractor based on the Contractor's past performance. Contractors receive scores for performance in each federal supply class (FSC) scores. The FSC scores are based on DLA consolidated performance history. A Contractor may have multiple FSC scores but will have only one DLA score, which is a compilation of the Contractor's FSC scores for all business conducted with DLA.

(ii) The ABVS score is a combination of a vendor's delivery and quality scores; scores range from zero to a perfect score of 100.

(iii) Scores are calculated daily based upon two years of data.

(iv) ABVS delivery scores provide quantification of the number and severity of Contractor-caused delinquencies, terminations, cancellations, and withdrawals for products in that FSC (or, if the Contractor has no history for the particular FSC, for all products the contractor provided to DLA within the time period under consideration).

(v) ABVS quality scores reflect the number and type of quality complaints (product and packaging nonconformances) issued against a Contractor for products in that FSC or for all products it provided to DLA, as described in (iv), above.

(vi) Data sources for past performance information include:

(A) Product data reporting and evaluation program (PEDREP);

(B) Systems, applications and products in data processing (SAP);

(C) DLA preaward contracting system (DPACS).

(vii) DLA will make negative quality and delivery data reflected in the ABVS score available to Contractors daily for review and challenge.

(viii) For further details concerning ABVS score calculations and contractor data challenge procedures, refer to the ABVS website at http://www.aviation.dla.mil/UserWeb/proc/ABVM/Abvm.htm.

(6) PPIRS-SR classifications

(i) PPIRS-SR classifications are based on federal supply class (FSC).

(ii) Classifications are calculated monthly based upon three years of data.

(iii) PPIRS-SR classifications are comprised of a delivery score and a quality color ranking.

(iv) The PPIRS-SR delivery score is based upon the total number of contract line items received and on weighted late deliveries.

(v) The contractor quality performance ranking is based upon a comparison among all contractors within an FSC.

(vi) Data sources for PPIRS-SR past performance can be found in the PPIRS-SR user manual at http://www.ppirs.gov/ppirsfiles/help.htm.

(vii) PPIRS-SR will make negative quality and delivery data reflected in the PPIRS-SR Classification available to Contractors for review and challenge.

(viii) For details concerning PPIRS-SR classification calculations and contractor data challenge procedures (Appendix A - Business Rules) , refer to the "PPIRS-SR Procedural Guide for Application Development" at: http://www.ppirs.gov/ppirs-sr/ppirssrmanual102004.pdf

(7) Evaluation using ABVS scores and PPIRS-SR classifications.

(i) The Contracting Officer will first evaluate contractors using the ABVS FSC score for the solicited FSC in effect at the time of evaluation. The Contracting Officer will use a Contractor's DLA score to evaluate a Contractor without an FSC score for that particular FSC. The Contracting Officer may consider the volume of business on which the FSC score is based as a measure of confidence in the score's indication of performance risk. The Contracting Officer may also choose to use the DLA score if the volume of business would tend to make the FSC-specific score an inadequate indicator of performance risk. The Contracting Officer also may use the DLA score if the FSC scores among Contractors are relatively equal. For non-national stock number (NSN) items, the Contracting Officer will evaluate using a Contractor's DLA score in effect at the time of evaluation. Contractors with no performance history for the particular FSC or any other FSC, agency-wide, for the timeframe being rated will be evaluated neither favorably nor unfavorably, and will be assigned a "999.9" in ABVS.

(ii) In order for the Government to assess performance risk, if the quoter/offeror having the lowest evaluated price also has an ABVS FSC score below 70 and would potentially be bypassed under best value in favor of a higher priced quoter/offeror with a higher ABVS FSC score, then past performance evaluation will be accomplished using PPIRS-SR, in lieu of ABVS, for all quotes/offers received.

(iii) Evaluation of PPIRS-SR delivery assessments will be based upon a numerical scale ranging from 0 (low) to 100 (high). A '0' (zero) delivery score with '0' (zero) lines is used to designate instances wherein the Contractor has no history for the particular FSC being rated.

(iv) In PPIRS-SR, Contractor quality will be assessed based upon relative ranking among all contractors within a given FSC.

(v) 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.

(vi) 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 normally be reflected in the delivery score.

(8) The Contracting Officer may collect and analyze other information in addition to ABVS/PPIRS-SR past performance information.

(End of Provision)

**52.213-9006 [Reserved.]**

**52.213-9007 Defense Logistics Agency (DLA) Internet Bid Board System (DIBBS) Quoting Information for BSM Automated Solicitations.**

As prescribed in 13.106-1(91), insert the following provision:

DEFENSE LOGISTICS AGENCY (DLA) INTERNET BID BOARD SYSTEM (DIBBS) QUOTING INFORMATION FOR BUSINESS SYSTEMS MODERNIZATION (BSM) AUTOMATED SOLICITATIONS (NOV 2011)

(a) Automated solicitations on DIBBS: This provision applies to all BSM automated solicitations valued at or below $150,000, Requests for Quotations (RFQs), that are posted on DIBBS. These automated solicitations are identified by "SPM" in the first three positions of a solicitation number, and "T" or "U" in the ninth position of the solicitation number.

(b) Submission of automated quotes: Automated quotes must be submitted electronically on DIBBS at https://www.dibbs.bsm.dla.mil or via electronic data interchange (EDI) prior to the solicitation return date and time for all requests for quotations (RFQs) posted on DIBBS. Quotes received by other electronic means, even though within the Federal Acquisition Regulation (FAR) definition of "electronic commerce" or "electronic and information technology", such as facsimile (fax) or electronic mail (email), will not be considered for award. Quotes received by United States (U.S.) mail will not be considered for award.

(c) Return date and time: The time for receipt of quotes is 3:00 p.m. eastern standard time, or when applicable, Eastern Daylight Savings Time on the return date. All return date/times are synchronized to the United States (U.S.) Naval Observatory Clock. If a return date falls on a Saturday, Sunday or federal holiday, the return date will be extended to the next business day. The direct entry of quote information into the DIBBS website is a method that precludes transmission delays, and will ensure the quote is evaluated. Quote submission using EDI/DIBBS is subject to electronic interface latency which can result in transmission delays. Offerors must consider transmission delays in the EDI/DIBBS system when submitting quotes for consideration, and assume the risk of late transmission/submission.

Return date and time auction: The solicitation return date/time is a firm closing date/time for auctions. Late quotes will not be considered for award.

Return date and time non-auction: Awards will not be made prior to the solicitation return date/time unless it is a Fast Procurement Automated Contract Evaluation System (PACE) procurement or there is a documented urgency. At the return date/time all quotes received will be evaluated, therefore, all quotes over "the micropurchase threshold" should be submitted by the return date/time specified in the solicitation. Fast PACE solicitations, which are those solicitations estimated to be less than "the micropurchase threshold", may be awarded prior to the solicitation return date/time when they are not auction solicitations.

PACE may extend the solicitation return date for three business days when prices from qualified quotes cannot be determined reasonable. Notice of the extension will be provided by email to all vendors in the competitive range (bids without exception) inviting them to revise their quotes. The notice will be sent to the email address registered on DIBBS for the person that submitted the quote. If a third party submitted the quote, the notice will be sent to the email addresses of the third party and the superuser for the commercial and Government Entity (CAGE) code on whose behalf the quote is being submitted. Vendors are responsible for the accuracy of email addresses in DIBBS and should ensure that they are correct. Vendors that have submitted their best quoted price will not need to resubmit their quote.

(d) How interruptions affect return time and date: If an emergency or unanticipated event interrupts DIBBS processes so that quotes cannot be submitted on DIBBS at the close of a solicitation, the return date/time will be extended to the same time of day on the next business day on which DIBBS processes resume. Notice of the extension will be provided on the DIBBS home page. A vendor's inability to submit a quote caused by failure of a vendor's hardware, software, Internet Service Provider, or the World Wide Web itself, is not cause for extension of a solicitation.

(e) Late quotes: Quotes received after the return date/time for auction solicitations will not be considered.

Quotes received after the return date/time for non-auction solicitations may continue to run through the automated evaluation process until the evaluation process has begun. Once the evaluation process has begun, late quotes will only be considered if the Contracting Officer determines that it is in the best interest of the Government and that considering the late quote would not unduly delay the award. See the provision at 52.213-9008 entitled Procurement Automated Contract Evaluation for information related to the automated evaluation process.

(f) Quote revisions: Quotes may be revised on DIBBS up until the time the solicitation is awarded or cancelled by resubmitting a new quote. Quote revisions will overlay previously submitted quotes on the same solicitation in the Government database.

(g) Quote withdrawal: Quotes may be withdrawn on DIBBS up until the time the solicitation is awarded or cancelled by resubmitting a new quote and selecting a bid type of "no bid." Quote withdrawal will overlay previously submitted quotes on the same solicitation in the Government database.

(h) Set-aside solicitations: Solicitations with an estimated dollar value exceeding "the micropurchase threshold" but not over $150,000 are set-aside for small business when cited in the solicitation. When a solicitation is set-aside, only small business quotes that comply with the non-manufacturer rule will be considered. See FAR 19.502(c) for an explanation of this rule.

(i) Fast PACE solicitations: A Fast PACE icon on the DIBBS "search results" screen identifies Fast PACE solicitations. These solicitations, estimated to be less than "the micropurchase threshold", are not set-aside for small businesses. The solicitations may be awarded prior to the solicitation return date/time when they are not auction solicitations. Commencing at 3:00 P.M., **3** business days after the issue date, and continuing every day thereafter at 3:00 P.M. until the return date, all quotes "the micropurchase threshold" or less will be evaluated by DLA's Procurement Automated Contract evaluation (PACE) program for an early award.

Disclaimer: The Fast PACE icon is used to indicate a "T" or "U" solicitation with an estimated dollar value of "the micropurchase threshold" or less, not the potential quoted value. Quotes valued less than "the micropurchase threshold" that are submitted in response to solicitations that have an estimated value greater than "the micropurchase threshold", may result in an early award as a result of being evaluated as a Fast PACE quote, even if not originally designated as such.

(j) Auction solicitations: Auction solicitations are identifiable by a statement on the solicitation and by a gavel icon appearing on the DIBBS dynamic RFQ search results, the Internet quote form, and the batch quote download file. Prices and other factors that could affect price evaluation (inspection and acceptance point, surplus, Buy American) are publicly displayed for all qualified quotes (bids without exception). (Note: Large business quotes above "the micropurchase threshold" are not displayed on

auction solicitations set-aside for small business, and any quote above $150,000 will not be displayed). Bidders remain anonymous and have the opportunity to lower their quotes up until the auction closes (the return date/time) in the hope of receiving the award. Awards of auction solicitations will not be made prior to the solicitation return date/time without a documented urgency. At the return date/time, all quotes will be evaluated, therefore all quotes for auction solicitations must be submitted by the return date/time specified in the solicitation. DIBBS quotes received after the return date/ time specified in the auction solicitation will not be considered for award.

(End of Provision)

**52.213-9008 Procurement Automated Contract Evaluation (PACE) Program Information.**
As prescribed in 13.106-2(b) (S-90)(2)(i), insert the following provision:

PROCUREMENT AUTOMATED CONTRACT EVALUATION (PACE) PROGRAM INFORMATION
(JUN 2012)

(a) PACE evaluation: Acquisitions are candidates for automated award under the Defense Logistics Agency's Procurement Automated Contract Evaluation (PACE) program, when the solicitation states that the PACE program applies. 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 PACE. PACE 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). Refer to provision 52.213-9007 for information related to 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. Vendors should submit quotes based on the requirements stated in the solicitation. If a vendor'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 an automated PACE 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) PACE evaluation factors: PACE evaluates all qualified quotes on the basis of price alone and does not consider quantity price breaks. 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) 252.225-7036.

(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 PACE evaluation, or if the solicitation stated that it was a candidate for PACE evaluation but PACE 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. Vendors 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) PACE distribution: The PACE 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 Defense Logistics Agency Pre-award Contracting System (DPACS) Electronic Data Interchange (EDI) to Contractors who are DPACS EDI capable. Contractors that are not DPACS 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)

**52.213-9009 Fast Payment Procedure.**
As prescribed in 13.404 (90), insert the following clause:

FAST PAYMENT PROCEDURE (NOV 2011)

When the contract or order includes Federal Acquisition Regulation (FAR) 52.213-1, Fast Payment Procedure, the following terms and conditions are included.

(a) The following statement shall appear on the consignee's copy of the invoice or packing slip:

Consignee's notification to purchasing activity of nonreceipt, damage, or

nonconformance

The consignee shall notify the purchasing office promptly after the specified date of delivery of supplies not received, damaged in transit, or not conforming to specifications of the purchase order. Unless extenuating circumstances exist, the notification should be made not later than 60 days after the specified date of delivery.

(b) Free on board (f.o.b.) terms are in accordance with FAR 52.213-1. Invoices shall be submitted directly to the finance office designated elsewhere in this order or in the basic contract, or in the case of unpriced purchase orders, to the Contracting Officer. For f.o.b. Origin shipments, transportation or postage shall be prepaid and added to the invoice as a separate line item.

(End of Clause)

**52.213-9010 Indefinite Delivery Purchase Order (IDPO) Evaluation.**
As prescribed in 13.390-2(h), 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 13.390-2(h), insert the following clause:

INDEFINITE DELIVERY PURCHASE ORDER (IDPO) AGREEMENT – UNILATERAL (SEP 2012)

(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). 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 13.390-2(h), insert the following clause:

INDEFINITE DELIVERY PURCHASE ORDER (IDPO) - BILATERAL (SEP 2012)

(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 he/she 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); 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)]

**52.214-9001 Schedule--Firm Fixed Price and Fixed Price with Economic Price Adjustment.**
As prescribed in 14.201-2(b)(90) and 15.204-2(b)(90), insert the following or similar provision:

SCHEDULE - FIRM FIXED PRICE AND FIXED PRICE WITH ECONOMIC PRICE ADJUSTMENT (EPA) (NOV 2011)

(a) For the following items, the base unit price (before any economic price adjustment (EPA)), is comprised of two portions:

(1) a portion subject to adjustment under the EPA clause of this contract, plus

(2) the (remaining) firm fixed price portion (for which separate pricing is permitted for option periods) pursuant to the clause of this contract entitled, "Option To Extend The Term Of The Contract - Separate Firm Fixed Price And Fixed Price With Economic Price Adjustment Portions".

Contract line-item (CLIN) _____

Firm fixed priced portion $_____

Portion subject to EPA +_____

Total base period unit price (sum of two) $_____

(See note.)

(End of Provision)

Note: When circumstances warrant, e.g., a substantial number of items is involved, the Contracting Officer may elect to repeat this CLIN price buildup in the schedule to incorporate the firm fixed price portion of each option period price, in lieu of adding the table to paragraph (c)(2) of the clause at 52.217-9001 to record this information.

**52.214-9002 Trade Discounts.**
As prescribed in 14.201-5(c)(90) and 15.204-5-90(b), a provision substantially as follows may be inserted:

TRADE DISCOUNTS (JUN 1983)

Trade discounts offered will be considered in evaluating offers for award. Offerors who desire to do so may quote customary terms of discount for prompt payment in addition to any trade or special discount available to the Government, provided such discounts are stated separately in their offers. Unless such trade or special discounts offered are separately stated, the offeror agrees that, when the discount offered exceeds 2 percent, the entire discount will be considered as a trade or special discount which will not be treated as a discount for prompt payment and will be considered in evaluating offers for award.

(End of Provision)

**52.214-9003 Right to Apply Free on Board (F.o.b.) Origin Offer.**
As prescribed in 14.201-5(c)(91), a provision substantially the same as follows may be inserted in invitations for bids:

RIGHT TO APPLY FREE ON BOARD (F.O.B.) ORIGIN OFFER (NOV 2011)

Unless otherwise specified by the bidder, the Government may apply an f.o.b. origin offer against any f.o.b. origin item or sub-item for the same product or supplies.

(End of Provision)

**52.214-9004 Subcontracting to Other Industrial Preparedness Planned Producers.**
As prescribed in 14.201-3(90) and 15.204-3, insert the following clause:

SUBCONTRACTING TO OTHER INDUSTRIAL PREPAREDNESS PLANNED PRODUCERS (NOV 2011)

(a) This contract is being awarded under the authority of Federal Acquisition Regulation (FAR) 6.302-3 (10 United States Code (U.S.C.) 2304(c)(3)) for the purpose of maintaining vital facilities or suppliers in business or making them available in the event of a national emergency. Accordingly, competition is being limited for the current acquisition to those offerors with whom industrial preparedness agreements exist, or who agree to enter into industrial preparedness agreements under the Department of Defense Industrial Preparedness Program.

(b) The Contractor agrees that it will not subcontract manufacturing of the deliverable end product under this contract to other firms which themselves are industrial preparedness producers for the end product. This does not preclude subcontracting for components for which subcontractors have entered into separate industrial preparedness agreements with the Department of Defense.

(End of Clause)

**52.214-9005 Descriptive Literature.**
As prescribed in 14.202-5(90), insert the following clause:

DESCRIPTIVE LITERATURE – INDUSTRIAL PLANT EQUIPMENT (IPE) (NOV 2011)

(a) "Descriptive literature" means information (e.g., cuts, illustrations, drawings and original manufacturers' brochures) that is submitted as part of an offer. Descriptive literature is required to establish, for the purpose of evaluation and award, details of the product offered that are specified elsewhere in the solicitation and pertain to significant elements such as (1) design; (2) materials; (3) components; (4) performance characteristics; and (5) methods of manufacture, assembly, construction, or operation. The term includes only information required to determine the technical acceptability of the offered product. It does not include other information such as that used in determining the responsibility of a prospective Contractor or for operating or maintaining equipment.

(b) Descriptive literature must be (1) identified to show the item(s) of the offer to which it applies and (2) received by the time specified in this solicitation for receipt of offers.

(c) Data displaying more than one model or size shall be clearly marked so as to indicate the specific item being offered.

(d) The offeror shall submit descriptive literature in duplicate, which provides evidence of compliance to the requirements of this solicitation. Unless indicated otherwise under special notes in Schedule B, each paragraph in Section C must be addressed in the descriptive literature submitted with an annotation indicating any exceptions taken or alternates proposed. Any section C requirements not addressed in the descriptive literature shall be submitted in a narrative form. Paragraphs annotated "exception" or "alternate" shall indicate why the exception or alternate is being taken and what is offered in its place.

(e) Offers which do not present sufficient information to permit complete technical evaluation by the Government may be rejected.

(End of Clause)

**52.214-9006 Conditional or Qualified Offers.**
As prescribed in 14.302-90, insert the following provision:

CONDITIONAL OR QUALIFIED OFFERS (AUG 2008)

(a) In order that offerors may not over-commit the capacity of their facilities, the Government will receive and consider offers under this solicitation which limit the acceptable quantities of any awards hereunder depending on the quantities which may be awarded by the Government on offers submitted on prior solicitations.

(b) In the event that two or more solicitations issued by the DLA for similar materials are outstanding at the same time, the DLA will evaluate offers and make awards in the order of the date and hour specified in the solicitations for the receipt of offers unless such action is precluded by circumstances beyond its control.

(c) If the offeror proposes to limit its offer in accordance with paragraph 1 above, the following stipulation will be completed:

This offer is submitted on condition that the offeror will not receive an award under the solicitation(s) listed below in quantities equal to or greater than that shown:

Solicitation Number(s) Item Number(s) Quantities

(End of Provision)

**52.214-9007 Place of Production of An Industrial Preparedness Program (IPP) Planned Item.**
As prescribed in 14.202-91, insert the following clause:

PLACE OF PRODUCTION OF AN INDUSTRIAL PREPAREDNESS PROGRAM (IPP) PLANNED ITEM (AUG 2008)

Production of the deliverable end item will be accomplished utilizing the facilities constituting the basis for the qualifying IPP Agreement except as otherwise approved by the Contracting Officer.

(End of Clause)

**52.214-9008 Rounding Off of Offer and Award Prices.**
As prescribed in 14.302-91, insert the following clause:

ROUNDING OFF OF OFFER AND AWARD PRICES (AUG 2008)

Unit prices shall be limited to a maximum of five decimal places. For evaluation and award purposes, offers containing a unit price of more than five decimal places shall be rounded off to five decimal places. For administrative purposes, the extended line item and total dollar amounts will be rounded to two decimal places and may not precisely reflect the quantity or quantities times the unit prices(s). Payment shall be accomplished on a unit price basis.

(End of Clause)

**52.214-9008 Alternate I Rounding Off of Offer and Award Prices.**
As prescribed in 14.302-91, insert the following clause:

ROUNDING OFF OF OFFER AND AWARD PRICES ALTERNATE I (AUG 2008)

In lieu of five decimal places, unit prices shall be limited to a maximum of two decimal places. For evaluation and award purposes, offerors containing a unit price of more than two decimal places shall be rounded off to two decimal places, as follows:

$0.01 to $0.104 = $0.10
$0.105 to $0.109 = $0.11
$0.111 to $0.114 = $0.11
$0.115 to $0.119 = $0.12, etc.

(End of Clause)

**52.215-9001 Evaluation Factor for Preaward Survey.**
As prescribed in 13.106-90(b), 14.201-8(a)(91), and 15.304(c)(95), insert the following provision:

EVALUATION FACTOR FOR PREAWARD SURVEY (NOV 2011)

(a) Although a majority of awards are made without the necessity of conducting a preaward survey (PAS) of the proposed awardee, such a survey may be required to be conducted of those offerors listed in (1) through (5) below as follows. Firms or individuals that have:

(1) Been listed on the General Services Administration (GSA) list of parties excluded from Federal procurement programs within the past * from the date of solicitation opening or closing; or

(2) Undergone reorganization under bankruptcy laws within the past * from the date of solicitation opening or closing, or are currently undergoing such reorganization; or

(3) Been included on the Defense Logistics Agency (DLA) contractor alert list (CAL), or are otherwise known to the Contracting Officer to have a poor or marginal performance history; or

(4) Within the past * received a negative PAS for an item within the same federal supply class (FSC) as the item of supply, or for the same or similar service required under this solicitation; or

(5) Failed to liquidate indebtedness to DLA, to the following extent: ** .

(b) As a consequence of the Government's cost incurrence associated with conducting a PAS, for purposes of determining the present responsibility of any offeror described in (a)(1) through (5) above and to ascertain the most advantageous offer received, price and other factors considered, the amount of $369, which is the average amount of the direct costs of performing the PAS, shall be added as an evaluation factor to such offeror's total offered price.

(c) Nothing in this provision affects the right of the Government to perform or not to perform a preaward survey on any offeror.

* Insert applicable time period in accordance with 15.304(c)(95)(A), (B) and (D).

** Insert the extent of indebtedness that applies in accordance with 15.304(c)(95)(E).

(End of Provision)

**52.215-9002 Socioeconomic Proposal.**
As prescribed in 15.304(c)(4)(i), 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 [Reserved.]**

**52.215-9004 AbilityOne, (formerly called Javits-Wagner-O'Day Act (JWOD)) Entity Proposal.**

As prescribed in 15.304(c)(S-91) (ii), insert the following or a similar provision:

ABILITYONE (FORMERLY CALLED JAVITS-WAGNER-O'DAY ACT (JWOD)) ENTITY PROPOSAL (FEB 2012)

(a) Provide a description of the efforts your company will make to assure that AbilityOne, (formerly called Javits-Wagner-O'Day Act (JWOD)) qualified nonprofit agencies for the blind or other severely disabled will have equal opportunity to compete for subcontracts under any resulting contract. Describe your current and proposed range of services, supplies, and any other support that will be provided to you by AbilityOne concerns. Include specific names of such subcontractors, to the extent they are known.

(b) Describe any future plans your company has for developing additional subcontracting possibilities for AbilityOne entities, or ways in which these entities could be partnered with other businesses and agencies in opportunities to diversify revenue production, during the contract period.

(c) Specify what proportion of your proposal, as a percentage of dollars, will be subcontracted to AbilityOne entities.

(d) You shall be required to submit periodic progress reports (no less frequently than annually) to the Contracting Officer regarding your subcontracting efforts relative to AbilityOne entities. Specify what type of performance data you will accumulate and provide to the Contracting Officer regarding your support of AbilityOne entities during the period of contract performance. Provide the name and title of the individual principally responsible for ensuring company support to such entities (generally, this is the individual responsible for subcontracting with small and women-owned small businesses).

(End of Provision)

**52.215-9005 AbilityOne, (formerly called Javits-Wagner-O'Day Act (JWOD)) Entity Support Evaluation.**
As prescribed in 15.304(c)(S-91)(ii), insert the following or a similar provision:

ABILITYONE (FORMERLY CALLED JAVITS-WAGNER-O'DAY ACT (JWOD)) ENTITY SUPPORT EVALUATION (FEB 2012)

The AbilityOne, (formerly called Javits-Wagner-O'Day Act (JWOD)) entity proposal provided by the offeror under 52.215-9004 will be evaluated in accordance with the evaluation scheme in the solicitation. An offeror that proposes or demonstrates a higher percentage, complexity level, and variety of participation by AbilityOne qualified nonprofit agencies for the blind or other severely disabled as subcontractors beyond those items for which AbilityOne entities are the mandatory source generally will receive a higher rating on this factor during the source selection process.

Offerors' proposals for such support will be made a part of any resulting contract for use in determining how well the contractor has adhered to its plan. This plan will be monitored by the cognizant Defense Contract Management Agency activity as a means of assisting the contracting officer in determining how well the contractor has in fact performed. This determination will be one factor used in the placement of orders against multiple-award contracts and/or the exercise of options in the contract's follow-on years (as applicable).

Performance on prior contracts in subcontracting with and assisting AbilityOne entities will be used as an element of past performance evaluation in subsequent source selection decisions.

(End of Provision)

**52.215-9006 AbilityOne, (formerly called Javits-Wagner-O'Day Act (JWOD)) Entity Support-Contractor Reporting.**
As prescribed in 15.304(c)(S-91)(iii), insert the following clause:

ABILITYONE (FORMERLY CALLED JAVITS-WAGNER-O'DAY ACT (JWOD)) ENTITY SUPPORT- CONTRACTOR REPORTING (FEB 2012)

The Contractor shall submit periodic progress reports, no less frequently than annually, to the Contracting Officer regarding the Contractor's subcontracting efforts relative to AbilityOne entities. There is no standard or prescribed format for this requirement; however, performance data accumulated and reported by the Contractor must be as specified in its offer.

(End of Clause)

**52.215-9007 Preproposal Conference.**
As prescribed in 15.201(d), insert the following provision:

PREPROPOSAL CONFERENCE (FEB 2005)

A preproposal conference will be held to explain the requirements of this solicitation (number _____) and to respond to questions raised by prospective offerors. Prospective offerors are encouraged to attend.

To arrange attendance, prospective offerors are requested to contact:

Name: _____
Telephone: _____
E-mail address: _____

The date, time, and location of the conference are provided below:

Date: _____
Time: _____
Location: _____

Prospective offerors are requested to submit questions regarding the solicitation in writing via electronic mail to the above e-mail address five (5) days in advance of the conference to allow their inclusion in the agenda. Questions will be considered at any time prior to or during the conference; however, offerors will be asked to confirm verbal questions in writing.

The Government will not be liable for expenses incurred by an offeror prior to contract award.

Offerors are cautioned that remarks and explanations provided at the conference shall not change the terms of this solicitation unless the solicitation is amended in writing. Offerors may obtain a copy of the conference minutes from the Contracting Officer.

(End of Provision)

**52.215-9008 Facsimile Bids and Proposals.**
As prescribed in 14.201-6 (v) and 15.209 (e), insert the following if facsimile bids are authorized. For DLA Land and Maritime and DLA Troop Support solicitations use Alternates I and II to replace paragraph (c) as appropriate.

FACSIMILE BIDS AND PROPOSALS (NOV 2011)

(a) Facsimile bids, proposals, amendments (including final proposal revisions (FPRs)), and withdrawals will be considered only if authorized in the solicitation by Federal Acquisition Regulation (FAR) 52.214-31, Facsimile Bids, or 52.215-5, Facsimile Proposals (Section L). Fax machines should be programmed to include the telephone number as the distant station identification (ID). This information is required to assist in properly documenting receipt.

(b) Defense Logistics Agency (DLA)/DLA Land and Maritime Internet Bid Board System (DIBBS) and Internet Quoting System (IQS). DIBBS and IQS do not permit facsimile proposals. Facsimile proposals in response to DIBBS or IQS solicitations will be rejected and returned to the offeror.

(c) DLA Aviation. The telephone number of the receiving facsimile equipment is 804-279-4165. For bid/proposal security reasons facsimile equipment is not located in the place designated for receipt of offers. Regular interoffice pick-up of facsimile transmissions occurs daily at 10:30 a.m. and 1:30 p.m., Eastern time zone.

(1) Bids, bid amendments, and bid withdrawals received by the facsimile equipment prior to 10:30 a.m. on the day of bid opening will be presumed to have been received on time.

(2) Proposals, amendments to proposals, withdrawals of proposals, and final proposal revisions (FPRs) received by facsimile equipment prior to 1:30 p.m. on the day of closing will be presumed to have been received on time.

Alternate I – (c) DLA Land and Maritime. The telephone number of the receiving facsimile equipment is 614-692-4275.

Alternate II - (c) DLA Troop Support. The telephone number of the receiving facsimile equipment is 215-737-9300 or 215-737-9301.

(End of Provision)

**52.215-9009 All or None for Automated Procurements.**
As prescribed in 15.204-5(c)(90)(iv), 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)

**52.215-9010 All or None (Invitation For Bid (IFB)/Request For Proposal (RFP) Only.**
As prescribed in 15.204-5-90(e), insert the following provision:

ALL OR NONE (INVITATION FOR BID (IFB)/REQUEST FOR PROPOSAL (RFP) ONLY)
(NOV 2011)

(a) With respect to each item or group of items identified below, offers must be submitted for all items indicated. No award will be made for less than the full requirements shown in this solicitation for these items or groups.

Group _____
Item _____

(b) If this is an IFB, any offeror offering less than all of the solicitation requirements of the indicated item or group of items will be non-responsive.

(c) If this is an RFP, any offeror offering less than all of the solicitation requirements of the indicated item or group of items may be precluded from consideration for award if the Contracting Officer elects to make an award without opening discussions.

(d) Offerors are cautioned that submission of an offer for selected item(s) within a given group is unacceptable; offers must be for all item(s) within a given group. However, an offeror may submit an offer on any one or more groups.

(End of Provision)

**52.215-9011 Requirements for Quantity Increments or Ranges.**
As prescribed in 14.201-5(c)(93) or 15.204-5(c)(90)(i), 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)

**52.215-9013 Production Facility Changes.**
As prescribed in 15.408-90, insert the following clause:

PRODUCTION FACILITY CHANGES (NOV 2011)

(a) The performance of any of the work contracted for in any place other than that named in the contract is prohibited unless specifically approved by the Contracting Officer. Written requests for a change in production facilities must be submitted in writing to the Contracting Officer. Changes in production facilities may be approved, provided

(1) performance by small business or in labor surplus areas as required by the contract will not be changed;

(2) the change will not cause a delay in delivery or necessitate a change in the purchase description;

(3) the free on board (f.o.b.) point is not changed; and

(4) each request is supported by a price reduction of $250.00 to cover the Government's administrative costs to process the change.

(b) The Government reserves the right to deny approval even if these four elements are met.

(End of Clause)

**52.215-9014 Aggregate Awards for Regional Petroleum Requirements.**
As prescribed in 15.308-91, insert the following provision:

AGGREGATE AWARDS FOR REGIONAL PETROLEUM REQUIREMENTS (NOV 2011)

(a) The requirements included in this solicitation have been grouped into three regions as follows:

Region I - Line Item

Region II - Line Item

Region III - Line Item

(b) Notwithstanding any language found anywhere else in this solicitation, it is the intent of the Government that only one award be made for the requirements of each region _____, resulting in a maximum of _____ awards for the requirements specified in paragraph (a) above, i.e., one award per each region.

(c) In order to be considered for award of such requirements on a regional basis, offerors must furnish prices for all the line items included in each of the regions for which they wish to be considered. For example:

(1) To be considered for award of the requirements included in Region I _____, offerors need to submit offers on each of the line items included in Region I _____;

(2) To be considered for award of the requirements in Region II _____, offerors need to submit offers on each of the line items included in Region II _____; and

(3) To be considered for award of the requirements included in Region III _____, offerors need to submit offers on each of the line items included in Region III _____.

Offers for less than all the line items included in each region will be rejected as nonresponsive on a region-by-region basis.

(d) (1) Region I requirements, including line items _____, will be awarded to the responsible offeror quoting the lowest aggregate price for all items included in Region I. .

(2) Region II requirements, including line items _____, will be awarded to the responsible offeror quoting the lowest aggregate price for all items included in Region II. .

(3) Region III requirements, including line items _____, will be awarded to the responsible offeror quoting the lowest aggregate price for all items included in Region III. .

(e) This provision [ ] does [ ] does not apply to line items_____ which cover stock requirements to depots. When this provision does not apply to stock requirements, award of stock

requirement items will be made on a line item basis in accordance with the Federal Acquisition Regulation (FAR) provision titled Contract Award in Section L of this solicitation.

(End of Provision)

**52.215-9015 Production Capacity - DLA Troop Support – Clothing and Textiles.**
As prescribed in 15.304-91, insert the following provision:

PRODUCTION CAPACITY - DLA TROOP SUPPORT - CLOTHING AND TEXTILES (NOV 2011)

(a) This solicitation calls for items producible with facilities that could also be used under production contracts resulting from other solicitations issued by the DLA Troop Support. The Government will consider offers under this solicitation that limit award if the Government makes award to that offeror under another solicitation.

(b) In the event that two or more solicitations issued by the center for similar items are outstanding at the same time, the center will evaluate offers and make awards in the order of the date and hour of opening of such solicitations, unless such action is precluded by circumstances beyond its control.

(c) If the offeror proposes to limit its offer in accordance with paragraph (a) above, the following stipulation will be completed:

This offer is conditioned upon the offeror's not receiving an award under the solicitation(s) listed below. If the offeror receives an award on any or all of the solicitation(s) listed below for a quantity in excess of the quantity indicated, this offer should be considered withdrawn.

Solicitation number(s)_____
Quantity:_____

(d) Offers that are conditioned on the exercise or nonexercise by the Government of an option contained in an existing contract will not be considered for award.

(e) Conditional offers, such as those which require awards under this solicitation and one or more other solicitations issued by the Center, or that vary the price under this solicitation or make the quoted price conditional on receipt of an award under one or more other solicitations issued by the center are not authorized and will not be considered for award.

(End of provision)

**52.215-9016 Notice to Contractors and Defense Finance Accounting Services (DFAS).**
As prescribed in 15.204-5-90(a), insert the following clause:

NOTICE TO CONTRACTORS AND DEFENSE FINANCE ACCOUNTING SERVICES (DFAS)
(NOV 2011)

Per Federal Acquisition Regulation (FAR) 15.204-1, Part IV of the solicitation/offer has been removed and retained in the contract file. Section K is hereby incorporated by reference. Therefore, the

page numbers indicated on the front of the award and on the last page of the continuation sheet will not reflect the actual number of pages in the award document.

(End of Clause)

**52.215-9017 List of Documents, Exhibits, and Other Attachments.**
As prescribed in 15.204-4(91), insert the following clause:

LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS (APR 2008)

(a) This solicitation / award consists of the following documents, exhibits, and other attachments:

(1)

(2)

(3)

(End of Clause)

**52.215-9018 Authorized Limitation.**
As prescribed in 15.204-5-90(f), insert the following provision:

AUTHORIZED LIMITATION (APR 2008)

The Government may consider offers which limit the items or lots offered, provided that said limitations are clearly defined and expressed. No limitations may be expressed in terms of quantity; a limitation may be expressed only in terms of item, stock number or lot, as applicable. (For example, if a supplier makes an offer on Items 0001, 0002, and 0003, it may provide in its offer that, if awarded Items 0001 and 0002, no award may be made to it on Item 0003.) A limitation or restriction expressed in terms of quantity shall render the offer non-responsive.

(End of Provision)

**52.215-9019 Operational Capability Demonstration.**
As prescribed in 15.308-94 insert the following provision:

OPERATIONAL CAPABILITY DEMONSTRATION (AUG 2008)

(a) This provision provides guidelines and instructions for offeror preparation and execution of the operational capability demonstration to be conducted as part of the proposal evaluation/selection process. Only the apparent successful offeror(s) may be required to perform an operational capability demonstration. Other offerors may be required to perform this functional demonstration but only if the initial apparent successful offeror withdrew or failed the demonstration. The Government may, at its option, waive the operational capability demonstration if it determines that the test is unnecessary.

(b) The goals of the operational capability demonstration are:

(1) Representativeness: this demonstration represents only a part of the overall evaluation process. It is composed of applications and tasks that are designed to test the ability of the item(s) offered to correctly meet the specification requirements.

(2) Functional Capability: This demonstration is intended to exercise the required function(s) to determine if the operational capability required is actually being provided.

(c) The test criteria are: _____(Insert text)_____

(d) The offeror shall satisfactorily demonstrate the functional operation of the item(s) to receive further consideration under the terms of the solicitation. The item(s) demonstrated must meet the test criteria specified in paragraph (c) of this provision. The offeror shall demonstrate all features of the item(s) to include any evaluated optional features that are being offered.

(e) An offeror may withdraw at any time. Offerors who withdraw are requested to advise the government in writing. Withdrawal from the operational capability demonstration constitutes withdrawal from any further consideration in this acquisition.

(f) The Government will not reimburse the offeror for time, effort, or any other expense incurred for the preparation and conduct of the demonstration.

(g) The demonstration should be conducted at a site free from outside interference. Participation should be limited to essential, key personnel directly involved in the demonstration. The operational capability demonstration shall be conducted by the offeror within 15 days after notification by the Contracting Officer. Time and date of the demonstration shall be mutually agreed upon by the offeror and the Contracting Officer. The Government will schedule operational capability demonstrations with regard to the effective use of government personnel, and if possible, on the date requested by the offeror.

(h) The location of the offeror's proposed demonstration site shall be reported to the government below. Whenever feasible, the demonstration shall be held at DLA Troop Support.

Offeror's proposed demonstration site:_____(Fill in)_____

(i) Inquiries concerning the demonstration shall be submitted in writing to the Contracting Officer.

(j) Instructions for performing the demonstration:

(1) The evaluation team will arrive at the demonstration site at a time agreeable to the offeror and the government and established in writing through the Contracting Officer.

(2) The offeror shall brief the team prior to the initiation of the demonstration. The offeror shall use the briefing period to explain to the evaluation team how the demonstration will be conducted and to answer questions concerning the demonstration.

(3) Errors due to operators or equipment shall be documented if they occur. All errors, malfunctions, or other problems shall be discussed with the evaluation team member-in-charge. Allowances for correction/reruns will be at the discretion of the member-in-charge of the team.

(4) The demonstration is allotted _____[Insert text]_____.

Although this is not a timed benchmark test, the demonstration should be conducted within the time allotted.

(End of Provision)

**52.215-9020 Instructions for Submitting Product Demonstration Models (PDM) for Supply Chains at DLA Troop Support.**
As prescribed in 15.308-93, insert the following provision:

INSTRUCTIONS FOR SUBMITING PRODUCT DEMONSTRATION MODELS (PDM) FOR SUPPLY CHAINS AT DLA TROOP SUPPORT (NOV 2011)

(a) The offeror shall submit product demonstration models (PDM), as specified below, as part of its proposal. Models will be submitted at no expense to the Government and must be received prior to the time and date set forth for closing of offers. PDMs will be returned at the offeror's request and expense so long as the PDM(s) is(are) not destroyed by testing, retained by the Government as a manufacturing standard, and/or unless otherwise specified by the solicitation. PDMs will become Government property unless return is requested within 30 days after date of award.

Item Number _____ Number of Units Required _____

(b) Models will be tested or evaluated to determine compliance with all characteristics specified for such test or evaluation as referenced in Federal Acquisition Regulation (FAR) Subpart 15.3. Failure of models to conform to all such characteristics may result in the rejection of the entire offer. Failure to furnish models by the time and date specified in the solicitation may be cause for rejection of the entire offer if not otherwise acceptable under the provisions for considering late offers.

The following applies only when checked as paragraph (c):

[ ] If the PDM will be used as a manufacturing standard, for the successful offeror(s), the Government will return one approved product demonstration model (PDM) which will serve as a manufacturing standard. Products delivered under any resulting contract shall conform to the approved model as to the characteristics listed for test or evaluation and shall conform to the specification/commercial product description characteristics.

[ ] It is preferred that the materials used to manufacture the PDM(s) be in accordance with any specifications defined in Section C of this solicitation. However, if the offeror uses alternate materials to manufacture the PDM(s) a letter must be supplied with them stating (i) which materials depart from the end item specification and (ii) that, although the materials used in producing the PDM(s) differ from those specified, the materials required by the specification will be utilized under any resultant contract.

Note: The use of alternate materials will not affect the rating of the PDM, either favorably or negatively when the use of the alternate materials is identified in accordance with the requirements of this section. However, the Government reserves the right to give a negative rating to (a) PDM(s) that is(are) made with materials that depart from the end item specification and the use of those alternate materials was not identified in accordance with the requirements of this section. Accordingly, to preclude a negative assessment of a PDM that is comprised of materials that are not in accordance with the

specification(s), it is in the offeror's best interest to identify any and all alternate materials that have been used.

Although the offeror is permitted to use alternate materials to construct the PDM(s), the offeror is not permitted to utilize alternate manufacturing operations or change the construction/design of the PDM. The PDM must be manufactured (i) at the same facility as the production quantity and (ii) must be in accordance with applicable specifications, including the placement of the labels, unless otherwise identified. However, labels need not be printed for the purpose of the PDM but there must be an indication as to the size of the PDM, when applicable."

(End of Provision)

**52.215-9021 Department of Defense (DOD) Electronic Mall (EMALL) Purchasing Reviews.**
As prescribed in 15.408-90, insert the following clause in all DoD EMALL solicitations and contracts.

DEPARTMENT OF DEFENSE (DOD) ELECTRONIC MALL (EMALL) PURCHASING REVIEWS (NOV 2011)

(a) The Contracting Officer may conduct price reasonableness reviews of items or services provided under this contract, regardless of dollar value, that were not specifically determined to have fair and reasonable prices at contract award. If an initial review of the price results in a determination by the Contracting Officer that a price is not fair and reasonable, the burden of proof shall be upon the Contractor to establish that the price is reasonable under the standards in Federal Acquisition Regulation (FAR) 12.209 and Subpart 15.4.

(b) If the Contracting Officer determines that an item or service is unreasonably priced, the Contracting Officer may direct that the item or service be removed from ordering under the contract if agreement cannot be reached with the Contractor concerning a fair and reasonable price for the item or service. The Contracting Officer may also recover from the Contractor the amount the Contracting Officer determines has been paid to the Contractor in excess of a reasonable price for that item or service. The Contracting Officer will 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, unless it can demonstrate to the satisfaction of the Contracting Officer that the price in question is fair and reasonable. The Contractor 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.

(c) Any disputes arising under this provision shall be handled in accordance with the “Disputes” clause of this contract.

(End of Clause)

**52.215-9022 Contractor Past Performance Evaluation – Automated Systems.**
As prescribed in 15.304-90**(e)**(2), insert the following provision:

CONTRACTOR PAST PERFORMANCE EVALUATION – AUTOMATED SYSTEMS (SEP 2012)

(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.

(b) Past performance systems:

(1) 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. DLA may utilize past performance information from various information systems, to include but not limited to: Automated Best Value System (ABVS); Past Performance Information Retrieval System – Statistical Reporting (PPIRS-SR), in evaluation of Contractor past performance.

(2) The ABVS is the DLA legacy computerized past performance system that collects a Contractor's existing past performance data and translates it into a numeric score. The Contracting Officer then uses the ABVS score as a source of past performance information when making best value award decisions.

(3) The PPIRS-SR is a web-enabled, Government-wide application that collects quantifiable delivery and quality Contractor past performance information from the Department of Defense (DoD) contracting activities.

(4) Definitions:

(i) "Score(s)," as used in this provision, refers to the ABVS assessment of a contractor's delivery and quality performance on past DLA contracts.

(ii) "Classification(s)," as used in this provision, refers to the PPIRS-SR assessment of a contractor's delivery and quality performance on past DoD contracts, including DLA.

(5) ABVS scores:

(i) DLA assigns an ABVS score to each contractor based on the contractor's past performance. Contractors receive scores for performance in each federal supply class (FSC) scores. The FSC scores are based on DLA consolidated performance history. A contractor may have multiple FSC scores but will have only one DLA score, which is a compilation of the contractor's FSC scores for all business conducted with DLA.

(ii) The ABVS score is a combination of a vendor's delivery and quality scores; scores range from zero to a perfect score of 100.

(iii) Scores are calculated daily based upon two years of data.

(iv) ABVS delivery scores provide quantification of the number and severity of contractor-caused delinquencies, terminations, cancellations, and withdrawals for products in that FSC (or, if the

contractor has no history for the particular FSC, for all products the contractor provided to DLA within the time period under consideration).

(v) ABVS quality scores reflect the number and type of quality complaints (product and packaging nonconformances) issued against a contractor for products in that FSC or for all products it provided to DLA, as described in (iv), above.

(vi) Data sources for past performance information include:

(A) Product data reporting and evaluation program (PEDREP);

(B) Systems, applications and products in data processing (SAP);

(C) DLA preaward contracting system (DPACS).

(vii) DLA will make negative quality and delivery data reflected in the ABVS score available to contractors daily for review and challenge.

(viii) For further details concerning ABVS score calculations and contractor data challenge procedures, refer to the ABVS website at http://www.aviation.dla.mil/UserWeb/proc/ABVM/Abvm.htm

(6) PPIRS-SR classifications.

(i) PPIRS-SR classifications are based on federal supply class (FSC).

(ii) Classifications are calculated monthly based upon three years of data.

(iii) PPIRS-SR classifications are comprised of a delivery score and a quality color ranking.

(iv) The PPIRS-SR delivery score is based upon the total number of contract line items received and on weighted late deliveries.

(v) The contractor quality performance ranking is based upon a comparison among all contractors within an FSC.

(vi) Data sources for PPIRS-SR past performance can be found in the PPIRS-SR user manual at http://www.ppirs.gov/ppirsfiles/help.htm].

(vii) PPIRS-SR will make negative quality and delivery data reflected in the PPIRS-SR Classification available to contractors for review and challenge.

(viii) For details concerning PPIRS-SR classification calculations and Contractor data challenge procedures, refer to the "PPIRS-SR Procedural Guide for Application Development" at: http://www.ppirs.gov/ppirs-sr/ppirssrmanual102004.pdf

(7) Evaluation using ABVS scores and PPIRS-SR classifications

(i) The Contracting Officer will first evaluate Contractors using the ABVS FSC score for the solicited FSC in effect at the time of evaluation. The Contracting Officer will use a Contractor's DLA

score to evaluate a Contractor without an FSC score for that particular FSC. The Contracting Officer may consider the volume of business on which the FSC score is based as a measure of confidence in the score's indication of performance risk. The Contracting Officer may choose to use the DLA score if the volume of business would tend to make the FSC-specific score an inadequate indicator of performance risk. The Contracting Officer also may use the DLA score if the FSC scores among Contractors are relatively equal. For non-NSN items, the Contracting Officer will evaluate using a Contractor's DLA score in effect at the time of evaluation. Contractors with no performance history for the particular FSC or any other FSC, agency-wide, for the timeframe being rated will be evaluated neither favorably nor unfavorably, and will be assigned a "999.9" in ABVS.

(ii) In order for the Government to assess performance risk, if the quoter/offeror having the lowest evaluated price also has an ABVS FSC score below 70 and would potentially be bypassed under best value in favor of a higher priced quoter/offeror with a higher ABVS FSC score, then past performance evaluation will be accomplished using PPIRS-SR, in lieu of ABVS, for all quotes/offers received.

(iii) Evaluation of PPIRS-SR delivery assessments will be based upon a numerical scale ranging from 0 (low) to 100 (high). A '0' (zero) delivery score with '0' (zero) lines is used to designate instances wherein the contractor has no history for the particular FSC being rated.

(iv) In PPIRS-SR, Contractor quality will be assessed based upon relative ranking among all contractors within a given FSC.

(v) 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.

(vi) 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 score.

(8) The Contracting Officer may collect and analyze other information in addition to ABVS/PPIRS-SR past performance information.

(End of Provision)

52.215-9023 Reverse Auction.
As prescribed in 15.408-90(c)(1), use the following provision.

REVERSE AUCTION (JUL 2012)

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 on-line 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 on-line auction process. The Government intends to use a commercial web-based product to conduct the reverse auction.

(c) Prior to or simultaneously with conducting the on-line 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) 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 on-line 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 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 proposal revisions are again requested in accordance with Federal Acquisition Regulation (FAR) 15.307.

(f) The following information is provided regarding the procedures to be followed if a reverse auction is conducted.

(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 offerors' pricing in confidence until after contract award.

(4) Any offeror 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.

(5) 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.

(6) 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' 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)

**52.215-9024 State Minimum Price Regulations.**
As prescribed in 15.408-91, insert the following provision:

STATE MINIMUM PRICE REGULATIONS (NOV 2011)

Acquisitions financed by appropriated funds are made under authority of Chapter 137, Title 10 United States Code (U.S.C.), and the Defense Federal Acquisition Regulation Supplement (DFARS). Pursuant to Paul versus United States decided by the Supreme Court of the United States on 14 January 1963, state minimum distributor price regulations with respect to milk or milk products are not applicable to such acquisitions.

(End of Provision)

**52.215-9033 Competing Individual Delivery Orders Through On-Line Reverse Auctioning.**
As prescribed in 15.408-90(c)(2), use the following clause.

COMPETING INDIVIDUAL DELIVERY ORDERS THROUGH ON-LINE REVERSE AUCTIONING (JUL 2012)

The Contracting Officer may utilize on-line 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, an on-line reverse auction will be used as the price negotiation technique for this delivery order. If an on-line 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 on-line 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 on-line 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 an on-line 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)

**52.215-9034 Submission of Cost Data**.
As prescribed in 15.403-5(a)(3), insert the following provision:

SUBMISSION OF COST DATA (SEP 2012)

(a) The Government reserves the right to require that each offeror itemize in sufficient detail, as determined by the Contracting Officer, its costs and profits within five working days (or longer when authorized by the Contracting Officer in writing) after receipt of a written request by the Government.

(b) If the offeror fails to timely submit the information, the offer may be determined ineligible for consideration and award.

(End of Provision)

**52.216-9000 Implementation of FAR 52.216-2 Economic Price Adjustment--Standard Supplies.**
As prescribed in 16.203-4(a)(1)(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 CLIN to be subject to EPA, provide for offeror fill-in of its item name, part number, current cost, unit of measure and 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)(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 CLIN to be subject to EPA, provide for offeror fill-in of its item name, part number, current cost, unit of measure and 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)(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 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(91)(iv), 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) |
|---|---|---|---|---|---|
| CLIN Subject to Adjustment | Specialty Metal Subject to Adjustment | Specialty Metal Amount per CLIN Unit of Issue | Base Specialty Metals Cost (see paragraph (b)(5)) in CLIN Base Unit Price | Specialty Metals Market price indicator identification and/or Name | Base Market Price Indicator (see paragraph (b)(4)) |
| Sample CLIN 0000 | Titanium Tt35 | 2 pound (lb) | $30 | Platts US SG Ingot Producer | $14.10/lb |
| | | | | | |
| | | | | | |
| | | | | | |

(End of Clause)

Paragraph (b)(5) – Buyer fill-in of frequency of adjustment period (quarterly, semi-annually or annually).

Paragraph (c)(7)(i) – Buyer fill-in of EPA ceiling percentage. Unless approved by the Chief of the Contracting Office, the ceiling shall be no more than 10%.

Table (f) columns (1) though (4) are vendor fill-ins, column (5) is a buyer fill-in.

Use with clause 52.217-9001 if contract will include options.

**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)

**52.216-9007 Contract and Delivery Order Limitations.**
As prescribed in 16.506(91)(a), insert the following clause:

CONTRACT AND DELIVERY ORDER LIMITATIONS (NOV 2011)

[ ] (a) Delivery orders will specify delivery no less than _____ days from the date of order. Changes or cancellations to delivery orders may be made by giving the Contractor notice no less than ___ days [remembering that days are always calendar days unless otherwise defined] before the required delivery date.

(b) Maximum contract limitation. The maximum quantity or maximum dollar value that may be ordered against this contract is _____.

(c) Guaranteed minimum.

(1) The Government guarantees that it will order under this contract (and under the contract awarded for any partial set-aside) the following minimum, as applicable:

[ ] (i) Base period of one year.
_____ (Quantity)
_____ (Percentage of the annual estimated quantity or dollar value)

[ ] (ii) Base period of two or more years.
_____ (Quantity) multiplied by _____.
_____ (Percentage) multiplied by _____.

[ ] (iii) The following minimum quantities within the time periods prescribed (quarter (QTR) represents a three-month period computed from date of award):

| Contract line-item (CLIN) | First quarter | Second quarter | Third quarter | Fourth quarter |
|---|---|---|---|---|
| _____ | _____ | _____ | _____ | _____ |

[ ] (iv) The Contractor will not be obligated to honor any order with F.o.b. Destination terms that requires delivery to a single destination of a quantity less than that shown below:

| CLIN | Minimum quantity per destination |
|---|---|
| _____ | _____ |

(2) The Government may fulfill the guarantee by a single delivery order or by any number of delivery orders subject to the minimum per order specified in the clause Order Limitations, Federal Acquisition Regulation (FAR) clause 52.216-19 (a). The maximum quantity per order does not apply until after the guaranteed minimum is satisfied.

(3) In the event that a single delivery order includes both items that are within the guaranteed minimum and items in excess of the guaranteed minimum, the maximum delivery order limitations in FAR 52.216-19 (b) shall apply, and the Contractor shall be governed by the notice requirement of FAR 52.216-19 (d).

(4) The total of the delivery orders issued during the base contract period will apply to the minimum guarantee stated in this paragraph (c). The Government's obligations with regard to the guarantee will be satisfied when the total of the delivery orders equals or exceeds the guaranteed quantity or guaranteed dollar value, as applicable.

(d) If this is an invitation for bids (IFB) and the Government elects to award a different quantity than that solicited or bid upon, the delivery schedule will be changed in direct proportion to the change in quantity. If this solicitation involves a partial set-aside, the Government will consider each destination (or combined destinations) separately in awarding the set-aside portion. The destination(s) appearing on page(s)_____ is (are) the non-setaside portion.

(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)

**52.216-9009 Estimated Total Quantity.**
As prescribed in 16.506(91)(c)(1), insert the following clause:

ESTIMATED TOTAL QUANTITY (NOV 2011)

(a) The estimated total quantity the Government expects to order during each contract year is as follows:

| Contract Line-Item (CLIN(S)) | Quantity | CLIN(S) | Quantity |
|---|---|---|---|
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |

(b) In the event that this solicitation provides for a partial set-aside, the estimated total quantity for the set-aside portion is as provided in the clause entitled "Set-Aside Portion" located in Section I of the solicitation.

Note: It is anticipated that the quantities listed will remain constant for any additional option periods as provided elsewhere in this contract.

(End of Clause)

**52.216-9010 Contract Quantity Limitations.**
As prescribed in 16.506 (91)(c)(2), insert the following clause:

CONTRACT QUANTITY LIMITATIONS (NOV 2011)

[ ] (a) The quantity limitations on any contract resulting from this solicitation are as follows during the contract period*:

(1) Minimum quantity or dollar amount: _____

(2) Maximum quantity or dollar amount: _____

The Government is obligated to order only the minimum quantity or dollar figure stated above.

If this solicitation provides for a partial Small Business set-aside and the resulting award is made to a Contractor receiving the set-aside and non setaside portion, the quantities specified above for both minimum and maximum will be doubled.

[ ] (b) Multiple national stock numbers (NSNs): The NSNs or NSN groups cited in the solicitation may be split (with one or more NSNs awarded to one Contractor, one or more to another Contractor or Contractors) after evaluation of offers. If there are split awards, the contract minimum for each contract during the contract period* will become the total of the minimum(s) for the NSNs awarded to each offeror The resulting contract minimum applies to the entire range of items awarded and does not guarantee that the Government will purchase any particular quantity or dollar amount of any individual NSN awarded.

The contract minimum will be $_____, which is the total of the minimum estimates for all NSNs. The minimum estimate for each NSN is calculated;

( ) (1) as _____ per cent of the estimated annual demand value for each item, or

( ) (2) as specified below for each NSN or NSN group

| NSN | Minimum Quantity or Dollar Value |
|---|---|
| | |
| | |
| | |

The contract maximum during the contract period* will be $_____.

[ ] (c) Multiple awards – The Government anticipates making multiple awards (awards for the same NSNs) as a result of this solicitation. If multiple awards are made, the contract minimum for each award during the contract period* will be a proportion of the overall minimum cited below. For example, if two awards are made the Government is obligated to purchase half of the minimum from each awardee. Regardless of the number of awards made under this solicitation, the Government may order, and each awardee is obligated to deliver, up to the maximum cited below:

The contract minimum will be $_____, which is the total of the minimum estimates for all NSNs. The minimum estimate for each NSN is calculated:

( ) (1) as _____ per cent of the estimated annual demand value for each item, or
( ) (2) as specified below for each NSN or NSN group

| NSN | Minimum Quantity Or Dollar Value |
|---|---|
| | |
| | |
| | |

The contract maximum during the contract period* will be $ _____.

*Note:

( ) Contract period as defined in this clause means the extended contract shall be inclusive of any/all option periods.

( ) Contract period as defined in this clause means a separate contract period for the initial basic and each option period.

(End of Clause)

**52.216-9011 Economic Price Adjustment – DoD Electronic Mall (EMALL).**
As prescribed in 16.203-4(92)(a)(1)(90)(i), insert the following clause:

ECONOMIC PRICE ADJUSTMENT – DEPARTMENT OF DEFENSE (DOD) ELECTRONIC MALL (EMALL) (NOV 2011)

(a) The Contractor warrants that the unit prices offered are and shall remain --

(1) the established prices for the same commercial items sold in substantial quantities to the general public as reflected in published catalogs and/or price lists; and

(2) as low or lower than prices being offered to its most preferred customers for like quantities of the same items under comparable terms and conditions.

(b) Price changes.

(1) Decreases: The Contractor may decrease prices without limitation and without prior notification to the Contracting Officer.

(2) Increases: The Contractor shall notify the Contracting Officer in writing 30 days prior to the effective date of any price increase.

(i) The Contractor is limited to annual price increases not exceeding 5% cumulatively per item.

(ii) Any increase exceeding 5% in an annual period, whether individual or cumulative, is subject to the Contracting Officer's approval and requires modification of the contract. The Contractor shall provide supporting data, including verifiable catalog or published list prices, corresponding increases in cost, discount structure, or any other information deemed appropriate by the Contracting Officer. Increases in commercial catalogs or published price lists do not automatically authorize corresponding increases in contract prices.

(iii) Price increases shall not apply to orders placed prior to approval of the price increase.

(iv) Within 30 days after receipt of the Contractor's written notification, the Contracting Officer may cancel, without liability to either party, any undelivered portion of the contract items affected by the increase.

(c) Any dispute under this clause shall be resolved in accordance with the Disputes Clause of this contract.

(End of Clause)

**52.216-9012 Economic Price Adjustment for Unitized Group Rations (UGR) - A Components – Actual Material Costs.**
As prescribed in FAR 16.203-4(c) and Defense Logistics Acquisition Directive (DLAD) 16.203-4(c)(90)(2), 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)

**52.216-9016 Intent to Award Against Existing BOA.**
As prescribed in 16.703(b)(90), insert the following provision:

INTENT TO AWARD AGAINST EXISTING BASIC ORDERING AGREEMENT (BOA)
(NOV 2011)

The Government intends to place an order for this requirement on a sole source basis against an existing BOA. Any party interested in responding to this requirement should contact the buyer specified in Block 5, "Issued by" block of the standard form (SF) 18 for a copy of a complete solicitation package."

(End of Provision)

**52.216-9017 Single or Multiple Awards.**
As prescribed in 16.506(f)(92), insert the following clause:

SINGLE OR MULTIPLE AWARDS (NOV 2011)

(a) In accordance with Federal Acquisition Regulation (FAR) 52.216-27, Single or Multiple Awards, the Government may elect to award a single task/delivery order contract or to award multiple task/delivery order contracts for the same or similar supplies or services to two or more sources under this solicitation.

(b) Evaluation criteria for award: Proposals will be evaluated in accordance with the evaluation provision(s) specified in the 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 based on the best interest of the Government, considering factors such as the administrative burden to the Government to administer multiple awards, the recurring nature of the requirement, the need to increase the active production base for military requirements, and the benefits that may be achieved through order-level competition.

(c) Task/delivery order placement procedure:

In the event of multiple awards, each awardee will be provided an opportunity to compete for individual task/delivery orders unless an exception at FAR 16.505(b)(2) applies. However, all testing and approval requirements, such as, but not limited to, first article testing, shall be satisfactorily completed prior to participating in order competition. Requests for order proposals may be transmitted to awardees by electronic, facsimile or oral means. The Contracting Officer shall establish a common cut-off date for the submission of proposals. As a minimum, evaluation criteria for order placement will include price.

The Government reserves the right to consider additional factors such as past performance on earlier orders under the contract, quality, timeliness, cost control, and delivery. The request for order proposals will specify the evaluation factors

(d) Conditional award on alternate offer.

The Government reserves the right to include amongst the multiple awardees any offeror who has submitted an alternate offer that has not yet been approved, but which has a reasonable likelihood of being approved within 180 days. This award would be a conditional award by which the alternate offeror would only be eligible to compete for orders in the event that the alternate offer is approved. The purpose of this conditional award is so that award to known acceptable sources to the Government is not delayed pending review of the alternate offer.

In the event that the alternate offer is subsequently approved, and any required first article test is successfully completed and approved, that offeror will be eligible to compete for all subsequent task/delivery orders.

In the event that the alternate offer is rejected, the conditional award will be subject to a no-fault termination at no cost to the Government.

For alternate offer items, the Government reserves the right to impose first article test if recommended by the Engineering Support Activity. In such cases, the modification finalizing the award

will also add the first article requirement. From the time the modification is issued, the Contractor is legally bound to perform on delivery orders and shall comply with all terms and conditions of the contract.

(e) The competition advocate at each contracting activity/office (as defined in Defense Logistics Acquisition Directive (DLAD) 2.101) shall act as the activity task and delivery order contract ombudsman pursuant to FAR 16.505(b)(5). 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 will be resolved by the Defense Logistics Agency (DLA) competition advocate. Task/delivery order complaints must specify they are being filed pursuant to FAR 16.505.

(End of Clause)

**52.216-9018 Alternate Offer Conditional Award.**
As prescribed in 16.105-91, insert the following provision:

ALTERNATE OFFER CONDITIONAL AWARD (APR 2008)

Award of this contract is on a conditional basis pending review and approval of your alternate offer. Once a decision is made on the acceptability of your item, this award will be modified to either remove the conditional status and modify the contract accordingly or terminate the contract on a no fault basis at no cost to the Government.

(End of Provision)

**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)

**52.216-9020 Prime Vendor Requirements.**
As prescribed in 16.506-95 insert the following clause:

PRIME VENDOR REQUIREMENTS DLA TROOP SUPPORT - MEDICAL (NOV 2011)

In accordance with Federal Acquisition Regulation (FAR) 52.216-21 (c), the requirements covered by this contract are hereby defined. Requirements under this contract are items, for the ordering facilities specifically identified in the solicitation, that are brand name specific items (including generic and house labels) covered either by distribution and pricing agreements (DAPAs) or indefinite delivery contracts established with manufacturers/suppliers specifically to support prime vendor contracts. The following provisions are applicable to these requirements:

(a) The Government is not required to, but may, place orders under this contract for items available from Government depot stock.

(b) The Government is not required to, but may, place orders under this contract for items which are normally available under the DLA Troop Support Medical Electronic Commerce Program.

(c) When the Contractor cannot fill a routine order under this contract due to manufacturer's backorder, the Government will be advised within two hours after order placement. The Government will have the right to cancel the order and place the order with another source.

(d) When the Government has an emergency order the Contractor will advise, within twelve hours after picking up the order from VAN, whether or not the order can be filled within the required timeframe. If the Contractor cannot fill the order, the Government has the right to cancel the order under this contract and place the order with another source.

(e) The Government is not obligated to place orders under this contract for items covered by FAR Part 8, Required Sources of Supplies and Services.

(f) The Government is not obligated to place orders under this contract for items normally available through the DLA Troop Support National Mail Order Pharmacy Program.

(End of Clause)

**52.216-9022 Placement of Task/Delivery Orders Against Multiple Indefinite Delivery Contracts.**
As prescribed in 16.505(b)(90) insert the following clause:

PLACEMENT OF TASK/DELIVERY ORDERS AGAINST MULTIPLE INDEFINITE DELIVERY CONTRACTS (NOV 2011)

(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)(5), 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)

**52.216-9023 Additional Ordering Limitation.**

As prescribed in 16.506(91)(e), insert the following clause:

ADDITIONAL ORDERING LIMITATION (APR 2008)

(a) The Government shall not be required to order under this contract any quantity of an item of supply, of which the Contractor has failed to make timely delivery on:

(1) a previous order issued under this contract, or

(2) on a contract or order separate and apart from this contract, unless the Contracting Officer determines that the failure to make timely delivery under the previous delivery order, or other contract or order, was due to causes beyond the control and without the fault or negligence of the Contractor within the meaning of the clause entitled "Default.

(b) The Government may exercise its right under this clause until such time as the Contractor cures its late delivery status with respect to the item of supply, or until the delivery order, contract or order separate from this contract is terminated or otherwise placed in a current or timely status. This provision shall not be construed as a waiver by the Government of its right of termination by default or any other of its rights contained in the contract.

(End of Clause)

**52.216-9024 Adjustment to Ordering Period.**
As prescribed in 16.506(91)(f), insert the following provision:

ADJUSTMENT TO ORDERING PERIOD (NOV 2011)

(a) The ordering period established in Federal Acquisition Regulation (FAR) Clause 52.216-18 is based upon the assumption that an award will be made by _____. The ordering period specified in 52.216-18 will be extended by the number of calendar days after the date that the contract is, in fact, awarded.

(b) If the acquisition contains a partial small business set-aside, the ordering period for the set-aside portion of the contract may be less than the number of days stated in FAR Clause 52.216-18. The expiration period of the set-aside portion will not exceed that of the unrestricted portion. The ordering clause will be adjusted at the time of award.

(End of Provision)

**52.216-9025 Invoices for Delivery Orders.**
As prescribed in 16.506(96), insert the following clause:

INVOICES FOR DELIVERY ORDERS (NOV 2011)

Invoice(s) must cite the delivery order number exactly as shown in block 2 of the Department Of Defense (DD) Form 1155.

(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 (CLIN)<br>National stock number (NSN) | Government estimated<br>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 Price Index.**
As prescribed in 16.203-4-90(d), use the following clause.

Notes for fill-in text:

a. Paragraph (b)(1): Enter the appropriate Producer Price Index (PPI) code number identification and title. Normally, unadjusted indices should be used (as opposed to seasonally adjusted indices). 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.

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 (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--

(1) "Price 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)_____

(2) "Base price index" is the arithmetic average of the final version of the indexes published for the two months preceding the closing date for receipt of proposals or the date required for receipt of final proposal revisions, if discussions were held.

(3) "Adjusting price index" shall be the two month arithmetic average of the index first published for the two months 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 price index, the adjusting price 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 price index and the adjusting price 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 price index is less than the base price index. There shall be _____ price adjustments per contract year.

(2) Example of adjustment calculation:

| | |
|---|---|
| Base Price Index = | 109.88* |
| Adjusting price index = | 112.72* |
| Less base price index = | 109.88 |
| Change to index = | 2.84 |
| Divide change to index by base price index = | 2.84 / 109.88 = .02585 (2.585%)** |
| Multiply by the base unit price = | $50.00 x .02585 = $1.29*** |

= Unit Price Adjustment

Adjusted unit price = $51.29

* In computing the base and adjusting price 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 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.

(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. 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 price index. In the event –

(1) Any applicable price index is discontinued or its method of derivation is altered substantially; or

(2) The Contracting Officer determines that the price 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 price 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).**
As prescribed in 16.205-4, insert the following clause:

PRICE REDETERMINATION PROSPECTIVE (DEVIATION) (OCT 2008)

(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, 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), insert the following clause:

ECONOMIC PRICE ADJUSTMENT – ESTABLISHED CATALOG PRICE TWO UPWARD ADJUSTMENTS PER YEAR OPEN SEASON 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) 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 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.

(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), insert the following clause:

ECONOMIC PRICE ADJUSTMENT – FEDERAL SUPPLY SCHEDULE PRICES - OPEN SEASON E-CAT SOLICITATION (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 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 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:

$$\text{Proposed new U/P for First option period} = \frac{\text{Adjusting Index}}{\text{Base Index}} \times \text{Current Contract U/P for the expiring Base Period}$$

Subsequent option periods:

Proposed new U/P for = Adjusting Index x Current Contract U/P for the

Upcoming Option Period Base Index 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), 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), 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)(96), 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 Federal Acquisition Regulation (FAR) 16.203-1(a)(1), Defense Logistics Acquisition Directive (DLAD) 16.203-1(a)(90) and 16.203-4(90) 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 (NOV 2011)

(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. Refer to Defense Logistics Acquisition Directive (DLAD) clause 52.217-9001, Option To Extend The Term Of The Contract - Separate Firm Fixed Price And Fixed Price With Economic Price Adjustment Portions, contained elsewhere in this solicitation.

(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 ITEM | EPA FACTOR | ECONOMIC INDICATOR | PUBLICATION / PUBLISHER | PUBLISHED | BASE UNIT PRICE | ADJ. UNIT PRICE |
|---|---|---|---|---|---|---|
| Beef, ground, | Beef | Boneless process Beef, trimmings, | Weekly National Carlot Meat Report | Weekly | 52 week period | 52 week period |

| | | | | | | |
|---|---|---|---|---|---|---|
| Creamed | | Weighted Average, 85%, BPN U24 | / USDA | | | |
| 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 lemon pepper 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 |
| 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)

**52.216-9055 Contractor Order Receipt Agents.**
As prescribed in 16.506(91)(g), insert the following clause:

CONTRACTOR ORDER RECEIPT AGENTS (DLA ENERGY) (NOV 2011)

Orders placed hereunder shall be directed to the prime Contractor at the address indicated in block 17a of the standard form (SF) 1449 unless another address is indicated below. All addresses indicated below shall belong to the prime Contractor or agents authorized to receive orders on behalf of the prime Contractor. Orders may be placed at different locations for different line items. If all orders are to be placed with one office, state: "all" in the first column below. The Contractor shall be responsible for seeing that orders are forwarded to any regional or area offices from which product is to be shipped in such time as to accomplish delivery within the permissible delivery lead time set forth under the clause. The prime Contractor will be held responsible for the delivery and performance of any and all of its designated order receipt agents. For this purpose, date of receipt of the order as specified under the clause shall be the date on which the order is received by the office to which it is addressed.

Item Number Contractor Agent's Name and Address

(End of Clause)

**52.216-9056 [Reserved.]**

**52.216-9057 Orders (Canadian Forces Vessels) (DLA Energy).**
As prescribed in 16.506(91)(g), insert the following clause:

ORDERS (CANADIAN FORCES VESSELS) (DLA ENERGY) (NOV 2011)

Any order placed under this contract by Canadian Forces Vessels, or civilian vessels operating under Canadian military contract, shall be honored by the Contractor. The order document (Department of Defense (DD) Form 1155) for Canadian Forces (CF) will be issued directly to the cognizant bunkers Contractor by the CF Ordering Officer. The Ordering Officer is responsible for complying with the provisions outlined in the contract as well as the Memorandum of Understanding (MOU), dated 11 August 2003, between and the Department of National Defense of Canada. The responsible Ordering Officer shall ensure that all procedures are followed in order to allow for payment to the Contractor by Defense Finance and Accounting Services – Columbus, pursuant to Annexes A, B, and C of the MOU.

(End of Clause)

**52.216-9058 Economic Price Adjustment (EPA) – Established Market Price – Wool Cloth .**
As prescribed in Defense Logistics Acquisition Directive (DLAD) 16.203-4-90, Federal Acquisition Regulation (FAR) 16.203-1(a)(1), and DLAD 16.203-1(a)(90), insert the following provision:

ECONOMIC PRICE ADJUSTMENT (EPA) - ESTABLISHED MARKET PRICE – WOOL CLOTH (NOV 2011)

(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. Refer to Defense Logistics Acquisition Directive (DLAD) clause 52.217-9001, Option To Extend The Term Of The Contract – Separate Firm Fixed Price And Fixed Price With Economic Price Adjustment Portions, contained elsewhere in the solicitation.

(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 Federal Acquisition Regulation (FAR)16.203(a)(1), and Defense Logistics Acquisition Directive (DLAD) 16.203-1(a)(90) and 16.203-4-90, insert the following clause:

ECONOMIC PRICE ADJUSTMENT (EPA) - MEAL COLD WEATHER/LONG RANGE PATROL (MCW/LRP) (NOV 2011)

(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. Refer to clause Defense Logistics Acquisition Directive (DLAD) clause 52.217-9001, Option To Extend The Term Of The Contract - Separate Firm Fixed Price And Fixed Price With Economic Price Adjustment Portions, contained elsewhere in this solicitation.

(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 | USDA / Weekly | 52 Week | 52 Week |

| ITEM | MENU | EPA FACTOR/ COMPONENT | ECONOMIC INDICATOR | PUBLISHER / PUBLICATION / FREQUENCY PUBLISHED | BASE UNIT PRICE | ADJ. UNIT PRICE |
|---|---|---|---|---|---|---|
| | | | Round, Knuckle, Trimmed, Wtd, Avg. (BPN U-12) | Nation Carlot Meat Report / Weekly | period | 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, Fried Noodle, Cup | Flour, hard winter Kansas City cwt | WSJ / WSJ Commodity Cash Prices / Daily | 52 Week period | 52 Week period |
| | | | | | | |
| **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 / | 12 Months period | 12 Month period |

| ITEM | MENU | EPA FACTOR/ COMPONENT | ECONOMIC INDICATOR | PUBLISHER / PUBLICATION / FREQUENCY PUBLISHED | BASE UNIT PRICE | ADJ. UNIT PRICE |
|---|---|---|---|---|---|---|
| | | | | Monthly | | |
| | #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 |
| | #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- | Miller Freeman, Inc. / Pulp & Paper Week / Weekly/Prices are | Semi-annual | Semi-annual |

| ITEM | MENU | EPA FACTOR/ COMPONENT | ECONOMIC INDICATOR | PUBLISHER / PUBLICATION / FREQUENCY PUBLISHED | BASE UNIT PRICE | ADJ. UNIT PRICE |
|---|---|---|---|---|---|---|
| | | | Annual | Published Monthly | | |
| **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 Federal Acquisition Regulation 16.203(a)(1), and Defense Logistics Acquisition Directive (DLAD) 16.203-1(a)(90) and 16.203-4-90, insert the following clause.

ECONOMIC PRICE ADJUSTMENT (EPA) – MEAL READY TO EAT (MRE) ASSEMBLY
(NOV 2011)

(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. Refer to Defense Logistics Acquisition Directive (DLAD) clause 52.217-9001, Option To Extend The Term Of The Contract - Separate Firm Fixed Price And Fixed Price With Economic Price Adjustment Portions, contained elsewhere in this solicitation.

(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 |
| | | | | |
| **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 |
| | | | | |

| ITEM | ECONOMIC INDICATOR | PUBLISHER / PUBLICATION / FREQUENCY PUBLISHED | BASE UNIT PRICE | ADJ. UNIT PRICE |
|---|---|---|---|---|
| **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 |
| | | | | |
| **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 |

| ITEM | ECONOMIC INDICATOR | PUBLISHER / PUBLICATION / FREQUENCY PUBLISHED | BASE UNIT PRICE | ADJ. UNIT PRICE |
|---|---|---|---|---|
| | | | | |
| **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 Federal Acquisition Regulation (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 (EPA) – TABLE SPREADS (NOV 2011)

(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. Refer to clause Defense Logistics Acquisition Directive (DLAD) clause 52.217-9001, Option To Extend The Term Of The Contract - Separate Firm Fixed Price And Fixed Price With Economic Price Adjustment Portions, contained elsewhere in this solicitation.

(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 |
| | | | | | |
| **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 FAR 16.203-1(a)(1) and Defense Logistics Acquisition Directive (DLAD) 16.203-1(a)(90) and 16.203-4-90, insert the following clause:

ECONOMIC PRICE ADJUSTMENT (EPA) – UNITIZED GROUP RATION (UGR) (NOV 2011)

(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. Refer to Defense Logistics Acquisition Directive (DLAD) clause 52.217-9001, Option To Extend The Term Of The Contract - Separate Firm Fixed Price And Fixed Price With Economic Price Adjustment Portions, contained elsewhere in this solicitation.

(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 |

| ITEM | EPA FACTOR/ COMPONENT | ECONOMIC INDICATOR | PUBLISHER / PUBLICATION / FREQUENCY PUBLISHED | BASE UNIT PRICE | ADJ. UNIT PRICE |
|---|---|---|---|---|---|
| | | | | | |
| **Bacon, precooked, sliced, cured** | Pork Belly | Pork Belly, Seedless, Fresh, Skin on , Trimmed 14-16#, Weighted, C9 | 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 Federal Acquisition Regulation (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 (EPA) – TAILORED OPERATIONAL TRAINING MEAL (TOTM) (NOV 2011)

(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. Refer to Defense Logistics Acquisition Directive (DLAD) clause

52.217-9001, Option To Extend The Term Of The Contract - Separate Firm Fixed Price And Fixed Price With Economic Price Adjustment Portions, contained elsewhere in this solicitation.

(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 w/Salsa** | 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 |
| | | | | | |
| **Chili & Macaroni** | Beef | Boneless Processing Beef/Beef Trimmings, | USDA / Weekly National Carlot Meat Report / | 52 week period | 52 week |

| ITEM | EPA FACTOR/ COMPONENT | ECONOMIC INDICATOR | PUBLISHER / PUBLICATION / FREQUENCY PUBLISHED | BASE UNIT PRICE | ADJ. UNIT PRICE |
|---|---|---|---|---|---|
| | | FOB National, Wtd. Avg. 85% fr (BPN U-24) | Weekly | | 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 DLA Troop Support Subsistence Delivered Price Business Model.**
As prescribed in 16.203-4(d)(2)(95), insert the following clause:

ECONOMIC PRICE ADJUSTMENT (EPA) – ACTUAL MATERIAL COSTS FOR DLA TROOP SUPPORT - SUBSISTENCE DELIVERED PRICE BUSINESS MODEL (NOV 2011)

(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) 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: Delivered Price and Distribution Price. The unit price sum of the two component prices shall be rounded up or down as applicable, to the nearest cent to determine the final Contract Unit Price.

(2) "Delivered Price" means the most recent manufacturer, grower or private label holder commercial price per unit to the Contractor, inclusive of standard freight. The Delivered Price shall be based on free on board (f.o.b.) Destination. Delivered Price shall exclude all costs that are to be covered in the Distribution Price.

(i) Exceptions:

(A) 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 applicable freight.

(B) A contiguous United States (CONUS)-based redistributor's price for a specific manufacturer's/grower's/private label holder'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/grower's/private label holder's published price inclusive of discounts/allowances. This exception must be approved by the Contracting Officer on a case by case basis. Supporting documentation may be required.

(3) "Product Allowance" means discounts, rebates, and allowances to be passed on to the Government. In accordance with other provisions of the contract (and subject to any exception in those provisions), 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 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 US Treasury, with an attached itemized listing of all customer purchases by line item to include contract number, call number, purchase order number and CLIN number.

(4) "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 SOW for the applicable SPV solicitation and resulting contract. As detailed above in (2), Delivered Price is distinct from and not to be included in the Distribution Price.

(5) "Ordering Catalog" means the electronic listing of items and their corresponding contract unit prices available for ordering under this contract.

(6) "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 Product Allowance 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 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, 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 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.

(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 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 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.

(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 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)

**52.216-9065 Economic Price Adjustment – Actual Material Costs For Subsistence Product Price Business Model.**
As prescribed at 16.203-4(d) (2) (96), insert the following clause:

ECONOMIC PRICE ADJUSTMENT – ACTUAL MATERIAL COSTS FOR DLA TROOP SUPPORT - SUBSISTENCE PRODUCT PRICE BUSINESS MODEL (NOV 2011)

(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 category {buyer fill in} (The Contracting Officer shall fill-in the distribution category for prime vendor FF&V); 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 (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.

"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 (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. {buyer fill-in OCONUS location(s)}.

(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 {buyer fill-in day and time of} of the First full week in a calendar month through the last {buyer fill-in day and time of} 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 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 time on the last {buyer fill-in day} of each month for submission not later than {buyer fill-in time} local Philadelphia time on the last {buyer fill-in day} 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 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 {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 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 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.

ALT I (APR 2011) Subsistence Prime Vendor Afghanistan: As prescribed in 16.203-4(d) (2) (96), insert the following paragraph in lieu of paragraph (b)(5) of the basic clause.

(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. the distribution prices are broken down into standard and non-standard prices. For this acquisition, there will be a total of {buyer fill in} distribution price categories. These categories will include both the standard distribution price component and the non-standard distribution price component. {buyer fill-in} category (category #(s) {buyer fill-in} – {buyer fill-in} will only include the non-standard distribution price:

(a) Standard distribution price: The standard distribution price is a firm fixed price and offered as a dollar amount, which represents all elements of the unit price, other than the product price and non-standard distribution price. All performance under this SOW will be included in the standard distribution price except aspects of performance that are specifically identified as being included in the non-standard distribution price. As detailed above in (3), product price is distinct from and not to be included in either distribution price (note that, for FF&V items from a foreign country imported into the local market of Afghanistan, no importer charges shall be included in the standard distribution price). The standard distribution price shall remain fixed for the duration of each tiered pricing period. The standard distribution price shall exclude ocean shipping costs referenced below and non-standard distribution prices separately priced in the schedule of items.

(b) Non-standard distribution price: The non-standard distribution price is a fixed price and offered as a dollar amount, which represents all elements of pricing related to performance under supplies/ services and prices as discussed in Section II work to be performed. The details of elements related to non-standard pricing may vary; therefore this information will be filled in by the buyer in appropriate sections of the solicitation and statement of work.

These non-standard distribution prices shall remain fixed for the duration of each tiered pricing period of the Contract. The non-standard distribution price shall exclude standard distribution prices separately priced elsewhere in the schedule of items. The Contractor shall not include the same performance or cost element in both the standard and non-standard distribution prices.

ALT II (APR 2011) {Buyer fill-in OCONUS Location(s)} The buyer will fill in the specific OCONUS location(s) where Alternate II is required in the solicitation, because the distribution pricing language in the basic clause does not adequately address the situation. As prescribed in 16.203-4(d) (2) (96), insert the following paragraph in lieu of paragraph (b)(5) of the basic clause.

(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 contract performance other than Product Price. The distribution prices are broken down into normal and premium prices:

Normal distribution price: The normal distribution price is a firm fixed price and offered as a dollar amount, which represents all elements of the unit price, other than the product price and premium distribution price. All performance under this SOW will be included in the normal distribution price except aspects of performance that are specifically identified as being included in the premium distribution price. As detailed above in (3), product price is distinct from and not to be included in either

distribution price. The normal distribution price shall exclude ocean shipping costs referenced below and premium distribution prices separately priced in the schedule of items.

Note: The normal distribution price shall remain fixed for the base period of the contract, and is subject to any agreed option period adjustments.

Premium distribution prices: Premium distribution prices are firm fixed prices for the base period of the contract and are subject to any agreed upon option period adjustments. The premium distribution prices shall be offered as a dollar amount for the premium distribution categories identified in the statement of work.

(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.

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.**
The clause at 52.216-9067 shall be used in contracts for procurement of Liquid Propane Gas (LPG). This clause is approved for use by DLA Distribution only.

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: Buyer must also fill in percentage applicable in (c)(5), as determined in accordance with 16.203-3 (94) and local procedures.

ECONOMIC PRICE ADJUSTMENT LIQUID PROPANE GAS – 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 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 3% (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 pri*ce 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 3% 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 hereunder 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 3% 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 3% 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 clause Default 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 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)

**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)(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 <u>on or prior to</u> 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)

**52.217-9000 Data Pricing, Evaluation, and Award.**
As prescribed in 17.7601-94, insert the following provision:

EVALUATION AND AWARD (DEC 2011)

(a) If the offeror does not indicate a charge for data, the Government will consider and the offeror agrees that the data charge is included in the price of the end item. The Government reserves the right to waive one or more data contract line-items (CLINS) in evaluating each offer and in awarding the contract, as the best interests of the Government may require. Each offer will be evaluated on the basis of only those data CLINs required of that offeror.

(b) Separate awards will not be made for data CLINs.

(End of Provision)

**52.217-9001 Option to Extend the Term of the Contract - Separate Firm Fixed Price and Fixed Price with Economic Price Adjustment Portions.**
As prescribed in 17.203(d), insert the following or similar clause:

OPTION TO EXTEND THE TERM OF THE CONTRACT - SEPARATE FIRM FIXED PRICE AND FIXED PRICE WITH ECONOMIC PRICE ADJUSTMENT (EPA) PORTIONS (NOV 2011)

(a) The Government may extend the term of this contract by written notice to the Contractor no later than ____ days prior to the expiration of the contract; provided, that the Government shall give the Contractor a preliminary written notice of its intent to extend at least ____ days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option provision. Each exercise of this option, if any, will extend the term of this contract by [number of months, weeks, etc.]. The total duration of this contract, including the exercise of any options under this clause, shall not exceed [number of months, weeks, etc.].

(c) The offeror agrees to furnish during the option period those items cited in the schedule that are subject to EPA, at unit prices made up of two portions:

(1) a portion applicable to the purchase costs of the specific material subject to the EPA, at the dollar value per unit in the award, modified by any adjustment under the EPA of this clause contract, and

(2) the (remaining) firm fixed price portion of the price for the same contract line item, using the applicable amount for each option period [Note] .

(End of Clause)

(Note) Insert herein either:

(1) the words "using the applicable amount cited in the schedule", or (when the Contracting Officer decides that circumstances warrant, e.g., the award will cover only one or several items),

(2) the additional wording and table quoted below, or similar wording (in lieu of using the provision at 52.214-9001 not only for the basic performance period, but also to identify in the schedule, the firm fixed price portion of the price for each option line item).

"as follows:

| Item Number | Option Period 1 | Option Period 2 | Option Period 3 | Option Period 4" |
|---|---|---|---|---|

**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 (DEC 2011)

(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

(v) 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

(vi) For Communications-Electronics Command **(**CECOM**)** DLR-DLA Land and Maritime solicitations beginning SPRBL1 of the PIIN:

Defense Logistics Agency
Depot Level Repairable (DLR) Procurement Operations
Aberdeen, Maryland 21005

(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)

**52.217-9004 Reopener Clause - Cost of Specified Direct Materials/Other Direct Cost Item.**
As prescribed in 17.9205, insert the following clause:

REOPENER CLAUSE - COST OF SPECIFIED DIRECT MATERIALS / OTHER DIRECT COST ITEM (NOV 2011)

(a) At the time the price for this contract was established, the amount of costs anticipated in the performance of this contract could not be established with any reasonable certainty, due to [Note 3] .

(b) To achieve an award in the face of this uncertainty, it was agreed that:

(1) The contract prices for the contract line item numbers (CLINs) designated in (4) below were based in part on [Note 4],

(2) The direct cost shown in (1) above was used in determining the amounts identified in (4) below attributable to this contingency, which were included in the contract prices for such CLINs, and which amounts serve as the basis for any price adjustments under this clause.

(3) Within 30 days from [Note 5], the Contractor shall submit, using standard form (SF) 1411, its calculations of the revised CLIN prices identified in (4) below,

(4) Pending such submission, the following contingent amounts for direct costs plus associated indirect costs and profit for the item identified in paragraph (a) were incorporated into the contract unit prices at time of award (basic and any options) for this item:

| CLIN # | Amount for Item in CLIN Unit Prices |
|---|---|
| _____ | $ [Note 6] |
| _____ | $ [Note 6] |
| _____ | $ [Note 6] |

(c) The Contractor warrants that the CLIN unit prices do not include any other allowance applicable to the cost of the item except as stated in subparagraph (b)(4) above.

(d) Subject to any restrictions of this clause, the price of this contract is subject to adjustment, calculated as exemplified below, at any time during contract performance that the weighted average unit price the Contractor will pay/has paid for the total amount of the item required in the performance of this contract differs from the amount identified in subparagraph (b)(1) above:

(1) Assume: Weighted average item price/unit included in contract award prices (basic + any options) = $1.450000

Actual average item price/unit = $1.305000
Item total amount in CLIN 0001A = $0.200000
Item total amount in CLIN 0001B = $0.210000

(2) Calculate actual item unit price reduction:

($1.450000 - $1.305000) = $0.145000

(3) Calculate percent reduction:

($0.145000/$1.450000) = 10.000000%

(4) Calculate reduction in CLIN unit prices:

CLIN 0001A (10.000000% x $0.200000) = $0.020000
CLIN 0001B (10.000000% x $0.210000) = $0.021000

Note: Numbers in all calculations and results shall be rounded off (if 4 or less) or up (if 5 or more) after the sixth decimal place as shown above.

(e) The Contractor shall obtain the Contracting Officer's approval in writing prior to the award on other than a competitive basis of any subcontract or purchase order for any portion of the contract requirements for the item, based on its submission to the Contracting Officer of:

(1) Cost or pricing data (Federal Acquisition Regulation (FAR) 15.401), and a Certificate of Current Cost or Pricing Data (FAR 15.406-2) submitted by the prospective subcontractor and Contractor, unless excepted pursuant to FAR 15.403-1.

(2) The Contractor's analysis of the Subcontractor's proposal,

(3) A memorandum detailing the principal elements, considerations, and results of negotiations of a tentative price with the prospective Subcontractor,

(4) A request for approval of the planned subcontract award.

(f) Promptly upon initial placement and any subsequent revision of subcontracts/purchase orders for the item requirements of this contract, the Contractor shall furnish a copy of such documents to the Contracting Officer, along with its calculation of any initial (downward only) or subsequent (upward or downward) price adjustment required by this clause and any other data required by the Contracting Officer to verify the item cost.

(g) Any initial price adjustment (downward only) is subject to further adjustment (upward or downward) pursuant to paragraph (f) in the event of changes in the total weighted average price actually paid by the Contractor for the quantity of the item required in the performance of this contract, except that in no event shall a weighted average item unit cost exceeding that cited in paragraph (a) be utilized in adjustments pursuant to this clause.

(h) Promptly upon contract completion, the Contractor shall furnish the Contracting Officer a copy of vendor invoices covering the total amount of the item utilized in the performance of this contract, any contract price recalculation required by this clause, and any other data required by the Contracting Officer to verify the final weighted average actual item cost under this contract.

(i) Should the Contractor fail to submit any information required by this clause or if there is no agreement on any adjustment hereunder, the Contracting Officer may make a unilateral determination and modify the contract accordingly. Failure to agree with such change in the contract price shall be resolved in accordance with the disputes clause of this contract.

(j) The Contractor shall include a statement on the final invoice that all price reductions required by this clause are reflected in the cumulative amount invoiced under this contract.

(End of Clause)

Note 1: The clause as shown is designed to ultimately allow for a downward only adjustment, normally from the Contractor's proposed cost. As such, the word "decrease" would be in the clause title. In the event no restriction is to be placed on the direction of the ultimate adjustment, the following changes are required to the clause:

(1) Title--insert "adjustment" vice "decrease"

(2) Paragraph (f)--delete "(downward only)"

(3) Paragraph (g)--delete "(downward only)" and balance of sentence beginning with "except that."

Note 2: Complete the title with "direct materials" or "other direct cost" as applicable.

Note 3: Describe the contingency which caused use of the reopener clause, explain why it occurred, and why it can't be resolved before contract award.

For example:

(1) The anticipated delay until (date) in the Contractor's submission of cost data proposal and evaluation of a planned noncompetitive subcontract for the injector assembly;

(2) The unwillingness of the peanut butter suppliers to furnish firm quotes for deliveries beyond the current 90 day period due to uncertainties in the cost of peanuts arising from the unprecedented drought conditions and resulting shortfall in the peanut crop experienced last year; or,

(3) The potential for a substantial change in the Government's total requirements under this indefinite delivery contract, which determines the incremental premium amount the Contractor must pay for product liability insurance.

Note 4: Enter a description of the item or service to be provided, its unit price and terms, define it for purposes of this clause as "the item," and include a reference as appropriate to allow identification of the source of the price (e.g., the Contractor's request for quote number or purchase order number and date).

Sample wording corresponding to the examples in Note 3 are:

(1) A $4.2 million "not to exceed" budgetary estimate, free on board (f.o.b.) origin, provided in a 14 March 199 response (reference request for quote (RFQ) 1475885) from the sole source supplier of the injector assembly (hereafter referred to as "the item");

(2) An estimated $1.75 per lb cost based on firm 90-day only quotes averaging $1.4500 per lb, F.O.B. origin, submitted in January 200_ by three suppliers RFQ #7979-9101) of peanut butter in 55 gallon drums (hereafter referred to as "the item");

(3) An annual premium of $5.00 per unit for product liability insurance (hereafter referred to as "the Item") from the Contractor's current insurance policy (#), which is subject to a reduction to $4.75 per unit after the first two million deliveries, and $4.25 after sales of four million units.

(Since a vendor name may be considered to be confidential by the Contractor, it should not be incorporated into a reopener clause or otherwise included in the contract.)

Note 5: Insert an appropriate description of the date for determining when submission of the reopener proposal is required, such as "contract award."

Note 6: Enter the total dollar value/CLIN unit price subject to downward adjustment. These amounts should be reached through preaward discussions/negotiations and agreement with the Contractor on how this amount was calculated. It is suggested a schedule of calculations as exemplified below be prepared for each affected CLIN, signed by both parties, and included as an attachment to the price negotiation memorandum. Absent such agreement, calculations supporting the Contracting Officer's interpretation of negotiations should be incorporated. Since 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:

Contract Price Calculations (CLIN # ):

| | FY | FY |
|---|---|---|
| Purchase Cost/Unit of the Item (a) | $ _____ | $ _____ |
| Quantity of Item/Unit of CLIN (b) | _____ | _____ |
| Item Cost/Unit of CLIN (a x b) | $ _____ | $ _____ |
| Material Overhead ( % / %) | _____ | _____ |
| Subtotals | $ _____ | $ _____ |
| G & A ( % / %) | _____ | _____ |
| Subtotals | $ _____ | $ _____ |
| Subtotals | $ _____ | $ _____ |
| Profit ( % / %) | _____ | _____ |
| Cost of Money - Material ( % / %) | _____ | _____ |
| Cost of Money - G & A ( % / %) | _____ | _____ |
| Subtotals | $ _____ | $ _____ (each Contractor FY) |

Total Price/Unit of CLIN $ _____(Assumes CLIN overlaps two FYs)

**52.217-9005 Reopener Clause - Pending Indirect Rates Proposal.**
As prescribed in 17.9205, insert the following clause:

REOPENER CLAUSE - PENDING INDIRECT RATES PROPOSAL (NOV 2011)

(a) At the time the price for this contract was established, agreement could not be reached on indirect expense rates due to [Note 1]. However, agreement was reached that [Note 2] of the contract price is subject to adjustment in accordance with the provisions of this clause.

(b) Within 30 days from [Note 3], the Contractor shall submit an indirect cost rate proposal to the cognizant administrative Contracting Officer. Simultaneously, the Contractor shall submit a supplemental proposal to the procuring Contracting Officer for purposes of adjusting the contract price and option price, whether or not such option has been exercised. The supplemental proposal shall (1) use the methodology, direct costs, and profit indicated in paragraph (a), (2) be supported by cost or pricing data (Federal Acquisition Regulation (FAR) 15.401), and a Certificate of Current Cost or Pricing Data (FAR 15.406-2), and (3) include the effect of accounting system changes and contract modifications which may impact the amount of the adjustment. In no event will an upward adjustment result in a finalized contract price which exceeds $

(c) If determined necessary by the Contracting Officer, the Contractor agrees to commence negotiations concerning the amount of the adjustment within 30 days after receipt of the supplemental proposal by the Government.

(d) Should the Contractor fail to submit the information in paragraph (b), or should there be no agreement as to the amount of the price adjustment contemplated by this clause, then the Contracting Officer may make a unilateral determination and modify the contract accordingly. Failure to agree with such change in the contract price shall be resolved in accordance with the Disputes clause of this contract.

(e) The Contractor warrants that the contract price does not include any other allowance for the indirect rate contingency except as shown above.

(f) Should information after award indicate the amount developed in paragraph (a) may vary significantly from the finalized price, the contract price shall be adjusted downward or upward, subject to the ceiling in paragraph (b), through negotiation.

(End of Clause)

Note 1: Enter a description of why the reopener clause was included in the contract, such as:

(1) Delay in the Contractor's submission of its revised forward pricing rate proposal for fiscal year 20##;

(2) Delay in agreement on rates for this contract, which represents a substantial portion of the Contractor's business base for fiscal year 20##;

(3) Delay in completion of the mandatory independent research and development/bid and proposal (IR&D/B&P) advance agreement with the Contractor or agreement on the Contractor's corporate allocation for fiscal year 20##, and a determination of its impact on projected indirect expense rates; or,

(4) The absence of agreement on the impact on projected indirect expense results of a pending review of the Contractor's corporate allocation for fiscal year (FY) 20##.

Note 2: Enter the total dollar value subject to downward adjustment. This amount should be reached through discussion and agreement with the Contractor on how this amount was calculated. It is suggested a schedule of calculations as exemplified below be prepared, signed by both parties, and included as an attachment to the price negotiation memorandum. Absent such agreement, calculations supporting the Contracting Officer's interpretation of negotiations should be incorporated. Since 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:

| | FY 20## | FY 20## |
|---|---|---|
| Indirect Expense Rate Calculations: | | |
| Materials Overhead Pool (a) | $ _____ | $ _____ |
| Materials Base (b) | _____ | _____ |
| Materials Overhead % | _____ | _____ |
| Labor Overhead Pool (c) | _____ | _____ |
| Direct Labor Hours Base (d) | _____ | _____ |
| Labor Overhead % | _____ | _____ |
| Other Direct Costs (e) | _____ | _____ |
| General and Administrative (G&A) Expenses Pool | _____ | _____ |
| Total Cost Input Base (a+b+c+d+e) | _____ | _____ |
| G&A Expenses % | _____ | _____ |

Contract Price Calculations (Contract line-item (CLIN) ):

| | FY 20## | FY 20## |
|---|---|---|
| Direct Materials | $ _____ | $ _____ |
| Other Direct Costs | _____ | _____ |
| Material Overhead ( % / %) | _____ | _____ |
| Direct Labor Hours ( hours/ hours) | _____ | _____ |
| Direct Labor Costs | _____ | _____ |
| Labor Overhead ( % / % of direct labor hours) | _____ | _____ |
| Subtotals | $ _____ | $ _____ |
| G&A ( % / %) | _____ | _____ |
| Subtotals | $ _____ | $ _____ |
| Profit ( % / %) | _____ | _____ |

Cost of Money - Material ( % / %) _____ _____
Cost of Money - G&A ( % / %) _____ _____

Subtotals $ _____ $ _____
(each Contractor FY)

Total Price $ _____

Note 3: Insert an appropriate description of the date for determining when submission of the reopener proposal is required, such as (1) contract award or (2) establishment of the revised forward pricing rate agreement.

(End of Clause)

**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 no 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)

**52.217-9017 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)

**52.217-9022 Provisioning Documentation is Waived.**
As prescribed in 17.7601-95, insert the following clause:

PROVISIONING DOCUMENTATION IS WAIVED (DEC 2011)

Provisioning documentation is waived.

(End of Clause)

**52.217-9023 Restriction of Alternate Offers for Source Controlled Items.**
As prescribed in 17.7502(b)(2)(70) 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)

**52.217-9024 Special Provisions for Bulk Milk Dispensing Equipment - DLA Troop Support Subsistence.**
As prescribed in 17.7302(90) insert the following clause:

SPECIAL PROVISIONS FOR BULK MILK DISPENSING EQUIPMENT - DLA TROOP SUPPORT SUBSISTENCE (NOV 2011)

(a) General. Regulations require that the cost to the Government for bulk milk dispensing equipment must be identified and paid for from a different fund than the milk itself. Accordingly, unit and extended prices on each offered item requiring the furnishing of bulk milk dispensing equipment will be broken down and will state separately (1) the charge for the milk itself, and (2) the charge for the bulk milk dispensing equipment called for by that item. The dispensing equipment charge will include the cost of furnishing, installing, servicing, maintaining and removing such equipment. Evaluation of offers will be based on the total charge for each such item. By submission of this offer, the offeror confirms that the separate charges entered for such items represent the true and accurate charges for the milk and bulk milk dispensing equipment, and that the price offered for milk does not include any cost on account of bulk milk dispensing equipment. Dispensing equipment charge will be the per-gallon rate for equipment and services.

(b) Invoices. Invoices covering items requiring the furnishing of bulk milk dispensing equipment must show separately for each such item the charge for the milk product furnished and the applicable charge for the bulk milk dispensing equipment.

(c) Computations. (Applicable only in contracts which contemplate the use of both government-furnished and Contractor-furnished dispensers.)

(1) Basic. To the extent both government-furnished and Contractor-furnished equipment is to be used in the dispensing of bulk milk required under this contract, the following dispenser charge procedures shall apply. In each case, the Government shall give written notice to the Contractor stating which of the consumption points will employ Contractor-furnished dispensers exclusively. Such points shall be called “Contractor Dispenser Points”.

(2) Central Deliveries. Where bulk milk is delivered to a central delivery point for redistribution by the Government both to Contractor Dispenser Points and to other consumption points, data shall be furnished by such central delivery point to the Contractor stating the gallonage issued during the invoice period to Contractor-Dispenser Points. Such data shall be the basis of invoicing dispenser charges.

(3) Direct Deliveries. Where bulk milk is delivered to Contractor Dispenser Points directly by Contractor, delivery receipt data applicable to such points shall be the basis of such invoicing.

(4) Mixed-Equipment Points. Where bulk milk is delivered either directly or through a central delivery point to any consumption point where any or all of the dispensers are furnished by the Government, no dispenser charges shall be applicable to, such milk, except as provided below. Contractor shall not be required to furnish dispensers at any consumption point where any Government dispensers are located, except as provided below.

(5) Urgency Exception. Where urgent requirements, as determined by the ordering officer, necessitate the use of both Government and Contractor-furnished dispensers at the same consumption point, the minimum number of Contractor-furnished dispensers shall be ordered in writing only and supplied to such point. In such case, dispenser charges (per line item) shall apply to that proportion of the bulk milk delivered to such point which corresponds to the proportion of Contractor-furnished dispenser spigots to the total number of spigots at such point. (For example: If half the number of spigots used in dispensing chocolate milk at that point are Contractor-furnished, half of the chocolate milk gallonage there shall be subject to the dispenser charge.)

(End of Clause)

**52.217-9029 Exercise Quantity Options.**
As prescribed in 17.208(d)(90), insert the following clause:

EXERCISE QUANTITY OPTIONS (OCT 2011)

(a) The Government may require delivery of additional supplies in accordance with the line items identified as quantity options in the Schedule.

(b) The option may be exercised in one or more increments from time of award of the basic contract through 14 days prior to the end of the contract. The total quantity of supplies ordered under this option will not exceed the maximum specified in the Schedule for the applicable Option line item but may be less than the maximum quantity. A written notice mailed or otherwise furnished by the Contracting Officer to the Contractor within the time specified in this paragraph shall constitute an exercise of the option.

(1) Delivery of option quantities shall be required within the same number of days as specified in the basic contract for the item(s), less any time provided in the contract for the production, testing, approval, or waiver of First Article Test. If additional time is required for delivery of the option quantity, the Contractor must submit a written request to the Contracting Officer within 10 days after receipt of option exercise notice.

(2) The Contractor will not be required to deliver option items prior to the earliest delivery date for the basic contract award line items.

(c) If the specifications are changed prior to option exercise or if the option exercise specifies delivery points or packing requirements other than stated in the basic contract, the price and delivery time for the option exercise quantity shall be subject to adjustment, as provided by the contract.

(End of Clause)

**52.219-9001 Set-Asides of Acquisitions of Items Listed in the Schedule of Products Made in Federal Penal and Correctional Institutions.**
As prescribed in 19.502-1(b)(90), insert the following provision:

SET-ASIDES OF ACQUISITIONS OF ITEMS LISTED IN THE SCHEDULE OF PRODUCTS MADE IN FEDERAL PENAL AND CORRECTIONAL INSTITUTIONS (NOV 2011)

For items listed on the Schedule of Products Made in Federal Penal and Correctional Institutions, when a comparability determination leads to a competitive acquisition, set-asides may be used. However, notwithstanding the inclusion of any set-aside provision or clause in this solicitation, Federal Prison Industries, Incorporated (FPI) shall also be permitted to compete for, and could receive award of, the acquisition.

(End of Provision)

**52.219-9002 Defense Logistics Agency (DLA) Mentoring Business Agreements (MBA) Program.**
As prescribed in 19.9007, insert a provision substantially as follows:

DLA MENTORING BUSINESS AGREEMENTS (MBA) PROGRAM (DEC 1997)

(a) The offeror is invited to participate in a program whereby small, small disadvantaged, and women-owned small businesses are afforded the opportunity (through the offeror's provision of developmental assistance in its capacity as prime Contractor) to participate in the DLA procurement process. (The offeror may alternatively propose to mentor a Javits-Wagner-O'Day (“AbilityOne”) Act-qualified nonprofit agency.) In order to participate, the offeror shall submit a proposal outlining the assistance already rendered or to be provided to the protégé, as well as the kinds of value-added activity the offeror might expect to receive, in return, from the mentored entity. The offeror-mentor may propose to provide the benefit of its managerial expertise, technical capabilities, market knowledge, etc.; the protégé will be expected to provide a specialized service or product, or, potentially, admission into its own market. Participation is entirely voluntary.

(b) The Government will evaluate the offeror's proposal for participation in the DLA MBA Program on a comparative basis among all offerors, rather than via establishment of an "acceptable" standard. The factor is an independent element in the overall award decision; the offeror who proposes or demonstrates the most comprehensive plan for tutoring a protégé will receive the highest rating for this evaluation factor during the source selection process. The evaluation will assess the offeror's willingness to assist such entities in receiving better market shares, improving their processes, and generally contributing to their viability under long-term contracting arrangements.

(c) The proposal submitted by the successful offeror will be incorporated into its contract with DLA. The successful offeror will be expected to incorporate the salient points of the evaluated proposal into a written agreement (the MBA) with a protégé selected by the offeror. The offeror's performance under the proposal will be monitored by the Contracting Officer and cognizant small business specialists (from the buying activity and/or the Defense Contract Management Agency) during the contract period. This performance will be one factor used to determine placement of orders against multiple-award contracts and/or exercise of options in the contract's follow-on years (as applicable). It will also be used as an independent evaluation factor, and as an element of past performance evaluation, in subsequent source selection decisions.

(End of Provision)

**52.219-9003 Defense Logistics Agency (DLA) Mentoring Business Agreements (MBA) Performance.**
As prescribed in 19.9007, insert a clause substantially as follows:

DLA MENTORING BUSINESS AGREEMENTS (MBA) PERFORMANCE (DEC 1997)

(a) The Contractor's proposed MBA plan shall become part of this contract upon award. The Contractor is hereby obligated, as part of its contractual undertaking, to enter into a written, binding mentoring business agreement with a protégé based on and reflective of this plan. Performance under the MBA plan shall be evaluated by the Contracting Officer, and may become a consideration prior to option exercise for the follow-on years of long-term contracts. MBA plan implementation may also become an independent evaluation factor and/or part of the overall past performance evaluation factor in future source-selection decisions.

(b) The Contractor-mentor and its protégé(s) shall meet semi-annually with the DLA Contracting Officer and the small business specialist(s) from the buying activity and/or the DCMA component to review progress/accomplishments under applicable MBA proposals. The Contractor is also required to submit periodic progress reports (no less frequently than annually) to the Contracting Officer regarding proposal fulfillment. Any MBA with a protégé that has voluntarily been submitted to the Government shall be compared by the Contracting Officer to the Contractor's proposed plan, hereby incorporated into this contract, to ensure that it adequately reflects the mentor's obligations expressed therein.

(End of Clause)

**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)

**52.219-9005 [Reserved.]**

**52.219-9006 [Reserved.]**

**52.219-9007 [Reserved.]**

**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)

**52.219-9010 [Reserved.]**

**52.219-9011 [Reserved.]**

**52.219-9012 [Reserved.]**

**52.219-9013 Combined Set-Aside Instructions – Type 1.**
As prescribed in 19.508(90)(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(90)(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(90)(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)

**52.219-9017 Small Business Set-Aside Portion – Unequal (Alternate I).**
As prescribed in 19.502-3, insert the following provision:

SMALL BUSINESS SET-ASIDE PORTION EQUAL (NOV 2011)

This solicitation is for the non-set-aside portion. A portion of this acquisition has been set-aside for small business concerns in accordance with Federal Acquisition Regulation (FAR) clause 52.219-7, Notice of Partial Small Business Set-Aside. The item, quantities, destinations and delivery schedule of the portion set-aside for small business concerns are identical to those applicable to the non-set-aside portion shown in this solicitation. Delivery date of the set-aside quantities will be established to allow the same production lead time as that allowed for delivery of the non-set-aside quantities. Incremental deliveries of the set-aside quantities will be made at the same rate as the non-set-aside quantities.

(End of Provision)

As prescribed in 19.502-3 replaces 52.219-9017 with the following alternate:

SMALL BUSINESS SET-ASIDE PORTION UNEQUAL ALTERNATE I (NOV 2011)

(a) A portion of this acquisition has been set-aside for small business concerns in accordance with Federal Acquisition Regulation (FAR) clause 52.219-7, Notice of Partial Small Business Set-Aside. The quantities set-aside for small business concerns are set forth below and are in addition to the quantities advertised herein:

Item number Quantity

Note: Offeror shall not insert prices.

(b) Delivery date of the set-aside quantities will be established to allow the same production lead time as that allowed for delivery of the non-set-aside quantities. Incremental deliveries of the set-aside quantities will be made at the same rate as the non-set-aside quantities.

(End of Provision)

**52.219-9018 Notification of Subcontracting Plan.**
As prescribed in 19.705-2, insert the following clause:

NOTIFICATION OF SUBCONTRACTING PLAN (NOV 2011)

When requested by the Contracting Officer, the apparent successful offeror must submit within _____ (buyer fill-in) calendar days its subcontracting plan in accordance with Federal

Acquisition Regulation (FAR) clause 52.219-9 (for negotiated acquisitions) or FAR 52.219-9 Alternate I (for sealed bid acquisitions).

Failure to respond to the Contracting Officer's request by furnishing a subcontracting plan or evidence to establish that no subcontracting will be required for the specific purpose of performing the proposed award shall be cause for rejection of offer.

Where a commercial product is offered and a company or division wide plan has been previously submitted and approved, the offeror shall submit a copy of the approved plan along with evidence of prior approval.

In order to facilitate and expedite the processing of a subcontracting plan when requested by the Contracting Officer, the offeror shall furnish the data elements in the same sequence as set forth in FAR 52.219-9(d).

If the contract contains a requirement to submit an Individual Subcontract Report (ISR) or Summary Subcontract Report (SSR) to the DCMA, follow instructions for submitting a report as provided at FAR 52.219-9.

(End of Provision)

**52.222-9000 Davis-Bacon Act - Price Adjustment.**
As prescribed in 22.103-5, the following clause shall be included in contracts for installation support and maintenance and repair containing option or multiyear provisions:

DAVIS-BACON ACT - PRICE ADJUSTMENT (NOV 2011)

(a) The Contractor warrants that the prices set forth in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(b) The minimum prevailing wage determination, including fringe benefits applied to this contract by operation of law or an amendment to the Davis-Bacon Act of March 1931, as amended (40 United States Code (U.S.C.) 267A), current at the beginning of each renewal option period or program year, shall apply to any renewal of this contract.

(c) When, as a result of an increased or decreased wage determination, the Contractor increases or decreases wages or fringe benefits of employees working on this contract to comply therewith, the contract price or contract unit price labor rates will be adjusted to reflect such increases or decreases. Any such adjustments will be limited to increases or decreases in wages or fringe benefits as described above, and the concomitant increases or decreases in social security and unemployment taxes and workmen's compensation insurance, but shall not otherwise include any amount for general and administrative costs, overhead, or profits.

(d) The Contractor shall notify the Contracting Officer of any increases claimed under this clause within 30 days after the effective date of the wage change, unless this period is extended by the Contracting Officer in writing. In the case of any decrease under this clause, the Contractor shall promptly notify the Contracting Officer of such decrease but nothing herein shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any other relevant data in support thereof, which may reasonably be

required by the Contracting Officer. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. Pending agreement on, or determination of, any such adjustment and its effective date, the Contractor shall continue performance.

(e) The Contracting Officer or authorized representative shall, until the expiration of 3 years after final payment under the contract have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor.

(End of Clause)

**52.223-9000 Material Safety Data Sheets and Hazard Warning Labels.**
As prescribed in 23.303, insert the following clause:

MATERIAL SAFETY DATA SHEETS AND HAZARD WARNING LABELS (NOV 2011)

(a)(1) This clause is to be used in conjunction with Federal Acquisition Regulation (FAR) clause 52.223-3, Hazardous Material Identification and Material Safety Data, and Defense Federal Acquisition Regulation Supplement (DFARS) clause 252.223-7001, Hazard Warning Labels. Notwithstanding paragraph 4 of the latest Federal Standard (FED-STD) 313, the apparently successful offeror shall submit Material Safety Data Sheets (MSDS) and accompanying Hazard Warning Labels (HWLs) to the Contracting Officer for review and approval prior to award.

(2) The MSDS must cite the solicitation number, the applicable Commercial and Government Entity (CAGE) code of the manufacturer, the part number, and, where so identified, the National Stock Number (NSN).

(3) Once submitted under the terms of this contract and approved in accordance with paragraph (1) of this clause, the MSDS and HWLs will be valid for the term of the contract, unless there is a change in the composition of the item or the requirements of FED-STD 313.

(End of Clause)

**52.223-9001 Estimate of Re-Refined Oil Content.**
As prescribed in 23.406-90 insert the following clause:

ESTIMATE OF RE-REFINED OIL CONTENT (AUG 2007)

(a) Definitions - As used in this clause:

(1) "Engine lubricating oils" means petroleum-based oils used for reducing friction in engine parts.

(2) "Gear oils" means petroleum-based oils use for lubricating machinery gears.

(3) "Hydraulic fluids" means petroleum-based hydraulic fluids.

(4) "Lubricating oils" means engine lubricating oils, gear oils and hydraulic fluids.

(5) "Re-refined oils" means used oils from which the physical and chemical contaminants acquired through previous use have been removed through a refining process.

(b) The following estimate of re-refined oil content is required under 40 Code of Federal Regulations (CFR) Part 252, Guidelines for Federal Procurement of Lubricating Oils Containing Re-Refined Oil. The offeror is responsible for providing the estimate whether or not the offeror is the actual manufacturer or blender of the lubricating oils. The offeror understands that the estimate is subject to verification by the procuring agency issuing this solicitation and agrees that the offeror or the offeror's supplier will make available for review by the procuring agency the mixing records of the offeror or actual manufacturer or blender, if other than the offeror.

(c) The estimated total percentage of re-refined oil content for the lubricating oils to be supplied under the contract resulting from this solicitation is (vendor shall fill in the percentage)% of the total content of the lubricating oils.

(End of Clause)

**52.223-9002 Anti-Stain Treatment (Untreated Wood Products).**
As prescribed in 23.705-90 insert the following clause:

ANTI-STAIN TREATMENT (UNTREATED WOOD PRODUCTS) (SEP 2008)

(a) Anti-Stain (fungicidal type) treatment is required for control of sapstain and mold-producing fungi and bacteria. The solution is to be water-based with the composition, concentration, and application specified by the chemical supplier. The solution shall not appreciably change the color of the wood to which it is applied. Chemicals used in the treating solution must be environmentally acceptable to the country of destination and mercury-free.

The following only applies to wood products (except timbers) which are 4 inches wide or greater:

(b) The above statement applies only if material is supplied with a moisture content greater than 19%. Moisture content of 19% or less shall be indicated on the grade stamp, i.e., S-DRY, KD 19.

(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)

**52.223-9008 Hazardous Chemical Exposure (DLA Maritime Norfolk).**
As prescribed in 23.303-94, insert the following clause in full text:

HAZARDOUS CHEMICAL EXPOSURE (DLA MARITIME-NORFOLK) (JUN 2011)

Contractors are informed that their employees present on property under Norfolk Naval Shipyard cognizance may be exposed to hazardous chemicals as a result of shipyard operations. Information on such materials may be obtained from the Shipyard safety and health office, Code 106.1.

Reference: NAVSHIPYDNORINST PS100.56 Volume VI Chapter II paragraph 7-J(3)

(End of Clause)

**52.225-9000 [Reserved.]**

**52.225-9001 [Reserved.]**

**52.225-9002 Foreign Military Sales (FMS) Shipping Instructions.**
As prescribed in 25.7302-90, insert a clause substantially as follows:

FOREIGN MILITARY SALES (FMS) SHIPPING INSTRUCTIONS (NOV 2011)

(a) This is a contract administered by the Defense Contract Management Agency (DCMA). To obtain the applicable Government shipping document/instructions, 18 days prior to shipment the Contractor shall use the shipping information request (SIR) web based application available through http://www.DCMA.mil. The Contractor shall also contact the enterprise transportation officer (ETO), Defense Logistics Agency (DLA) Distribution, at delivery@dla.mil or 1-800-456-5507.

(b) The Contractor shall include a certificate of conformance in the box for each FMS line item supplied.

(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)

**52.227-9001 Evaluation of Offers for Manuals.**
As prescribed in 27.7102-3(a)(90), insert the following clause:

EVALUATION OF OFFERS FOR MANUALS (AUG 2007) -

(a) Offers will be evaluated on the basis of furnishing two manuals with each end item. If the offeror fails to indicate a Unit price for manuals, this will be construed to mean that the cost of acceptable manuals, in the quantity required, is included in the offered price for the applicable end item(s) and the offer will be evaluated accordingly. No award for manuals will be made to other than an offeror who receives an award for the end item to which the commercial manual is applicable.

(b) In addition, in the evaluation of offers, the cost of additional manuals for distribution as required by the attached Commercial Manual Distribution Form will be added to each offer, unless a waiver is granted pursuant to the Commercial Manual Clause (Section H).

(End of Clause)

**52.227-9002 Data – English Language.**
As prescribed in 27.409-90, insert the following clause:

DATA – ENGLISH LANGUAGE (AUG 2007)

All data required to be submitted pursuant to any clause or requirement of the contract must be in the English language. Also, all correspondence or any other documentation of any kind submitted during the administration of the contract must be in the English language.

(End of Clause)

**52.227-9003 In Plant Equipment (IPE) Contract Data Requirements.**
As prescribed in 27.409-91, insert the following clause:

IN PLANT EQUIPMENT (IPE) CONTRACT DATA REQUIREMENTS (NOV 2011)

(a) The Government assumes no responsibility for providing technical data required to accomplish repair, rebuild, and retrofit of machines. Operation and maintenance technical data is normally maintained with IPE items in accordance with existing Department of Defense (DoD) policy. If such data is with the item it may be used by the Contractor if he so desires, while it is in his possession. This data remains Government property and shall be shipped with the machine at time of completion. The Government does not guarantee the adequacy of such data if used by the Contractor.

(b) The Contracting Officer will notify the Contractor of approval or disapproval of all contract data submitted in accordance with Department of Defense (DD) form 1423 requirements within ____ days after receipt of the required distribution and quantity specified. Notifications of all contract data not approved as submitted shall include the reason therefore and the required corrections. Any work done prior to such approval shall be at the Contractor's risk.

(c) Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such data, nor from responsibility for complying with the requirements of this contract, except with respect to variations expressly described and approved in accordance with the

contract data requirements, when applicable. If the Contracting Officer approves any such variation(s), the Contracting Officer shall issue an appropriate contract modification, except in cases where the variation is minor and does not involve a change in price or in time of performance.

(d) Additional time required for review and notification of any revised contract data due to Contractor errors or omissions in initial data submittals shall be the responsibility of the Contractor and shall not be considered excusable cause for delay of specified contract performance requirements.

(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 FN Herstal Technical Data.**
As prescribed in 27-402-90(b), insert the following clause:

RESTRICTION ON USE OF 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)

**52.228-9000 Insurance.**
As prescribed in 28.310, insert the following clause:

INSURANCE (NOV 2011)

(a) The Contractor shall, at its own expense, provide and maintain during the entire period of any resulting contract, including any extensions granted by contract modification, at least the kinds and minimum amounts of insurance noted here:

(1) Workers’ Compensation and Employer’s Liability - $150,000 (except in states with exclusive or monopolistic funds that do not permit workers’ compensation to be written by private carriers.)

(2) General Liability- $500,000 per occurrence

(3) Automobile Liability – Property damage $20,000 per occurrence, bodily injury $200,000 per person and $500,000 per occurrence.

(b) When requested by the Contracting Officer, the Contractor shall provide a copy of all subcontractors' proofs of required insurance no later than five (5) days before each subcontractor commences work on the Government installation.

(End of Clause)

**52.228-9001 Bid Guarantee for Use in Negotiated Acquisitions.**
As prescribed in 28.101-2 (90), insert the following clause:

BID GUARANTEE FOR USE IN NEGOTIATED ACQUISITIONS (NOV 2011)

(a) If the solicitation contains Federal Acquisition Regulation (FAR) clause 52.215-1, failure to furnish a bid guarantee in the proper form and amount, by the closing date and time set for receipt of proposals, may be cause for rejection of the offer.

(b) The offeror shall furnish a bid guarantee in the form of a firm commitment, for example, bid bond supported by good and sufficient surety or sureties acceptable to the Government, postal money order, certified check, cashier's check, irrevocable letter of credit, or, under Treasury Department regulations, certain bonds or notes of the United States (U.S.). The Contracting Officer will return bid guarantees, other than bid bonds,

(1) To unsuccessful offerors as soon as practicable after award of a contract, and

(2) To the successful offeror upon execution of any contractual documents and bonds (including any necessary coinsurance or reinsurance agreements), as required by the offer as accepted.

(c) The amount of the bid guarantee shall be _____ percent of the bid price or $_____, whichever is less.

(d) If the successful offeror, upon acceptance of its offer by the Government within the period specified for acceptance, fails to execute all contractual documents or furnish executed bond(s) within 10 days after receipt of the forms by the offeror, the Contracting Officer may terminate the contract for default.

(e) In the event the contract is terminated for default, the offeror is liable for any cost of acquiring the work that exceeds the amount of its offer, and the bid guarantee is available to offset the difference.

(End of Clause)

**52.228-9002 Additional Bond Security.**
As prescribed in 28.201-2 (91), insert the following clause:

ADDITIONAL BOND SECURITY (NOV 2011)

Documentation of bond security as required by Federal Acquisition Regulation (FAR) clause 52.228-2 shall be the original signed form. Facsimile or photo copies are not acceptable.

(End of Clause)

**52.229-9000 Kentucky Sales and Use Tax exemption.**
As prescribed in 29.490(c), insert the following clause in solicitations:

KENTUCKY SALES AND USE TAX EXEMPTION (DEC 1984)

Contracts awarded under this solicitation are exempt from the Kentucky Sales and Use Tax per Kentucky tax exemption _____. No amounts for this tax should be included in bids/offers.

(End of Clause)

**52.229-9001 United States Department of Treasury Tax-Free Ethyl and Denatured Alcohol Permits.**
As prescribed in 29.401-3(90), insert the following clause:

UNITED STATES (U.S.) DEPARTMENT OF TREASURY TAX-FREE ETHYL AND DENATURED ALCOHOL PERMITS (NOV 2011)

(a) Offered prices shall not include the tax for ethyl and denatured alcohol. The Contractor shall contact the Administrative Contracting Officer for permits required for withdrawal/shipment of tax free ethyl and denatured alcohol. The location of the administering office is reflected on the face of the award.

(b) No contract shall be awarded as a result of this solicitation to any offeror which has not, as of the date of award, obtained from the Department of the Treasury the appropriate permit authorizing it to sell tax-free ethyl alcohol or specially denatured alcohol as required by the solicitation. See Title 27 of the Code of Federal Regulations, Parts 20-22 for further information. Offerors are cautioned that the permit to be issued by the Administrative Contracting Officer will not satisfy this requirement.

(c) In the space provided below, each offeror will furnish the identification number and date of the permit(s) applicable to this solicitation.

| Tax-Free Ethyl Alcohol | | Specially Denatured Alcohol | |
|---|---|---|---|
| Identification (ID) Number: | Date: | ID number: | Date: |

(End of Clause)

**52.229-9002 Tax Exemption Forms.**
As prescribed in 29.401-3(91) insert the following clause:

TAX EXEMPTION FORMS (NOV 2011)

(a) Federal excise taxes: Contractor's request for tax exemption forms covering any federal excise tax excluded from the contract price pursuant to the terms of this contract shall be forwarded to DLA Aviation, 8000 Jefferson Davis Highway, Attention: FASA, Richmond, Virginia 23297, except for:

(1) Drummed or packaged supplies consigned to a port of embarkation for export where such certificates will be requested from the port transportation officer, and

(2) Deliveries to activities of federal departments, other than the military, or authorized Government Contractors, in which case such activities shall indicate the procedure for processing tax exemption certificates.

(b) State and local taxes: Contractor's requests for tax exemption forms covering any state or local tax excluded from the contract price pursuant to the provisions of paragraph (b) of the clause entitled "Federal Excise, State and Local Taxes Excluded From Contract Price," shall be forwarded with Contractor's invoices or as otherwise indicated by the ordering officer.

(End of Clause)

**52.229-9003 Excise Tax Included (No Proof Of Export).**
As prescribed in 29.2(90), insert the following clause:

EXCISE TAX (PROOF OF EXPORT) (SEP 2008)

Prices stated herein include all applicable excise tax since proof of export will not be furnished.

(End of Clause)

**52.229-9004 Federal Excise Tax.**
As prescribed in 29.2(91), insert the following clause:

FEDERAL EXCISE TAX (SEP 2008)

The price offered must exclude federal excise taxes and certificate of export will be furnished by the administrative Contracting Officer.

(End of Clause)

**52.229-9005 Federal Excise, State and Local Taxes Excluded From Contract Price.**
As prescribed in 29.2(93), insert the following clause:

FEDERAL EXCISE TAX, STATE AND LOCAL TAXES EXCLUDED FROM CONTRACT PRICE (NOV 2011)

(a) Federal Excise Taxes excluded. Notwithstanding paragraph (b) of Federal Acquisition Regulation (FAR) clause 52.229-3, Federal, State, and Local Taxes --

All contract prices for Benzol, Benzene, and Naphtha exclude the special excise tax imposed by 26 USC Section 4041(a)(2) of the Internal Revenue Code.

(b) State and Local Taxes excluded. Notwithstanding paragraph (b) of FAR 52.229-3, Federal, State, and Local Taxes, all contract prices exclude such of the following state and local taxes as are imposed on the supplies furnished hereunder:

(1) Lubricating oil taxes,

(2) Naphtha, benzol, or benzene taxes, and

(3) California sales and use tax.

(c) Tax Reimbursement by Government: The Government will reimburse the Contractor for the amount of any such Federal excise, state or local tax from which the Government, the Contractor, or the transaction covered by this contract is not exempt (and from which no exemption is otherwise available) and the Contractor is, therefore, required to pay on supplies furnished hereunder. As used in the preceding sentence, the term "Such Federal Excise, State or Local Tax" means only (1) Federal Excise Taxes specifically excluded from the contract price by a provision of this contract and (2) state and local taxes excluded from the contract price pursuant to the provisions of paragraph (b) of this clause. Invoices or vouchers shall set forth the amount of any such taxes as a separate item and shall identify the particular tax involved. Whenever reimbursement of a state or local tax may be required pursuant to this paragraph (c), the Contractor shall take action as directed by the Contracting Officer, and the contract price shall be equitably adjusted to cover the costs of such action, including any interest, penalty, and reasonable attorney's fees.

(End of Clause)

**52.229-9006 Tax Exemption Forms.**
As prescribed in 29.305(90), insert the following clause:

TAX EXEMPTION FORMS (NOV 2011)

(a) Federal excise taxes: Contractor's request for tax exemption forms covering any federal excise tax excluded from the contract price pursuant to the terms of this contract shall be forwarded to the DLA Aviation, 8000 Jefferson Davis Highway, Attention: FAS, Richmond, Virginia 23297, except for:

(1) drummed or packaged supplies consigned to a port of embarkation for export where such certificates will be requested from the port transportation officer, and

(2) deliveries to activities of federal departments, other than the military, or authorized Government Contractors, in which case such activities shall indicate the procedure for processing tax exemption certificates.

(b) State and local taxes: Contractor's requests for tax exemption forms covering any state or local tax excluded from the contract price pursuant to the provisions of paragraph (b) of the clause entitled "Federal Excise, State and Local Taxes Excluded From Contract Price," shall be forwarded with Contractor's invoices or as otherwise indicated by the ordering officer.

(End of Clause)

**52.229-9007 United States Department of Treasury Tax-Free Ethyl And Denatured Alcohol Permit.**
As prescribed in 29.4(90), insert the following clause:

UNITED STATES (U.S.) DEPARTMENT OF TREASURY TAX-FREE ETHYL AND DENATURED ALCOHOL PERMIT (NOV 2011)

(a) No contract shall be awarded as a result of this solicitation to any offeror which has not, as of the date of award, obtained from the Department of the Treasury the appropriate permit authorizing it to sell tax-free ethyl alcohol or specially denatured alcohol as required by the solicitation. See Title 27 of the Code of Federal Regulations, Parts 20-22 for further information.

(b) Offerors are cautioned that the permit to be issued by the Administrative Contracting Officer will not satisfy the above requirement.

(c) In the space provided below, each offeror will furnish the identification number and date of the permit(s) applicable to this solicitation.

(d) Offered prices shall not include the tax for ethyl and denatured alcohol. The Administrative Contracting Officer will obtain permits for tax-free withdrawal/shipment of such.

| Tax-Free Ethyl Alcohol | | Specially Denatured Alcohol | |
|---|---|---|---|
| Identification (ID) Number (No.) | Date | ID No. | Date |

(e) The Contractor shall contact the Administrative Contracting Officer for permits required for withdrawal/shipment of tax free ethyl and denatured alcohol. The location of the Administering Office is reflected on the face of the award.

(End of Clause)

**52.230-9000 Submission of Data on Facilities Capital Cost of Money.**
As prescribed in 30.7004-1 (c) or 30.7004-2 (b) (3), insert the following provision:

SUBMISSION OF DATA ON FACILITIES CAPITAL COST OF MONEY (NOV 2011)

(a) Offerors claiming facilities capital cost of money in accordance with Federal Acquisition Regulation (FAR) clause 52.215-16 in Section L of this solicitation shall submit with their proposal the following data for each Contractor fiscal year (or portion) covering the planned period of contract performance:

(1) A completed form CASB-CMF or the cost of money factors,

(2) Data regarding the distribution percentages of facilities capital employed for land, buildings, and equipment, and

(3) Status of the review/approval of this data by the cognizant administrative Contracting Officer (ACO).

(b) Instructions for completing Form CASB-CMF are available at FAR Appendix, Cost Accounting Standards, Appendix A, Section 9904.414.

(c) This provision does not apply when the offeror does not include facilities capital cost of money as a proposed cost in its offer.

(End of Provision)

**52.230-9001 Disclosure Statement Form – Tank-Automotive and Armaments Command (TACOM) Depot Level Repairable (DLR) – DLA Land and Maritime).**
As prescribed in 30.201-3(c), insert the following clause:

DISCLOSURE STATEMENT FORM – TANK-AUTOMOTIVE AND ARMAMENTS COMMAND (TACOM) DEPOT LEVEL REPAIRABLE (DLR) - DLA LAND AND MARITIME) (NOV 2011)

(a) Disclosure statement, Form CASB-DS-1, is not included in this solicitation package. Any offeror meeting the criteria for concurrent submission of the disclosure statement may download a copy of the form from the Office of Management and Budget (http://www.whitehouse.gov/omb/procurement/.) The offeror is responsible for reproducing the completed form in sufficient number of copies required for submission.

(b) No extension of the closing date of the solicitation will be granted on account of the requirement for submission of the disclosure statement.

(End of Provision)

**52.231-9000 Pre-Contract Costs (Air Force Depot Level Repairable (DLR) – DLA Aviation).**
As prescribed in 31.109(h)(90)(e), insert the following clause:

PRE-CONTRACT COSTS – (AIR FORCE DEPOT LEVEL REPAIRABLE (DLR) SITE - DLA AVIATION) (NOV 2011)

(a) Certain costs up to (insert dollar limitation) incurred by the Contractor after (insert date) but before the effective date of this contract, shall be recognized for payment. Only costs that are directly related to the contract and consistent with the specific cost principles at the applicable Federal Acquisition Regulation (FAR) Subpart(s) shall be recognized for payment. Costs incurred prior to (insert same date as above) shall not be recognized for payment or reimbursement. In addition, the Contracting Officer cannot authorize payment of costs that are not consistent with FAR cost principles regardless of when such costs are incurred.

(b) If there is no advance agreement in place, the Contractor understands that all contract related costs incurred by the Contractor before the effective date of this contract shall be at the Contractor's own risk.

(c) After the effective date of the contract, the contract terms shall control reimbursements made to the Contractor, and will be limited to those costs that are allowable, allocable, and reasonable.

(End of Clause)

**52.232-9000 Progress Payment Data.**
As prescribed in 32.502-4(90), insert the following clause:

PROGRESS PAYMENT DATA (NOV 2011)

(a) If this solicitation, award, or order contains Federal Acquisition Regulation (FAR) clause 52.232-16, Progress Payments, the following additional terms and conditions apply when selected:

[ ] The liquidation rate for progress payments applicable to this contract is ___%.

[ ] Stocking Up Process. Progress payments shall apply only for costs incurred in the "stocking up process" as set forth elsewhere in this solicitation/contract, and will be limited to an amount computed by multiplying the guaranteed minimum quantity for each line item by the corresponding liquidation rate.

[ ] Unusually Large Order. Progress payments may be authorized at the sole discretion of the Contracting Officer when the Contractor is required to engage in a "stocking up process" of _____ days or more as the result of an unusually large order.

(End of Clause)

**52.232-9001 Invoice Confirmation – Commercial Manuals.**
As prescribed in 32.908-90, insert the following clause:

INVOICE CONFIRMATION – COMMERCIAL MANUALS (JUN 2008)

Commercial manuals are to be distributed in accordance with (Contracting Officer to fill in appropriate form). Contractor shall confirm in writing that such distribution has been made. This confirmation, properly signed, will accompany the first invoice submitted for payment.

(End of Clause)

**52.232-9002 Tare Included or Excluded.**
As prescribed in 32.908-90, insert the following provision:

TARE INCLUDED OR EXCLUDED (JUN 2008)

As indicated by the Government, this solicitation/contract treats tare as follows:

[ ] Tare is included. The prices stated herein are based on the gross-weight of the supplies being purchased and payment will be made on this basis. Accordingly, in computing the number of pounds of material, tare shall be included. However, the Contractor shall not be compensated for the amount, if any, by which the tare exceeds the percent, allowed in the Specification, of the gross weight of the supplies (including tare) being purchased.

[ ] Tare shall not be included. The prices stated herein are based on the net-weight of the supplies being purchased, and payment shall be made on that basis. Accordingly in computing the number of pounds of material, tare shall not be included.

(End of Provision)

**52.232-9003 Billing Weight and Payments for Carbon Steel or Steel Plate/Sheets.**

As prescribed in 32.908-91 insert the following provision:

BILLING WEIGHT AND PAYMENTS FOR CARBON STEEL OR STEEL PLATE/SHEETS (NOV 2011)

(a) Offers will be evaluated on the basis of the total price per plate/sheet. For this purpose, the total price per plate/sheet will be computed by multiplying the price per pound offered by the billing weight per plate/sheet designated by the offeror in its offer (for which space is provided below), and in the absence of such designation, by the Government's stated weight per plate/sheet on the description page.

(b) Payments will be made at the total price per plate/sheet multiplied by the number of plates/sheets accepted by and delivered to the Government multiplied by the number of pounds per plate/sheet indicated below. Invoices will be accepted for payment only on this basis.

Item Number National Stock Number (NSN) Pounds Per Plate/Sheet

(End of Provision)

**52.232-9004 Purchase Card Purchases – Vendor Rebate Program (VRP).**
As prescribed in 32.206-90, insert the following clause:

PURCHASE CARD PURCHASES – VENDOR REBATE PROGRAM (VRP) (NOV 2011)

(a) Government entities with a Government-wide Commercial Purchase Card may make purchases directly from the Contractor on this contract. Government-wide Commercial Purchase Card purchases will follow commercial practices to the maximum extent practicable including payment through the banking system.

(b) The Contractor shall include a 7% surcharge for all government wide commercial purchase card purchases based on the total order value. The Contractor will track the dollar value of purchase card sales that occur under the terms of the contract, and rebate the surcharge on those sales to DLA Land and Maritime.

(c) The Contractor is required to submit a rebate check of 7 percent of purchase card sales, by sending a rebate check to the DLA Land and Maritime, Attention: DLA Land and Maritime, RPF, Post Office (P.O.) Box 3990, Columbus, Ohio 43218-3990 on a quarterly basis and must reference the contract number on both the check and the envelope along with the word “rebate.”

(d) The checks are to be made payable to Disbursing Officer, Defense Finance and Accounting Service (DFAS). Additionally, each rebate check must be supported by data or documentation showing the total amount of sales/orders upon which the rebate is based, and the dollar amount of each sale/order.

(e) The checks are to be received by DLA Land and Maritime RPF no later than the 25th day of January, April, July, and October. A copy of the rebate check and the supporting documentation are to be sent to the Contracting Officer. Each rebate payment is to correspond to purchase card sales for the preceding three-month period.

(End of Clause)

**52.232-9005 Invoicing Instructions (Time-and-Materials or Labor-Hour Task Order Contract).** As prescribed in 32.111(a)(7)(90), insert the following clause:

INVOICING INSTRUCTIONS (TIME-AND-MATERIALS OR LABOR-HOUR CONTRACT)
(NOV 2011)

(a) Submitting Invoices – Invoices and vouchers shall be submitted in accordance with Federal Acquisition Regulation Supplement (DFARS) 252.232-7003.

(b) Final Payment – The final invoice under each task order shall be identified as final and list all invoices previously tendered under the task order. Final payment will be predicated upon the execution of a Material Inspection and Receiving Report (Department of Defense (DD) form 250) or other acceptance document, in addition to the Contracting Officer representative's certification. The last invoice for work performed under this contract will be so designated in order that a final, close-out audit may occur.

(c) Invoice Preparation – Invoices and vouchers shall contain the following information:

(1) Contract and Delivery Order Number

(2) Contract Line Item Number(s)

(3) Description of Work

(4) Straight time and premium time labor charges by number of labor hours, classification, and cost in accordance with paragraph (a) of the Payments under Time-and-Materials and Labor Hour Contracts Clause, Federal Acquisition Regulation (FAR) 52.232-7 (Section I). Labor charges are to be substantiated by individual, daily time cards or a record of the time worked showing individuals by name, hours worked, and amounts charged. Charges for performance away from the local facility shall be certified by cognizant government personnel on the Certificate of Performance (Attachment ____) and Certificate of Service.

(5) Material cost (if any) – In accordance with paragraph (b) of FAR 52.232-7, material charges are to be substantiated by evidence of actual payment and shall include all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits.

(6) Subcontract~~s~~ costs (if any) – In accordance with paragraph (b) of FAR 52.232-7. All subcontracts must be approved in writing by the Contracting Officer as specified in Section C.

(7) Travel and per diem costs (if any) – Amounts are to be in accordance with the pricing provisions in Sections B and C of this contract, and the requirements of the Joint Travel Regulations, Volume 2.

(8) Cumulative value of all billings to date.

(9) Other information required by the Certificate of Performance.

(10) Certification of Final Indirect Costs (FAR 52.242-4) – An executed certificate shall be submitted with each invoice requesting payment of indirect costs (including overhead, G&A, handling,

and other cost rates applied as a percentage of direct costs). However, if a blanket overhead certification was provided when the established rate was negotiated, the following statement may be affixed to the invoice in lieu of the certificate:

"Indirect cost rates contained herein are in accordance with established rates negotiated with (Government agency and official) on (Date). The established rates are effective until (Date). A blanket certification of overhead as required by FAR 52.242-4 was made when the established rate was negotiated."

(d) The Contractor shall submit the following invoice-related documents with the cost vouchers in wide area work-flow (WAWF):

Invoice or Voucher
Certificate of Performance
Certification of Final Indirect Costs (when invoice includes indirect costs)
DD Form 250 (when 252.246-7000 is included in contract)
Supporting Data in 52.232-9005 paragraph (c)

(End of Clause)

**52.232-9007 Contractor's Remittance Address -Tank-Automotive and Armaments Command (TACOM) Depot Level Repairable (DLR) – DLA Land and Maritime).**
As prescribed in 32.004(b), insert the following clause:

CONTRACTOR'S REMITTANCE ADDRESS -TANK-AUTOMOTIVE AND ARMAMENTS COMMAND (TACOM) DEPOT LEVEL REPAIRABLE (DLR) – DLA LAND AND MARITIME) (NOV 2011)

(a) Offerors are requested to indicate below the address to which payment should be mailed, if such address is different from that shown for the Offeror on the face of this Solicitation.

Name _____
Address _____
City and State _____

(b) Do not include any bank account information. If necessary, please submit this information under separate cover.

(End of Clause)

**52.232-9008 Constructive Acceptance.**
As prescribed in 32.908-92, insert the following clause:

CONSTRUCTIVE ACCEPTANCE (JUN 2012)

In accordance with FAR 32.904(b)(1)(ii)(B)(4), the Contracting Officer has determined that more than seven days are needed for constructive acceptance. The following number of days for constructive acceptance applies to paragraph (a)(5)(i) of FAR Clause 52.232-25, "Prompt Payment", which is incorporated by reference or full text: _____ days for constructive acceptance.

(End of Clause)

52.232-9009 (Reserved.)

**52.232-9010 Accelerated Payments to Small Business.**
As prescribed in 32.906 (a)(S-90)(1), insert the following clause:

ACCELERATED PAYMENTS TO SMALL BUSINESS (JUN 2012)

In order to implement Department of Defense policy providing for accelerated payments to small businesses, the Government may issue awards that reflect payment terms of net 30 days, regardless of the payment terms offered by the vendor. This is required so that the Government can make accelerated payment to small businesses, which it intends to do in accordance with Defense Federal Acquisition Regulation Supplement (DFARS) 232.906(a)(ii), on contracts or orders for which fast pay procedures do not apply as soon as practicable following receipt of a proper invoice and completion of receipt and acceptance documentation, as required for payment by Federal Acquisition Regulation (FAR) 32.905. The Government's intent to make accelerated payment does not alter the rules for imposition of prompt payment interest as set out in the contract or order and FAR Subpart 32.9.

(End of Clause)

**52.233-9000 Agency Protests.**
As prescribed in 33.106 (c) 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 )

**52.236-9000 Safety, Fire Prevention, and Security.**
As prescribed in 36.5(90), insert the following provision:

SAFETY, FIRE PREVENTION, AND SECURITY REQUIREMENTS (NOV 2011)

(a) The Contractor shall comply with __type center name here__ (buyer fill-in) regulations regarding safety, fire prevention and security. All security requirements of the installation site identified elsewhere in this solicitation shall be observed by the Contractor's personnel at all times.

(b) Security requirements for Contractor compliance include, but are not limited to: fire, safety, security, housekeeping, and traffic regulations in effect during the period of contract performance.

(c) The on-site contracting officer's representative (COR) is available to inform the Contractor of regulations applicable prior to Contractor's commencement of work at the site, but the Contractor is responsible for compliance with all applicable regulations whether or not information is received from the COR.

(End of Provision)

**52.237-9001 Contractor Personnel Changes and Key Personnel Requirements.**
As prescribed in 37.110-90 insert the following clause:

CONTRACTOR PERSONNEL CHANGES AND KEY PERSONNEL REQUIREMENTS (NOV 2011)

(a) Contractor personnel changes:

(1) The Contractor shall have the right to remove his personnel assigned to perform the tasks hereunder and to substitute other qualified personnel provided that the Contracting Officer is notified of (and in certain circumstances approves) such removal and replacement. The Contractor shall notify the Contracting Officer prior to such change, giving the new employee's name, security clearance and technical qualifications.

(2) Any removals or replacements for the convenience of the Contractor shall be at no additional cost to the Government. Cost to be borne by the Contractor include but are not limited to time of travel, travel and training costs for replacement personnel.

(3) Removals or replacements of Contractor personnel shall be considered for the convenience of the Contractor except when such removal is for:

(i) employees removed as a result of cancellation or completion of the contract,

(ii) employees replaced due to death or incapacitating illness or injury,

(iii) or employees removed or replaced at the Government's request.

(4) If any employee removes him/herself from the employ of the Contractor, such removal will be at no additional cost to the Government.

(b) Key personnel requirements:

(1) Certain 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 for evaluation of the proposal and are listed in paragraph (3) below. The Contractor agrees that such personnel shall not be removed from the contract work or replaced without compliance with the following:

(i) If one or more of the key personnel, for any reason, becomes or is expected to become unavailable for work under this contract for a continuous period exceeding 30 work days, or is expected to devote substantially less effort to the work than indicated in the proposal or initially anticipated, the Contractor shall, subject to the concurrence of the Contracting Officer or an authorized representative, promptly replace personnel with personnel of equal ability and qualifications.

(ii) All requests for approval of substitutions must be in writing and provide a detailed explanation of the circumstances necessitating the proposed substitutions. The request must contain a resume for the proposed substitute, and any other information requested by the Contracting Officer. The Contracting Officer shall promptly notify the Contractor of approval or disapproval in writing.

(2) 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 that the resultant reduction of productive effort would be so substantial as to impair successful completion of the contract, the Contracting Officer may terminate the contract for default or for the convenience of the Government, as appropriate, or make an equitable adjustment to the contract to compensate the Government for any resultant delay, loss or damage.

(3) The follow positions are identified as key personnel : (Insert key personnel positions)

(End of Clause)

**52.237-9002 Key Personnel – Fixed-Price Service Contracts.**
As prescribed in 37.110-91 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 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 (1) 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 (2) 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) at his discretion, if he 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(a)(90), 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)

**52.237-9004 Evaluation – Contractor Installation or Verification of Installation.**
As prescribed in 37.110(a)(91), insert the following provision:

EVALUATION – CONTRACTOR INSTALLATION OR VERIFICATION OF INSTALLATION (AUG 2008)

Offers will be evaluated on the basis of the aggregate cost to the Government for line item _____ plus the cost of Contractor installation or Contractor verification of installation (as specified in the schedule), line item _____.

(End of Provision)

**52.239-9000 Y2K Compliance Notice.**
As prescribed in 39.106(a)(92), insert the following in solicitations and contracts.

Y2K COMPLIANCE NOTICE (JUN 2002)

The Contractor shall ensure that all items/products delivered under this contract (or order) that contain embedded microchips with a clock mechanism, timing device, or control device and are required to perform date/time processing involving dates subsequent to December 31, 1999, shall be Year 2000 (Y2K) compliant.

"Y2K compliant" means to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first century, and the years 1999 and 2000, and leap year calculations, to the extent that other Information Technology (IT) and non-IT items being acquired properly exchange date/time data with it.

The Government reserves the right to test delivered items for Y2K compliance.

(End of Clause)

**52.242-9000 Production Progress Reports.**
As prescribed in 42.1107(a), insert the following clause:

PRODUCTION PROGRESS REPORTS (JUL 2006)

(a) The Contractor shall prepare DD Form 375, Production Progress Report, and DD Form 375C, Continuation (as necessary) for the following contract items:

_____

(b)(1) Unless otherwise indicated in paragraph (b)(2) below, the forms shall be submitted on a monthly basis within two workdays after each reporting period, beginning thirty (30) days after award.

(2) The forms shall be submitted on a _____ basis within two workdays after each reporting period, beginning _____.

(3) In addition to the above indicated timeframes, the Contractor shall promptly submit DD Form 375 reporting any delay in the scheduled delivery or completion as soon as known or anticipated.

(c) The forms shall be sent to the following offices as indicated in the contract/award document:

(1) Contracting office (Issued by)
(2) Administration office (Administered by)
[ ](3) Status control activity or inventory control manager
[ ](4) _____

(End of Clause)

**52.242-9001 Notification of Shipment.**
As prescribed in 42.14(90), insert the following clause:

NOTIFICATION OF SHIPMENT (NOV 2011)

Seventy-two (72) hours before shipment of industrial plant equipment (IPE), the Contractor shall provide the following shipping information to the Contracting Officer:

Contract/delivery order number(s),
Identification numbers,
Bill of lading number(s),
Carrier,
Mode of shipment,
Weight,
Cube, and
Date the items will be shipped.

(End of Clause)

**52.242-9002 Manufacturing Directive Number (MDN) for Use In Identifying Government-Furnished Property (GFP) Transactions.**
As prescribed in 42.14(91) insert the following clause:

MANUFACTURING DIRECTIVE NUMBER (MDN) FOR USE IN IDENTIFYING GOVERNMENT-FURNISHED PROPERTY (GFP) TRANSACTIONS (NOV 2011)

(a) A manufacturing directive number (MDN) will be assigned to any contract resulting from this solicitation/contract for use in identifying Government-furnished property (GFP) transactions. This number will be entered on receiving, shipping and disposition documents prepared under the contract terms to identify each receipt of components into the assembler's plant and each shipment leaving the assembler Contractor's plant, whether assembled rations or components, including shipments to other Contractors, shipments to consignees, material shipped at the end of the contract, and material reported destroyed. GFP transaction identification is required on a single copy of the receiving document for components entering the Contractor's plant and the shipping document for items leaving the assembly Contractor's plant as follows:

(b) On a single copy of each receiving report (Department of Defense (DD) Form 250 or other shipping document) for all shipments of components received from component suppliers (other than packaging, packing, or crating), the Contractor will enter in the "mark for" block the MDN and the last four digits of the assembly contract number, i.e., MDN XXX and contract XXXX. The single copy is that copy identified elsewhere in the contract for distribution to:

DLA Troop Support
Attention: FT
700 Robbins Avenue
Philadelphia, Pennsylvania 19111-5092

(End of Clause)

**52.242-9005 Report of Shipment (Repship) of Perishable Medical Items.**
As prescribed in 42.1107(b) 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)

**52.242-9006 Delay of Installation for Medical and Laboratory Instrumentation.**
As prescribed in 42.1305-90 insert the following clause:

DELAY OF INSTALLATION FOR MEDICAL AND LABORATORY INSTRUMENTATION – DLA–TROOP SUPPORT -MEDICAL (NOV 2011)

(a) Installation (reference installation clause) shall not commence until authorized by the chief of medical materiel services (CMMS) at the hospital. It shall be the Contractor's responsibility to inform the CMMS with information copy to the Contracting Officer, of any problems which may be anticipated in connection with installation or which will adversely affect performance once installation is completed. Such matters as inadequacy of power supply, limitations of site, or inadequate preparation of site shall be included in information reported prior to start of installation. Installation shall not proceed under such circumstances until notified by the CMMS at the hospital, with information copy to the Contracting Officer.

(b) Unless otherwise authorized by the Contracting Officer, installation of the system/equipment shall in no event exceed _____ calendar days from the date of notice to proceed with installation.

(c) In the event that progress in the installation is interrupted through no fault of the Contractor, the continuous installation referred to in the installation clause may be terminated until such time as the cause of delay has been eliminated, and then shall be resumed within 24 hours after the Contractor has been notified by the CMMS that work may again proceed. (Except in those situations where life and/or

property would be imperiled by such delay, termination of installation shall be made only after 2 hours' notice has been given to CMMS at the hospital receiving installation.)

(End of Clause)

**52.242-9008 Technical Direction.**
As prescribed in 42.7400(a)(90), insert the following clause:

TECHNICAL DIRECTION (AUG 2008)

(a) Performance of the work under this contract shall be subject to the technical direction of the designated Contracting Officer's Technical Representative (COTR). The term "Technical Direction" is defined to include the following:

(1) Provide on-site guidance and clarification to the Contractor – filling in the technical details concerning tasks to accomplish the contractual statement of work.

(2) Provide information and technical guidance to the Contractor as needed to ensure accurate interpretation of drawings, specifications or technical portions of the work description.

(3) Review and, where required by the contract, approve technical reports, drawings, specifications and other technical information to be delivered by the Contractor to the Government under the contract,

(b) Technical direction must be within the general scope of work stated in the contract. The designated COTR does not have the authority to and may not issue any technical direction which:

(1) constitutes an assignment of additional work outside the general scope of the contract;

(2) constitutes a change as defined in the contract clause entitled "Changes";

(3) causes an increase or decrease in the total estimated contract cost or price, the fixed fee or the time required for contract performance; or

(4) changes the express terms, conditions, or specifications of the contract.

(c) The authority of the COTR is limited to those responsibilities described in (a)(1) through (a)(3) above. The COTR is not authorized to obligate the Government or to alter the terms and conditions of the contract. Only the Contracting Officer may obligate the Government or alter the terms and conditions of the contract.

(d) The designated COTR shall issue all technical directions in writing. In those circumstances where the Contractor requires immediate guidance, however, the designated COTR may provide the necessary technical direction orally, but shall follow-up in writing such oral direction within five (5) working days.

(e) The Contractor shall proceed promptly with contract performance in accordance with technical directions issued by the designated COTR which are within his/her authority and which have been duly issued in the manner prescribed elsewhere in this clause.

(f) If the Contractor believes any instruction or direction issued by the COTR exceeds the designated COTR's authority as described herein, the Contractor shall notify the Contracting Officer in writing within five (5) working days after receipt of any such instruction or direction, may withhold from performance in accordance with the instruction or direction, and request the Contracting officer to modify the contract as appropriate. Upon receiving such notification from the Contractor, the Contracting Officer shall resolve the matter as appropriate. The Contractor shall comply immediately with the direction given. a failure of the parties to agree upon the nature of the instruction or direction or upon the contract action to be taken with respect thereto shall be subject to the provisions of the contract clause entitled "Disputes."

(End of Clause)

**52.242-9009 Correspondence Regarding Meal, Ready-to-Eat (MRE) and Tray Pack Contracts.**
As prescribed in 42.202(a)(92), insert the following clause:

CORRESPONDENCE REGARDING MEAL, READY-TO-EAT (MRE) AND TRAY PACK CONTRACTS (NOV 2011)

All pertinent correspondence relative to this contract shall be directed to _____ except requests for acceptance of nonconforming supplies (including requests for deviation from specification) are not delegated to that office. Contractor requests for acceptance of nonconforming supplies shall be submitted to the assigned quality assurance representative (QAR), i.e., United States (U.S.) Army veterinary inspector (AVI), U.S. Department of Agriculture (USDA) inspector or Defense Contract Management Agency (DCMA) QAR as applicable. The QAR should forward the request directly to the Contracting Officer with an information copy to the administrative Contracting Officer (ACO). A copy of correspondence notifying the Contractor of acceptance/rejection of waiver/deviation requests will be furnished to the ACO by the Contracting Officer.

(End of Clause)

**52.242-9010 Title of Containers and Packaging Materials.**
As prescribed in 42.7204(90), insert the following clause:

TITLE OF CONTAINERS AND PACKAGING MATERIALS (AUG 2008)

As part of the consideration for the services to be performed, all containers and packaging materials in which Government furnished property (GFP) is delivered shall, upon separation from the contents, be retained by and title thereto shall vest in the Contractor. Contractor agrees to re-use, without cost to the government, such containers and packaging materials necessary to re-ship GFP as directed by the Contracting Officer. In the event of reshipments directed by the Contracting Officer, the title to the packaging materials and shipping containers (used to re-ship the GFP) will pass back to the Government.

(End of Clause)

**52.242-9012 Notice of Availability.**
As prescribed in 42.14-92, insert the following clause:

NOTICE OF AVAILABILITY (SEP 2012)

(a) The Contractor will furnish the freight forwarder or country representative cited elsewhere in this solicitation/contract, fifteen (15) days in advance of each shipment, the following information:

(1) Name and location of shipper.

(2) Identification that shipment is relative to contract issued by _____ (the contract specialist will enter the contracting activity).

(3) Contract number.

(4) National stock number or part number (when applicable).

(5) Number of containers and quantity contained therein.

(6) Date of shipment (enter the Julian date of the year, for example, 31 January expressed as 031 followed by A for first shipment, B for second shipment, etc.).

(7) Document number (this is the first line of the address markings).

(8) Proposed method of transportation.

(9) Description of materiel to be shipped.

(10) Foreign military sales case number (last line of freight forwarder's address).

(11) Total weight and cubic feet of shipment.

(12) When shipment is oversized or over 20,000 pounds gross weight, the following additional data will be supplied:

(i) Weight in tons of heaviest container.

(ii) Length of longest piece in feet.

(iii) Width of largest piece in feet.

(iv) Height of largest piece in feet.

(b) Shipment instructions follow. (The contract specialist shall check the appropriate block.)

[ ] Shipment will be released to the freight forwarder fifteen days after the notice of availability unless alternate instructions have been furnished in writing by the freight forwarder during the interim.

or

[ ] If shipment instructions have not been received in fifteen days, the cognizant transportation officer will be contacted for shipping advice.

(End of Clause)

**52.242-9013 Responsibility for Administration and Inspection.**
As prescribed in 42.202(b)(10)(90), insert the following clause:

RESPONSIBILITY FOR ADMINISTRATION AND INSPECTION (DEC 2011)

(a) Correspondence: All pertinent correspondence relative to this contract or order shall be directed to the administering office set forth on Page 1 of this contract or order. Contractor requests for deviations from, or waiver of, specification requirements shall be submitted to the assigned quality assurance representative (QAR). Contractor requests for deviation from, or waiver of, specification requirements shall require written approval from the Contracting Officer via written modification.

The following paragraphs are applicable only when checked:

[ ] (b) Property administration.

(1) Where Government furnished material (GFM) is being provided under the clothing and textile bailment system (see Defense Logistics Acquisition Directive (DLAD) clause 52.245-9011), the responsibility for property administration is assigned to the administering office designated on page 1 of this contract or order. The responsibility for maintenance of the Government's official property records is retained by the DLA Troop Support, attention: DLA Troop Support –FODM.

(2) Where Government loaned property (GLP) is being provided (see DLAD clause 52.245-9010), the responsibility for property administration is retained by the DLA Troop Support, attention: DLA Troop Support-_____.

(3) Where Government furnished property (GFP), other than that cited in paragraphs (1) and (2) above, is being provided, the responsibility for property administration is assigned to the administering office designated on Page 1 of this contract/order.

[ ] (c) Inspection: Inspection shall be accomplished by the administering office at the Contractor's place of performance unless otherwise indicated below:

Inspection office (if other than administering office):
Inspection point (if other than place of performance):

If a Government QAR has not been assigned by the time inspection service is needed, notify the cognizant inspection office.

[ ] (d) Inspection instructions: The supplies shall be inspected for compliance with packaging, packing, marking and quantity requirements only. At the discretion of the QAR, the Contractor's test records (protocol) shall also be reviewed to determine compliance with requirements.

[ ] (e) Advance notification: Pursuant to Federal Acquisition Regulation (FAR) clause 52.246-2, Inspection of Supplies Fixed-Price, the Government hereby requests advance notification that supplies are ready for Government inspection. The Contractor shall telephonically notify the Government QAR at the office indicated in paragraph (c) above seven working days prior to the date supplies are ready for inspection.

[ ] (f) Special instructions on certificate of conformance (CoC): The term "contract administration office" as it is used in FAR Clause 52.246-15, Certificate of Conformance (CoC), shall be interpreted as the Food and Drug Administration office cited in paragraph (c) above. This interpretation applies only to FAR clause 52.246-15 and shall not apply to any administrative function performed by the office designated on Page 1, of this contract or order.

(End of Clause)

**52.243-9000 Design Change – Supply Items (Army Aviation and Missile Command (AMCOM) Depot Level Repairable (DLR) – DLA Aviation).**
As prescribed in 43.104(a)(90) insert the following clause:

DESIGN CHANGE – SUPPLY ITEMS (ARMY AVIATION AND MISSILE COMMAND (AMCOM) DEPOT LEVEL REPAIRABLE (DLR) – DLA AVIATION) (NOV 2011)

(a) The Contractor shall review all orders prior to proceeding with performance and shall maintain surveillance during manufacture to determine the impact of approved engineering changes. The Contractor shall provide written notification to the Contracting Officer of the impact of approved engineering changes on delivery orders under this contract. The Contractor shall provide such notification prior to beginning performance on new delivery orders affected by the change and within 90 days after approval of an engineering change that affects an existing delivery order. After receipt of the notification from the Contractor, the Contracting Officer will confirm the Government still has a requirement for the part number reflected on the order or direct the Contractor to deliver parts incorporating the approved engineering change.

(b) If the Contracting Officer directs the Contractor to deliver parts incorporating an engineering change not reflected in the delivery order, the Contractor may be entitled to an equitable adjustment in contract price or delivery schedule in accordance with Federal Acquisition Regulation (FAR) clause 52.243-1 and FAR 52.243-7.

(c) The Government is not precluded from ordering or requiring delivery of parts without incorporating approved engineering changes.

(d) After direction by the Contracting Officer to incorporate the engineering change, the Contractor may request a contract modification allowing deliveries to the Government bonded storerooms and bill for the contract price of the delivered supplies. Upon receipt of the modification incorporating the part number change, the Contractor will ship the supplies to destinations specified in the applicable delivery order, free on board (f.o.b.) origin.

(End of Clause)

**52.245-9001 Evaluation of Use of Government Furnished Property.**
As prescribed in 45.106(90), insert the following provision:

EVALUATION OF USE OF GOVERNMENT FURNISHED PROPERTY (GFP) (NOV 2011)

(a) The term "Government Property", as used in this clause, shall be synonymous with the term "Government Furnished Property", as defined in Federal Acquisition Regulation (FAR) 45.101.

(b) Government property to the extent, if any, itemized below is offered for use without charge in performance under the item(s) with which it is identified. The offeror shall identify in its offer which, if any, of the items under this solicitation is offered by it on the basis of the Government making available without charge any of the listed Government property, and the period of use, in months, said property is to be made available to the offeror in performance of an awarded contract.

| For evaluation purposes | | | | | |
|---|---|---|---|---|---|
| Item Number | Identification Of Government Property | Present Location | Acquisition Cost | Rate | Period of Use |
| | | | | | |

(c) The Government property to be furnished in accordance with this clause shall be delivered by the Government within ____ days after the effective date of the award/contract at a point specified in accordance with FAR 52.247-55 “F.o.b. Point For Delivery Of Government-Furnished Property." The offeror is requested to specify in the space below, by item, the free on board (f.o.b.) point for the delivery of the Government furnished property that will be used in contract performance.

| For evaluation purposes | | | |
|---|---|---|---|
| | F.o.b. Point | Private Rail Siding | |
| Item Number | (cite name, street address, city, state and zip code) | yes (state name of rail carrier) | no (state name and address of nearest public rail siding and carrier) |
| | | | |

(d) If, in performance of any contract resulting from this solicitation, the offeror intends to use any Government owned property, such use shall be a factor in evaluating the offer and awarding the contract in accordance with FAR Subpart 45.2, in order to avoid any competitive advantage that might accrue to a Contractor possessing Government property. Once the Contracting Officer determines the necessity, this is done by either:

(1) Newly furnished GFP: Adjusting the offers of those Contractors by applying, for evaluation purposes only, a rental equivalent evaluation factor, or by charging the Contractor rent for using the property. In evaluating offers, the Contracting Officer shall also consider any costs or savings to the Government related to providing such property, regardless of any competitive advantage that may result (see FAR 45.202-3). Computation of the rent charge or the rental equivalent evaluation factor will be made in accordance with the clause at FAR 52.245-9, “Use and Charges”.

(2) Existing GFP (Any offeror who desires to use Government property in its possession or for which it is an authorized user, or in the possession of its subcontractor or for which its subcontractor is an authorized user):

(i) Offeror shall furnish a copy of the written permission of the Contracting Officer having cognizance of the property for use of such facilities or tooling to include a statement as to whether or not rental will be charged for such use and the amount of monthly rent which would be charged for such use but for any rent-free use permission.

(ii) If use is to be rent free, the offeror must provide the rent computed as provided by the contract or, in the absence of a contractual rate, by the clause set forth in FAR 52.245-9 entitled "Use and

Charges", which the Government will use as an evaluation factor pursuant to FAR Subpart 45.2 in evaluating the offer. If use of the Government property is permitted, the offeror must:

(A) List or describe the Government property;

(B) Identify the contract or other instrument under which the Government property is held and the date contract/instrument is to expire.

(C) State the number of months during which the Government property will be used; and with respect to any such Government property which will be used concurrently in the performance of two or more contracts, state the amounts of the respective uses in sufficient detail to support the proration of rent between work resulting from an award under this solicitation and such other work.

(e) The following list of known subcontractors, if any, possessing Government property which, in the past or currently, has been authorized for use in manufacturing components or parts of the items to be procured is set forth below.

| For evaluation purposes | | |
|---|---|---|
| Item Number | Identification Of Government Property | Present Location (including name of subcontractor) |
| | | |

(f) In the event any subcontractor desiring to use Government property on a no-charge basis refused to quote to any prospective prime Contractor, the Government reserves the right to:

(1) Refuse to authorize the subcontractor's use of such property; or

(2) Evaluate 100 percent of the acquisition cost of said Government property against the bid of the prime Contractor proposing to use such subcontractor.

(End of Provision)

**52.245-9002 Use of Government Furnished Property.**
As prescribed in 45.106(91) insert the following clause:

USE OF GOVERNMENT FURNISHED PROPERTY (NOV 2011)

The Government shall furnish to the Contractor on a rent free or no charge basis the Government property listed below for the period and for use in performance of this contract as shown:

| Identification of Government property | Quantity | Period of use | Present location |
|---|---|---|---|
| | | | |

The above listed Government property shall be delivered by the Government within _____ days after the effective date of the award/contract free on board (f.o.b.) _____ in accordance with Federal Acquisition Regulation (FAR) clause 52.247-55 “F.O.B. Point For Delivery Of Government-Furnished Property."

Except to the extent specifically authorized elsewhere in this contract, no use of Government property other than as described and permitted above shall be authorized unless such use is approved in writing by the Contracting Officer and either rent calculated in accordance with the use and charges clause set forth in FAR 52.245-9 is charged or the contract price is reduced by an equivalent amount.

(End of Clause)

**52.245-9003 Transportation Costs of Government Furnished Property (GFP).**
As prescribed in 45.106(92)(a) insert the following clause:

TRANSPORTATION COSTS OF GOVERNMENT FURNISHED PROPERTY (GFP) (NOV 2011)

(a) In accordance with Federal Acquisition Regulation (FAR) clause 52.245-2 Government Property Installation Operation Services, or FAR 52.245-4, Government Furnished Property (Short Form) the Government will furnish at no cost to the Contractor the property specified below for the use performing the resulting contract:

| Item Number. | Identification of Property | Quantity | Unit Price |
|---|---|---|---|
| | | | |
| | | | |
| | | | |

(b) The Government will deliver government furnished property to the Contractor's plant in accordance with FAR 52.247-55, F.O.B. Point for Delivery of Government-Furnished Property. Offerors must indicate in the space below the name and address of the plant where the property will be utilized. In the absence of so indicating, the Government will assume and evaluate offers on the assumption that the property will be utilized at the plant specified by offerors in their offers under the heading "Production Facilities," or Block 15A of standard form (SF) 33.

Offeror to complete:

Plant: _____
Street address: _____
City and state: _____

(c) In the evaluation of the offers, in response to this solicitation, among the factors to be considered in determining the low offeror will be the cost of transporting Government-furnished property to the Contractor's plant. Land methods of transportation by regulated common carrier will be used to evaluate cost of transportation from the Government's place of shipment (cited below) to the offeror's plant (paragraph b). This transportation cost will be added to the offered price to determine the overall cost to the Government; however, if the location from which the government furnished property will be shipped is not known at the time of issuance of the solicitation, the cost of transporting such property to the offeror's plant will not be a factor in the evaluation of offers.

Government furnished materials will be shipped from: _____
Weight: _____
Cube: _____

(d) The delivery schedule contained in Section F is based on the assumption that delivery of Government-furnished property will be made to the Contractor within 45 days, unless otherwise indicated, after date of award.

(e) Contractor's receipt for GFP: Concurrently with each shipment of GFP, the Government will furnish the Contractor with shipping documents setting forth the exact quantity of property furnished. Within five days after receipt of GFP for performance under this contract, the Contractor shall acknowledge receipt on the Government shipping documents and return them to _____. The Government reserves the right to suspend further shipments of property until receipts for GFP have been properly prepared and received by the Government. Notwithstanding any other contract provision, delays by the Contractor caused by suspension of GFP shipments for failure to meet this provision shall not constitute an excusable delay within the meaning of the contract.

(End of Clause)

**52.245-9005 Government-Owned Tooling.**
As prescribed in 45.306-5(91), insert the following clause:

GOVERNMENT-OWNED TOOLING (NOV 2011)

Offers submitted on the basis of utilization of Government-owned tooling, as specified herein, must offer the total quantity of goods and services listed in the solicitation.

(a) Availability:

(1) Tooling/set(s) of tooling as listed in the attachment to this solicitation is available and may be inspected at:_____

(2) The Contractor will be responsible for repairs and replacements to the tooling/set(s), if any, and all such repairs and replacements will be accomplished by the Contractor at his own expense.

(3) Such tooling will be furnished "as is" in accordance with Federal Acquisition Regulation (FAR) clause 52.245-19, Government Property Furnished "As Is" of this solicitation.

(b) Inspection of tooling: Offerors whose offer is based on the use of the Government-owned tooling must satisfy themselves that such tooling is suitable for their use. Any costs of transporting, installing, modifying, repairing, or otherwise making the tooling suitable for use shall be borne by the successful offeror. If a prospective offeror is interested in inspecting the Government-owned tooling, arrangements should be made by contacting the Contracting Officer who will coordinate with the appropriate special tooling coordinator. Contact shall be made at least ten (10) working days prior to the time of the inspection to be made at the location indicated in paragraph (a)(1) above.

(c) Suitability for use: FAR 52.245-19 is applicable to the contract. If the Contractor modifies, repairs, or otherwise makes the tooling suitable for use, then the Contractor is required to maintain that special tooling in accordance with sound industrial practice. This is understood to mean that the Contractor will furnish all repairs and replacements necessary to maintain the tooling/set(s) in a condition to produce specification items throughout the period of production.

(End of Clause)

**52.245-9006 Use of Government-Owned Tooling.**
As prescribed in 45.306-5(92), insert the following clause:

USE OF GOVERNMENT-OWNED TOOLING (JAN 2007)

The Government intends to furnish special tooling listed/described in this solicitation rent-free to the successful offeror. If offer is based on using Government tooling, a rental equivalency evaluation factor will be added to the offeror's offered price. Each offeror must indicate below whether or not his offer is based on the use of Government-owned tooling:

Offer is [ ] is not [ ] based on use of Government-owned tooling listed herein.

(End of Clause)

**52.245-9007 Use of Government-Owned Special Tooling or Test Equipment.**
As prescribed in 45.306-5(93), insert the following clause:

USE OF GOVERNMENT-OWNED SPECIAL TOOLING OR TEST EQUIPMENT (JAN 2007)

This office has no knowledge of Government-owned special tooling or special test equipment for this item. If an offeror has knowledge of the existence of any Government-owned special tooling or test equipment used in the manufacture of this item and desires to use such, then that offeror shall furnish a copy of the written permission of the Contracting Officer having cognizance of this property. The written permission for use of the special tooling or special test equipment is to include a statement as to whether or not rent will be charged and the amount of monthly rent which would be charged for such use but for any rent-free use permission. If use of the tooling or test equipment is permitted, the offeror must also furnish:

(a) A list or description of the tooling or test equipment;

(b) The facilities contract number, or other instrument number, under which the special tooling or special test equipment is held and date contract/instrument is to expire; and

(c) A statement of the number of months during which the facilities or tooling will be used. If such special tooling or test equipment will be used concurrently in the performance of two or more contracts, state the amounts of the respective uses in sufficient detail to support the proration of rent between work resulting from an award under this solicitation and such other work.

(End of Clause)

**52.245-9008 Use of Government Facilities on a No Charge Basis.**
As prescribed in 45.302-6(90), insert the following clause:

USE OF GOVERNMENT FACILITIES ON A NO CHARGE BASIS (NOV 2011)

[ ] (a) The Contractor is authorized to use, on a rent-free basis, in the performance of this contract, the Government-owned facilities provided under contract number .

[ ] (b) This contract is for an foreign military sales (FMS) requirement. The Contractor is authorized to use the Government-owned facilities provided under contract number . As rental for use thereof, the Contractor must remit monthly the sum of $ to the ACO of the office designated for the administration of this contract.

(End of Clause)

**52.245-9009 Government-Furnished Property.**
As prescribed in 45.106(93), insert the following clause:

GOVERNMENT-FURNISHED PROPERTY (GFP) (NOV 2011)

The Government will furnish at no cost to the Contractor for use in performance of the contract property specified below:

| Property | Quantity ( ) Estimated | Value ( ) Estimated |
|---|---|---|
| | | |
| | | |

The GFP will be delivered to the Contractor free on board (f.o.b.) storage location, DLA Land and Maritime, and the Contractor will be responsible for transportation to the work site(s). If the Contractor requires materials, in excess of the amounts stated above, such additional materials will be furnished by the Government; however, the Contractor must bear the cost thereof. The cost of excess materials will be withheld by the Government from payments due the Contractor, unless the Contractor makes other arrangements with the Contracting Officer for payment.

The Government materials will be made available by the installation management office, as needed by the Contractor.

(End of Clause)

**52.245-9010 Government-Furnished Property (GFP): Hubs, Dies, Molds, Shaping Blocks, Guide Samples, and Inspection Gauges.**
As prescribed in 45.106(94), insert the following clause:

GOVERNMENT-FURNISHED PROPERTY (GFP): HUBS, DIES, MOLDS, SHAPING BLOCKS, GUIDE SAMPLES, AND INSPECTION GAUGES (NOV 2011)

(a) Government-furnished hubs, dies, molds, shaping blocks, guide samples, and inspection gauges:

The Government will furnish on a loan basis to the Contractor, if required, the Government property indicated in Federal Acquisition Regulation (FAR) clause 52.245-1 and/or Defense Logistics Acquisition Directive (DLAD) clause 52.245-9001 when the offeror checks the appropriate blocks shown below and indicates the receiving address for receipt of GFP. Failure to check the appropriate blocks will be considered an indication that the offeror does not require GFP.

GFP will be returned to _____.

[ ] Shaping blocks and molds required
[ ] Hubs/dies required

[ ] Guide sample required
[ ] Inspection gauge required

Contractor's receiving address for GFP:

(b) GFP.

(1) Hub(s) or production dies:

(i) Hub(s) are only authorized for use in making production die(s) for the manufacturing of end items under this contract. Similarly, GFP production die(s) will be used for the manufacture of end items under this contract only.

(ii) The Contractor shall be responsible for the cost of damaged hubs/dies due to its negligence while the GFP is in its possession. Examples of damage caused by negligence include, but are not limited to: cracks, chipping, smashing, tool tampering, modification, or re-annealing. Any of these could adversely affect the serviceability of the hub/die for future use, as determined by the Contracting Officer or its authorized representative. When a determination has been so made, the Contractor will be assessed in the amount stated under “unit acquisition cost” in clause 52.245-9001.

(2) Guide samples.

(i) Guide samples are to be used for guidance purposes only such as color, finish, trimming, and piercing characteristics. For any inconsistency between contractual requirements and those characteristics exhibited on the guide sample, the former takes precedence.

(ii) The Contractor will be responsible for the loss or damage of the guide sample or the destruction of the sealed envelope enclosure. Upon loss or damage, the Contractor will be responsible for the replacement value of the guide sample.

(iii) The Contractor must request permission from the Contracting Officer to retain the guide sample(s) for use on concurrent or consecutive contracts.

(3) Shaping blocks and molds.

(i) Shaping blocks(s) or mold(s) will be furnished as GFP when requested by the Contractor to be used as a guide to manufacture production shaping blocks or molds required in the manufacture of end item(s).

(ii) The Contractor will be responsible for loss or damage of shaping blocks or molds while in its possession. The Contractor will be assessed cost, as cited in valuation above, to replace shaping block(s) or mold(s).

(iii) The Contractor may not use shaping block(s) or mold(s) as a production tool to manufacture end item(s).

(iv) The Contractor must request permission to retain shaping block(s) or mold(s) from the Contracting Officer for use on concurrent or consecutive contracts.

(v) The shaping blocks to be used as Government-furnished material, cited in paragraph (3), are to be retained by the Contractor and will be permitted for use in future procurements only if in compliance with specifications and pattern requirements.

(4) Inspection gauges.

(i) The inspection gauges listed in FAR clause 52.245-1 and/or DLAD clause 52.245-9001 are required for performing certain dimensional and size examinations under this contract. Although the Contractor is not precluded from utilizing its own gauges, in case of dispute, the Government results obtained by use of the Government gauge shall govern. The inspection gauges listed above are available and will be loaned to the Contractor.

(ii) The Government shall not be responsible for damage to property of the Contractor or for personal injuries to the Contractor's officers, agents, servants, or employees, or to any other persons on the Contractor's premises, whether as invitees, licensees, or trespassers, arising from or incident to the use of the inspection gauge(s), and the Contractor shall save and hold the Government harmless from any and all such claims.

(iii) Government inspection gauges loaned to the Contractor will be made available to the Government quality assurance representative when required in performing verification examination.

(End of Clause)

**52.245-9011 Government-Furnished Material (GFM) (Bailment System) and Property Administration.**
As prescribed in 45.106(95), insert the following clause:

GOVERNMENT-FURNISHED MATERIAL (GFM) (BAILMENT SYSTEM) AND PROPERTY ADMINISTRATION (NOV 2011)

Limitations on applicability of certain sections of this clause for webbing or tape or short pieces, are as follows:

1. When webbing or tape is issued as GFM for equipment items, the first sentence of subparagraph 2(a)(3); and subparagraph 2(a)(4) are not applicable to the acquisition.

2. When the solicitation provides up to 100% of total allowance for short pieces, the first sentence of subparagraph (a)(3) is not applicable to the acquisition.

(a) Material to be made available by the Government:

(1) The Government will make available to the Contractor, for use in connection with and under the terms of this contract, the materials set forth below (hereinafter referred to as Government material), and the Contractor shall utilize such materials in the furnishing of supplies or services hereunder. The Government reserves the right to furnish such cloth put up either in rolls or folded, whenever such cloth is 46 inches wide or narrower. Cloth more than 46 inches wide will be furnished put up on rolls. The

Government shall be the sole source of the supply of the materials listed herein and only such material obtained from the Government under this contract may be used in the performance of this contract. Price for cloth is based on gross yardage with no allowance for imperfections. Material furnished shall be charged to the Contractor's account in multiples of one yard. Where material furnished contains fractions of a yard, the yardage shall be rounded to the whole yard. Fractions of less than one-half yard will be rounded to the next lower full yard; fractions of one-half yard or more will be rounded to the next higher full yard, e.g., 159 1/4 yards shall be rounded to 159 yards; 159 1/2 yards shall be rounded to 160.

Type Of Material Unit Price Location

(2) The offeror shall determine the quantity of Government material it will require in the performance of the contract and shall include the value of such material in its offered price(s). To calculate the value of the Government material, the offeror shall multiply the quantity of Government material it will require per unit by the unit price of the material set forth in paragraph (a)(1) of this clause.

(3) The Government reserves the right to make available not more than 10% of the material in short pieces. The Contractor shall cut and use short pieces furnished and/or generated and not retain them for return to the Government at completion of the contract. Only the types of materials listed above will be made available to the Contractor by the Government. All other types of materials required in the performance of this contract shall be furnished by the Contractor.

(4) The Government may furnish material in widths other than those specified herein. Where such other widths are furnished, the quantity thereof shall be converted to the mathematical equivalent in linear yards of the width specified and the value of the material furnished and returned will be determined accordingly. It is expressly agreed that this method of adjustment shall be exclusive. It is further agreed that regardless of widths furnished, the Government material shall not be deemed deficient or defective within the meaning of (k) below.

or

(applicable for the following items only):

Tent liners; cover, maintenance, frame supported; fly, tent; screen, latrine; windbreaker, flexible material; shelter half, tent; cover, tent (various type tents and sizes); all paulins, except: paulin, ctn. duck, or wind measuring set, paulin ctn. duck 20 ft. x 20 ft., paulin, laminated, vinyl-nylon, flexible; all tents, except: tent, air-supported, launcher, hawk system; tent, Nike-Hercules, air-supported; tent, pyramidal, 3-4 man type; tent, radome, air-supported; tent, mountain, 2-man.

(5) The Government may furnish material in widths other than those specified herein. When the width furnished differs from the specified width by more than plus or minus 2 inches, the Contractor shall be entitled to an equitable adjustment in accordance with paragraph (k) herein if such substituted width causes increased performance costs; provided, however, that no equitable adjustment shall be allowed unless the 5-day and 30-day notices in paragraph (k)(2) and (k)(3) shall first have been given as provided therein. Notwithstanding the foregoing, for administration of the Government material account, where widths other than those specified are furnished, the quantity thereof shall be converted to the mathematical equivalent in linear yards of the width specified and the value of the material furnished and returned will be determined accordingly.

(6) In the event the Government makes the material available at locations other than those specified above, or requires the return of the material to a location other than specified above, freight adjustment(s) shall be made in the same manner as prescribed in the Changes clause specified in the solicitation/contract. No adjustment of less than $50.00 will be made pursuant to this paragraph.

(b) Property Account Number: The property account number is the contract number. Consolidated records are not authorized. The Contractor shall maintain separate records for each contract.

(c) Contractor's Request for Government Material: It shall be the responsibility of the Contractor to request its requirements of the Government material, pursuant to the provisions of this clause, in sufficient time to comply with the delivery schedule of the contract. In the event that the Contractor requests Government material in excessive quantities, the Contracting Officer may, at his or her discretion and prior to release of any such excessive Government material, require the Contractor to submit such evidence as the Contracting Officer may deem adequate to support the Contractor's request for such material. When submission of such evidence is required, the Contractor shall also provide a copy of the same to the assigned property administrator located at the cognizant Defense Contract Management Agency (DCMA) Office. Failure of the Contractor to furnish such evidence when required shall justify the Contracting Officer in refusing to grant the Contractor's request for such Government material. When the request for excessive Government material is approved, the value of that material shall be withheld from subsequent payments due the Contractor under this or any other contract pending final adjustment at completion of contract performance (see paragraph (e) of this clause).

(d) Availability of Government Material: For each required delivery of material, the Contractor shall submit a properly executed original DLA Troop Support Form 1786, Prime Contractor's request for Government material, to the Commander, DLA Troop Support, 700 Robbins Avenue, Building 6-1-D, Philadelphia, Pennsylvania 19111-5092, Attention: Material Accountability Section, Directorate of Clothing and Textiles, FQCA.

(1) The Contractor shall also provide an informational copy of each request for material to the cognizant DCMA property administrator. The Contractor shall be solely responsible for making transportation arrangements for the pickup and delivery of this material, using its own truck, or a leased or rental carrier. These arrangements shall be specified by the Contractor on the DLA Troop Support Form 1786. The Government material will be available for pickup not later than 21 calendar days after receipt of the original DLA Troop Support Form 1786 by the Government.

(2) The Contractor and the cognizant DCMA property administrator will be furnished copies of DLA Troop Support FL 504, Government-furnished Material Information, which will indicate the availability date of the Government material. On or after this date, such material may be picked up at the location specified above.

(3) Prior to pick-up, the Contractor shall contact the storage location to coordinate the exact date for pickup and provide the name of the motor carrier to be used. If such pickup is not made within 10 calendar days after the availability date specified on DLA Troop Support FL 504, or the actual date the Government material becomes available, whichever date is later, the Government reserves the right to return the Government material to storage, unless a revised date for its pickup has been requested by the Contractor.

(4) If the Contractor later requires this Government material which has been returned to storage, submission of a new DLA Troop Support Form 1786 will be required. The Government will not be liable

for any additional expense, delay, or loss incurred by the Contractor as a result of the aforementioned action being accomplished.

(5) All material picked up at the location specified will be made available at the shipping platform. Loading into the vehicle will be the responsibility of the Contractor or its representative. Delivery of the Government material shall be deemed to be accomplished when the material has been picked up by the Contractor, or its authorized representative.

(e) Payment: Upon delivery of end items, $____ per unit will be deducted from the contract price and applied to cover the value of the Government material. (This is an administratively determined rate to be offset against the value of the Government material furnished the Contractor, and should not be used by the offeror to determine its material requirements on which to base its offer price.) The balance of the contract price, less discounts computed on the basis of the amount remaining payable, shall be paid to the Contractor. The Contractor shall bill at the contract unit price, and shall also reflect deduction for the administratively determined rate per unit. Subsequent to final delivery, the Government shall issue a unilateral modification to the contract for the purpose of adjusting and finalizing the Government material account. Adjustments to the account shall be made as follows:

(1) if the total amount deducted from the contract price to cover the value of the Government material exceeds the value of all such material furnished the Contractor, the Contractor shall receive payment of the excess amount; or,

(2) if the total value of the Government material furnished the Contractor exceeds the amount deducted from the contract price to cover the value of the Government material, the Contractor shall reimburse the Government for the value of such material for which sufficient deductions were not taken. Regardless of the amount of Government material consumed, the unit cost to the Government of each item accepted including Government material shall not exceed the contract unit price for the item. (See notice requirements contained in paragraphs (k)(2) and (k)(3) below.) Should the Contractor take exception to any portion of the data contained in the modification, such exception, with supporting data, must be presented in writing to the Contracting Officer within 30 calendar days of the Contractor's receipt of the modification in order to be considered.

(f) Value of Government Material Furnished Contractor: To determine the total value of Government material furnished the Contractor, the Contractor will be charged for the total value of material furnished at unit prices stated in (a) above less $_____ per rejected end item purchased by the Contractor and will receive credit at the unit price specified in (a) above for Government material unconsumed and returned by him in an undamaged condition to the Government.

(g) Contractor inventory:

(1) Irrepairable rejects: The Contractor agrees to purchase any or all irrepairable rejects when notified in writing by the Contracting Officer, or its duly authorized representative, at $_____ per unit. An irrepairable item shall be defined as an item that is physically unable to be repaired.

(2) Scraps and ends: Disposal of scrap and ends will be the responsibility of the successful offeror. In computing the price offered, the offeror agrees it has taken into consideration the anticipated net proceeds, if any, of the sale of scrap and ends at the estimated market price at time of sale based on a projection of the current market price in the locality at which any contract awarded to it will be

performed. The offeror further agrees that the price quoted by it on the items covered by this solicitation reflects consideration of anticipated receipt, if any, from the sale of scrap and ends.

(3) Return or disposition of other Government material:

(i) All Government material other than irrepairable rejects, scraps and ends, will be returned to the Government at the Contractor's expense, or disposed of by the Contractor as otherwise directed by the Contracting Officer within 30 days after completion of deliveries.

(ii) In the event original pieces furnished by the Government cannot be used, and are being returned, the shipment will consist of original put-ups, with their original piece tickets attached, packed as specified in the applicable fabric specification. If short pieces generated by the Contractor during manufacture of the end item are being returned, these short pieces will be separately packed and identified and tagged with a piece ticket. Where a portion of material in a container is used, and short pieces are generated, this material will be packed separately from full-length pieces, and the container will be clearly marked "short pieces" followed by the length range of the contents. Each length range will be packed and marked separately. The Contractor shall provide to the Quality Assurance Representative (QAR) a listing of the contents of each return shipment including the following information for each roll:

(A) Roll number

(B) Condition code ("A" for full length or "C" for short pieces)

(C) Put-up (original package or Contractor repackaged)

(D) Yards

A copy of the listing will be packed with the return shipment. The shipment will consist of a copy of the above listing, a QAR release statement, original or Contractor put-ups.

(iii) The Contractor may request transfer of Government material from one contract to another provided the Contractor will:

(A) Prepare a written request for transfer. The request must:

1. Specify the PIIN (award number) of each contract involved in the transfer.

2. Clearly identify the material involved. Cite NSN/item description, width, and any other characteristics such as short pieces and full pieces. Cite the quantity of each item of Government material being transferred.

(B) Submit the request for transfer to material accountability section, DLA Troop Support, Attention: FQCA with copies to the Contracting Officer, QAR, and DCMA property administrator.

(C) Maintain proper accountability records by PIIN.

(D) Return all remaining Government material from completed contracts, other than that material being transferred, in accordance with the provisions of paragraphs (g)(3)(i) and (g)(3)(ii) above.

(h) Definitions:

(1) Full length pieces: Single continuous pieces, full width, of the length specified as the minimum in the fabric specification.

(2) Short pieces: Single continuous pieces, full width, less than a full length piece, but not less than 10 yards in the case of frieze (heavy woolen fabric with long, shaggy knap) and pile fabrics, not less than 18 yards in the case of woolens and worsteds, and not less than 20 yards in the case of all other fabrics.

(3) Ends: Single pieces, full width, less than short length pieces, but not less than 1-1/2 yards in the case of woolens, frieze and pile fabrics, and not less than 5 yards in the case of all other fabrics.

(4) Scraps: Includes clippings, remnants, cutting parts and cut parts;

(i) Clippings: Residue from cutting operations not large enough to be re-cut into smaller component parts.

(ii) Remnants: All pieces of cloth up to but not including 1-1/2 yards in the case of woolens, frieze and pile fabrics, and up to but not including 5 yards in length in the case of all other fabrics.

(iii) Cut parts: Cut component parts not assembled or partially assembled.

(iv) Cutting parts: Pieces of cloth of irregular widths, lengths and shapes, less than full width from which a square of cloth of at least nine inches by nine inches can be cut.

(i) Purpose of Government material: The Contractor warrants that any material obtained from the Government is required for use in connection with the supplies or services to be furnished under this contract.

(j) Responsibility for Government material: The Contractor assumes the risk of, and is responsible, for any loss or damage to Government material from the time the material is delivered to the carrier at the originating location to the time it is re-delivered by the Contractor to the Government.

(k) Deficiency or delay in furnishing Government material:

(1) In the event the Government material is not available for delivery to the Contractor (as in (d) above), the Contracting Officer shall, if requested by the Contractor, make a determination of the delay occasioned the Contractor thereby. If the Contractor does not make such request of the Contracting Officer within 7 days after the 21 days allowed for the Government to make the material available (paragraph (d) above) no equitable adjustment will be made to delivery or performance dates, or the contract price.

(2) In the event the Contractor believes that damaged, defective, or incorrect Government material has been furnished, exclusive of the deficiencies allowed by the acceptable quality limits of the applicable fabric specification, or in the event of shortages, either within individual pieces or the entire shipment, narrow widths, or other discrepancies, the Contractor shall immediately examine the material in question, thoroughly document the type, location and extent of the deficiencies being alleged.

(i) For the determination of alleged defective Government material for excessive visual defects, the Contractor's examination of the Government material shall be in strict accordance with the quality assurance provisions for the fabric, including random sampling procedures and, as applicable, federal standard (FED-STD) 4 or military standard (MIL-STD) 655 and the applicable Sears slub (i.e. knot in yarn) and knot gauges. The Contractor shall inspect and use fabric as it is opened and shall set aside higher point count (metric for assessing fabric defects) rolls for return as either "excess" or "defective" goods. Over-point count fabric set aside prior to cutting by the Contractor shall be returned to the shipment in question prior to random sampling. Upon completion of the examination, the Contractor shall immediately provide the quality assurance representative (QAR) and the cognizant Defense Contract Management Agency (DCMA) property administrator with a written notification of the alleged deficiencies, including the findings of its own examination of the material using a cloth perch (machine which allows unrolling/rerolling of fabric to search for defects).

(ii) As a minimum, the Contractor shall provide the following data:

(A) Type of material

(B) Nature of nonconformance (including examination report of alleged defective point count)

(C) Number of rolls or pieces in shipment

(D) Name of manufacturer of material

(E) Contract number(s) of material

(F) Lot identification of material

(G) Total number of yards in shipment

(H) Acceptable quality limits (or acceptable quality level (AQL), if applicable)

(I) Number of rolls or yardage in sample

(J) Acceptance number

(K) Recommended disposition

(iii) The Contractor shall promptly provide the QAR access to a cloth perch, which the QAR will use to examine the material in question. The QAR shall verify the damage, defect, shortage, narrow width, or discrepancy as documented in the Contractor's notification, and will report the findings of the verification to the Contracting Officer and cognizant DCMA property administrator.

(iv) Note: The QAR's examination of allegedly deficient material will be limited to verifying those deficiencies set forth in the notification and examination report provided by the Contractor. In the absence of the Government QAR, the Contractor shall immediately so notify the Contracting Officer of the damage, defect, shortage, narrow width, or discrepancy.

(v) The Contractor shall not cut or use such Government material, or in the event the damage, defect, shortage, narrow width or discrepancy is such that it could not reasonably have been discovered until after cutting or further processing, the Contractor shall not further process such Government material pending instructions from the Contracting Officer.

(vi) If replacement is to be made, the Government shall effect the replacement at its own expense, including transportation costs. When the return of the GFM is authorized, the Contractor will ship it in accordance with paragraph (g)(3)(ii) and include a copy of the Contractor's notification of deficiencies (including examination report) and the QAR's deficiency verification (Defense Logistics Agency (DLA) Form 506, and DLA Form 499 or 504).

(vii) If the Contractor fails to notify either the cognizant Government QAR or the Contracting Officer within 5 days of discovery of any damage, defect, shortage, narrow width or discrepancy in the Government material, no equitable adjustment will be made in the delivery or performance dates or the contract price.

(3) In cases of delay or failure to furnish any of the duly requested Government material or in cases where the Government has furnished damaged, defective, short, narrow width, or other discrepancies in the material, the Contracting Officer, upon written request of the Contractor, shall equitably adjust the delivery or performance date, or the contract price or both and any other contractual provisions effected thereby, in accordance with Federal Acquisition Regulation (FAR) clause 52.243-1, Changes--Fixed-Price. If the Contractor does not request such an adjustment within 30 days from the time the Contractor either knew or should have known of any such delay or failure to furnish duly requested material, or shortage within the piece, narrow width or other discrepancy in the Government material furnished, no adjustment will be made. Under no circumstances shall the Government include as an element of any adjustment under this clause any amount for loss of prospective profits. Further, the foregoing provisions for adjustment are exclusive, and the Government shall not be liable to suit for breach of contract by reason of any delay or failure to furnish Government material to the Contractor.

(4) In no event may the Contractor assert a defense against assessment of additional monies due under (e) above, nor shall the Contractor claim refund of monies deducted under said paragraph on the ground of shortages, narrow width, or other discrepancies in the Government material unless the 5-day and the 30-day notices in paragraphs (k)(2) and (k)(3) above shall first have been given as provided therein.

(5) Cloth containing deficiencies considered acceptable in accordance with applicable specifications shall not be considered defective. Any claim for shortage within the roll shall be adjusted as follows: For shortage on individual pieces only, credit will be taken by the Government for the minus tolerance provided for individual pieces in the "Examination for Length" paragraph of the fabric specification; for the entire shipment, the Government will reduce the total shortage by the total overage on all pieces in the shipment found to be longer than the length specified on the piece ticket. Narrow widths shall be subject to adjustment only where the discrepancy exceeds 1/4 inch. Measurement shall be "overall" or "exclusive of selvage (i.e. non-fraying woven edge)," in accordance with the width provision of the applicable fabric specification.

(l) Protection of Government material, title, access: The Contractor shall establish and maintain a program for the use, maintenance, repair, protection and preservation of Government property in accordance with sound industrial practice and the applicable provisions of Subpart 45.5 of the FAR, with the exceptions noted in paragraphs (b), (c) and (p) and with the exception that Government property shall

be physically segregated from the Contractor's own property. The Contractor shall arrange and maintain its plant(s) to insure clean and sanitary conditions and insure proper identification and segregation of material for each Government contract. Title to the Government material shall remain with the Government and shall not be affected by the incorporation or attachment thereof to any property not owned by the Government. The Government shall at all reasonable times have access to the premises wherein any Government material is located. Additionally, the following requirements shall be adhered to with respect to broad woven and knitted fabrics. Original piece tickets and wrapping shall remain intact until material is spread for cutting. Material shall be stored dry and away from heat and shall not be exposed to weather. Rolls shall not stand on end at any time, nor be cross stacked and under excessive load. If necessary, rolls shall be placed on side-supported pallets with no more than 4 tiers of rolls per pallet.

(m) Retention of essential records: The Contractor shall retain the original Government piece tickets on the pieces until spread for cutting. The Contractor shall also retain in its possession for a period of 12 months subsequent to completion of performance of this contract, all piece tickets removed from Government material. The Contractor shall assemble all piece tickets from a particular lay in one bundle, and all bundles shall be consecutively numbered so as to indicate the order in which the lays were cut. All piece tickets retained by the Contractor shall be returned to the Government upon the Government's request. In addition, the Contractor shall retain cutting records and any fallout records for each lay (section) for the above stated 12-month period. The Contractor shall retain the documentation specified in this paragraph in addition to the basic information required by FAR 45.505-1.

(n) Settlement of length discrepancies: The length marked on the piece tickets of cloth made available as Government material reflects the measurement metered during preparation for delivery of the cloth, using mechanical measuring devices. An inherent disparity exists between these measurements and cutting table measurements, because the latter are subject to many variables that cannot be controlled. Accordingly, claims for shortages based on cutting table measurements will be considered for allowance only when the shortage on an individual piece exceeds 3-1/2% of the length marked on the piece ticket. All other claims for shortages shall be based on measurements using a mechanical measuring device (calibrated in accordance with the current edition of military standard (MIL-STD) 45662, Calibration System requirements) activated positively by direct contact, with the fabric in continuous motion. These measurements can be determined by using such devices as true meter, length counter on cloth perch, or similar devices. Length measurements shall be in units of 1/8 yard and multiples thereof.

(o) Final shipment notice and contractor's representative: Simultaneous with release of the final shipment, the Contractor shall provide information copies of the final shipping document to the cognizant DCMA property administrator and to the Material Accountability Section, DLA Troop Support, attention: FQCA. The representation reads as follows: "It is represented that, with respect to the type(s) of material which the contract provides shall be furnished solely by the Government, all material of said type(s) used in the performance of this contract was furnished by the Government for the performance of this contract; that property furnished by the Government under this contract has been returned to the designated depot(s) or installation(s) and/or disposed of or transferred as authorized by the Contracting Officer, or its authorized representative, in the form of finished articles, or otherwise; and that this representation is made with full knowledge and understanding of the penalty imposed by Section 1001, Title 18, United States Code (U.S.C.), for so representing falsely." The cognizant DCMA property administrator shall monitor the Contractor's adherence to the time frames specified for the disposition of excess Government material (paragraph (g)(3)) and for the execution of the above referenced representation. In the event the Contractor fails to comply with these time frames, the Government reserves the right to initiate the final

adjustment to the Contractor's Government material account based on the data contained in the Government's official property record.

(p) Records of Government property: Notwithstanding (m) above, the DLA Troop Support will maintain the Government's official Government property records for the Government material provided. The requirements of FAR 45.505(c) are hereby made applicable to the Contractor's property records in lieu of the official Government property records. The recording of pricing information shall be maintained as part of the Contractor's property records.

(q) Discounts: Unless otherwise stipulated by the Contractor and agreed to by the Government, prompt payment discounts will be computed on the basis of the balance of the contract price remaining payable after deduction of the administratively determined rate per unit (which is applied to cover the value of the Government material furnished) as specified in paragraph (e), above.

(r) Diversions of shipment: Diversions of shipment shall be made in accordance with the provisions of the Changes clause specified in the solicitation/contract. When Government material is furnished under this clause and the end item destination and storage location for the Government material were originally located in the same geographical area, a freight adjustment shall be made when the diversion precludes the Contractor from picking up the Government material by its own or leased trucks upon delivery of end items. The price adjustment for such shipment shall be based on the difference between the transportation costs of end item shipment to the new destination and one-half the transportation costs of the end item shipment to the old destination.

(End of Clause)

**52.245-9012 Government-Furnished Property Cloth Only.**
As prescribed in 45.106(96), insert the following clause:

GOVERNMENT-FURNISHED PROPERTY CLOTH ONLY (JUL 2008)

(a) Allowances. The Government may vary the allowances set forth and such variations shall be deemed a change. An appropriate adjustment shall be made in accordance with the procedure provided for in the "Changes" clause of this contract. If the Government so elects, the cloth furnished may be charged to the Contractor's account in units of one yard; where a fraction is less than one-half of one yard, it will not be recorded; where it is one-half of one yard or more, it may be recorded and charged as a full yard. Unless otherwise specified, stated unit allowances are gross, with no reduction for imperfections. If material in widths other than those stated herein is furnished, the applicable unit allowances will be furnished at the time delivery of such material is made. The Contractor shall retain all piece tickets supplied with materials furnished under this contract for a period of 90 days after completion of the contract.

(b) Liability for additional property- credit for property returned. Where the Government furnishes more than one type of Government-furnished property, each type furnished will be accounted for between the parties individually and separately. As to each type of property, the Contractor will be charged for all property of that type furnished by the Government in excess of the applicable unit allowances. Savings resulting from the Contractor's use of less than the applicable unit allowance of a particular type of Government-furnished property will revert to the Government, and will not be credited or set off against any excess usages of other types of Government-furnished property by the Contractor. No charge will be made unless the total value of all excess usage exceeds $25.00. In determining whether the Contractor

exceeded the unit allowances for each type of property, credit will be given for all property of that type returned undamaged in the form of full pieces and short pieces. No credit will be given for property returned in the form of ends, scrap, or damaged pieces of irrepairable items.

(c) Proficient usage. The Contractor agrees to cut and use the Government property proficiently in accordance with the best commercial standards and practices employing careful and efficient workers to utilize short pieces, ends, and scrap to the fullest extent possible, consistent with the best and most economical practices; and to produce with a minimum quantity of Government property articles complying in all respects with applicable specifications.

(d) Maintenance and segregation of property and sanitation. Property shall be maintained and used only in those plants approved by the Contracting Officer. The Contractor shall arrange and maintain its plant(s) to insure segregation of property for each Government contract and to insure clean and sanitary conditions therein.

(e) Return of property. All scrap property shall be segregated as to kind, and shall be weighed after each cutting. All wool cloth in lots less than carload or truckload lots being returned in rolls will be suitably wrapped. if the scrap property and surplus property are not clean when returned, the cost of cleaning will be charged to the Contractor. Sewing room floor sweeping will not be returned.

(f) Irrepairable items. Non-specification items which are irrepairable must be shipped to the Government as per instructions of the Contracting Officer. No payment will be made for such items.

(g) Pin tickets. When the Soabar method of shade marking is used, only aluminum or non-corrosive wire staples will be used in the fastening of pin tickets.

(h) Representation. Upon completion of deliveries, the Contractor will render the following representation to the property administrator: "It is represented that, with respect to the type(s) of material which the contract provides shall be furnished solely by the Government, all material of said type(s) used in the performance of this contract was furnished by the Government for the performance of this contract; that property furnished by the Government under this contract has been returned to the designated depot(s) or installation(s) and/or disposed of or transferred as authorized by the Contracting Officer, or its authorized representative, in the form of finished articles, or otherwise; and that this representation is made with full knowledge and understanding of the penalty imposed by Section 1001, Title 18, U.S. Code, for so representing falsely."

(i) Definitions:

(1) Property: includes all material and equipment furnished by the Government.

(2) Full length pieces: Single continuous pieces, full width, 30 yards or over in the case of frieze (heavy woolen fabric with long, shaggy knap) and pile fabrics, and nylon knit; 40 yards or over in the case of woolens and worsteds, cotton sateen, polyester fabrics except coated, and synthetic fiber duck except nylon; 50 yards or over in the case of cottons, rayons, nylons, and nylon blends except nylon knit and nylon and rayon blends; 80 yards or over in the case of cotton and nylon ducks; and 100 yards or over in the case of nylon twill, and nylon and rayon blends.

(3) Short pieces: Single pieces, full width, less than full length piece, but not less than 10 yards in the case of frieze and pile fabrics, not less than 18 yards in the case of woolens and worsteds and not less than 20 yards in the case of all other fabrics.

(4) Ends: Single pieces, full width, less than short length pieces, but not less than 1 1/2 yards in the case of woolens, frieze and pile fabrics and not less than 5 yards in the case of all other fabrics.

(5) Scrap includes clippings, remnants, cutting parts and cut parts:

(i) Clippings: Residue from cutting operations not large enough to be recut into small components parts.

(ii) Remnants: All pieces of cloth up to, but not including, 1 1/2 yards in length in the case of woolens, frieze and pile fabrics, and up to but not including 5 yards in length in the case of all other fabrics.

(iii) Cut parts: Cut component parts not assembled or partially assembled.

(iv) Cutting parts: Pieces of cloth of irregular width, lengths and shapes, less than full width from which a square of cloth of at least nine inches by nine inches can be cut.

(j) Provisions applicable to contracts for dyeing and/or finishing of Government-furnished duck:

(1) Only first quality full length pieces and short pieces, as defined above, will be accepted for payment except that acceptance of short pieces is limited as otherwise set forth in this contract. First quality material is material which does not contain finishing defects in excess of the quantity established by acceptable quality levels for first quality material. The cut or roll ticket of the finished duck will show gross yards. The total finished yardage shall equal the greige goods received by the Contractor, plus any yardage gained as a result of dyeing and finishing. Only materials of the same classification, weight and width shall be packed in the same bale or roll.

(2) Except for scrap, all material will be returned to the Government. Full pieces other than first quality, short pieces other than first quality, and all ends shall each be constituted into separate, clearly identified lots for return to the Government. Scrap will be disposed of by the Contractor as directed by the Contracting Officer. The Contractor shall receive no payment for dyeing and/or finishing material which is not acceptable under (j)(1) above, and shall be liable for any material damaged.

(k) Valuation of government-furnished property. Government-furnished property will be valued in case of Contractor liability for excess usage, loss, or damage at a price based upon the price shown herein for the basic width indicated, or the current market price, whichever is higher. Materials furnished in widths other than the basic width will be valued at prices representing proportionate conversions from the basic width price.

(End of Clause)

**52.245-9013 Provisions Relating to Materials to Be Furnished by the Government (Non-Bailment)-Footwear.**

As prescribed in 45.106(97), insert the following clause:

PROVISIONS RELATING TO MATERIALS TO BE FURNISHED BY THE GOVERNMENT (NON-BAILMENT)- FOOTWEAR (NOV 2011)

(a) The Government will furnish: _____(fill-in)_____

(b) Evaluation of Government-furnished property (GFP) - Government-furnished Property (GFP) will be valued in case of Contractor liability for loss or damage at the price shown herein or the current market price, whichever is higher.

Item Price

Specification MIL-L-_____

(c) Contractor's requirements - The Contractor shall furnish the following information within 10 days of date of award:

(1) Last requirements necessary to complete the quantity of boots and/or shoes awarded to the Contractor under this contract. However, the Government reserves the right to furnish a lesser quantity of lasts than requested if, in the opinion of the Government, the Contractor's estimated last requirements are excessive. Note: A last is the form used in shoemaking to shape a shoe. The last reflects the shape, style, and fit of the shoe.

(2) If patterns are required - Patterns will be furnished only if requested by the Contractor. The lasts and patterns will be delivered by the Government to the Contractor at Government expense. The last bags or other containers in which the lasts are shipped will be stored by the Contractor at no additional cost to the Government. Replacement of damaged bags or containers will be furnished by the Government at no additional cost to the Contractor upon return of the damaged bags to the Government.

(d) GFP lead time - The delivery of GFP shall be made to the Contractor not later than 40 calendar days after receipt of last/pattern requirements.

(e) Delivery dates will not be extended if the delay is caused by failure of the Contractor to comply with paragraph (c) above or to furnish information required by Federal Acquisition Regulation (FAR) clause) 52.247-55, "F.o.b. Point For Delivery Of Government-Furnished Property".

(f) Disposition of lasts:

(1) The Contractor shall, on a monthly basis, inspect for unserviceable and mismated lasts and advise the Material Accountability Section, Defense Supply Center, Philadelphia, Attention: DLA Troop Support, FQCA-1, of quantity by size. Disposition instructions will be furnished for the return of the lasts. Shipments of unserviceable and mismated lasts shall be made in accordance with (f)(2)(iii), (iv) and (v), below.

(2) Upon completion or termination of the contract, the Contractor will, at its expense:

(i) Prepare unexpendable patterns for return to the Government in a manner that will be acceptable to common carriers.

(ii) Prepare the lasts for return to the Government by removing any accumulation of wax, chalk, etc., and packaging and packing them to the level A preservation, level B packing requirements of MIL-L-_____."

(iii) Each burlap bag shall be packaged and marked in accordance with the level A preservation of MIL-L-_____.

(A) Contractors shall insure that each bag contains no more than 12 pairs of lasts, of one size and width only (less than 12 pairs may be bagged if there are not enough of the particular size being returned). At no time shall the Contractor: (1) pack more than 12 pairs of lasts per burlap bag; (2) pack more than one size and width of last per bag; or (3) mix damaged lasts with fully serviceable lasts within the same bag. In addition to the markings required by military standard (MIL-STD) 129 for the unit pack, each bag shall be tagged with the tags furnished by the Government for this purpose, and shall be annotated as: (a) "repairable" or (b) "non-repairable."

(B) All bags shall be packed in the tri-wall containers specified by the specification for the lasts. The total quantity of lasts per tri-wall container, together with the total quantity of bags and lasts per national stock number (NSN) within the container, shall be marked on the outside of the palletized container. In addition to the burlap bags furnished by the Government, any commercially available burlap bag may be used. Such commercial burlap bags must, however, be of the same approximate size, afford the same degree of protection and close as securely as the bags described in the last specification.

(iv) The Government quality assurance representative (QAR) shall perform a packaging examination as specified in MIL-L-_____ prior to approving the return of the Government-furnished Material lasts.

(v) Deliver the lasts to the carrier designated by the Government and ship on Government bills of lading.

(vi) Return damaged and unserviceable containers or bags to the Government along with the return shipment of lasts.

(vii) Property account number - The property account number is the contract number.

(3) The Contractor may request transfer of lasts from one contract to another provided the Contractor will:

(i) Prepare a written request for transfer. The request must specify:

(A) The PIIN (contract number) of each contract involved in the transfer.

(B) The quantities by size of the lasts being transferred listed by contract.

(ii) Direct the request for transfer to the Material Accountability Section, DLA Troop Support, Philadelphia, FQCA-1, with copies to the Property Administrator, Quality Assurance Representative, and Contracting Officer.

(iii) Maintain proper accountability records by procurement instrument identification number (PIIN).

(iv) Return any lasts remaining from completed contracts and not included in the transfer in accordance with the provisions of paragraph (f)(2) above.

(End of Clause)

**52.245-9014 Government-Furnished Property (GFP) Provisions – Dyeing and Finishing Contracts.** As prescribed in 45.106(98), insert the following clause:

GOVERNMENT-FURNISHED PROPERTY (GFP) PROVISIONS – DYEING AND FINISHING CONTRACTS (NOV 2011)

(a) Material to be furnished by the Government:

(b) Property account number - The property account number is the contract number.

(c) GFP lead time - The initial delivery of GFP will be made to the Contractor not later than _____ calendar days after the date of award. In the event that the GFP is not delivered to the Contractor by such date, the Government will extend each delivery period in the delivery schedule by the number of calendar days that such delivery of GFP is delayed.

(d) Delivery dates will not be extended if the delay is caused by failure of the Contractor to furnish information required by 52.247-55, "Fob Point For Delivery Of Government-Furnished Property".

(e) Material availability.

(1) Material will be available in a total amount consistent with the bid and/or award quantity within 45 days after award.

(2) In the event the offeror has inadequate storage facilities to accommodate a single shipment of the full quantity, the rate of acceptable deliveries (such as would enable the offeror to meet the delivery schedule) must be indicated below. Estimated Government freight costs will be computed accordingly as part of the evaluation process to determine the lowest offered price.

_____ within _____days after award
_____ within _____days after award
_____ within _____ days after award

(f) GFP variation in quantity - Any quantities of dyed and/or finished items delivered under this contract in excess of the quantities specified herein, including the variation in quantity clause, if any, are the sole property of the Government and no compensation shall be allowed the Contractor therefor.

(g) GFP for off-shore Contractors - Where a Contractor's plant is located outside the contiguous United States (U.S.), the free on board (f.o.b.) point for Government delivery of GFP shall be restricted to a location in the contiguous United States named by the Contractor. If the Contractor fails to name such point, then the f.o.b. point shall be the nearest port city to the Government source of GFP which has regular commercial water transportation services to the off-shore port nearest the Contractor's plant.

(End of Clause)

**52.245-9015 Dyeing and Finishing Of Textiles.**
As prescribed in 45.106(99), insert the following clauses:

DYEING AND FINISHING OF TEXTILES (JUL 2008)

(a) In the event that an increase in the yardage of material delivered under this contract over the yardage of griege goods (fabric not yet dyed or finished) furnished by the Government is caused by the dyeing or finishing process, such increase will be accepted and paid for at the contract price up to _____% in excess of the yardage of griege goods used. However, if such increase exceeds _____% the entire excess yardage including the _____% will be returned to the Government as directed by the Contracting Officer, and the Contractor will not be compensated for any yardage in excess of the griege goods processed.

[ ](b) In the event that the total yardage delivered by the Contractor is less than the total yardage furnished by the Government, and the decrease in yardage is caused by the dyeing or finishing process and does not exceed ____% of the yardage furnished, the Contractor will be paid for the acceptable yardage delivered and the contract will be considered complete. However, if the shortage exceeds _____%, the Contractor will be required to purchase the necessary additional yardage from the Government and process the yardage specified in the contract. The Contractor is not authorized to dye or finish any griege goods received in excess of the contract quantity of dyed or finished goods without prior approval by the Contracting Officer. If such excess quantity of griege goods is received, the Contractor shall immediately notify the Contracting Officer and request instructions. The Government may at its option ship up to _____% of the contract quantity in one shipment.

OR

[ ](b) In the event that the total yardage delivered by the Contractor is less than the total yardage furnished by the Government and the decrease in yardage is due to negligence or fault of the Contractor, the Contractor will be required to pay for the necessary additional yardage from the Government and process the yardage necessary to complete the contract.

[ ](c) In the event that the Government-furnished griege material supplied the Contractor is in width(s) not specified in this contract or in quantity (gross yards) different from that indicated on the covering shipping document(s), the Contractor will notify the Contracting Officer immediately.

(End of Clause)

**52.245-9016 Availability of Clothing Patterns.**
As prescribed in 45.106(100), insert the following clause:

AVAILABILITY OF CLOTHING PATTERNS (JUL 2008)

Government-furnished clothing patterns will be delivered to the Contractor within 14 days after the date of award. In the event patterns are not delivered within 14 days after award or are delivered incomplete, it is the Contractor's responsibility to notify the Government, in writing, by certified mail. Such notification must be mailed to the Contracting Officer within 30 days from date of award. Timely

notification of late delivery upon Contracting Officer's verification will result in a day for day extension of the delivery schedule for each day or delay beyond the initial 14-day period. Failure to provide the above notice will preclude any adjustment of delivery schedule as a result of late receipt of Government-furnished patterns.

(End of Clause)

**52.245-9017 Ownership of Overruns Containing Government Furnished Property (GFP).**
As prescribed in 45.106(101), insert the following clause:

OWNERSHIP OF OVERRUNS CONTAINING GOVERNMENT FURNISHED PROPERTY (GFP) (JUL 2008)

Any quantities of items manufactured and delivered under this contract in excess of the quantities specified herein, after taking into account overages permitted under the variation in quantity clause, are the sole property of the Government. The Government is not obligated to pay or provide material credit for the excess. If more than one destination is provided for in this contract, this clause shall not apply to variations by destination but only to variations in excess of those permitted for the entire contract quantity, including the variation permitted for each size regardless of destination.

(End of Clause)

**52.245-9018 Government-Furnished Material - National Industries For The Blind (NIB) and National Industries For The Severely Handicapped (NISH).**
As prescribed in 45.106(102), insert the following clause:

GOVERNMENT-FURNISHED MATERIAL – NATIONAL INDUSTRIES FOR THE BLIND (NIB) AND NATIONAL INDUSTRIES FOR THE SEVERELY HANDICAPPED (NISH) (NOV 2011)

(a) The Government shall furnish the materials listed herein (hereinafter referred to as Government Material), in accordance with the allowance set forth below. The Government shall be the sole source of supply of materials listed below and only such materials obtained from the Government under this contract may be used. Price for cloth is based on gross yardage with no allowance for imperfections.

Type Of Material Price Allowance Per Unit Value Of Allowance Per Unit

(b) The award prices shall not include the value of the Government-furnished material.

(c) The Government reserves the right to furnish not more than 10% of the material in short pieces. Further, the Government may furnish material in widths other than specified herein. The quantity shall be converted to the mathematical equivalent in linear yards of the width specified and the value of the material furnished and returned will be determined accordingly. This method of adjustment shall be exclusive and no other adjustment will be made because of the failure to furnish the width specified above.

(d) CONTRACTOR'S REQUEST FOR GOVERNMENT MATERIAL. Upon award, the Contractor shall request the Government material in sufficient time to comply with the delivery schedule of the contract. The Government material shall be delivered 21 days after receipt by the Government of a properly executed "Prime Contractor's Request for Government Material," DPSC Form 1786 (original

only), to the Commander, DLA Troop Support, 700 Robbins Avenue, Philadelphia, Pennsylvania 19111-5092, Attention: Government-furnished Material Section, FQCA-1. Copies of this form may be obtained from the aforementioned addressee. Such material shall be shipped at Government expense to the F.O.B. point for Government-furnished Material as defined below.

(e) Free on board (f.o.b.) point for Government-furnished material. F.o.b. Point for Government-furnished Material is defined to mean that the Contractor is responsible for unloading, receiving, and receipting for the material from the carrier's vehicle, wharf, or freight station specified by the Government, provided that the Contractor will not be required to bear any costs which exceed the costs of acceptance of the material from the railroad cars in the same or nearest city having rail service. The Contractor shall nevertheless perform the specified unloading, and any additional cost will be adjusted pursuant to the "Changes" provisions. When the Contractor's plant is within the same city or county in which the Government material is located, the Contractor will accept the Government material at the Government depot.

(f) Liability for excess usage. The Contractor shall be charged for all material consumed by the Contractor in excess of the applicable allowances. The following procedure shall be utilized to determine whether the Contractor consumed material in excess of allowances:

(1) The total allowance for the contract shall be determined by multiplying the number of end items accepted for payment by the value of allowance per unit stated in paragraph (a) above.

(2) The total value of material consumed shall be determined by charging the Contractor for the total value of materials furnished at the price stated in paragraph (a) above and crediting Contractor at said price for all material returned to the Government in an undamaged condition in the form of full and short pieces.

(3) No charge shall be made unless the total value of all excess usage exceeds $50.00.

(g) Contractor inventory

(1) Scrap and Ends: Disposal of scrap and ends will be the responsibility of the Contractor.

(2) Other Government Material: All Government material other than scrap and ends shall be returned to the Government on Government Bills of Lading, or disposed of by the Contractor as directed by the Contracting Officer.

(h) Definitions.

(1) Full length pieces: Single continuous pieces, full width, of the length specified as the minimum in the fabric specification.

(2) Short pieces: Single continuous pieces, full width, less than a full length piece, but not less than 10 yards in the case of frieze (heavy woolen fabric with long, shaggy knap) and pile fabrics, not less than 18 yards in the case woolens and worsteds and not less than 20 yards in the case of all other fabrics.

(3) Ends: Single pieces, full width, less than short length pieces, but not less than 1 1/2 yards in the case of woolens, frieze and pile fabrics and not less than 5 yards in the case of all other fabrics.

(4) Scrap: Includes clippings, remnants, cut parts, and cutting parts.

(i) Clippings: Residue from cutting operations not large enough to be recut into small component parts.

(ii) Remnants: All pieces of cloth up to but not including 1 1/2 yards in the case of woolens, frieze, and pile fabrics and up to but not including 5 yards in length in the case of all other fabrics.

(iii) Cut parts: Cut component parts not assembled or partially assembled.

(iv) Cutting parts: Pieces of cloth of irregular widths, lengths and shapes, less than full width from which a square of cloth at least nine inches by nine inches can be cut.

(i) Irrepairables. All irrepairable items shall be returned to the Government at the Contractor's expense to destinations specified by the Contracting Officer, and no payment or credit will be given.

(j) Retention of piece tickets. The Contractor shall retain all piece tickets removed from Government material for a period of twelve (12) months subsequent to completion of performance of this contract. The Contractor shall assemble all piece tickets from a particular lay (section) in one bundle, and all bundles shall be consecutively numbered so as to indicate the order in which the lays were cut. All piece tickets retained by the Contractor in accordance with this clause shall be returned to the Government upon the Government's request.

(k) Notification of substitute or unsuitable Government-furnished material. Upon receipt of Government-furnished material which the Contractor considers to be a substitution for the material specified in the Schedule, the Contractor shall notify the Contracting Officer in writing. In the event that notification of substitution is given pursuant to this provision or notification of unsuitability is given pursuant to paragraph (d) of Federal Acquisition Regulation (FAR) clause 52.245-1, the Contractor shall furnish a copy of such notification, and upon request, the suppliers' piece tickets, to the Government Quality Control Representative.

(l) Representation. Upon completion of deliveries, the Contractor shall render the following representation to the property administrator: "It is represented that material furnished by the Government under this contract has been returned to the designated depot(s) or installation(s) and/or disposed of or transferred as authorized by the Contracting Officer or authorized representative in the form of finished articles, or otherwise; and that this representation is made with full knowledge and understanding of the penalty imposed by Section 1001, Title 18, United States Code (U.S.C.), for so representing falsely."

(m) Records of Government property. Notwithstanding FAR 52.245-1 "Government Property" appearing elsewhere in this contract, the DLA Troop Support shall maintain the official control records for Government property provided.

(End of Clause)

**52.245-9019 Government-Owned Property (Bulk Storage Contract).**
As prescribed in 45.106(103), insert the following clause:

GOVERNMENT-OWNED PROPERTY (BULK STORAGE CONTRACT) (JUL 2008)

(a) Government-Owned Property. Once the Contractor produces the item listed as Line Item 0001 in the schedule and the Food and Drug Administration has inspected and accepted the initial lot(s) of these supplies, title shall pass to the Government. The Contractor shall be responsible and accountable for all Government-owned property while in Contractor storage and shall, at its own expense, replace stock rendered unusable regardless of cause. The Government shall retain title to the contract quantity throughout the entire contract period.

(b) Property Administration. The Contractor shall establish and maintain a program for the use, maintenance, protection, and preservation of Government-owned property in accordance with sound industrial practice. The Contractor shall establish and maintain inventory records, either manual or automated, in such form as to adequately reflect the contract quantity. Such records shall be made available for inspection by the Government at reasonable times. These Contractor-maintained records shall be the official contract records. If any Government-owned property is in the possession of a subcontractor, the Contractor shall bear the responsibility of insuring that adequate records are maintained by the subcontractor.

(c) Use of Government-Owned Property. The Government property shall be used only for performing this contract, unless otherwise provided in this contract or approved by the Contracting Officer.

(d) Risk of Loss. The Government shall, at all times, have title to the Government-owned property in the Contractor's possession in quantities equal to those initially inspected and accepted, less quantities of the item used to manufacture finished material which is subsequently delivered to the Government. The Contractor assumes the risk of, and shall be responsible for, any loss, destruction of, or damage to, the Government-owned property in its possession.

(e) Access. The Government and all its designees shall have access at all reasonable times to the premises in which any Government-owned property is located for the purpose of inspecting the Government-owned property.

(f) Final Accounting and Disposition of Government-Owned Property. Upon completing this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government-owned property not delivered to the Government. The Contractor shall prepare for shipment, delivery F.O.B. origin, or dispose of the Government-owned property as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or shall be paid to the Government as the Contracting Officer directs.

(g) Communications. All communications under this clause shall be in writing.

(End of Clause)

**52.245-9020 Cartoons and Guide Samples for Embroidered Insignia.**
As prescribed in 45.106(104), insert the following clause:

CARTOONS AND GUIDE SAMPLES FOR EMBROIDERED INSIGNIA (JUL 2008)

Offeror will indicate below whether a Government cartoon (i.e. detailed drawing for producing art) and/or guide sample will be required. If required, the same will be forwarded within ten days after date of award.

Government Cartoon ( ) Yes ( ) No
Guide Sample ( ) Yes ( ) No

(End of Clause)

**52.245-9021 Government Samples.**
As prescribed in 45.106(105), insert the following clause:

GOVERNMENT SAMPLES (JUL 2008)

There are no samples available for loan. However, a guide sample of the end item is available for inspection at this center. Where applicable, standard sample swatches for shade, finish, and colorfastness are available and will be furnished upon request.

(End of Clause)

**52.245-9022 Sized Items.**
As prescribed in 45.106(106), insert the following clause:

SIZED ITEMS (JUL 2008)

(a) Contracts for quantities less than the quantity solicited for each destination shall be in the same ratio to the total quantity solicited for each size by destination in the solicitation, except that when the total quantity herein specified for any size is determined by the Contracting Officer to be impractical for pro-rating between Contractors, the Government reserves the right to award such total quantity to any one Contractor. Unless otherwise specifically permitted in the solicitation, offers limited to selected sizes only or quantities of sizes not in the same ratio as the stated tariff of sizes by destination will not be considered for award.

(b) The Contractor shall make all shipments in even case lots limited to one size. In the event that monthly delivery requirements result in less than case lot quantities remaining for shipment at the end of any one month, the Contractor shall hold said quantity until even case lot quantity is obtained. Where shipment in an even case lot quantity for each size is impracticable because it is the final shipment, the Contractor may ship less than an even case lot quantity for each size and may mix different sizes within the same carton.

(c) Changes:

Sizes and/or quantities of each size awarded are subject to change by the Contracting Officer. The Government and the Contractor agree that the monetary adjustment shall be limited to the value of the saving or excess in material usage. (No adjustment shall be made for labor, overhead, freight, package and packaging.) The savings or excess usage shall be determined as follows:

(1) Clothing (except for items in Para (2) below):

The material usage shall be computed by multiplying the number of square inches for each size being increased, decreased by the number of items being changed in that size. The difference between the total increase and the total decrease in square inches represents the savings or excess in material usage for the change in sizes. This excess or savings in usage shall be first converted to linear yards using the appropriate fabric width, and then converted into dollars using the cost per yard of the material(s). (NOTE: On Government-furnished Material (GFM) contracts, the material width(s) specified in clause 52.245-9011 of the contract shall be used; on Contractor-furnished Material (CFM) contracts, the width as verified by the Contractor's invoices or the Government's physical inspection of the material(s) shall be used.) The resultant amount shall be the sole equitable adjustment in contract price for the size change. In the event the total square inches for each size change are not included in the contract, the Government will compute the square inches involved and determine the adjustment in accordance with the above procedures.

(i) On contracts where GFM is utilized and the change in sizes affects the usage requirement, payments shall be made by a modification crediting the Contractor's material usage account where the usage requirement increases, and charging the Contractor's material usage account where usage requirement decreases.

(ii) On CFM contracts where the change in sizes affects the usage requirements of the CFM, payment shall be effected by a modification either increasing or decreasing the contract price whichever is appropriate in CFM contracts.

(2) Knitwear, rubber footwear, equipage (i.e. accessory) items, protective clothing, and protective gloves: Any such change shall be deemed to be a change within the purview of the "Changes" provision.

(3) Leather footwear: The material usage for any given size which has been changed, compute as follows: (see chart below)

(i) Multiply the point value of the size being changed by the quantity being changed;

(ii) Multiply the point value of the new size by the quantity being changed;

(iii) Determine the difference between (i) and (ii) above to arrive at the net points gained or lost;

(iv) The excess or savings shall be converted to dollars by multiplying the net points gained or lost by the unit cost. This figure will then be multiplied by 2%. The resultant total shall be the sole equitable adjustment.

Note: When utilizing the point value table, the following will apply:

Extra narrow will be computed using Narrow.

Extra Wide will be computed using Wide.

Half Sizes will be computed using the next higher size.

Point value

Table leather footwear

| Size | point value | size | point value |
|---|---|---|---|
| 3N | 1/2 | 10N | 7 |
| 4N | 1 | 10R | 7-1/2 |
| 4R | 1-1/2 | 10W | 8 |
| 4W | 2 | 11N | 8 |
| 5N | 2 | 11R | 8-1/2 |
| 5R | 2-1/2 | 11W | 9 |
| 5W | 3 | 12N | 9 |
| 6N | 3 | 12R | 9-1/2 |
| 6R | 3-1/2 | 12W | 10 |
| 6W | 4 | 13N | 10 |
| 7N | 4 | 13R | 10-1/2 |
| 7R | 4-1/2 | 13W | 11 |
| 7W | 5 | 14N | 11 |
| 8N | 5 | 14R | 11-1/2 |
| 8R | 5-1/2 | 14W | 12 |
| 8W | 6 | 15N | 12 |
| 9N | 6 | 15R | 12-1/2 |
| 9R | 6-1/2 | 15W | 13 |
| 9W | 7 | | |

(v) An additional adjustment will be made where size changes require expenditures for leather component materials beyond the quantity and/or unit price originally committed and contracted. At the time of a change in sizes, the Contractor shall provide documentation regarding the market price of hides and leather footage costs both at time of offer and at the time the size change was directed. (The Contractor's supportive invoices for the additional quantity, together with the invoice for the original material will be considered satisfactory documentation.)

(d) However, where, as a result of the change in sizes, work in process, residual inventory (i.e., components, raw materials, etc.), and/or means of production (i.e., markers, dies, etc.) cannot be utilized, an adjustment will be made to compensate the Contractor for the direct costs expended. (If Government-furnished property is involved, material credit will be given for work in process.) In the event an adjustment is made, the Contracting Officer shall have the right to prescribe the manner of disposition of the property for which the Contractor has been compensated.

(e) The method of adjusting for size changes indicated above will also be applied to pattern changes.

(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)

**52.245-9025 Contractor Control of Government-Furnished Property (GFP).**
As prescribed in 45.106(109), insert the following clause:

CONTRACTOR CONTROL OF GOVERNMENT-FURNISHED PROPERTY (GFP) (NOV 2011)

(a) Federal Acquisition Regulation (FAR) clause 52.245-1, Government Property, requires the Contractor to comply with basic requirements to be observed by the Contractor in establishing and maintaining control over Government property provided pursuant to the terms of the contract.

The Contractor shall establish a system, either manual or mechanized, which will assure adequate control for all Government property provided under this contract, including property provided under the contract as may be in the possession or control of a subcontractor. The system shall assure that records created and maintained provide the true physical and financial accounting of Government property, contract items shipped into the Contractor's plant by other Contractors, property in possession of subcontractors, assembly Contractor acquired material converted to Government property under the terms of this contract, and property furnished by the Government to use by the Contractor under the terms of this contract.

The property control system for Government property shall comply with the requirements of FAR and shall be approved, in writing by the Government contract property administrator. In addition to that information described in FAR 52.245-1, inventories for Government property shall include lot numbers for all food items.

(b) Unusable subsistence means:

(1) A food item which is fit for human consumption but its condition is such that it must be issued with a limited time frame and due to its condition cannot be used as a component within the meal assembly, or

(2) A food item which is in such condition as to be unfit for human consumption and which must be destroyed by burning, burial or other means. Disposition of such supplies will be directed by the Contracting Officer and will be at the expense of the Contractor. The Contractor is responsible for all handling, storage, preparation for shipment and authorized destruction for all Government-furnished material (GFM) at no cost to the Government.

(c) Definitions:

(1) Manufacturer's damage is defined as that damage to Government-furnished property--

(i) Discovered at the time of ration assembler's inspection of incoming shipments as verified by the Government representative (except damage directly attributable to transportation), or

(ii) Found to be unusable during production operations due to defects obviously originating at the manufacturer level.

(2) Assembler's damage is defined as that damage to GFP ration components which is not attributable to manufacturers damage, concealed damage, inspection incurred damage, or transportation damage.

(3) Concealed damage is defined as that damage where the cause or responsibility cannot be determined by the Government representative upon receipt inspection, is discovered subsequent to receiving inspection and not identifiable; as manufacturer or assembler incurred, i.e., which are discovered after the components have been accepted by assembler but prior to, or during assembly. Concealed damage shall be verified by the army veterinary inspector (AVI) and shall be certified by the AVI as not being assembler damage.

(4) Inspection incurred damage is defined as those components-

(i) Damaged or destroyed in verification examination,

(ii) Components submitted to the laboratory for destructive or special testing, and

(iii) Components destroyed by the Contractor in required Contractor examination and testing.

(d) The Contractor shall maintain a salvage department to daily identify and classify, under the Government representative's guidance and direction, all damage to GFM (i.e., manufacturer's, assembler's, or concealed damage). All damaged GFM, after screening by the Contractor and verification by the Government representative, shall be reported to the Contracting Officer for disposition.

The report(s) shall be submitted on a monthly basis and numbered sequentially; i.e., the first month's report will be number 1, the second month will be number 2, etc. DLA Troop Support Form 2651-1, 2651-2, 2651-3 and 2651-4 supplied by the assigned Government representative will be used. Troop issue quantities should include the approximate number of truckloads required to ship said product. Number of truckloads should be separately designed for crackers alone and for all other components.

Failure to submit applicable DLA Troop Support Forms 2651's on a monthly basis will result in findings by the PCO that the assembler will be the cause of any delays in the assembly operations by reason of insufficient GFM, and is therefore liable for all the resultant cost. The submitted DLA Troop Support Form 2651's must be executed by the Government representative or the document will not be considered valid and therefore will not relieve the Contractor of this requirement or of its liability for any assembly shutdown. In addition, nonconformances detected in GFM must be reported to the PCO on a daily basis.

(End of Clause)

**52.245-9026 Special Instructions for Compressed Gas Requirements (includes FSCs 6830 and 8120).**
As prescribed in 45.106(110), insert the following clause:

SPECIAL INSTRUCTIONS FOR COMPRESSED GAS REQUIREMENTS
(INCLUDES FSCS 6830 AND 8120) (NOV 2011)

(a) Acknowledgment of Receipt: Within ten days after receipt of cylinders, the Contractor will submit copies of Department of Defense (DD) 1348-1, annotated as to date, quantity received, and quantity rejected, to the Administrative Contracting Office (ACO), indicated in the "Administered By" block on page 1 of the contract, and to the DLA Aviation, Attention: Government Furnished Property (GFP) Monitor, Richmond, Virginia 23297. A copy of Department of Defense (DD) form 1348-1 must accompany cylinders when returned to the depot by the Contractor.

(b) If the quantity of cylinders to be refurbished/filled is less than that prescribed by the contract/order (considering any allowable variation in quantity) due to failure of the Government to provide the proper number of cylinders to the Contractor, or due to rejection of cylinders by the Contractor, the ACO will modify the contract/order and reduce the quantity of cylinders to be filled accordingly. Rejected cylinders will not be replaced.

(c) Repair/Reconditioning - Government-furnished Cylinders:

(1) Except as noted below, cylinders shall be repaired and/or reconditioned under the terms of this contract or at the request of the Quality Assurance Representative (QAR) except that:

(i) The authorized dollar limitation stated herein shall not be exceeded without prior approval of the ACO, and

(ii) The Contractor shall, when the authorized dollar limitation has been expended, contact the ACO for availability of additional funds and/or disposition instructions, prior to further repair/reconditioning or return of cylinders.

(2) Services such as valve repair or replacement, which are performed on individual cylinders (but not all cylinders), shall be verified by listing cylinder serial number and the services performed on each cylinder and presenting the list to the Government QAR.

(3) Cylinders received from Defense Logistics Agency (DLA) Supply Depots shall not be commingled with cylinders from any other activity.

(4) In accordance with military standard (MIL-STD) 1411, repair and/or reconditioning of cylinders as set forth above shall be itemized on DD Form 250, Material Inspection and Receiving Report. A copy of the DD Form 250 shall be furnished to the DLA Aviation, Attention: Government Furnished Property Monitor, Richmond, Virginia 23297-5862.

Cylinders rejected as unsuitable for repair will also be itemized citing the reason/rationale for rejection.

(5) Parts, material and labor for "as required" repair and/or reconditioning of Government-furnished cylinders will be first approved by the QAR from the DCMR Office. Based on QAR approval, funds necessary for "as required" repairs will be allocated by the Contracting Officer. Do not commence any "as required" repairs prior to approval of repairs by the QAR and notification

(d) Filling and Testing (when applicable): Cylinders received that vary in characteristics from that indicated in the item description shall be reported immediately to the ACO. Upon identification of such cylinders to a proper NSN they will be filled to their rated capacity and reidentified to the designated

National Stock Number as advised by the procuring activity. Special filling limits 10% above the marked service pressure are not authorized for DLA activities unless the test date is followed with a "+" sign. Rejected cylinders shall not be replaced. The contract will be considered complete for the quantity of cylinders filled.

Delivery orders: In the event of a conflict between these special instructions and the basic contract, the latter will govern.

Contractor pick-up (If applicable): Government-furnished cylinders will be available upon telephone notification from the storage depot. Specific location and mode of shipment (or date, hour) for Contractor pick-up of cylinders will be arranged at that time. If the Contractor is not notified within 30 days of receipt of contract/order, contact the GFP Monitor at DSCR-FAGD, (telephone (804)279-4642 or 6296). The Contractor is required to submit DD Form 1348-1 acknowledging receipt of cylinders.

(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)

**52.245-9028 Allowable Losses for Meal, Ready-To-Eat (MRE) And Tray Pack Government-Furnished Property (GFP).**
As prescribed in 45.106(112), insert the following clause:

ALLOWABLE LOSSES FOR MEAL, READY-TO-EAT (MRE) AND TRAY PACK GOVERNMENT-FURNISHED PROPERTY (GFP) (NOV 2011)

(a) All component items received will be palletized.

(b) The Government will deliver the following components listed in paragraph (c) below. If by truck, delivery will be made free on board (f.o.b.) from the Contractor’s plant; if by rail, delivery will be made f.o.b. rail cars from the Contractor’s plant.

(c) The quantities of each component listed below are based on assembly of _____ cases and Contractors will be furnished proportionate quantities based upon their final award share. The following percentages represent the allowable loss due to assembly Contractor damage:

| Component | Quantity | Unit | Loss Allowable Percentage |
|---|---|---|---|

| | |
|---|---|
| Notes: | (1) Being procured in equal quantities of orange, lemon-lime, grape and cherry flavors.<br>(2) Being procured in equal quantities for incorporation into appropriate menus at random.<br>(3) Being procured to allow for at least three different varieties with no more than two of any one kind, in an assembled MRE case. |

(d) An amount of money not to exceed ___% of the total contract amount, or _____ whichever is smaller, will be withheld pending determination of the Contractor’s liability for GFP.

(e) The liability of the assembly Contractor for loss and damages to GFP (components) shall be calculated as follows:

(1) A final physical inventory will be performed by the assembly Contractor and the results furnished the Defense Contract Management Agency (DCMA) office within 14 days after completion of the contract with a copy to the principal Contracting Officer (PCO).

Additionally, the Contractor shall prepare a final inventory reconciliation as described below and provide this report to the DCMA and the Contracting Officer within 30 days from contract completion. Failure to comply with these timely submissions will be deemed a breach of contract and may result in the Contractor being liable for the value of the Government furnished material (GFM) residuals determined not suitable for transfer due to such delay.

Additionally, the Government shall not be liable for any resultant start-up delays due to lack of GFM. The Contractor will be required to store, prepare for shipment and handle all residual components for a period of ninety days after agreement to the final inventory has been reached between the Contractor and the Government.

The date of agreement shall be the day the Government executes the contract modification concerning the inventory reconciliation.

The final inventory will be performed on an item-by-item basis and at a minimum give the quantities, dates of pack and status for all components. The Contractor will provide any and all resources necessary for DCMD/AVI verification of the final inventory. The Contractor will be responsible to reimburse the Government for any and all losses to the components based on the following inventory reconciliation list. (Calculate the amount owed - total residual below) by deducting items ii-v below from item i):

(i) Quantity received per component

(ii) Quantity consumed in completed cases Total

(iii) Quantity transferred out on DD 250's (or if transferred in) total

(iv) Manufacturer damages, concealed damages*, and inspection damages** total

(v) Actual assembler damage = total residual

* Concealed damage is damage that cannot be determined by the Government representative upon receipt inspection, is discovered subsequent to receiving inspection, and not identifiable as manufacturer or assembler incurred.
** Inspection incurred damage occurs when components are damaged in verification examination, submitted to a laboratory for destructive or special testing, or destroyed by the Contractor in required Contractor examination and testing.

(2) The residual figure as calculated above will be compared to the physical inventory. If the actual physical inventory is less than the residual figure, the Contractor will be liable to the Government for the difference in the monetary value of that item. The dollar value will be calculated by multiplying the unit price or the weighted average price of the item by the number of components unaccounted for. Offsets may be made in the area of homogenous items, described in paragraph (g). Offsets for homogenous items

will be made based on the values of the items, e.g., a calculated shortage of $2,000 for peanut butter may be offset by a calculated overage of $2,000 for cheese spread.

(3) If the Contractor's assembler damage exceeds the allowable loss percentage, for an item as delineated in H-5C of the assembly solicitation, the Contractor will reimburse the Government. The Contractor's liability will be calculated by multiplying the Government's unit price of the component by the number of units in excess of the allowable cost. The monetary loss of any one component due to excessive damage cannot be reduced by the savings from another component. Therefore, if the total dollar value of the contract damages (computed as the sum of the total dollar value of the damages allowed for each individual GFM item) is less than the total dollar value of the damages allowed under the contract, but various individual component items were damaged over the allowable tolerances, the Contractor is still liable for the cost of these individual component damages.

However, in the area of homogeneous items, as listed in paragraph (g), offsets may be taken. Offsets will be calculated on a value basis as described in paragraph (e). For example, if the actual losses for cheese spread have exceeded the allowable losses but the actual losses for peanut butter, a homogeneous item, are less than the allowable loss quantity, the dollar difference between the actual and allowable losses for peanut butter can be applied to the value of the excess losses of cheese spread to reduce the Contractor liability for the cheese spread. This procedure is allowed only for homogeneous items.

(4) A ___% surcharge will be added to the total liability for loss and damages to account for administrative handling and transportation charges.

(5) In no event shall the Contractor be reimbursed if the value of actual physical inventory exceeds the value of calculated residual. Homogeneous items are defined as follows:

(f) The Government reserves the right to substitute any of the above or alternate components, and the Contractor shall not be entitled to any additional compensation so long as the substituted items are of substantially the same size as the components for which they are substituted. The Contracting Officer shall be notified no less than ten (10) working days in advance of any component shortage. If the Contractor fails to provide this notice, and assembly is delayed, resulting assembly delay damages shall not be assessable against the Government. Wire notices of GFM components shortages will include the total receipt and on hand quantity for subject items.

(g) GFP listed herein is scheduled for delivery to the assembler's plant in quantities as outlined below, however, not in any particular component order or any regular daily rate of delivery. Regardless of this schedule, deliveries of components will be accelerated to the extent necessary to ship minimum carload and/or truckload quantities.

| | Percentage of Components Needed to Support Assembly (See H-5.c.) | Components Delivery Period |
|---|---|---|
| Thermostabilized Items: | | |
| Sugar: | | |
| Crackers: | | |
| Other Components: | | |

Components required to support the quantity of the line items awarded will be delivered as shown above. However, the Government will not be liable for assembly delays caused by delinquent components if the components are delivered before the first day of the corresponding final assembly delivery period or if the components necessary to maintain assembly are delivered prior to an assembly shutdown caused by lack of components. The assembly Contractor shall immediately notify the Contracting Officer of the failure of any components to be delivered in accordance with the above schedule. The PCO may be contacted by telephone at area code (215) 737-____.

(h) The component delivery schedule shown above may be adjusted at no additional cost to the Government. The Contractor warrants and agrees that he will be ready and able to receive and to store by time of award until assembly or disposition pursuant to this contract, and at no cost to the Government, 70% of the total quantity on a unit basis of all components to be delivered. (The 70% will be determined on a unit basis, e.g., cheese spread - 15,912,000 x 70% = 11,138,400 bags). This percentage does not apply to individual components but rather to the total of all components. Therefore, deliveries in excess of 70% of one component may be offset by deliveries of less than 70% of another component. (E.g., if 100% of one item, e.g., 15,912,000 bags of cheese spread are received, they may be offset by receipt of only 30% of another item, e.g., 5,853,600 pouches of peanut butter). The Contractor may be required to receive and store in excess of the quantity required herein in accordance with the changes clause of this contract. Assistance in determining required storage facilities is available by contacting DLA Troop Support FTR at phone (215) 737-____.

(i) The Contractor will promptly unload all GFP delivered free on board (f.o.b.) his plant, at his own expense, irrespective of the schedule provided herein for the delivery of the GFP. The Government will not be liable in any manner or form for any demurrage charge accruing as a result of the Contractor's failure or inability to unload cars promptly. It is the assembly Contractor's responsibility to have adequate warehousing and offloading capabilities for the quantities of components schedules below. Failure to have adequate offloading capabilities may result in Government storage of product, either at a Government or commercial facility, which will be charged to the assembly Contractor. Any and all changes resulting from the Contractor's failure to unload cars shall be the liability of the Contractor.

(j) If required, the Contractor will, at no cost to the Government, continue to store, handle and prepare for shipment or dispose of residual GFP for a period of ninety calendar days beginning immediately after whichever of the following occurs later: either 1) agreement to the final inventory has been reached between the Contractor and the Government, or 2) final shipment of assembled meals. Disposition will be in accordance with instructions from the Contracting Officer. In the event that Contractor storage exceeds this period, the Government will only be liable for those additional and direct costs incurred by the Contractor as a result of this extended storage. Preparation for shipment of GFM shall include adequate packing, unitization and blocking and bracing. Any damage to GFM during transportation as a result of inadequate preparation for shipment shall be the liability of the Contractor.

(k) Payment hereunder will be based upon the number of completed boxes assembled and delivered. No compensation will be allowed for subassemblies which are not incorporated into completed boxes. All such subassemblies shall be and remain sole property of the Government and shall be accounted for as residual inventory. All Contractor-furnished material (CFM) will be inventoried at the completion of this contract following the procedures stipulated in this solicitation, and forwarded to the troop issue destination as directed by DLA Troop Support-FTR (See paragraph H-5(e)), unless the Contractor requests otherwise in writing. If a request is received from a Contractor for use of residual CFM under this contract for any subsequent contracts, or from any previous contracts for use in the assembly of this contract, a complete inventory of the item(s) involved, the applicable lot numbers and dates of processing

shall be provided. DLA Troop Support-FTR shall forward direction regarding approval of the proposed transfer. If the transfer is approved, modification of the prime contract shall be effected in the following manner:

(1) In regard to residual CFM to be considered for use under the current contract, the following shall apply:

(i) For residual quantities up to and including the total quantity negotiated as a tolerance under the prior contract (computed by adding the quantity damaged plus residual material enough to reach the quantity tolerance), all residual material will be transferred at no cost. The current contract quantity requirement for the residual item(s) shall be reduced accordingly.

(ii) For residual quantities over the quantity negotiated as a tolerance under a prior contract (see paragraph (k) above), the quantity of residual material up to that tolerance quantity negotiated (computed by the quantity tolerance) shall be transferred in accordance with paragraph (k)(1)(I) above. Any quantity over and above the tolerance negotiated may be offered to the Government. If the request is accepted, the Contractor shall be reimbursed for that product at the unit price negotiated under the prior contract. The current contract quantity requirement for that item shall be reduced accordingly.

(iii) For purposes of executing the above transfer, the Contractor shall promptly forward closing inventories of all products at the completion of all the applicable contracts. This ending inventory shall be verified by the DCMA property administrator or an authorized representative. All GFM and CFM, if when combined with the damaged CFM totals the negotiated damages quantity in the contract, shall be immediately retained for use on the following contract at no cost to the Government. Any remaining CFM may be transferred in accordance with paragraph (ii) above. All final transactions shall be accomplished by formal modifications.

(2) In regard to residual Contractor-furnished material under this contract to be considered for use under a subsequent contract, if applicable, the provision of paragraph (k)(1) above shall govern except reference to “prior contract(s)” shall be deleted and substituted with “the current contract” and reference to “the current contract” shall be deleted and substituted with “future contract”.

(l) The Government reserves the right to increase or decrease the quantities of Government-furnished components specified herein but not by an amount to exceed 5% for any specific item. Notwithstanding the fact that supplies have been accepted at F.O.B. origin, blocks 21b and 22 of the DD 250 will be signed by the cognizant Government inspector and Contractor quality assurance representative respectively for evidence of receipt of shipment for count, identity and condition of supplies received. The fully executed copies of the DD 250 must be immediately mailed to the attention of _____.

(m) The Contractor shall not incorporate any defective components into the assembled meals. For defective GFM components, the Contractor shall, at its own expense, set aside, store and handle such defective components in accordance with (i) and (j) above, provided that, in the event that the quantity of such defective components exceeds 5% of the total quantity of that component furnished, an equitable adjustment shall be made in the contract price to compensate the Contractor for its cost of storing and handling that quantity of defective components which is in excess of 5% of the total quantity of that component furnished and the contract shall be modified in writing accordingly. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled “disputes”. However, nothing in this clause shall excuse the Contractor from proceeding with contract performance. In addition, the cost data detailing Contractor costs, if any, for storage and

handling of the quantity of defective components in excess of 5% of the total quantity of that component furnished must be submitted within 10 days of completion of the screening operation. Failure to submit this cost data within 10 days of completion of this operation shall constitute the Contractor's agreeing that this screening operation was performed at no cost to the Government. In the event that the Contractor discovers excessive defects for any GFM component, the Army Veterinary Inspector (AVI) should be notified immediately, so that they can perform a warranty inspection if such is determined applicable.

(n) Contractor responsibility.

(1) It is the responsibility of the Contractor to promptly inspect all GFM arriving at this plant for count, condition and identity and to promptly annotate bills of lading and material inspection and receiving reports (DD Form 250) furnished by the component Contractor as to any shortage or damage, after notice to and verification by the Army Veterinary Inspector (AVI) (see (e)(2) for procedure requirements). The final responsibility for signing the material inspection and receiving reports, resulting in acceptance of the product, rests with the Government inspector even though this acceptance may be based on the Contractor's inspection results.

(2) The Contractor must distribute fully executed DD forms 250 within seven calendar days from receipt of shipment with receipt clarified to mean date of delivery and not inspection or acceptance. Distribution is as follows: 1 copy to DLA Troop Support, Attention: _____, 700 Robbins Avenue, Philadelphia, Pennsylvania 19111-5092 and 1 copy to the payment office indicated on the DD Form 250 accompanying the component shipments. The payment office copies shall be forwarded via express mail or overnight delivery; Contractors shall group DD Forms 250 by payment office for daily expediting. Failure to comply may result in any lost payment discounts to the Government being assessed against assembly in addition to liability for all resultant costs associated with insufficient GFM.

(3) Manufacturer/transportation damages not annotated at time of receipt inspection in accordance with (e)(2) will be considered assembler damage, unless promptly made available for verification by the AVI and the AVI manufacturer/ transportation damages shall be annotated at time of receipt inspection only, unless concealed damages can be ascertained by the AVI. An email shall be forwarded to: _____ by every Friday which includes all GFM receipted for during that week. The following information should be contained in the weekly email:

(i) Item

(ii) Quantity

(iii) Date arrived

(iv) Shipment number

(v) Contract number

(vi) Status, i.e., accepted/rejected/pending AVI inspection

(vii) If rejected, (or rejected by assembler) reason for rejection.

To conserve space, the Contractor should indicate data by letter for example:

(i) Cheese

(ii) 122,222

(iii) 12-22-87

(iv) CHE0022

(v) 87-C-Z022

(vi) Accepted

(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)

**52.246-9001 Manufacturing Process Controls and In Process Inspections.**
As prescribed in 46.202-4-90, insert the following clause:

MANUFACTURING PROCESS CONTROLS AND IN-PROCESS INSPECTIONS (NOV 2011)

This clause supplements process control guidance of the International Organization for Standardization (ISO) / American National Standards Institute (ANSI)/American Society for Quality (ASQ) 9000 Series standard, or equivalent standards with process controls, and is applicable when the contract requires a higher-level quality system in accordance with Federal Acquisition Regulation (FAR) 46.202-4. The Contractor shall:

(a) Ensure that all manufacturing operations are carried out under controlled conditions which will adequately assure that product characteristics and criteria specified by contract are achieved and maintained in the produced item. Controlled conditions include documented process control and in-process inspection procedures, adequate methods for identifying and handling material, and adequate production equipment and working environments.

(b) As a minimum, perform inspections, examinations and/or tests, during manufacturing on those product characteristics which cannot be inspected at a later stage, and ensure that process controls are implemented and effective.

(1) Manufacturing processes shall be evaluated to determine which process characteristics have an effect on the quality of the produced item. These manufacturing processes shall be identified and requirements for their control shall be specified in written process control procedures.

(2) When in-process inspection of material is not practical, control by monitoring processing methods, equipment, and personnel shall be provided. Both in-process inspection and process monitoring shall be provided when control is inadequate without both.

(3) Prompt corrective action shall be taken when noncompliance or out of control conditions occur.

(c) Clearly identify each in-process inspection and process control point at appropriate locations in the manufacturing operation.

(d) Prepare clear, complete, and current written procedures for:

(1) Each in-process inspection. Identify: the type, frequency, and amount (sampling plan/100 percent) of inspection; product characteristics to be inspected; criteria for approving and rejecting product; the record for documenting inspection results; and the method for identifying the inspection status of approved and rejected product.

(2) Each process control. Identify the criteria, frequency, and records used verifying control of the process.

(3) Assessing the adequacy of in-process inspections and process controls. The Contractor's quality organization shall assure by periodic surveillance that procedures are followed and are effective. Records of this surveillance will be maintained.

(e) Make the documented inspection system available for review by the Government Quality Assurance Representative prior to the initiation of production and throughout the life of the contract. The Government is under no obligation to perform verification inspection or to accept product produced under the contract until the Government has received acceptable written procedures, and has been afforded the opportunity to evaluate the inspection system. Acceptance of the Contractor's inspection system by the Government does not bind the Government to accept any nonconforming supplies that may be produced by the Contractor. Periodic evaluations of the system may be made by the Government throughout the life of the contract.

(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 (NOV 2011)

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) 10012-1 or American National Standards Institute (ANSI)/NCLS Z540-1.

(End of Clause)

**52.246-9004 Product Verification Testing.**
As prescribed in 46.392, insert the following clause:

PRODUCT VERIFICATION TESTING (NOV 2011)

(a) The requirements of Federal Acquisition Regulation (FAR) clause 52.246-2, "Inspection of Supplies-Fixed Price," American National Standards Institute (ANSI)/American Society for Quality (ASQ) Z1.4-1993, "Sampling Procedures and Tables for Inspection by Attributes," apply. These documents form the basis for the Government's right to perform product verification testing (PVT) of this product. FAR 52.246-2 is hereby incorporated by reference into the contract if not otherwise called out in the purchase document. The current version of ANSI/ASQC Z1.4 can be found at http://asq.org. The private sector and non-Department of Defense (DOD) agencies may purchase copies of ANSI/ASQC Z1.4 from the American Society for Quality at http://asq.org/index.aspx.

(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. Notwithstanding any other clause to the contrary, and/or in addition thereto, 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) On any given contract, the Government may require PVT through a Government-designated testing laboratory on the contract or production lot at Government expense to verify conformance. When the contract is designated by the Procurement Contracting Officer (PCO)/Administrative Contracting Officer (ACO) for PVT, the Government Quality Assurance Representative (QAR) will select a random sample, from lots presented by the Contractor for Government acceptance, to verify that the entire lot tendered meets the requirements of the contract or during production to ensure critical manufacturing processes are in control and send the samples to a Government-designated laboratory for testing at the Government's expense. The PVT samples shall be shipped with a copy of the Department of Defense (DD) Form 250, a DD Form 1222 (as prepared in coordination with the QAR) and marked as follows: "Product Verification Test Samples, Contract number _____, lot/item number _____." Upon shipment of the PVT samples, the original unsigned DD Form 250, along with a copy of the DD Form 1222, shall be submitted to the PCO.

Upon notification to the Contractor that PVT is invoked, the Contractor shall not ship any material from the sampled lot until the Contractor receives notification of acceptable PVT results. Government reserves the right to reject the lot, or withhold payment if the Contractor ships prior to Government approval of the PVT. The Government will notify the Contractor of the results of the testing within 15 working days after receipt of the samples by the Government.

(d) Samples subjected to PVT are deemed to be part of the contract quantity. Samples destroyed during testing will be paid for at the contract price, provided the samples pass PVT. Those samples not destroyed during PVT will be returned to the Contractor at the Government's expense and will be included as part of the total contract quantity within the limits of the quantity variation clause specified in the contract.

(e) The Contractor will not be paid for those samples destroyed during testing which fail PVT. Such failure will result in rejection of the entire contract lot from which the samples were taken. Those samples from a rejected lot which were not destroyed during PVT may be returned to the Contractor at the Contractor's request and expense.

(f) [This subparagraph pertains only to contracts and bilateral purchase orders.]

(1) The QAR will evaluate the test results and accept or reject the rest of the production lot based on those results. At acceptance, the QAR is authorized to notify the Contractor and send copies of the report to the product verification program (PVP) Office and the PCO. If the Government fails to act within the period set forth herein for notification, the Contracting Officer shall, upon timely written request, equitably adjust, under the Changes clause of this contract, the delivery or performance dates and/or the contract price and any other contractual terms affected by the delay. 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 lot tendered for any defects noted by the PVT. Any defects found shall be corrected before re-tendering the lot for acceptance by the Government. Furthermore, the Government may subject this lot to additional PVT. If the Government disapproves the lot tendered for acceptance because of 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 to remedies to which it is otherwise entitled by law, regulation, or this contract.

(g) [This subparagraph pertains only to unilateral purchase orders.]

(1) The QAR will evaluate the test results and accept or reject the rest of the production lot based on those results. At acceptance, the QAR is authorized to notify the Contractor and send copies of the report to the PVP Office and the PCO. 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 lot tendered for any defects noted by the PVT. Any defects so found shall be corrected before re-tendering the lot for acceptance by the Government. Furthermore, the Government may subject this lot to additional PVT. If the Government disapproves the lot tendered for acceptance because of a failure to pass the PVT, the Government has the right to reject the entire offer, thereby releasing the parties from further obligations under the purchase order.

Alternate I When acquiring Packaged Petroleum Products, use the following paragraph (c) in lieu of paragraph (c) in the basic clause:

(c) On any given contract, the Government may require PVT through a Government-designated testing laboratory on a lot tendered for acceptance or during production on a number of samples at the Government's expense. However, the provision of sample containers and all costs associated with the transportation of samples to and from the testing facility will be the responsibility of the Contractor. The samples will be sent to a Government-designated testing laboratory for PVT. Testing will consist of chemical and/or mechanical/dimensional conformance tests as the Government deems necessary to verify conformance to contract requirements. When the contract designates such test, the Government QAR will conduct lot acceptance testing, which is required on 100 percent of lots produced and will observe the Contractor in the packaging and shipment of the samples to the designated laboratory for testing. The QAR will perform the evaluation and accept or reject the samples. Upon acceptance, the QAR is authorized to notify the Contractor and send copies of the report to the PVP Office and the PCO. The Contractor shall not delay shipment of the supplies pending receipt of PVT results unless specifically directed to do so by the QAR or Contracting Officer. The Government reserves the right to hold acceptance until after receipt of the PVT results.

Alternate II When acquiring heat and die number requirements, use the following paragraphs (c) (1) and (c) (2) in addition to paragraph (c) in the basic clause.

(c) (This paragraph applies only when "heat number" or "die number" requirements are in the contract description or specifications. It shall take precedence over any provisions of this contract or of this PVT clause which are inconsistent herewith.)

(1) If the contract description or specifications require that the supplies be identified by "heat number" or "die number", the selection of samples on a random basis in accordance with paragraph (c) above shall be from each "heat" or "die number" lot which is included in the production lot or contract lot tendered for acceptance.

(2) Subparagraph (h)(2) above is modified to provide that, if the PVT reveals nonconformities in the chemical or mechanical properties of the samples tested, the nonconformities shall be 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 III When acquiring instrument bearings, use paragraphs (a) and (c) in addition to the basic clause and paragraph (b) in lieu of paragraph (c) in the basic clause.

(a) 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) In the event that the Government test activity performs destructive testing on any of the PVT samples, the Contractor shall receive the full contract unit price for that sample or samples as long as the testing found that sample or samples to be in conformance with technical requirements. PVT samples determined to be conforming and not destroyed or degraded in testing shall be returned, by the Government test activity, to the Contractor at Government expense. The Contractor shall examine the returned PVT samples, refurbish as necessary, and may include them in the production quantity if found to be unharmed by the PVT.

(c) 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_____
NSN_____Specification/Part Number _____

In all cases, the PCO reserves the right to make final waiver determination.

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)

**52.246-9005 Note to Contractor for Inspection (ALRE).**
As prescribed in 46.393(a), insert the following clause:

NOTE TO CONTRACTOR FOR INSPECTION (AIR LAUNCH AND RECOVERY EQUIPMENT) (ALRE)) (NOV 2011)

Because of the critical nature of this material, a representative of the Naval Air Warfare Center (NAWC) Lakehurst is available to furnish technical assistance on Quality Assurance (QA) matters and shall have the option of conducting QA surveillance for the first lot produced under this contract (and subsequent lots if necessary).

This requirement will be performed in conjunction with the Quality Assurance Representative (QAR) of the cognizant Defense Contract Management Agency (DCMA) Contract Management Office and does not abrogate the authority of responsibility of the DCMA QAR. The Contractor agrees to notify, in writing, the supervisor of the Quality Assurance (QA) Section, Code 4.8.8.8, Lakehurst NJ 08733-5025, when the material is scheduled to be presented to the DCMA QAR for Government inspection and acceptance.

This notice shall afford the NAWC Lakehurst QA Representative the option of being present during the inspection. Notification may be provided via telephone (732) 323-7504 immediately followed by written confirmation, or via facsimile transmission to (732) 323-1381. A minimum of fourteen (14) working days after receipt of notification is required to arrange such a visit.

Note: Advise the Procuring Contracting Officer (PCO) listed in the order by facsimile or email at the same time notice is given to NAWC Lakehurst.

(End of Clause)

**52.246-9007 Inspection and Acceptance at Destination.**
As prescribed in 46.503, insert the following clause:

INSPECTION AND ACCEPTANCE AT DESTINATION (AUG 2007)

(a) Inspection and acceptance are at destination.

(End of Clause)

**52.246-9008 Inspection and Acceptance at Origin.**
As prescribed in 46.503, 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(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,

ALT I

(a) For each NSN, Inspection and Acceptance will take place at:
Origin - First Shipment Only;
Destination - Subsequent Shipments

(End of Clause)

**52.246-9009 Lubricating Oil, Internal Combustion Engine MS9250 (A Qualified Product).**
As prescribed in 46.394(a) insert the following clause:

LUBRICATING OIL, INTERNAL COMBUSTION ENGINE MS9250 (A QUALIFIED PRODUCT)
(AUG 2007)

(a) Qualified product shall conform to MIL-L-9000H (SH) dated 16 Sep 87 with the following exception: magnesium content shall be 100 ppm maximum.

(b) The lubricating oil shall be only those products authorized by the qualification activity for listing on the latest qualified products list (QPL-9000) prior to contract award.

(c) Qualified products listed on the latest QPL-9000 which no longer meet the qualified formulation due to change in base stocks will be considered provided the offeror submits the following additional information with its offer:

(1) Typical base stocks characteristics for API gravity, viscosity (cSt) at 100-c, viscosity index, flash point (-C), cloud point (-C), pour point (-C), neutralization number, color, sulfur (% m/m), aniline point (-C), saturates (% vol), aromatics (% vol) and naphthenics (% vol). The offeror shall also specify the test method used to determine each base stock characteristic. This information will be used to determine how the change in base stocks will affect the finished product and/or formulation.

(2) In addition, Alcor IG test result information shall be provided for all finished blends that differ in base stocks approved by the qualification activity. This test information will be compared to the Caterpillar IG-2 test required by specification (MIL-L-9000). The address and telephone number where the Alcor IG test is performed:

Alcor, Inc.
10130 Jones-Moltberger Road, San Antonio, Texas 76216-4191
Phone: 1-800-354-7233

(End of Clause)

**52.246-9010 Determination of Quantity Specific to Lubricating Oils.**
As prescribed in 46.394(b), insert the following clause:

DETERMINATION OF QUANTITY SPECIFIC TO LUBRICATING OILS (NOV 2011)

(a) The quantity of supplies furnished under this contract shall be determined by one of the following methods:

(1) The Contractor shall provide delivery equipment that enables the receiving activity and the Contractor to determine quantity at destination in the delivery conveyance by one of the following:

(i) Calibrated meter (in areas where environmental restrictions prohibit the opening of dome hatches prior to, during, or after off-loading, calibrated meter must be used); or

(ii) Certified capacity tables. The tables must be made available at the time of delivery; or

(iii) Certified tank calibration markers. Certified tank calibration markers will not be accepted unless the conveyance is full to the marker and the entire quantity is off-loaded at the receiving activity.

(2) The Contractor and the receiving activity may mutually agree in writing to determine quantity by inventories of the receiving tank(s) just prior to and after delivery. For each contract line item mutually agreed to under this section, the Contractor shall submit one copy of the written mutual agreement to the DLA Aviation contract administrator.

(3) The Contractor and the receiving activity may mutually agree in writing to accept the net quantity determined at the loading point using a calibrated loading rack meter. For each contract line item mutually agreed to under this section, the Contractor shall submit one copy of the written mutual agreement to the DLA Aviation contract administrator.

(i) This quantity must be mechanically printed on the loading rack meter ticket that is generated by the loading rack meter. In addition, the loading rack meter ticket must contain whatever additional information the receiving activity specified when they agreed in writing to use this method.

(ii) Such quantity will be accepted only if the conveyance is sealed at the loading point with serially numbered seals, the seal numbers are recorded on the meter ticket at the loading point, and all seals are intact upon arrival at the receiving activity. The Contractor must affirm in writing that the conveyance was sealed at the loading point.

(iii) If this method is being used, the Government reserves the right to determine the quantity received in gallons at 60 degrees Fahrenheit (or liters at 15 degrees Centigrade) at any time and by any valid means available. If the difference between the quantity determined at the loading point and the quantity determined by the Government at the receiving point exceeds 0.5 percent of the quantity determined at the loading point or if the difference is attributed to a source other than measurement techniques, the net quantity determined by the Government will be the quantity received.

(4) In any case, at the Government's option, quantity may be determined at the receiving activity on the basis of--

(i) Weight, using calibrated scales; or

(ii) A calibrated meter on the receiving tank system.

(b) Water bottoms. Every delivery must be free of all water bottoms prior to discharge, and the Contractor is responsible for their removal and disposal.

(c) Volume correction. Volume correction to gallons at 60 degrees Fahrenheit (or liters at 15 degrees Centigrade) is required for all product volumes of lubricating oils measured in tank trucks, trucks and trailers, and tank wagons.

(d) Measurement standards. All measurements and calibrations made to determine quantity shall be in accordance with the most recent edition of the API Manual of Petroleum Measurement Standards. Certified capacity tables shall mean capacity tables prepared by an independent inspector or any independent surveyor. In addition, the following specific standards will be used as applicable:

(1) API manual of petroleum measurement standards chapter 7, Method of Measuring the Temperature of Petroleum Products (API 2543/ASTM D 1086). In areas where the metric system is used, an equivalent type Centigrade thermometer may be used.

(2) API manual of petroleum measurement standards Chapter 9, Section 1, Density Determination (ASTM D 1298).

(3) API manual of petroleum standards chapter 3, Method of Gauging Petroleum Products (API 2545/ASTM D 1085).

(4) API manual of petroleum measurement standards chapter 11.1, Volume Correction Factors (API 2540/ASTM D 1250/IP 200). Either the printed version or the computer subroutine version of the standard may be used.

(i) Use Volume XIII, Tables 5D and 6D (or Volume XIV, Tables 53D and 54D) for lubricating oils.

(ii) Volume XII, Table 52, shall be used to convert cubic meters at 15 degrees Centigrade to barrels of 60 degrees Fahrenheit, except when this method is restricted by foreign law. Convert liters at 15 degrees Centigrade to cubic meters at 15 degrees Centigrade by dividing by 1,000. Convert gallons at 60 degrees Fahrenheit to barrels at 60 degrees Fahrenheit by dividing by 42.

(iii) If the original measurement is by weight, using calibrated scales, then--

(A) Volume XI, Table 8, shall be used to convert pounds to U.S. gallons at 60 degrees Fahrenheit.

(B) Volume XII, Table 58, shall be used to convert metric tons to U.S. gallons at 60 degrees Fahrenheit.

(5) API Manual of Petroleum Measurement Standards Chapter 4, Proving Systems. All meters used in determining product volume shall be calibrated using this standard with the frequency required by local regulation (foreign or domestic). If no local regulation exists, then the frequency of calibration shall be that recommended by the meter manufacturer or every 6 months, whichever is more frequent.

(e) Units of quantity.

(1) Depending upon the unit shown in the Schedule, the unit of quantity, as used in this contract, shall be--

(i) The U.S. gallon of 231 cubic inches;

(ii) The liter of 61.026 cubic inches.

(2) Unless otherwise specified in the contract, a reference to gallons shall mean U.S. gallons.

(End of Clause)

**52.246-9011 Liquefied Petroleum Gases Quality Assurance..**
As prescribed in 46.394(c), insert the following clause:

LIQUEFIED PETROLEUM GASES QUALITY ASSURANCE (AUG 2007)

(a) Unless specifically requested by the Contracting Officer, testing of liquefied petroleum gases (propane, butane, and mixtures thereof) to assure conformance to Federal Specification BB-G-110, is not required. In lieu thereof, the Contractor will obtain a statement from all manufacturers from whom he buys bulk gas, that the liquefied petroleum gases (LPG) supplied was manufactured in accordance with the recommendations of the Natural Gas Processors Association (NPGA), NGPA publication number 2140.

(b) LPG shipments to the Government are limited to material manufactured in accordance with the recommendations of the Natural Gas Processors Association, NGPA Publication Number 2140.

(c) This clause does not waive the right of the Government to require or perform specification testing to confirm compliance with the applicable product specifications.

(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, 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)

**52.246-9018 Shipping Documents Supplied to Assembly Contractors.**
As prescribed in 46.601-90, insert the following clause:

SHIPPING DOCUMENTS SUPPLIED TO ASSEMBLY CONTRACTORS (APR 2008)

The assembly Contractor will be supplied with a DD Form 250 prior to shipment for use in effecting shipments. The DD Form 250 shall contain shipping and marking instructions, except for that shipping information to be obtained and entered by the assembly Contractor. The assembly Contractor shall be required to print copies of the completed DD Form 250 sufficient for shipping and distribution requirements and invoicing purposes.

(End of Clause)

**52.246-9019 Material and Inspection Report.**
As prescribed in 46.601-91, insert the following clause:

MATERIAL AND INSPECTION REPORT (APR 2008)

(a) The Contractor shall create a receiving report in wide area workflow receipt and acceptance (WAWF-RA), which serves as the material inspection and receiving report (MIRR)) (Department of Defense (DD) form 250). Once the receiving report is created and the Government has accepted the material, an electronic signature of the Government representative responsible for acceptance will appear on the receiving report.

(b) In addition to the receiving report via WAWF-RA, the Contractor shall include hard copies of the receiving report (which includes an electronic signature of the Government representative responsible for acceptance if acceptance is at origin) in the exterior and interior shipping documentation.

(End of Clause)

**52.246-9020 Distribution of Material Inspection and Receiving Report.**
As prescribed in 46.601-92, insert the following clause:

DISTRIBUTION OF MATERIAL INSPECTION AND RECEIVING REPORT (APR 2008)

(a) Whether processed manually or through wide area work flow receipt and acceptance (WAWF-RA), if this purchase is for foreign military sale (FMS), the Contractor shall—

(i) Include hard copies of the receiving report (from WAWF-RA or if processed manually DD Form 250) in the exterior and interior shipping documentation for each package shipped to the freight forwarder.

(ii) Provide eight (8) additional hard copies of the DD Form 250/ WAWF-RA Receiving Report to the freight forwarder.

(b) In accordance with DFARS Appendix F, the Contractor shall include a hard copy of the DD Form 250/WAWF-RA Receiving Report in the exterior and interior shipping documentation for each additional package of a multi-package shipment.

(End of Clause)

**52.246-9021 Source Inspection Provisions.**
As prescribed in 46.402-93, insert the following clause:

SOURCE INSPECTION PROVISIONS – DLA AVIATION (NOV 2011)

Notwithstanding any other inspection provisions contained in this award, inspection and acceptance of supplies shall be accomplished at source by appropriate source inspection personnel. Inspection shall be limited to: type and kind, quantity, condition, operability (if readily determinable), and preservation, packaging, packing, and marking.

(End of Clause)

**52.246-9022 Inspection System Requirement-Foreign Manufactured Items.**
As prescribed in 46.202-3(90), insert the following clause:

INSPECTION SYSTEM REQUIREMENT-FOREIGN MANUFACTURED ITEMS – DLA TROOP SUPPORT - MEDICAL (NOV 2011)

Notwithstanding any other provision contained herein, the Contractor agrees that, for any foreign manufactured items to be delivered under this contract, it shall perform, or have performed at independent domestic facilities, all examinations and tests cited in the applicable specification; and foreign certificates or protocols shall not be acceptable as evidence of compliance with contractual requirements.

(End of Clause)

**52.246-9023 General Inspection Requirements.**
As prescribed in 46.202-3(91), 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(92), 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 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)

**52.246-9026 Inspection Fees – Petroleum Products.**
As prescribed in 46.202-3(93), insert the following clause:

INSPECTION FEES – PETROLEUM PRODUCTS (NOV 2011)

(a) The contract price includes all state and local inspection fees in effect and applicable to the supplies to be furnished under this contract; except fees from which the Government, the Contractor, or the transactions covered by this contract are exempt, or which are otherwise provided for in the contract.

(b) Notwithstanding the provisions of paragraph (a) above, the following provisions shall apply to deliveries within the states indicated below:

(1) Tennessee: Drum Deliveries - The unit price shall include the Tennessee inspection fee, if applicable.

(2) Kansas: The unit prices set forth in the Schedule hereof exclude the Kansas inspection fee. The Government hereby consents that the products furnished under such items be not inspected under the Kansas oil inspection law. Should any further consent of the Government be required for the Contractor

to obtain a waiver of such inspection, the Contractor shall notify the Contracting Officer, DLA Aviation. In the event, however, that the Contractor is required to pay the Kansas inspection fee, the contract prices for the items affected thereby shall be increased by the amount of such fee.

(3) South Carolina: The unit price set forth in the Schedule hereof shall exclude the South Carolina inspection fee. In the event the Contractor is unable to obtain exemption from or refund of such fee on supplies furnished hereunder, the Government will reimburse the Contractor for the amount thereof.

(End of Clause)

**52.246-9027 Inspection of Bulk Deliveries – Petroleum Products.**
As prescribed in 46.202-3(94), insert the following clause:

INSPECTION OF BULK DELIVERIES – PETROLEUM PRODUCTS (APR 2008)

(a) The activity assigned petroleum procurement inspection responsibility for the geographical area wherein the point of bulk shipment (loading) is located is responsible for assuring compliance with the Contractor inspection responsibilities.

(b) The following information will be dispatched by the Contractor so as to be available to the Government inspection activity for the shipping point at least 5 days (see note below) prior to the date of shipment: (1) Contract number and item number; (2) date shipment is to be made; (3) name and location of refinery from which shipment is made; (4) identity of consignee; (5) quantity to be shipped.

(Note: in the case of tank wagon deliveries into vessel, the above information will be made available to the cognizant Government inspection activity at least 24 hours in advance of the time of shipment.)

(c) Shipping documents will attest to Government inspection (and acceptance if applicable) by such means as determined appropriate by the Government inspection activity.

(End of Clause)

**52.246-9028 Inspection of Construction.**
As prescribed in 46.312-90, insert the following clause:

INSPECTION OF CONSTRUCTION (APR 2008)

(a) The _____ (Insert Individual and Office) or their authorized representative will be responsible for inspection of work performed.

(b) Upon completion of the work, the Contracting Officer's Representative (COR) will furnish a certificate to the Contracting Officer attesting to the performance of the work in accordance with the contract requirements without deviation.

(c) Upon receipt of the COR's certificate, the work will be accepted by the Contracting Officer.|

(End of Clause)

**52.246-9029 Inspection and Acceptance Points.**
As prescribed in 46.503-90, insert the following clause:

INSPECTION AND ACCEPTANCE POINTS (APR 2010)

(a) Inspection and Acceptance are:

Inspection point: [ ] Destination [ ] Origin [ ] Elsewhere

Acceptance point: [ ] Destination [ ] Origin

(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)

**52.246-9032 Identification of Qualified Laboratory and Source Sampling.**
As prescribed in 46.401-90, insert the following clause:

IDENTIFICATION OF QUALIFIED LABORATORY AND SOURCE SAMPLING (NOV 2011)

(a) The offeror or bidder shall indicate in paragraph (e) below the name and address of the laboratory or laboratories where components or end items will be tested during the course of any resultant contract. Any laboratory proposed by the Contractor is subject to the approval of the Contracting Officer.

(b) The Government quality assurance representative (QAR) will cut samples from a lot at the textile component source and send them for testing to the laboratory cited below. (The acceptability of each lot will be determined through the testing of these samples). In addition, the QAR will simultaneously cut samples from the same rolls of material and send them to the DLA Troop Support laboratory when advised by the DLA Troop Support textile technologist to do so. For end items, duplicate samples will be drawn. Source sampling procedures are detailed further in DLA Troop Support Manual, Quality Systems Requirements, 4155.3, which is incorporated by reference.

(c) The prime Contractor will notify the DLA Troop Support textile technologist (_____at (215) 737-____) in writing at least ten days in advance when lots are to be presented to allow Government witnessing of testing at the Contractor's laboratory. If the Government intends to witness testing, a representative from the DLA Troop Support laboratory will notify the Contractor's laboratory. In the absence of Government notification, testing should proceed as scheduled.

(d) Should the Contracting Officer withdraw approval of the laboratory proposed by the Contractor during the course of a contract, DLA Troop Support will perform the required testing for up to 30 calendar days from the date of approval withdrawal. The charge for testing will be the DLA Troop Support laboratory's effective cost rate on the date of testing. The Contractor is responsible for securing the services of another laboratory during this period.

(e) Any change in the laboratory (or laboratories) specified below is prohibited unless approved in advance by the Contracting Officer.

Name and Address of Laboratory Component Identity* Name and Address of Component Source

* When a single lot of material requires testing by more than one laboratory for different characteristics, list the name of the secondary laboratory and the test characteristics below:

Name and Address of Laboratory Component Identity* Test Characteristics

(f) It is solely the prime Contractor's responsibility to schedule laboratory testing and to obtain test reports. The cost of laboratory testing shall also be borne by the prime Contractor.

(g) Shipments of component materials to the prime Contractor need not be deferred pending test results except when shade approval is required (see paragraph (h)). Cutting production lots without a passing laboratory test report on the corresponding samples is done at the Contractor's own risk.

(h) Shade evaluation is acceptance testing. Therefore, component lots may not be shipped to the prime Contractor until the DLA Troop Support laboratory accepts the shade of the material.

(End of Clause)

**52.246-9033 Operational Check of Equipment Items.**
As prescribed in 46.105-90, insert the following clause:

OPERATIONAL CHECK OF EQUIPMENT ITEMS – DLA TROOP SUPPORT - MEDICAL
(NOV 2011)

Notwithstanding any other provision of this contract, the Contractor/manufacturer shall perform an operational check on each piece of mechanical or electrical equipment to be supplied to the Government. The operational check shall demonstrate that the equipment is capable of performing all of the functions specified in the contract. This check shall be supported by inspection records which detail each operational check performed. A Contractor/ manufacturer using an alternate procedure which provides a 100% check of all significant operations may use its procedure if prior approval by the Contracting Officer is obtained.

(End of Clause)

**52.246-9034 Testing at Government Laboratory.**
As prescribed in 46.401-90, insert the following clause:

TESTING AT GOVERNMENT LABORATORY – DLA TROOP SUPPORT - MEDICAL (NOV 2011)

The Government reserves the right to select samples of any item at any one or more stages of production for testing. Such samples shall be forwarded by the Contractor, at its expense, to the government laboratory designated by the cognizant inspector. Thereafter, no supplies represented by the samples shall be shipped, unless otherwise directed by the inspector, until the Contractor receives notification from the designated laboratory that the samples have been approved. Provided such samples are not destroyed in testing, they shall be packed, packaged, and returned to the Contractor, at its expense, if so requested at time of their submission.

(End of Clause)

**52.246-9035 Acceptance of Medical and Laboratory Instrumentation.**
As prescribed in 46.502-90. insert the following clause:

ACCEPTANCE OF MEDICAL AND LABORATORY INSTRUMENTATION – DLA TROOP SUPPORT - MEDICAL (NOV 2011)

(a) Final acceptance of equipment at the hospital will be made by the Chief of Medical Materiel Services (CMMS) based upon an inspection and test to be performed at government expense within 30 days from date of receipt. The Contractor shall, in accordance with customary trade practices, submit a written copy of test procedures and performance certification for the equipment. These procedures and other Government tests shall verify that the Contractor specifications and government requirements have been met. The Government acceptance test procedure will include complete verification of functional operation. The Government may also choose to verify the published specifications of the Contractor's catalog components and to verify the performance specifications for noncatalog or modified devices.

(b) In the event the equipment is rejected as a result of the first inspection, the Contractor will be advised as to deficiencies which were cause for rejection. It shall be the Contractor's responsibility to correct reported deficiencies and to advise the CMMS when all corrections have been made and the equipment is ready for reinspection. Reinspection will be performed by the government with all costs incurred chargeable to the Contractor's account.

(c) If there are no deficiencies or if deficiencies found at the time of inspection are corrected within 14 calendar days, date of acceptance will be the date of receipt. Failure to correct deficiencies within the 14 day period shall result in a day-for-day extension of the warranty period.

(End of Clause)

**52.246-9036 Acceptance of Installation for Medical and Laboratory Instrumentation.**
As prescribed in 46.502-91, insert the following clause:

ACCEPTANCE OF INSTALLATION FOR MEDICAL AND LABORATORY INSTRUMENTATION - – DLA TROOP SUPPORT - MEDICAL (NOV 2011)

(a) Upon completion of installation, the equipment shall be turned over to the hospital for use, and the Contractor shall furnish, a written notice of readiness for inspection of the equipment to DLA Troop Support, MX, Chief, Biomedical Systems Office, Directorate of Medical Materiel, DLA Troop Support, 700 Robbins Avenue, Philadelphia, Pennsylvania 19111-5092. Final acceptance of installation shall be made by Chief, Biomedical Systems Office, DLA Troop Support MX, based upon an inspection and test to be performed at government expense within 30 days from date of receipt of request for inspection. The Chief of Medical Materiel Services (CMMS) at the hospital shall notify the Contractor 72 hours in advance of inspection. The Contractor shall be responsible for connecting test equipment and operating the components during inspection testing. Minor discrepancies which may be corrected during the inspection shall not be cause for rejection. If acceptance inspection is not conducted within 30 days from date of receipt of request for inspection, the Government shall accept installation. Use of equipment during the period between completion of installation and inspection or inspection and reinspection shall not negate the right on the part of the Government to reject installation.

(b) In the event the installation is rejected as a result of the first inspection, Contractor shall be advised as to deficiencies which were cause for rejection. It shall be Contractor's responsibility to correct reported deficiencies and to advise the contracting office when all corrections have been made and equipment is ready for reinspection. Reinspection shall be performed by the Government with all costs incurred chargeable to the Contractor's account.

(c) If deficiencies found at the time of inspection are corrected within 14 calendar days, date of acceptance shall be the date notice of readiness for inspection is received at DLA Troop Support, MX. Failure to correct deficiencies within the 14 day period shall result in a day-for-day extension of the warranty period.

(End of Clause)

**52.246-9037 Orders for Repair of Medical Equipment.**
As prescribed in 46.709-92(b), insert the following clause:

ORDERS FOR REPAIR OF MEDICAL EQUIPMENT - DLA TROOP SUPPORT – MEDICAL (NOV 2011)

(a) Statement of Work.

The Contractor will furnish all facilities, labor, tools, equipment, material, and parts to recondition and rebuild the item(s) to be delivered under this order to the original manufacturer's tolerances, performance, and material specification. Prior to delivery, the Contractor will perform such tests necessary to insure compliance with the requirements.

(b) Warranty.

The Contractor warrants that the item(s) delivered under this order are free from defective workmanship or material and will rework or replace at its expense any such defect as may be discovered within 1 year after delivery; or ninety 90 days of operation, whichever is sooner.

(End of Clause)

**52.246-9038 Installation of Medical and Laboratory Instrumentation.**
As prescribed in 46.403(a)(93), insert the following clause:

INSTALLATION OF MEDICAL AND LABORATORY INSTRUMENTATION –
DLA TROOP SUPPORT - MEDICAL (NOV 2011)

Installation shall include electrical and mechanical interconnection between components of the system. The Contractor shall not be responsible for effecting the connection between power source and the control unit; but shall supervise the installation of this electrical line. Contractor installation shall not include rigging, carpentry work, plumbing, conduit, wire in conduit, junction boxes, line switches, or fuses.

The Contractor shall be responsible for visiting the site of installation, surveying power requirements, and, in accordance with customary trade practices, providing the Chief of Medical Materiel Services (CMMS) at the hospital with complete layout plans, room preparation drawings and instructions within ____ calendar days after award of contract. Such instructions shall specifically indicate the point at which responsibility for utility connection will be assumed by the Contractor and shall indicate that material which is to be installed, furnished, Contractor-installed.

It shall be the responsibility of the Government to comply with the furnished drawings and/or instructions to provide for the proper installation. In addition, the Contractor shall advise the activity as to the selection of the power supply required to feed the system. In all instances, when the system/equipment being procured or installed includes or will operate with other ancillary equipment, the Contractor shall also furnish complete instructions and drawings which show interfacing of all system components.

(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)

**52.246-9040 Inspection and Acceptance Supervision of Installation.**
As prescribed in 46.503-90, insert the following clause:

INSPECTION AND ACCEPTANCE - SUPERVISION OF INSTALLATION (AUG 2008)

Final inspection and acceptance will be performed at destination after installation of the equipment and satisfactory completion of performance tests, unless the Contractor's obligation to supervise installation of the equipment is canceled by the Contracting Officer. If the Contractor’s obligation to supervise installation is cancelled, the equipment may be accepted before installation, subject to the Government’s right to inspect and test the equipment after installation and to reject defective equipment.

(End of Clause)

**52.246-9041 Government Loss or Damage.**
As prescribed in 46.805(a)(90), insert the following clause:

GOVERNMENT-CAUSED LOSS OR DAMAGE (AUG 2008)

(a) If the Government, through negligence, causes loss or damage to Contractor equipment or materials being used in the performance of this contract, the Government will reimburse the Contractor for the actual cost of repair or replacement directly attributable to the Government’s negligence. Authorization for such repairs or replacement must be approved in writing by the purchasing Contracting Officer prior to corrective action by the Contractor, except as provided below. The Government shall be relieved of the liability for such loss or damage if of the Contractor relieves or would relieve any commercial customer of such liability under like circumstances.

(b) If the Government, through negligence, causes loss or damage to Contractor equipment or materials being used in the performance of this contract, and the loss or damage creates a safety hazard to personnel or could cause more damage to the equipment being installed or surrounding existing equipment and facilities, the Contracting Officer's Representative (COR) is authorized to direct repair and the Contractor should immediately repair such damages. In these instances the COR shall immediately notify the Contracting Officer in writing of details to describe the extent and causes of damages, and any other information that may be required. The Contractor shall immediately notify the Contracting Officer in writing describing all repairs made, additional materials furnished, the period during which repairs were made, the additional cost to the Government under this contract for those repairs and any other information that may be required by the Government. The Government will reimburse the Contractor for

the actual cost of repair or replacement directly attributable to the Government's negligence. The Government shall be relieved of the liability for such loss or damage if of the Contractor relieves or would relieve any commercial customer of such liability under like circumstances.

(c) In no event shall the Government be liable to the Contractor for consequential damages, lost profits, or other indirect damages.

(End of Clause)

**52.246-9042 Documentation of Traceability - QPL/QML Integrated Circuits, Hybrid Microcircuits, and Semiconductor Devices.**
As prescribed in 46.504(a)(90), 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 (NOV 2011)

(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 Veterinary Command (VETCOM) Circular 40-1, Worldwide Directory of Sanitarily Approved Food Establishments for Armed Forces Procurement, (Worldwide Directory) (available at: https://vets.amedd.army.mil/vetcom). Compliance with the current edition of DoD Military Standard 3006, 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 and Poultry Inspection Directory", published by the United States Department of Agriculture, Food Safety and Inspection Service (USDA, FSIS), at http://www.fsis.usda.gov/Regulations/Meat_Poultry_Egg_Inspection_Directory/index.asp .

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 Worldwide 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://www.fsis.usda.gov/Regulations_&_Policies/Meat_Poultry_Egg_Inspection_Directory/index.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.cfsan.fda.gov/~ear/ims-toc.html. 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.cfsan.fda.gov/~ear/pmo03toc.html.

(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/dairy/dypubs.htm ) 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 (i.e. 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.cfsan.fda.gov/~ear/shellfis.html.

(3) Establishments exempt from Worldwide Directory listing. Refer to AR 40-657/NAVSUPINST 4355.4F/MCO P1010.31G, Veterinary/Medical Food Inspection 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, 5285 Port Royal Road, Springfield, Virginia 22161; 1-800-553-6847; or download from web site: http://www.usapa.army.mil/ .) For the most current listing of exempt plants/products see the Worldwide Directory (available at: https://vets.amedd.army.mil/vetcom).

(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)

**52.246-9048 Packed Cracker Packets.**

As prescribed in 46.805-90, insert the following clause:

PACKED CRACKER PACKETS (AUG 2008)

As a result of normal assembly processes it is expected that a portion of Contractor-furnished material (CFM) cracker packets will be damaged. As they contain government-furnished material (GFM) crackers, cracker packets designated for troop issue shall become the property of the government, at no additional cost to the Government.

(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)

**52.246-9050 Acquisition of Liquids in Bulk Quantities.**

As prescribed in 46.311-95, insert the following clause:

ACQUISITION OF LIQUIDS IN BULK QUANTITIES (AUG 2008)

(a) Acquisition by weight: The weights of the liquid delivered shall be determined by empty and loaded scale weights of the transport vehicle. If scales are not available, the weight of the liquid shall be determined by the volume of the liquid. The measurement temperature and sample of the contents of the transport vehicle shall be taken immediately after loading. The density of the liquid at the temperature taken at the time of measurement shall be determined by a method accurate to within 0.1%. The volume (in gallons) multiplied by the density (in pounds per gallon) will be the pounds loaded.

(b) Acquisition by volume: The volume of the liquid delivered shall be obtained by either of two methods.

(1) By volume. The volume of liquid in the transport vehicle shall be obtained by measurement. The temperature and sample of the liquid shall be taken at the time of measurement. If the temperature of the liquid is different than the temperature stated in the procurement document, the volume shall be corrected by:

(i) The known coefficient of expansion of the liquid, or

(ii) By determining the density of the liquid at the loading temperature and calculating the weight of the load, then dividing this weight by the known density (pounds per gallon) of the liquid temperature specified in the procurement document.

(2) By weight: The new weight of the liquid contents in the transportation vehicle is divided by the density of the liquid (expressed in pounds per gallon) at the temperature specified in the procurement document. The results will be gallons at this temperature. The Contractor shall furnish the Government representative all the necessary data and certifications required to determine the correctness and accuracy of the facilities and apparatus used in determining the quantity of liquids delivered.

(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)

**52.246-9052 Warranty of Supplies.**
As prescribed in 46.709-92(c), insert the following clause:

WARRANTY OF SUPPLIES (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 equipment or approves specific services as partial or complete performance of the contract.

"Correction," as used in this clause, means the elimination of a defect.

"Equipment," as used in this clause, means the end item furnished by the Contractor. The word does not include "data" or "services".

"Services," as used in this clause, means performing installation services on the equipment so that it is fully operational and ready for immediate use.

"Training," as used in this clause, means performing operational and maintenance training relative to the equipment as required by the contract.

(b) Contractor's obligations.

(1) Notwithstanding inspection and acceptance by the Government of equipment furnished under this contract, or any condition of this contract concerning the conclusiveness thereof, the Contractor warrants that after receipt of equipment at destination and continuing for an additional time of one year after date of acceptance of installation services*:

(i) All equipment, services and training furnished under this contract will be free from defects in material or workmanship and will conform with all requirements of this contract; and

(ii) The preservation, packaging, packing and marking, and the preparation for, and method of, shipment of such equipment will conform with the requirements of this contract; and

(iii) All equipment, services and training will be of a quality to pass without objection in the trade and will be fit for the particular purpose under the contract description.

*Note: When installation services are not required in the contract, then warranty coverage shall begin with the receipt of equipment at destination instead of acceptance of installation services.

(2) When return of the equipment to the Contractor and redelivery, if applicable, is required, transportation charges and responsibility for the equipment while in transit shall be borne by the Contractor. However, the Contractor's liability for such transportation charges shall not exceed an amount equal the cost of transportation by the usual commercial method of shipment between the designated point specified in this contract and the Contractor's plant, and return. The Contractor shall also be liable for:

(i) Handling costs and incidental charges incurred by the Government in the preparation of the above described equipment for return to the Contractor and in return of said equipment to place of installation after redelivery by the Contractor; and

(ii) Cost of Government examination of the corrected or replaced equipment computed and charged at the flat rate of $49.28 per hour

(3) Any equipment or parts thereof, corrected or furnished in replacement and any service or training reperformed under this clause, shall also be subject to the terms of this clause to the same extent as equipment, services and training initially delivered. The warranty, with respect to immediately above described equipment, parts thereof, services and training, shall be equal in duration to that in paragraph (b)(1) of this clause and shall begin upon inspection and acceptance of the corrected or replaced equipment or parts, or the reperformed service or training.

(c) Remedies available to the Government.

(1) Notice requirement: The Contracting Officer shall give written notice to the Contractor of any breach of warranties in paragraph (b) of this clause starting from receipt of equipment at destination and continuing for an additional time of 13 months after date of acceptance of installation services.

(2) Conformance of equipment or parts thereof, services thereon or training subject to warranty action shall be determined in accordance with the inspection and acceptance procedures contained in the contract except as provided herein. If the contract provides for sampling, the Contracting Officer may group any equipment delivered under this contract. The size of the sample shall be that required by the sampling procedure specified in the contract for the quantity of equipment on which warranty action is proposed. Warranty sampling results may be projected over equipment in the same shipment or other equipment contained in other shipments even though all of such equipment are not present at the point of reinspection and regardless of whether such equipment has been issued or consumed, provided (1) the equipment from which the samples were drawn are reasonably representative of the quantity on which warranty action is proposed, and (2) the defects found in the sample size are sufficient to reject the quantity of equipment on which warranty action is proposed, even though the sample size may be less than that required for such quantity. The original inspection lots need not be reconstituted, nor shall the Contracting Officer be required to use the same lot size as on original inspection. Within a reasonable time after the notice, the Contracting Officer may exercise one or more of the following remedies and also, following the exercise of an option, may unilaterally change it to one or more of the other remedies set forth below:

(i) Require an equitable adjustment in the contract price for any equipment or group of equipment, for the installation thereof, for training or for any combination thereof;

(ii) Either before, during or after installation, screen the equipment at Contractor's expense and return all nonconforming equipment to the Contractor for correction or replacement and performance or reperformance of installation services and training upon return of the equipment or for any combination thereof;

(iii) Either before, during or after installation, require the Contractor to screen the equipment and to correct/replace all nonconforming equipment or perform/reperform any installation services and training or for any combination thereof at destination. The Contractor shall proceed in accordance with the "Service Requirements" clause incorporated elsewhere in the contract;

(iv) Either before, during or after installation, return any equipment or group of equipment under this clause to the Contractor (irrespective of the f.o.b. point or the point of acceptance) for screening and correction or replacement, and performance or reperformance of installation services and training upon return of the equipment or for any combination thereof;

(v) Either before, during or after installation, return or hold for the Contractor's account any equipment or group of equipment delivered hereunder, whereupon the Contractor shall repay the contract price paid for the equipment, services, training or any combination thereof. In such event, the Government may reprocure similar equipment services and training as applicable, upon such terms and in such manner as the Contracting Officer may deem appropriate, and charge to the Contractor the additional cost occasioned the Government thereby.

(3) When remedy(c) (2) (ii), (c) (2) (iii), or (c) (2) (iv) of this clause is exercised, the Contractor may be required to submit in writing and within 30 days after receipt of notice of such invocation a schedule for either:

(i) Correction and/or replacement of all defective equipment and subsequent redelivery of the returned equipment; or,

(ii) Screening defective equipment at each destination involved and subsequent redelivery of all corrected and/or replaced equipment as well as performance or reperformance of installation services, training or any combination thereof upon return of the equipment. Such schedule will become a part of the contract delivery schedule upon agreement thereto by the Government. If the Contractor fails to provide an agreeable schedule within the specified period or any extension agreed to by the Government, the Government may correct the items and charge the Contractor's account or issue a contract for correction of the items and charge the Contractor's account; or exercise one or more of the remedies specified in paragraph (4) below.

(4) If the Contractor fails to accept return of the nonconforming equipment; or fails to make redelivery of the corrected or replaced equipment to the Government or to perform or reperform installation services, training, or any combination thereof within the time established; or fails to make progress after its return to correct or replace it so as to endanger performance within the time established for redelivery and does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure, the Contracting Officer may exercise one or more of the following remedies:

(i) Retain or have the Contractor return the nonconforming equipment and require an equitable adjustment in the contract price for the equipment, for the installation thereof, for training or for any combination thereof.

(ii) Return or hold the nonconforming equipment for the Contractor's account, or require the return of the nonconforming equipment and then hold for the Contractor's account, whereupon the Contractor shall repay the contract price for the equipment, services, training or any combination thereof. In such event, the Government may reprocure similar equipment, services and training upon such terms and in such manner as the Contracting Officer may deem appropriate, and charge to the Contractor the additional costs occasioned the Government thereby.

(iii) If the Contractor fails to furnish timely disposition instructions, dispose of the nonconforming equipment for the Contractor's account in a reasonable manner, in which case the Government is entitled to reimbursement from the Contractor or from the proceeds for the reasonable expenses of the care and disposition of the nonconforming equipment, as well as for any other costs incurred or to be incurred.

(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 this contract.

(d) Failure to agree upon any determination to be made under this clause shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(e) When the contract specifies ultimate delivery of equipment to a location outside the contiguous United States, such location shall be deemed the destination for purposes of this clause.

(End of Clause)

**52.246-9053 Commercial Warranty.**
As prescribed in 46.709-90, insert the following clause:

COMMERCIAL WARRANTY (SEP 2008)

The Contractor agrees that the supplies or services furnished under this contract will be covered by the most favorable commercial warranties the Contractor gives to any customer for such supplies or services and that the rights and remedies provided herein are in addition to and do not limit any rights afforded to the Government by any other clause of this contract. Attach a copy of the commercial warranty to this offer if applicable.

(End of Clause)

**52.246-9054 Warranty – Acceptance of Supplies.**
As prescribed in 46.710-91, insert the following clause:

WARRANTY - ACCEPTANCE OF SUPPLIES (NOV 2011)

This clause is applicable when surplus materials are accepted (Defense Logistics Acquisition Directive (DLAD) clause 52.211-9000), when a certificate of conformance (Federal Acquisition

Regulation (FAR) 52.246-15) supports or forms the basis for acceptance of supplies at origin by the Government, or when acceptance is performed by the Government at destination.

(a) The Contractor warrants for a period of one year that the supplies at time of delivery conform to all contract requirements. If this warranty is breached, the Government may elect to:

(1) reject the supplies and require refund of contract price; or

(2) require the Contractor at its expense to repair or replace the supplies; or

(3) repair or correct the supplies and charge the Contractor for the costs the Government incurred; or

(4) retain the supplies and require an equitable adjustment in the contract price.

(b) The Government shall mail or otherwise furnish notice to the Contractor of the breach of this warranty within one year after date of delivery, inform the Contractor of the remedy exercised and shall require the Contractor to take action accordingly. Any disputes as to the breach of this warranty shall be resolved under the Disputes clause of the contract.

(c) The rights hereby provided the Government shall not be affected by other clauses concerning the conclusiveness of inspection and acceptance and are in addition to and do not limit any rights of the Government under other clauses of this contract.

(End of Clause)

**52.246-9055 Warranty of Supplies and Virtual Prime Vendor.**
As prescribed in 46.710-92, insert the following clause:

WARRANTY OF SUPPLIES AND VIRTUAL PRIME VENDOR (SEP 2008)

(a) General Application.

(1) The Contractor warrants, at the time of delivery to the user and for one year thereafter, that the supplies delivered conform to all the technical requirements of the delivery order. Contractor further warrants the supplies are free from defects in workmanship or material. Within a reasonable period of discovering any defect, but not later than 30 days after the warranty period, the Government shall give the Contractor written notice of any defect, except as provided in subsection (a)(2) or (3). The Contractor shall replace the nonconforming supplies within the time period allowed in the current order to ship time (OST) or contractor processing time (CPT), as applicable, performance metric for routine requisitions. This period begins upon receipt of the Government's notice. The Contractor is responsible for all costs incurred in returning and replacing the nonconforming supplies.

(2) On-site liaison. For supplies delivered to customers operating where the Contractor has an on-site liaison, the warranty in section (a)(1) applies except that the customer may notify the Contractor liaison of a nonconforming supply via email and may return the nonconforming supply to the liaison.

(3) Off-site liaison. For supplies delivered to customers operating where the Contractor has an off-site liaison, the warranty in section (a)(1) applies except that the customer may notify the Contractor liaison of a nonconforming supply via email.

(b) The benefits conferred by this warranty shall operate independently of, and be supplemented by, the benefits conferred by any manufacturer's or supplier's warranty.

(c) The liaison must immediately document in writing any reported discrepancy to the Administrative Contracting Officer and any disposition instruction provided by the liaison. The Contractor shall make available on its website all relevant information about reported discrepancies, defects, and actions taken.

(End of Clause)

**52.246-9056 Warranty Period for Overseas Shipments.**
As prescribed in 46.706-90, insert the following clause:

WARRANTY PERIOD FOR OVERSEAS SHIPMENTS (SEP 2008)

For overseas shipments, the warranty period begins when the supplies are received at the overseas destination.

(End of Clause)

**52.246-9057 Warranty of Data.**
As prescribed in 46.708-90, insert the following clause:

WARRANTY OF DATA (SEP 2008)

(a) Definition. Technical data as used in this clause, means recorded information, regardless of the form or method of the recording of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.

(b) Warranty.

(1) Notwithstanding inspection and acceptance by the Government of the technical data package furnished under this contract and notwithstanding any provision of this contract concerning the conclusiveness thereof, the Contractor warrants the technical package as delivered will, without any additional data, be adequate to enable any competent manufacturer to produce the item without 1) resort to or the need for additional design effort; or (2) require any additional data from the Contractor.

(2) The Contractor also warrants the technical data package does not require the incorporation of any product made solely by the Contractor and the data includes, in addition, all other necessary information, a complete description of and the right to use by or for the Government, any manufacturing processes identified in the technical data package which are not common industry practices.

(3) The Contractor further warrants all technical data delivered under this contract will at the time of delivery conform with the specifications and all other requirements of this contract.

(4) The warranty shall remain in effect until the first production Contractor has manufactured and tested items in accordance with the technical data package provided by the Contractor and the items accepted by the Government or three years, whichever occurs first. The production Contractor shall be the first Contractor to manufacture and sell the items to the Government under contract using the technical data package furnished by the Contractor under this contract. The three year warranty period shall be computed from the date of Government acceptance of the technical data package as indicated by the Government's execution of a DD 250 or other form clearly expressing acceptance.

(c) Notification.

(1) The Contractor agrees to notify the Contracting Officer in writing immediately of any breach of the above warranty which the Contractor discovers within the warranty period.

(2) The Contracting Officer shall give written notice to the Contractor of any breach of warranty in this clause within 90 days after discovery of a defect.

(d) Remedies. The following remedies shall apply to all breaches of the above warranty provided the government notifies the Contractor of the breach in writing within period stated in paragraph (c)(2):

(1) Within 30 days after the Contracting Officer notifies the Contractor of a breach of warranty, the Contracting Officer may by written notice, direct the Contractor to correct or replace at the Contractor's expense the nonconforming technical data package.

(2) If the Contractor refuses or fails to comply with the direction under (d)(1) above, the Contracting Officer may, within 90 days of such refusal or failure, by contract or otherwise, correct or replace the nonconforming technical data package and charge the Contractor the cost occasioned to the Government thereby.

(e) Additional liabilities. In addition to the remedies under paragraph (d)(1) and (2) of this clause, the Contractor shall be liable to the Government for all damages of any sort which the Government suffers as a result of the breach of warranty.

(End of Clause)

**52.246-9058 Warranty of Supplies.**
As prescribed in 46.710-93, insert the following clause:

WARRANTY OF SUPPLIES (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 supplies, or approves specific services as partial or complete performance of the contract.

"Correction," as used in this clause, means the elimination of a defect.

"Supplies," as used in this clause, means the end item furnished by the Contractor and related services required under the contract. The word does not include "data".

(b) Contractor's Obligations.

(1) 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 warrants that for one year after receipt of supplies at destination or, in the case of supplies required to bear an expiration date, for the expiration dating period indicated in the labeling thereof:

(i) All supplies furnished under this contract will be free from defects in material or workmanship and will conform with all requirements of this contract; and

(ii) The preservation, packaging, packing and marking, and the preparation for, and method of, shipment of such supplies will conform with the requirements of this contract.

(2) When return of the supplies to the Contractor and redelivery, if applicable, is required, transportation charges and responsibility for the supplies while in transit shall be borne by the Contractor. The Contractor shall also be liable for

(i) handling costs and incidental charges incurred by the Government in the preparation of the above described supplies for return to the Contractor and in return of said supplies to storage, after redelivery by the Contractor and

(ii) for cost of Government examination of the corrected or replaced supplies computed and charged at the flat rate of $49.28 per hour.

(3) Any supplies or parts thereof, corrected or furnished in replacement under this clause, shall also be subject to the terms of this clause to the same extent as supplies initially delivered. The warranty, with respect to supplies or parts thereof, shall be equal in duration to that in paragraph (b)(1) of this clause and shall run from the date of receipt at destination of the corrected or replaced supplies.

(4) All implied warranties of merchantability and "fitness for a particular purpose" are excluded from any obligation contained in this contract.

(c) Remedies available to the Government.

(1) Notice requirement: The Contracting Officer shall give notice to the Contractor of any breach of warranties in paragraph (b)(1) of this clause within 13 months from receipt of supplies at destination or, in the case of supplies required to bear an expiration date, no later than one month following the expiration date indicated in the labeling thereof.

(2) Within a reasonable time after the notice, the Contracting Officer may exercise one or more of the following remedies; and also, following the exercise of any remedy, may unilaterally change it to one or more other of the other remedies set forth below:

(i) Require, by written notice, the prompt correction or replacement of any supplies or parts thereof (including preservation, packaging, packing and marking) that do not conform with the requirements of this contract within the meaning of paragraph (b)(1) of this clause; or

(ii) Retain such supplies and reduce the contract price by an amount equitable under the circumstances, after which the Contractor shall promptly make appropriate repayment; or

(iii) Return or hold for Contractor's account any supplies or group of supplies delivered hereunder, whereupon the Contractor shall repay the contract price paid therefore. In such event, the Government may reprocure similar supplies upon such terms and in such manner as the Contracting Officer may deem appropriate, and charge to the Contractor the cost occasioned the Government thereby.

(3) When the remedy in paragraph (c)(2) of this clause is exercised, the Contractor is required to submit in writing and within 30 days after receipt of notice of such invocation a schedule for correction and/or replacement of all nonconforming supplies and subsequent redelivery of the returned supplies. Such schedule will become a part of the contract delivery schedule upon agreement thereto by the Government. If the Contractor fails to provide an agreeable schedule within the specified period, or any extension agreed to by the Government, the Government may:

(i) correct the items and charge the Contractor's account or

(ii) issue a contract for correction of the items and charge the Contractor's account or

(iii) exercise one or more of the remedies specified in (4) below.

(4) If the Contractor fails to accept return of the nonconforming supplies; or, fails to make redelivery of the corrected or replaced supplies to the Government within the time established; or, fails to make progress after their return to correct or replace them so as to endanger performance within the time established for redelivery and does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure, the Contracting Officer may exercise one or more of the following remedies:

(i) Retain or have the Contractor return the nonconforming supplies and require an equitable adjustment in the contract price.

(ii) Return or hold the nonconforming supplies for Contractor's account, or require the return of the nonconforming supplies and then hold for Contractor's account, whereupon the Contractor shall repay the contract price therefore. In such event, the Government may reprocure similar supplies upon such terms and in such manner as the Contracting Officer may deem appropriate, and charge to the Contractor the additional cost occasioned the Government thereby.

(iii) If the Contractor fails to furnish timely disposition instructions, dispose of the nonconforming supplies for the Contractor’s account in a reasonable manner, in which case the Government is entitled to reimbursement from the Contractor or from the proceeds for the reasonable expenses of the care and disposition of the nonconforming supplies, as well as for any other costs incurred or to be incurred.

(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 this contract.

(d) Failure to agree upon any determination to be made under this clause shall be a dispute concerning a question of fact within the meaning of the “Disputes” clause of this contract.

(e) When the contract specifies ultimate delivery of supplies to a location outside the contiguous United States, such location shall be deemed the destination for purposes of this clause.

(End of Clause)

**52.246-9059 Warranty of Supplies (Commercial Items).**
As prescribed in 46.709-91, insert the following clause:

WARRANTY OF SUPPLIES (COMMERCIAL ITEMS) (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 supplies, or approves specific services as partial or complete performance of the contract.

"Correction", as used in this clause, means the elimination of a defect.

"Supplies", as used in this clause, means the end item furnished by the Contractor and related services required under the contract. The word does not include "data".

(b) Contractor's Obligations.

(1) 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 warrants that for one year after receipt of supplies at destination or, in the case of supplies required to bear an expiration date, for the expiration dating period indicated in the labeling thereof, all supplies furnished—

(i) Are of a quality to pass without objection in the trade under the contract description;

(ii) Are fit for the ordinary purposes for which the supplies are used;

(iii) Are within the variations permitted by the contract, and are of an even kind, quality, and quantity within each unit and among all units;

(iv) Are adequately contained, packaged, and marked as the contract may require; and

(v) Conform to the promises or affirmations of fact made on the container.

(2) When return of the supplies to the Contractor and re-delivery, if applicable, is required, transportation charges and responsibility for the supplies while in transit shall be borne by the Contractor. The Contractor shall also be liable for (i) handling costs and incidental charges incurred by the Government in the preparation of the above described supplies for return to the Contractor and in return of said supplies to storage, after redelivery by the Contractor and (ii) for cost of Government examination of the corrected or replaced supplies computed and charged at the flat rate of $49.28 per hour.

(3) Any supplies or parts thereof, corrected or furnished in replacement under this clause, shall also be subject to the terms of this clause to the same extent as supplies initially delivered. The warranty, with

respect to supplies or parts thereof, shall be equal in duration to that in paragraph (b)(1) of this clause and shall run from the date of receipt at destination of the corrected or replaced supplies.

(c) Remedies Available to the Government.

(1) Notice Requirement: The Contracting Officer shall give notice to the Contractor of any breach of warranties in paragraph (b)(1) of this clause within 13 months from receipt of supplies at destination or, in the case of supplies required to bear an expiration date, no later than one month following the expiration date indicated in the labeling thereof.

(2) Within a reasonable time after the notice, the Contracting Officer may exercise one or more of the following remedies; and also, following the exercise of any remedy, may unilaterally change it to one or more other remedies set forth below:

(i) Require, by written notice, the prompt correction or replacement of any supplies or parts thereof (including preservation, packaging, packing, and marking) that do not conform with the requirements of this contract within the meaning of paragraph (b)(1) of this clause; or

(ii) Retain such supplies and reduce the contract price by an amount equitable under the circumstances, and the Contractor shall promptly make appropriate repayment; or

(iii) Return or hold for Contractor's account any supplies or group of supplies delivered hereunder, whereupon the Contractor shall repay the contract price paid therefore. In such event, the Government may reprocure similar supplies upon such terms and in such manner as the Contracting Officer may deem appropriate, and charge to the Contractor the cost occasioned the Government thereby.

(3) When the remedy in paragraph (c)(2) of this clause is exercised, the Contractor is required to submit in writing and within 30 days after receipt of notice of such invocation a schedule for correction and/or replacement of all nonconforming supplies and subsequent redelivery of the returned supplies. Such schedule will become a part of the contract delivery schedule upon agreement thereto by the Government. If the Contractor fails to provide an agreeable schedule within the specified period, or any extension agreed to by the Government, the Government may (i) correct the items and charge the Contractor's account or (ii) issue a contract for correction of the items and charge the Contractor's account or (iii) exercise one or more of the remedies specified in (4) below.

(4) If the Contractor fails to accept return of the nonconforming supplies; or, fails to make redelivery of the corrected or replaced supplies to the Government within the time established; or, fails to make progress after their return to correct or replace them so as to endanger performance within the time established for redelivery and does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure, the Contracting Officer may exercise one or more of the following remedies:

(i) Retain or have the Contractor return the nonconforming supplies and require an equitable adjustment in the contract price.

(ii) Return or hold the nonconforming supplies for Contractor's account, or require the return of the nonconforming supplies and then hold for Contractor's account, whereupon the Contractor shall repay the contract price therefore. In such event, the Government may reprocure similar supplies upon such terms

and in such manner as the Contracting Officer may deem appropriate, and charge to the Contractor the additional cost occasioned the Government thereby.

(iii) If the Contractor fails to furnish timely disposition instructions, dispose of the nonconforming supplies for the Contractor's account in a reasonable manner, in which case the Government is entitled to reimbursement from the Contractor or from the proceeds for the reasonable expenses of the care and disposition of the nonconforming supplies, as well as for any other costs incurred or to be incurred.

(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 this contract.

(d) Failure to agree upon any determination to be made under this clause shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(e) When the contract specifies ultimate delivery of supplies to a location outside the contiguous United States, such location shall be deemed the destination for purposes of this clause.

(End of Clause)

**52.246-9060 Warranty of Supplies (Commercial Items).**
As prescribed in 46.709-92(a), insert the following clause:

WARRANTY OF SUPPLIES (COMMERCIAL ITEMS) (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 supplies, or approves specific services as partial or complete performance of the contract.

"Correction," as used in this clause, means the elimination of a defect.

"Supplies," as used in this clause, means the end item furnished by the Contractor and related services required under the contract. The word does not include "data".

(b) Contractor's obligations.

(1) 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 warrants that for _____ after receipt of supplies at destination or, in the case of supplies required to bear an expiration date, for the expiration date indicated in the labeling thereof, all supplies furnished

(i) Are of a quality to pass without objection in the trade under the contract description;

(ii) Are fit for the ordinary purposes for which the supplies are used;

(iii) Are within the variations permitted by the contract, and are of an even kind, quality and quantity within each unit and among all units;

(iv) Are adequately contained, packaged, and marked as he contract may require; and

(v) Conform to the promises or affirmations of fact made on the container.

(2) When return of the supplies to the Contractor and redelivery, if applicable, is required, transportation charges and responsibility for the supplies while in transit shall be borne by the Contractor. The Contractor shall also be liable for:

(i) Handling costs and incidental charges incurred by the Government in the preparation of the above described supplies for return to the Contractor and in return of said supplies to storage, after redelivery by the Contractor; and

(ii) For cost of Government examination of the corrected or replaced supplies computed and charged at the flat rate of $49.28 per hour.

(3) Any supplies or parts thereof, corrected or furnished in replacement under this clause, shall also be subject to the terms of this clause to the same extent as supplies initially delivered. The warranty, with respect to supplies or parts thereof, shall be equal in duration to that in paragraph (b)(1) of this clause and shall run from the date of receipt of the corrected or replaced supplies at destination.

(c) Remedies available to the Government.

(1) Notice Requirement: The Contracting Officer shall give written notice to the Contractor of any breach of warranties in paragraph (b)(1) of this clause within _____ from receipt of supplies at destination or, in the case of supplies required to bear an expiration date, no later than one month following the expiration date indicated in the labeling.

(2) Conformance of supplies or parts thereof subject to warranty action shall be determined in accordance with the inspection and acceptance procedures contained in the contract except as provided herein. If the contract provides for sampling, the Contracting Officer may group any supplies delivered under this contract. The size of the sample shall be that required by the sampling procedure specified in the contract for the quantity of supplies on which warranty action is proposed, except when projecting sampling results. Warranty sampling results may be projected over supplies in the same shipment or other supplies contained in other shipments even though all of such supplies are not present at the point of reinspection and regardless of whether such supplies have been issued or consumed, provided (1) the supplies from which the samples were drawn are reasonably representative of the quantity on which warranty action is proposed, and (2) the defects found in the sample size are sufficient to reject the quantity of supplies on which warranty action is proposed, even though the sample size may be less than that required for such quantity. The original inspection lots need not be reconstituted, nor shall the Contracting Officer be required to use the same lot size as on original inspection. Within a reasonable time after the notice, the Contracting Officer may exercise one or more of the following options; and also, following the exercise of any option, may unilaterally change it to one or more of the other options set forth below:

(i) Require an equitable adjustment in the contract price for any supplies or group of supplies;

(ii) Screen the supplies grouped under this clause at Contractor's expense and return all nonconforming supplies to the Contractor for correction or replacement;

(iii) Require the Contractor to screen the supplies at depots designated by the Government within the contiguous United States and to correct or replace all nonconforming supplies;

(iv) Return any supplies or group of supplies under this clause to the Contractor (irrespective of the f.o.b. point or the point of acceptance) for screening and correction or replacement;

(v) Return or hold for Contractor's account any supplies or group of supplies delivered hereunder, whereupon the Contractor shall repay the contract price paid therefore. In such event, the Government may reprocure similar supplies upon such terms and in such manner as the Contracting Officer may deem appropriate, and charge to the Contractor the additional cost occasioned the Government thereby.

(3) When remedy (c) (2) (iii) or (c) (2) (iv) of this clause is exercised, the Contractor is required to submit in writing and within 30 days after receipt of notice of such invocation a schedule for either:

(i) Correction and/or replacement of all defective supplies and subsequent redelivery of the returned supplies; or,

(ii) Screening defective supplies at each depot involved and subsequent redelivery of all corrected and/or replaced supplies.

Such schedule will become a part of the contract delivery schedule upon agreement thereto by the Government. If the Contractor fails to provide an agreeable schedule within the specified period, or any extension agreed to by the Government, the Government may correct the items and charge the Contractor's account; or, issue a contract for correction of the items and charge the Contractor's account; or, exercise one or more of the remedies specified in paragraph (4) below.

(4) If the Contractor fails to accept return of the nonconforming supplies; or, fails to make redelivery of the corrected or replaced supplies to the Government within the time established; or, fails to make progress after their return to correct or replace them so as to endanger performance within the time established for redelivery and does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure, the Contracting Officer may exercise one or more of the following remedies:

(i) Retain or have the Contractor return the nonconforming supplies and require an equitable adjustment in the contract price.

(ii) Return or hold the nonconforming supplies for Contractor's account, or require the return of the nonconforming supplies and then hold for Contractor's account, whereupon the Contractor shall repay the contract price therefore. In such event, the Government may reprocure similar supplies upon such terms and in such manner as the Contracting Officer may deem appropriate, and charge to the Contractor the additional costs occasioned the Government thereby.

(iii) If the Contractor fails to furnish timely disposition instructions, dispose of the nonconforming supplies for the Contractor's account in a reasonable manner, in which case the Government is entitled to reimbursement from the Contractor or from the proceeds for the reasonable expenses of the care and disposition of the nonconforming supplies, as well as for any other costs incurred or to be incurred.

(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 this contract.

(d) Failure to agree upon any determination to be made under this clause shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(e) When the contract specifies ultimate delivery of supplies to a location outside the contiguous United States, such location shall be deemed the destination for purposes of this clause.

(End of Clause)

**52.246-9061 Warranty of Industrial Plant Equipment (IPE) – Federal Supply Group (FSG) 34.** As prescribed in 46.710-94, 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 46.710-95, 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)

**52.246-9064 Quality Conformance Inspection Requirements.**
Insert the following clause as prescribed at 46.401-91(a):

QUALITY CONFORMANCE INSPECTION REQUIREMENTS (NOV 2011)

(a) Scope. This clause applies when manufactured parts are being acquired and the item description states that quality conformance inspection is required. If any provision herein is inconsistent with any

other specification requirement of this order/contract, the other specification takes precedence over this clause.

(b) Specifications, standards.

(1) American Society of Mechanical Engineers (ASME) B46.1, Surface Texture.

(2) ASME Y14.5M, Dimensioning and Tolerancing.

(3) American National Standards Institute (ANSI)/ NCSL Z540.1, "Calibration Laboratories and Measuring and Test Equipment - General Requirements".

(4) National Bureau of Standards Federal Standard (FED-STD) H28, Screw Thread Standards for Federal Services.

(5) American Society for Testing Materials (ASTM) Standards.

(6) E8 - Test Methods for Tension Testing of Metallic Materials.

(7) E10 - Test Methods for Brinell Hardness of Metallic Materials.

(8) E18 - Test Methods for Rockwell Hardness and Rockwell Superficial Hardness of Metallic Materials.

(9) International Organization for Standardization (ISO) 9000 "Quality management and quality assurance - Vocabulary".

(c) Requirements.

(1) Items procured in accordance with a technical data package that is complete for manufacture (e.g., Government drawing, commercially-available technical data, etc.) shall be tested/examined by the Contractor as follows:

(i) Machined surfaces of parts specified to a surface roughness value shall be examined in accordance with ASME B46.1 to determine conformance of surface roughness to a specified value.

(ii) Product threads shall be in accordance with FED-STD-H28.

(iii) Specified dimensional and geometric tolerances shall be measured using only calibrated measuring equipment that is certified and traceable to National Institute of Standards and Technology (NIST) for accuracy.

(iv) Testing shall be in accordance with applicable ASTM standards.

(2) Finished products shall be uniform in quality and condition; and clean, smooth and free from scale, burrs, slivers, sharp edges (unless a technical requirement), ragged or torn edges, and other defects considered detrimental to serviceability of product.

(d) Quality assurance provisions.

(1) Sampling for quality conformance inspection shall be as specified in the contract.

(2) The following classification of characteristics shall apply, unless otherwise specified:

(i) Critical:

(A) Diametrical and linear dimensions having a total tolerance of 0.001 inch (0.025 MM) or less.

(B) Surface finishes having a 16 rms value or less.

(C) Geometric Tolerances having a tolerance of 0.002 inch (0.051 MM) or less.

(D) Nondestructive tests - Magnetic particle inspection, Liquid penetrant inspection, Ultrasonic testing, Radiographic testing, etc.

(ii) Major:

(A) Diametrical and linear dimensions having a total tolerance greater than 0.001 inch (0.025 MM) up to and including 0.005 inch (0.1270 MM).

(B) Surface finishes having specified rms values over 16 but less than or equal to 63.

(C) Geometric tolerance having a tolerance greater than 0.002 inch (0.051 MM) and equal to or less than 0.008 inch (0.2032 MM).

(D) Threads specified to Class 3 tolerances.

(iii) Minor:

(A) Diametrical and linear dimensions having a total tolerance in excess of 0.005 inch (0.1270 MM).

(B) Surface finishes specified to rms values in excess of 63.

(3) Visual and dimensional characteristics that are found to be nonconforming with the requirements of the applicable drawing and the requirements of this provision shall be considered contractual nonconformances.

(4) Chemical test lot. For chemical analysis, a test lot shall consist of one heat or melt of material regardless of product sizes/shapes produced.

(5) Mechanical test lot. For mechanical testing, when heat treatment is a technical requirement, a lot shall consist of:

(i) One size/shape of "as received" material from a "chemical test lot", or

(ii) Each heat treat batch or continuous furnace run of end items from a "chemical test lot".

(6) Material certification. Written certification shall state that the material used conforms to the specification requirements and that test reports are on file. The Contractor shall present the material manufacturer's certificate of test for each heat or melt of material used in the manufacture of inspection lot product. The certificate shall show that the test results are in accordance with specification requirement and shall be entered into the inspection record. When a certificate of quality compliance (COQC) is a requirement, the material certification:

(i) Shall be signed by an authorized company officer or Contractor representative responsible for Quality Assurance;

(ii) Shall include actual test/inspection results; and

(iii) Shall include documentation for all required processes.

(7) Metallic products: Products produced from "as received" material, or from material purchased in accordance with technical requirements of the contract/order, including products to be heat treated during the manufacturing cycle, shall require certificates (test report results) or mill source certification; and shall be verified by the Contractor for conformance with the requirements of the applicable material specification, including conformance with the properties for the type, grade, class, condition ordered. Inconclusive certification will require verification testing in accordance with the applicable specification and shall be performed on the chemical test lot and mechanical test lot of any particular material received; and test report results shall form part of the contract inspection records.

(i) Heat treated parts: Those articles which during the manufacturing cycle have been heat treated as may be required by drawing to obtain desired mechanical properties must be tensile and/or hardness tested as applicable to assure conformance to the drawing requirements.

(ii) When necessary due to product size, tensile test coupons may be taken from the same material from which the part is made. Test coupons shall be the same thickness as the maximum section of the part being heat treated and shall be subjected to the same heating and cooling cycles performed in the heat treatment of the parts.

(8) Non-metallic products: Test certificates from the raw material producer or source certification shall be examined by the Contractor for conformance to the applicable material application. The certification received from the material producer/supplier may be the sole basis for acceptance when the certificate establishes that the material meets the requirements of the applicable specifications. If the certificate is not complete, additional testing must be performed or data obtained to establish that material meets the requirements of the applicable specifications.

(9) Surface finishes and treatments/metallic coatings:

(i) Plating, surface finishes and treatments: Samples shall be selected, examined and tested in accordance with requirements of the applicable finish specification cited within technical documents of the contract with the acceptance/rejection criteria of the specification applying. In lieu of specific testing inspection criteria, the Contractor may furnish the plating vendor's certification with inspection results attached as objective quality evidence of surface finish conformance with specified requirements.

(ii) When hydrogen embrittlement relief treatment is required, the Contractor shall include on the certification a statement that product was so treated by baking at the temperature and time required.

(10) Examination for preparation for delivery. Examination of the preparation for delivery shall be performed to determine conformance with contractual requirements.

(End of Clause)

**52.246-9065 Protection from Degradation due to Electrostatic/Electromagnetic Forces.**
Insert the following clause as prescribed at 46.401-91(b):

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)

**52.246-9070 Commercial Bills of Lading (Bulk).**
As prescribed in 46.601-93, insert the following clause:

COMMERCIAL BILLS OF LADING (BULK) (DLA ENERGY) (NOV 2011)

(a) Commercial bills of lading should not be used in the performance of this contract. The official record for the cargo lifts under bulk fuels contracts is the Department of Defense (DD) Form 250-1, Tanker/Barge Material Inspection and Receiving Report.

(b) If a fuel Contractor requires the use of a commercial bill of lading for record purposes, the bill of lading must clearly state, on the original and all copies, the following:

"Nonnegotiable instrument – DD form 250-1 is the official document for this Government cargo."

(End of Clause)

**52.246-9071 Drawings For Inspection (Logistics Command (LOGCOM) Depot Level Repairable (DLR) –DLA Land and Maritime).**
As prescribed in 46.300 (97), insert the following clause:

DRAWINGS FOR INSPECTION (LOGISTICS COMMAND (LOGCOM) DEPOT LEVEL REPAIRABLE (DLR) – DLA LAND AND MARITIME) (NOV 2011)

The Contractor shall make legible drawings and the printed specifications to which the product was manufactured available to the Government quality assurance representative (QAR) at the time of production inspection. These drawings and specifications shall be annotated to the latest revision

incorporated therein. Upon completion of product inspection and acceptance by the Government QAR, all drawings and specifications will be returned to the Contractor.

(End of Clause)

**52.246-9072 Government Inspection (DLA Disposition Services).**
As prescribed in 46.302-90, insert the following clause:

GOVERNMENT INSPECTION (DLA DISPOSITION SERVICES) (NOV 2011)

(a) All services will be subject to inspection by the Procuring Contracting Officer (PCO) and/or the PCO's authorized representative(s). The Government has the right to inspect and obtain copies of all licenses, permits, and approvals issued by any Government entity or agency to the Contractor or its subcontractors that are applicable to the performance of services under this contract. The Government has the right to inspect and test, at its own expense, operations conducted by the Contractor or its subcontractors in the performance of this contract.

(b) The Government will be afforded free access to any facility used by the Contractor and any subcontractors in performing services under this contract, including offices and facilities where contract-related records are retained. Government inspections of Contractor and subcontractor facilities may be scheduled or unscheduled, i.e., announced or unannounced. The purpose of these inspections is to assist the Government in determining the conformance of services with contract requirements.

(c) The Contractor is solely and exclusively responsible for the quality of all services performed under this contract. The Government's right to conduct inspections at Government, Contractor, or subcontractor facilities, does not relieve the Contractor of this responsibility. Neither Government failure to make such inspection, nor failure to discover nonconforming services, shall prejudice the rights of the Government thereafter to reject services, nor relieve the Contractor of its obligation to perform work strictly in accordance with the contract.

(d) The Contractor, in its agreements with subcontractors, shall ensure that the inspection rights described herein are afforded the Government by each subcontractor performing services under this contract.

(End of Clause)

**52.246-9073 Use of Commercial Concerns to Perform Inspection of Services and Facilities (DLA Disposition Services).**
As prescribed in 46.302-90, insert the following clause:

USE OF COMMERCIAL CONCERNS TO PERFORM INSPECTION OF SERVICES AND FACILITIES (DLA DISPOSITION SERVICES) (NOV 2011)

(a) The Government reserves the right to utilize the services of commercial concerns to perform, or assist in the performance of surveillance, inspections, and/or tests of Contractor and/or subcontractor services as provided in the clause Inspection Of Services – Fixed Price 52.246-4. Such surveillance, inspections and/or tests may include, but shall not be limited to the performance, operations, documentation, and/or records of the Contractor or subcontractor that are required in the performance of this contract.

(b) Duly authorized commercial concerns will present a letter of authorization identifying themselves as a representative of the Government prior to surveillance, inspection and/or testing. Such surveillance, inspections and/or tests shall be performed in a manner that will not unduly interfere with contract performance.

(c) These commercial concerns are independent Contractors with limited grants of authority. They may not modify or interpret contracts or otherwise act on behalf of the Government or to issue any directions or instructions except as provided in this clause. The Government assumes no liability or responsibility for any actions or inactions of the commercial concerns or their employees, agents, or representatives.

(End of Clause)

**52.246-9080 Points of Inspection and Acceptance.**
As prescribed in 46.503-91, insert the following clause:

POINTS OF INSPECTION AND ACCEPTANCE (DLA ENERGY) (NOV 2011)

(a) Free on board (f.o.b.) origin deliveries will be inspected and accepted at origin.

(b) F.o.b. destination deliveries will be inspected at origin and accepted at destination.

(End of Clause)

**52.246-9081 Certificate of Conformance.**
As prescribed in 46.504-91, insert the following clause:

CERTIFICATE OF CONFORMANCE (DLA ENERGY) (NOV 2011)

(a) When authorized in writing by the cognizant contract administration office (CAO), the Contractor shall ship with a certificate of conformance any supplies for which the Contract would otherwise require inspection at source. In no case shall the Government's right to inspect supplies under the inspection provisions of this contract be prejudiced. Shipments of such supplies will not be made under this contract until use of the certificate of conformance has been authorized in writing by the CAO, or inspection and acceptance have occurred.

(b) The Contractor's signed certificate shall be attached to or included on the top copy of the material inspection and receiving report (Department of Defense (DD) Form 250) or other authorized document that is distributed to the payment office (Block 12 of the DD Form 250). A copy shall also be sent with the shipment and to the CAO (Block 10 of the DD Form 250); however, the CAO copy shall only be sent if specifically requested by the Contracting Officer.

(c) The Government has the right to reject defective supplies or services within a reasonable time after delivery by written notification to the Contractor. The Contractor shall in such event promptly replace, correct, or repair the rejected supplies or services at the Contractor's expense.

(d) The certificate shall read as follows:

"I certify that on [Date], [Contractor's name] furnished the supplies or services called for by [contract number] via [carrier] on [bill of lading or other shipping document] in accordance with all applicable requirements. I further certify 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 physical item identification (part number), and are in the quantity shown on this or on the attached acceptance document."

[Date of Execution]
[Signature]
[Title]

(End of Clause)

**52.246-9083 Liability for Warehouse Charges for Perishable Cold Storage Items Due to Receipt of Defective Supplies.**
As prescribed in 46.805(a)(S-91), insert the following clause:

LIABILITY FOR WAREHOUSE CHARGES FOR PERISHABLE COLD STORAGE ITEMS DUE TO THE RECEIPT OF DEFECTIVE SUPPLIES (SEP 2012)

(a) Commercial warehouses.

(1) Supplies which are ultimately rejected, including supplies which were retested and supplies permitted to be reworked, will be charged to the account of the supply contractor.

(2) All handling, storage and reworking charges and any other charges reasonably incurred by the commercial warehouse may be collected by the commercial warehouse from the contractor as a condition of releasing the rejected supplies to the contractor.

(b) Government-owned warehouses.

(1) Supplies which are ultimately rejected, including supplies which were retested and supplies permitted to be reworked by the contracting officer, shall be removed promptly by the contractor after notification of such rejection.

(i) If the Contractor does not remove such supplies within 15 days after written notice of rejection is placed in mail or telephonic notice is transmitted or oral (including telephonic) notice is given, the contractor shall be liable to the Government at a rate of $0.02 per net hundred-weight per day for every day the supplies remain in the Government's possession after date of such notice.

(ii) The Government's right to invoke and collect such charge shall be in addition to any other rights and remedies afforded the Government under any other provision of this contract or provided by law. The Government may dispose of such supplies, with no liability to the contractor, if the contractor does not remove the supplies within 90 days after a written notice is issued to the contractor.

(2) Any reduction in price imposed by the contracting officer on account of nonconforming supplies in accordance with the Inspection provision of the contract may include, in addition to such other reduction as may be equitable, all handling, storage and reworking costs and any other costs reasonably

incurred by the Government which would not have been incurred but for the supplies being defective upon receipt.

(End of Clause)

**52.246-9085 Production Lot Testing (PLT) – Government.**
As prescribed in 46.392(b)(2)(i), insert the following clause:

PRODUCTION LOT TESTING (PLT) – GOVERNMENT (NOV 2011)

(a) For the lots/items specified, the Contractor is required to provide [Contracting Officer shall insert number of samples identified on Defense Logistics Agency pre-award contracting system (DPACS) PR Trailer or 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 on DPACS PR trailer or 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 are 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 on DPACS PR trailer or 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(b)(2)(ii), insert the following clause:

PRODUCTION LOT TESTING (PLT) – CONTRACTOR (JUL 2011)

(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 on DPACS PR Trailer or 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 [the Contracting Officer shall insert number of days as shown on DPACS PR trailer or 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 46.504-92, 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)

**52.247-9000 Guaranteed Maximum Shipping Weights or Dimensions.**
As prescribed in 47.305-3(90), insert the following clause:

GUARANTEED MAXIMUM SHIPPING WEIGHTS OR DIMENSIONS (DEC 1985)

Note to Administrative Contracting Officer: This award has been made on the basis of guaranteed maximum shipping weights or dimensions, and/or minimum size of shipments as specified. Take action in accordance with DLAM 8105.1, Contract Administration Manual, section 47-5, if it becomes evident that the guaranteed maximum shipping weights or dimensions will be exceeded, or if the Contractor tenders delivery of less than the minimum size shipment specified, in order that action may be taken to adjust the contract price.

(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)

**52.247-9003 [Reserved.]**

**52.247-9004 [Reserved.]**

**52.247-9005 [Reserved.]**

**52.247-9006 Free on Board (F.O.B.) Destination Price Quoting Instructions -- Overseas Direct Vendor Delivery(DVD) and Navy Ships.**
As prescribed in 47.305-4, insert the following clause in solicitations and contracts:

FREE ON BOARD (F.O.B.) DESTINATION PRICE QUOTING INSTRUCTIONS – OVERSEAS DIRECT VENDOR DELIVERY (DVD) AND NAVY SHIPS (NOV 2011)

Note: This clause does not apply when the signal code (SIG) found in Section F - Additional delivery information is J, K, L, or M; use instructions in clause 52.247-9001 instead.

Offerors shall include the cost of transportation in their price quotes. This clause identifies the contiguous United States (CONUS) location (i.e., destination) to use for price quoting purposes. This clause does not modify or supersede any shipping instructions specified elsewhere in the solicitation. The successful offeror (i.e., awardee) must contact the transportation office of the contract administration office prior to shipment for confirmation of actual delivery location.

The location (i.e., destination) to use for price quoting purposes only, in order of precedence (first to last), is as follows:

Use the CONUS break bulk point (BBP) or container consolidation point (CCP) if one is identified in Section F - Additional Delivery Information.

If one is not identified, use the complete (i.e., contains street, city, state) CONUS shipping address, if one is identified in Section F - Delivery Information Ship To.

If one is not identified, use the following APO/FPO information in Section F - Delivery Information Ship To.

If the APO/FPO is AA or AE, anticipate delivery to New Cumberland, Pennsylvania. 17070; Dover, Delaware. 19902; or Norfolk, Virginia 23511.

If the APO/FPO is AP, anticipate delivery to Travis Air Force Base (AFB), California 94535, Tracy, California 95376; or San Diego California 92136.

If none of the above exists, access the TAC 1 (parcel post address) from the Defense automatic addressing center inquiry (DAASINQ) website. Perform a Department of Defense activity addressing code (DoDAAC) query using the following as the DoDAAC:

First 6 digits of the transportation control number (TCN), if signal code (SIG) in Section F – Additional Delivery Information is other than J, K, L, or M. Supplementary address (SUPP ADD) in Section F – Additional Delivery Information, if SIG is J, K, L, or M.

If the TAC 1 is a complete CONUS shipping address, use this address. If the TAC 1 contains an APO/FPO, use the destination specified in (c)(1) or(c)(2) above.

(End of Clause)

**52.247-9007 Free on board (f.o.b.) destination price quoting instructions -- Contiguous United States (CONUS) Direct Vendor Delivery (DVD).**
As prescribed in 47.305-4, insert the following provision in solicitations:

FREE ON BOARD (F.O.B) DESTINATION PRICE QUOTING INSTRUCTIONS – CONTIGUOUS UNITED STATES (CONUS) DIRECT VENDOR DELIVERY (DVD) (NOV 2011)

Offerors shall include the cost of transportation in their price quotes. This clause identifies the location (i.e. destination) to use for price quoting purposes. This clause does not modify or supersede any shipping instructions specified elsewhere in the solicitation.

The location to use for price quoting purposes only, in order of precedence (first to last), is as follows:

Use the CONUS break bulk point (BBP) in Section F additional delivery information if one is identified.

If CONUS BBP is not identified, use the Ship To address in Section F Delivery Information.

(End of Provision)

**52.247-9008 Free on Board (F.o.b.) Destination Price Quoting Instructions – Foreign Military Sales (FMS).**
As prescribed in 47.305-4, insert the following clause in solicitations and contracts:

FREE ON BOARD (F.O.B) DESTINATION PRICE QUOTING INSTRUCTIONS – FOREIGN MILITARY SALES (FMS) (NOV 2011)

Note: Do not use the "ship to" address (i.e., ultimate consignee) identified in Section F - Delivery Information, or an outside the contiguous United States (OCONUS) break bulk point (BBP) if one is specified in Section F - Additional Delivery Information, for price quoting purposes. Instead, use the below procedures for price quoting purposes.

Offerors shall include the cost of transportation in their price quotes. This clause identifies the contiguous United States (CONUS) location (i.e., destination) to use for price quoting purposes. This clause does not modify or supersede any shipping instructions specified elsewhere in the solicitation. The successful offeror (i.e., awardee) must contact the transportation office of the procuring activity office prior to shipment for confirmation of actual delivery location.

The location (i.e., destination) to use for price quoting purposes only, in order of preference (first to last), is as follows:

CONUS break bulk point (BBP), if one is specified in Section F- Additional Delivery Information.

Anywhere within a 100-mile radius of the freight forwarder address specified in Section F-Additional Delivery Information.

(End of Clause)

**52.247-9009 Free on Board (F.o.b.) Destination Price Quoting Instructions -- Canadian Foreign Military Sales (FMS).**
As prescribed in 47.305-4, insert the following clause in solicitations:

FREE ON BOARD (F.O.B.) DESTINATION PRICE QUOTING INSTRUCTIONS – CANADIAN FOREIGN MILITARY SALES (FMS) (NOV 2011)

This requirement is for a Canadian foreign military sales customer. Offerors shall include the cost of transportation in their price quotes. The location (i.e., destination) to use for price quoting purposes is the ship to address (i.e., ultimate consignee) identified in Section F-delivery information.

(End of Provision)

**52.247-9010 Free on Board (F.o.b.) Destination Price Quoting Instructions – Shipment to Depot.**
As prescribed in 47.305-4, insert the following clause in solicitations:

FREE ON BOARD (F.O.B.) DESTINATION PRICE QUOTING INSTRUCTIONS – SHIPMENT TO DEPOT (NOV 2011)

(a) Offerors shall include the cost of transportation in their price quotes. This clause identifies the location (i.e. destination) to use for price quoting purposes. This clause does not modify or supersede any shipping instructions specified elsewhere in the solicitation.

(b) When the Section F delivery information ship to is a contiguous United States (CONUS) location, use the ship to address.

(c) When the Section F delivery information ship to is an outside CONUS (OCONUS) location, use New Cumberland, Pennsylvania. 17070 for European depots (Defense Depots Germerscheime, Germany and Sigonelli, Italy) Tracy, California 95376 for Pacific depots (Defense Depots Sasebo, Japan and Yokosuka, Japan).

(End of Provision)

**52.247-9011 Vendor Shipment Module (VSM).**
As prescribed in 47.305-8, 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 47.305-1(c)(91), 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)

**52.247-9013 Free on Board (F.o.b.) Origin And/Or F.o.b. Port(S) of Loading (Destination) on Offer Evaluation.**

As prescribed in 47.305-6(e), insert the following provision:

FREE ON BOARD (F.O.B.) ORIGIN AND/OR F.O.B. PORT(S) OF LOADING (DESTINATION) IN OFFER EVALUATION (NOV 2011)

(a) As selected below by the Government, offers shall be submitted:

[ ] on the basis of both f.o.b. origin and f.o.b. port of loading (destination) for items _____. The Government will award on the f.o.b. basis determined by the Contracting Officer to be the most advantageous to the Government. An offer on the basis of f.o.b. origin only or f.o.b. port of loading (destination) only is acceptable, but will be evaluated only on the basis submitted.

[ ] only on the basis of f.o.b. port of loading (destination) for items _____. Offers submitted on any other basis will be rejected as nonresponsive.

[ ] only on the basis of f.o.b. origin for items _____. Offers submitted on any other basis will be rejected as nonresponsive.

(b) If the offeror designates and/or nominates more than one U.S. port of loading in FAR 52.247-51 or its alternates for evaluation of its offer, but intends a separate or different price applicable to each port of loading, the offeror shall identify in its offer the price(s) applicable to each item, quantity, and port of loading. Absent such identification, the same price(s) shall apply for each item and quantity for all port(s) of loading designated or nominated.

(c) [ ] When checked, logistics requirements limit the port of loading to the ports listed by the Government in (d) of FAR 52.247-51 or its alternates. Any nominations for additional ports by the offeror in (e) of FAR 52.247-51 or its alternates will not be evaluated.

(End of Provision)

**52.247-9014 Evaluation of Offers Via Export Aerial Ports.**
As prescribed in 47.305-6, insert the following provision:

EVALUATION OF OFFERS VIA EXPORT AERIAL PORTS (NOV 2011)

[__] (a) Free on board (f.o.b.) aerial port of embarkation (destination): Offers will be evaluated on the basis of the lowest cost to the Government at the overseas aerial port of debarkation (APOD). Included in this evaluation, in addition to the price to the United States aerial port of embarkation (APOE) will be the aerial shipping costs from the APOE to the overseas APOD. Offeror must insert in this paragraph at least one of the aerial ports shown in paragraph (c) as the place of delivery for each f.o.b. destination offer.

Caution: If a port is not inserted by the offeror, evaluation will be made to a port in paragraph (c) geographically nearest offeror's shipping point.

Place of delivery:

| | |
|---|---|
| Item number | Port |
| Item number | Port |

Item number Port

[__] (b) F.o.b. origin, transportation under Government bill of lading (GBL): Offers will be evaluated on the basis of the lowest cost to the Government at the overseas aerial port of debarkation (APOD). Included in this evaluation, in addition to the f.o.b. origin price of the item, will be the inland transportation costs from the point of origin in the United States to the aerial port of embarkation (APOE) and aerial shipping costs from the APOE to the oversea APOD. The Government will designate the mode and routing at time of shipment and may load from other than those aerial ports specified for evaluation purposes.

[ ] (c) Aerial port(s) of embarkation and shipping costs for evaluation of offers:

Note: Aerial transportation charges are assessed by pound or cube. The cubic foot measurement is multiplied by the cube density minimum of 12.5 pounds per cubic foot and compared to the weight. The larger of the two, actual weight or cube weight, is used for computing charges.

Solicitation item number

Overseas APOD code

APOE Location Cost Per Pound

CHS-Charleston Air Force Base (AFB), South Carolina
DOV-Dover AFB, Delaware
NGU-Naval Air Station (NAS), Norfolk, Virginia
SUU-Travis AFB, California
TCM-McChord AFB, Washington
WRI-McGuire AFB, New Jersey

(End of Provision)

ALT I Add paragraph (d) for awards utilizing f.o.b. destination:

(d) This award is based on shipment to APOE:_____.

(End of Provision)

ALT II Add paragraph (d) for awards utilizing f.o.b. origin:

(d) This award is based on evaluation to APOE:_____.

(End of Provision)

**52.247-9015 Loading Capabilities for Bulk Shipments.**
As prescribed in 47.305-3(92), insert the following clause:

LOADING CAPABILITIES FOR BULK SHIPMENTS (NOV 2011)

(a) For the method(s) of shipping as specified in the schedule, the bidder shall indicate each type of conveyance into which it can load or fill bulk products:

[ ] Transport truck
[ ] Tank wagon
[ ] Tank car

(b) To assure appropriate routing for free on board (f.o.b.) origin shipments from the Contractor's shipping point, specify below the location of the shipping point.

Street address, city, state, zip code: _____
Carrier: _____
Shipping point (rail-private siding): _____
Shipping point (transport truck, truck and trailer, tank wagon): __

(End of Clause)

**52.247-9016 Free on Board (F.o.b.) Destination Contractor Transshipment.**
As prescribed in 47.303-6(c), insert the following clause:

FREE ON BOARD (F.O.B.) DESTINATION CONTRACTOR TRANSSHIPMENT (NOV 2011)

When the Contractor elects to ship by common carrier from the point of Government acceptance to destination via a Contractor distribution center or similar transshipment point to permit consolidation of Contractor shipments, it is agreed that:

(a) The Contractor shall mark Government-ordered supplies appropriately at origin to permit identification throughout shipment;

(b) The Contractor retains no rights to such supplies except for the sole purpose of assuring delivery in a safe condition to the destination specified in the contract;

(c) The Government may direct diversion of such supplies, under emergency circumstances, any time prior to receipt;

(d) Retention of the signed commercial bill of lading for the supplies covered by the invoice meets the requirements of Federal Acquisition Regulation (FAR) clause 52.247-48, f.o.b. Destination - Evidence of Shipment.

(e) Submission of an invoice for payment shall mean supplies for which the Government is being billed have been shipped or delivered in accordance with the shipping instructions issued by the ordering officer, in the quantities shown on the invoice, and that such supplies are in the quantity and of the quality designated by the cited contract. Notwithstanding any other provision of the contract, the Contractor assumes all responsibilities and risk of loss for supplies which are (1) not received at destination, (2) damaged in transit, or (3) not conforming to purchase requirements and shall either replace, repair, or correct such supplies promptly at his expense.

(f) All pertinent records relative to the shipment shall be retained by the Contractor for a period of 3 years after completion of the contract and shall be available for review, if needed.

(End of Clause)

**52.247-9017 Perishable Foodstuff Transportation.**
As prescribed in 47.305-3(93), insert the following clause:

PERISHABLE FOODSTUFF TRANSPORTATION – DLA TROOP SUPPORT - SUBSISTENCE (NOV 2011)

(a) The Contractor shall reimburse the government for all detention or other charges paid to carriers when containers, trucks, trailers or other transportation vehicles are not loaded and released to the carrier within the free time authorized by the carrier.

(b) Refrigerated seavan shipments. The Contractor shall load, brace, and block the products for shipment in refrigerated seavans. The Contractor warrants that the loading pattern specified and required for each load is correct, proper, and acceptable to the ocean carrier. Therefore, the Contractor will pay for the cost of restacking/rebuilding seavans if rejected by the ocean carrier. The Contractor will also pay for other charges related to restacking/reloading such as detention charges for trucks.

(c) Any conflicts in direction will be brought to the attention of the Contracting Officer.

(End of Clause)

**52.247-9018 Utilization of Containers (Seavans) for Export Shipments.**
As prescribed in 47.507(c) insert the following clause:

UTILIZATION OF CONTAINERS (SEAVANS) FOR EXPORT SHIPMENTS (NOV 2011)

(a) The Government reserves the right, where the origin points of successful offerors permit containerized shipments, to direct any or all shipments on contracts resulting from this solicitation to be made in containers.

(b) The responsible transportation officer may direct container shipments on awards providing for delivery free on board (f.o.b.) origin.

(c) Only the Contracting Officer is permitted to direct thru-container movement on f.o.b. destination offers or awards. When container shipment is directed, the Government will bear the transportation costs. In such event, the offer/contract price of the supplies shall be reduced as follows:

(1) Shipments planned for transport by Contractor-owned or leased truck(s), and so certified by the Contractor, shall be reduced in contract price by an amount equal to 70% of the lowest applicable rate(s) published in common carrier tariffs as of the date of shipment.

(2) Shipments planned for transport by common or contract carrier shall be reduced in contract price by the applicable published tariff rate(s) for commercial shipments by common carrier, or by the transportation rate(s), if any, agreed upon between the Contractor and his carrier and which would have been payable.

(d) The conversion of f.o.b. terms will be by contract modification. However, the Government further reserves the right to award any resulting contracts on the basis of an origin container movement where available container service is established before award at the origin point of a successful offeror. The contract price for such award will be that price adjusted downward on the basis set forth in paragraph (c) above.

(e) When thru-container movement is directed, the responsible government transportation officer (after coordination with the Contractor) shall order the container(s) from the carrier for stuffing by the Contractor, and furnish partially prepared Government bills of lading (GBLs) or partially prepared transportation control and movement documents (TCMDs), and partially prepared seavan consists, Department of Defense (DD) Form 3542, with mailing envelopes, as applicable.

(f) The Contractor will be responsible for:

(1) Advising the above transportation officer of the following:

(i) Requirements for GBLs.

(ii) Number of containers required for loading and placement of containers.

(iii) Date(s) containers are required.

(iv) If containers have not arrived as scheduled.

(v) If it is desired to change the placement of the containers.

(2) Stuffing (loading) and sealing the container.

(3) For perishable supplies:

(i) Maintaining seavan refrigeration if there are delays in loading.

(ii) Assuring that the thermostat is set at appropriate temperature when loading is completed.

(4) Documentation.

Complete two copies of seavan consist, DLA Troop Support Form 3542, or equivalent automated listing which identifies the seavan and line item contents thereof, place them in waterproof envelope marked “MILSTAMP Documentation” and attach either to the interior of the loading door of the van or to one of the packages visible immediately upon opening. Instructions as to additional distribution of the consist document will be provided by the responsible government transportation officer. When partially prepared seavan consists are not furnished, place into the above-mentioned envelope two copies of a contract, delivery order, packing/loading list, or other document which identifies the contents, the transportation control number (TCN), date shipped, van number, seal number, van owner, seavan TCN, total pieces, total weight and total cube.

(5) Applying shipment address marking on a waterproof military shipping label (DD Form 1387), and attaching to the rear exterior of the seavan. (Note: No address markings are required to be applied to the supplies loaded in the container.)

(6) When partially prepared GBLs are furnished:

(i) Completing the GBL by inserting thereon the following:

(A) Seavan number (not license number).

(B) Seal Number and whether carrier or shipper applied the seal.

(C) Total number of pieces in the seavan.

(D) total gross weight of all pieces in the seavan.

(E) Total cube of all pieces in the seavan.

(F) Date shipped.

(G) Include the statement: “Shipper’s load and count”.

(H) Signature of driver.

(ii) Distributing the completed GBL as follows:

(A) One signed original GBL (Standard Form (SF) 1103) and four copies (1 blue, 1 pink and 2 white copies standard forms 1103B, 1104, 1105 and 1106) to carrier.

(B) Retain 1 yellow memorandum copy (SF 1103A).

(C) Forward 3 yellow memorandum copies (SF 1103A) to transportation officer.

(D) Attach 1 yellow memorandum copy (SF 1103A) marked “Invoice Copy” to invoice.

(7) When partially prepared TCMDs are furnished:

(i) Completing the TCMD by inserting thereon the following:

(A) Block 2 - Container number.

(B) Block 15 - Date shipped.

(C) Block 22 - Number of pieces.

(D) Block 23 - Gross weight.

(E) Block 24 - Total cube.

(ii) Distributing as follows:

(A) Attach signed original (marked "invoice copy") to invoice.

(B) Three copies to carrier.

(C) One copy to the transportation officer.

(D) One copy to be retained by Contractor.

(8) Submitting a report of shipment (REPSHIP) by telephone to the transportation officer immediately after the seavan has been loaded, furnishing the following information:

(i) GBL Number(s).

(ii) Van Number(s).

(iii) Seal Number(s).

(iv) Commodity.

(v) Total Number of Pieces.

(vi) Total Weight.

(vii) Total Cube.

(viii) Date Shipped.

(9) Any detention charge for each container not released to the carrier within the free time authorized by the carrier.

(10) Complying with any additional instruction peculiar to a particular commodity, when provided by the transportation officer.

(End of Clause)

**52.247-9019 Shipments Direct to Port Terminals for Export.**
As prescribed in 47.303-10(90), insert the following clause:

SHIPMENTS DIRECT TO PORT TERMINALS FOR EXPORT (NOV 2011)

(a) Contractor agrees to ship within the shipping period in the export release (when such release is required) for semiperishable subsistence, or in the contract/order for perishable subsistence. The Contractor shall be responsible for any additional charges that may accrue at the port terminal due to nonacceptance because of untimely delivery.

(b) Transportation control number (TCN).
The principal means of export shipment identification is the 17 digit alphanumeric code known as the TCN, e.g., AK4WC 15090 7800 XAX.

(1) Configuration of the first 15 digits shall be set forth in the contract. When a determination is made to use seavan containers for semiperishable acquisitions, the responsible transportation officer shall furnish an additional TCN for use solely in the marking and control of the seavan.

(2) The last 2 digits shall be inserted by the Contractor. The 16th digit shall be used to identify the partial and/or complete shipment. The 17th digit shall always be "X".

(i) If only one load constitutes a complete shipment, the 16th digit will be "X".

(ii) If there are 25 carloads/truckloads or less with the same TCN, the 16th digit shall reflect each partial shipment utilizing the letter "A" for the first load, "B" for the second, etc., except that the letter "X" shall not be used and the letter "Z" shall always be used to identify the final shipment.

(iii) When there are more than 25 carloads/truckloads, an additional TCN shall be provided by the responsible transportation officer to identify separately the 25th and each subsequent partial, including the last partial. The final shipment shall be indicated by using "Z" as the 16th digit in the TCN provided.

(c) Notice of shipment.

On the day shipment is made, Contractor shall send a notice to the Contracting Officer who awarded the contract and to the Defense Contract Management Agency (DCMA) administrative Contracting Officer when the contract has been assigned to DCMA for administration. The telegram shall indicate the contract number, purchase request number, quantity shipped, method of shipment, name of carrier and bill(s) of lading number(s).

(d) Advance notice of proposed shipment.

The Contractor shall provide the following information to the responsible transportation officer when the number of pieces, weight or cube for proposed shipments is other than set forth in the contract:

| | |
|---|---|
| | (1) TCN (including all TCNs in a consolidated shipment).<br>(2) Contract and purchase request numbers.<br>(3) Planned shipment date.<br>(4) Brief item nomenclature(s).<br>(5) Number of pieces (for each TCN).<br>(6) Weight and cube (for each TCN).<br>(7) Origin point.<br>(8) Planned mode of transportation (number of carloads, truckloads, seavans, etc.).<br>(9) Name of Contractor. |

Such information must be furnished 10 days in advance of shipment if shipping point is outside the port terminal area or 3 days in advance for shipments originating in the port terminal area.

(e) Documentation to accompany all seavan shipments.

Four copies of a document showing the contents of the van, and including the words "date stuffed" with such date, will be placed in a waterproof envelope marked "milstamp documentation" and attached either to the interior of the loading door of the van or to one of the packages visible immediately upon opening. (This document may be any one of the following: contract, delivery order, packing/loading

list, DD Form 250, transportation control and movement document (TCMD), bill of lading or other document which identifies the contents.)

(End of Clause)

**52.247-9020 Advance Notice of Late, Short or Non-Shipment of Supplies.**
As prescribed in 47.207-5(90). insert the following clause:

ADVANCE NOTICE OF LATE, SHORT OR NON-SHIPMENT OF SUPPLIES (SEP 2007)

Deliveries shall be made at the time and place specified in individual calls/purchases against this blanket purchase agreement. Suppliers shall notify the cognizant Contracting Officer, Contracting Officer's representative, or destination customer, as appropriate, at least 24 hours prior to the scheduled time for delivery, if the scheduled delivery will be more than one hour late, will be less than the quantities purchased and/or when the scheduled delivery will not be made.

(End of Clause)

**52.247-9021 Free on Board (F.o.b.) Origin Contracts for Supplies Originating Outside the United States.**
As prescribed in 47.305-6(i), insert the following provision:

FREE ON BOARD (F.O.B.) ORIGIN CONTRACTS FOR SUPPLIES ORIGINATING OUTSIDE THE UNITED STATES (NOV 2011)

If the offeror offers supplies originating outside the United States (U.S.) which require transportation by ocean vessel, the following provisions apply:

(a) Inspection and acceptance will be at point of origin. The offeror will designate one or more ports of loading which have regular sailings of U.S. flag vessels which will meet the required delivery dates at the final destinations. Supplies shall be delivered to the port of loading at the expense of the Contractor. The Government will not be liable for any transportation, delivery, storage, demurrage, accessorial, or other charges involved prior to actual delivery of the supplies to the port of loading. The Contractor will assume all responsibility and risk of loss for supplies (1) not received at the point to which the Contractor has prepaid the transportation costs or (2) damaged in transit to such point and will replace repair or correct such supplies promptly at Contractor expense, including any additional transportation charges, provided notice of loss or damage is furnished by the Contracting Officer within 90 days from the date of acceptance.

(b) In addition to the f.o.b. origin price of the supplies, the price(s) will include inland transportation costs from the point of origin to the port or ports of loading designated by the offeror, for delivery to and placement on the carrier's wharf (free along shipside within reach of ships loading tackle). Offers offering supplies of foreign origin will be evaluated on the basis of the laid-down cost to the Government at the destination(s) shown in the schedule, via a port of loading designated by the offeror which is compatible with required delivery dates and other military considerations without limitation. Failure to designate a port of loading having regular sailings of U.S. flag vessels which will meet the required delivery dates at the final destination may render the offer unacceptable and subject to rejection.

(c) When delivery to the port of loading is made by common carrier, the Contractor will state on its invoice the name of the carrier and bill of lading number of the shipment and will furnish therewith a receipted freight bill or, if the Contractor does not have a receipted freight bill, a copy of the unreceipted freight bill and a copy of the carrier's invoice to him. When shipment is made by other than common carrier, the Contractor will attach to its invoice a receipted copy of the delivery document showing receipt at the port of loading.

(d) Where the schedule provides for the designation of the offeror's shipping point, offeror shall indicate the port of loading used in submission of his offer.

(End of Provision)

**52.247-9022 Evaluation of Transportation Costs – Order Quantity.**
As prescribed in 47.306-1(d)(90) insert the following provision:

EVALUATION OF TRANSPORTATION COSTS – ORDER QUANTITY (SEP 2007)

Evaluation of the Government's transportation costs will be based upon the minimum order quantity with weight factors computed from estimated or guaranteed shipping data as provided.

(End of Provision)

**52.247-9023 Evaluation of Transportation Costs – Bulk Shipments.**
As prescribed in 47.306-1(d)(91), insert the following provision:

EVALUATION OF TRANSPORTATION COSTS – BULK SHIPMENT (NOV 2011)

Free on Board (F.O.B.) origin offers will be evaluated on an estimated weight of 9.2 pounds per gallon. For evaluation purposes only, transportation costs will be based on one tank car not exceeding 10,000 gallons or the maximum gallon capacity of one tank car or tank truck (where authorized) whichever produces the lowest cost.

(End of Provision)

**52.247-9024 Free on Board (F.o.b.) Origin by Non-CONUS or Non-Canadian Offerors for Delivery to Consignees within CONUS or Canada.**
As prescribed in 47.304-4(90), insert the following clause:

FREE ON BOARD (F.O.B.) ORIGIN BY NON-CONTIGUOUS UNITED STATES (CONUS) OR NON-CANADIAN OFFERORS FOR DELIVERY TO CONSIGNEES WITHIN CONUS OR CANADA (NOV 2011)

(a) Contiguous United States (CONUS) is defined as being the 48 contiguous states and the District of Columbia.

(b) This provision applies only to those contract line-items(s) (CLIN(S)) inviting offers on an f.o.b. origin basis which will be shipped from outside CONUS or Canada to consignees within CONUS or Canada.

(c) Offers, based on furnishing supplies that are to be manufactured and shipped from locations outside CONUS or Canada to consignees within CONUS or Canada, must be submitted based on delivery to an f.o.b. CONUS carrier at one or more of the port cities listed below and comply with the requirements of Federal Acquisition Regulation (FAR) 52.247-29 f.o.b. origin and FAR 52.246-2 Inspection of Supplies - Fixed Price. Supplies will be subject to inspection at the delivery point by the Government QAR to determine whether any loss or damage occurred during transit from the overseas shipping point to the delivery point for which risk of loss is on the Contractor per FAR 52.246-16 - Responsibility for Supplies.

| | |
|---|---|
| New York, New York | Seattle, Washington |
| Baltimore, Maryland | Oakland, California |
| Norfolk, Virginia | Los Angeles, California |
| New Orleans, Louisiana | |

(d) Offers will be evaluated by adding transportation costs from the delivery point, designated by the offeror, to the CONUS consignee specified in the solicitation.

(e) Offerors must specify below, as the delivery point, one or more of the port cities listed in paragraph (c) above. If the offeror fails to specify one or more of such cities or the offeror specifies a port city that cannot be used for evaluation, the offeror agrees to deliver the supplies to the above listed port city which is closest to the CONUS destination for each CLIN and the offer will be evaluated accordingly. If the offeror specifies a CONUS port city other than those listed in paragraph (c) above, if possible, that port will be used for the purpose of evaluating the offer and the supplies will be delivered accordingly:

CLIN Delivery Port

(End of Clause)

**52.247-9025 Free on Board (F.o.b.) Origin by Non-CONUS or Non-Canadian Offerors for Delivery to Consignees Outside CONUS or Canada.**
As prescribed in 47.304-4(91), insert the following clause:

FREE ON BOARD (F.O.B.) ORIGIN BY NON-CONTIGUOUS UNITED STATES (CONUS) OR NON-CANADIAN OFFERORS FOR DELIVERY TO CONSIGNEES OUTSIDE CONUS (OCONUS) OR CANADA (NOV 2011)

(a) Contiguous United States (CONUS) is defined as being the contiguous 48 states and District of Columbia.

(b) This provision applies only to those contract line-item(s) (CLIN(S)) inviting offers on an f.o.b. origin or f.o.b. port of loading basis for supplies to be delivered to consignees outside CONUS or Canada. The overseas destination(s) for the supplies to be furnished under this solicitation are as follows:

CLIN Overseas destination

(c) If delivery to the consignee can be affected by land transportation, offers must be based on delivery f.o.b. carrier at the place where inspection and acceptance is to be performed, notwithstanding. Offerors must specify the f.o.b. point below:

CLIN F.o.b. point

(d) If delivery to the consignee requires ocean or water transportation, offers must be submitted based on delivery f.o.b. port of loading of the country of origin. Offerors must designate the port of loading below:

CLIN Port of loading

(e) Offers will be evaluated on the basis of the cost of delivery to the consignee via methods compatible with the required delivery dates and conditions affecting transportation known at the time of evaluation. If ocean or water transportation is involved, port handling charges at the port of loading, shipping costs to the port of discharge, port handling charges at the port of discharge, and inland transportation costs to the consignee will be included in the evaluation.

Note: Failure of offerors to designate a delivery point in either paragraphs (c) or (d) above may render such offers non-responsive.

(End of Clause)

**52.247-9026 Evaluation of Offers Invited for both Free on Board (F.o.b.) Origin and F.o.b. Destination.**
As prescribed in 47.305-2(b)(90), insert the following provision:

EVALUATION OF OFFERS INVITED FOR BOTH FREE ON BOARD (F.O.B.) ORIGIN AND F.O.B. DESTINATION (NOV 2011)

(a) F.o.b. origin and/or destination.

Offers are invited on the basis of both f.o.b. origin and f.o.b. destination, and the government will award on such basis as the Contracting Officer determines to be most advantageous to the Government. An offer on the basis of f.o.b. origin only or f.o.b. destination only is acceptable, but will be evaluated on the basis submitted.

(b) F.o.b. origin offers are sometimes herein designated as Bid A. F.o.b. destination offers are sometimes herein designated as Bid B.

(c) The low f.o.b. origin (bid A) offer, by item, will be determined as follows:

(1) Multiply the unit price offered by the total estimated or stated quantity shown in the schedule.

(2) Add to the amount obtained in paragraph (c)(1)above, the freight, calculated on the basis of the estimated quantity and tentative destination specified in the schedule, but using a freight rate applicable to _____% of the total estimated quantity set forth in the schedule. For this purpose:

(i) For evaluating offers, the following tentative destinations shall apply:

Item Number Tentative Destinations

(Will be indicated in the solicitation)

(ii) [ ] If checked, offers will be evaluated based on the following estimated shipping weight:

Item Number Weight Per Unit

(Will be indicated in the solicitation)

(3) Additional evaluation factors, if any, required to be considered by this solicitation will be added to the amount obtained in subparagraph (c)(2) above.

(d) The low f.o.b. destination (bid B) offer will be determined by multiplying the unit price bid by total estimated quantity.

(e) Award shall be made either on an f.o.b. origin or f.o.b. destination basis with the low offeror determined in accordance with the above formulas and subparagraph (a). Notwithstanding the method of evaluation provided for herein, the price specified in each delivery order shall correspond to the price offered.

The following paragraph (f) applies only if preceded by an "X" in the block provided in the solicitation:

[ ] (f) Except as may be otherwise provided in the set-aside notice, award under the set-aside shall be at the same unit prices by item awarded to the successful Offeror on the non-set-aside portion, adjusted to reflect transportation, rent free use of Government property and other cost factors which were considered in evaluating offers on the non-set- aside portion. The set-aside award prices shall be subject to the same discount terms as the non-set-aside award prices.

(End of Provision)

Alternate I (APR 2008). As prescribed in 47.305-2(b)(90), for use when soliciting separate prices for different quantity levels or increments. Replace paragraphs (c)(d)(e)(f) of the basic and add (g) and (h):

Replace paragraphs (c)(d)(e)(f) with (c)(d)(e)(f) below and add (g) and (h):

(c) Offers will be evaluated and awards made on all-or-none basis by item. An Offeror must submit a price for all quantity increments specified in the schedule for each item on which he wishes to submit an offer. If the offeror desires to offer the same unit price for all quantity increments of an item he may state that the same unit price applies to all quantity increments of that item instead of repeating the same unit price in all columns. If the offeror does not desire to offer the same unit price for all quantity increments of an item, he must insert a unit price for each quantity increment for that item.

(d) Prices offered must be unit prices. Each unit price offered must represent the full and complete price for the described unit of supply, inclusive of preservation, packaging, packing, set up and such other processing as may be required by this solicitation.

Failure to offer unit prices on all quantity increments of an item in accordance with the requirements stated above, may result in the rejection of the offer for that item.

(e) The low f.o.b. origin (bid A) offer for each item will be determined by the weighted average unit price calculated in accordance with the following formula:

(1) With respect to each quantity increment:

(i) Add to the unit price the freight cost per unit. For this purpose the following shall apply:

(A) The freight rate used shall be based on the median of the quantity range specified for the increment (and on the tentative destination specified for the item). Where an increment is expressed in terms which cannot be related to a quantity range with a fixed maximum quantity, then the quantity to be used shall be the lowest quantity specified. For example, if an increment were expressed in terms of "over 25,000" the quantity to be used would be 25,000.

(B) The term "Freight" shall include all evaluation factors relative to transportation.

(C) For evaluating offers, the following tentative destinations shall apply:

Item Number Tentative Destinations

(Will be indicated in the solicitation)

(D) [ ] If checked, offers will be evaluated based on the following estimated shipping weight:

Item Number Weight Per Unit

(Will be indicated in the solicitation)

(ii) The quantity increments set forth in the schedule are designated increments _____ and _____ and are assigned weighted values of _____ and _____ respectively. With respect to each quantity increment, multiply the price as adjusted in subparagraph (c)(1)(i) above by the assigned weighted values.

(2) Add the results obtained in subparagraph (e)(1)(ii) above for all of the quantity increments in the item and divide the total by _____ (the total of the weighted values assigned).

(3) Additional evaluation factors , if any, required to be considered by this solicitation (reduced, however, where appropriate, to a per unit amount based on the estimated quantity) will be added to the amount obtained in subparagraph (e)(2) above.

(f) The low f.o.b. destination (bid B) offer for each item will be determined by the weighted average unit price calculated in accordance with the following formula:

(1) With respect to each quantity increment, multiply the unit offered therefore by the weighted value (i.e., number assigned thereto as shown in subparagraph (e)(1)(ii) above).

(2) Add the results obtained in subparagraph (f)(1) above for all quantity increments in the item and divide the total by _____ (the total of the weighted values assigned).

(3) Additional evaluation factors, if any, required to be considered by this solicitation (reduced, however, where appropriate, to a per unit amount based on the estimated quantity) will be added to the amount obtained in subparagraph (f)(2) above.

(g) Award shall be made in accordance with the requirements of applicable law/regulations and at the increment prices offered, with the low Offeror determined in accordance with the above formulas and subparagraph (a). The awarded unit price to be paid under a delivery order shall correspond to the unit price offered for that quantity increment of the item regardless of the number of destinations or stock numbers called for in the order.

(h) An offer which conditions the Government's right to award one item upon the concurrent award of one or more other items shall not qualify for award unless each of the items subject to such an all-or-none condition is low when individually evaluated.

(End of Provision)

**52.247-9027 Evaluation of Offers for Quantity Increments.**
As prescribed in 47.305-3(93), insert the following provision:

EVALUATION OF OFFERS FOR QUANTITY INCREMENTS (APR 2008)

(a) Offers will be evaluated and awards made on an all-or-none basis by item and each offeror may submit an offer for one or more items. However, an offeror must submit a price for all quantity increments specified in the schedule for each item on which he wishes to submit an offer. If the offeror desires to offer the same unit price for all quantity increments of an item, the offeror may state that the same unit price applies to all quantity increments of that item instead of repeating the same unit price in all columns. If the Offeror does not desire to offer the same unit price for all quantity increments of an item, the Offeror must insert a unit price for each quantity increment for that item.

(b) Prices offered must be unit prices. Each unit price offered must represent the full and complete price for the described unit of supply, inclusive of preservation, packaging, packing, set up and such other processing as may be required by this solicitation. Failure to offer unit prices on all quantity increments of an item in accordance with the requirements stated above will result in the rejection of the offer for that item.

(c) The low offer for each item will be determined by the weighted average unit price calculated in accordance with the following formula:

(1) With respect to each quantity increment:

(i) Add to the unit price the freight cost per unit. For this purpose, the following shall apply:

(A) The freight rate used shall be based on the median of the quantity range specified for the increment (and upon the tentative destination specified for the item). Where an increment is expressed in terms which cannot be related to a quantity range with a fixed maximum quantity, then the quantity to be

used shall be the lowest quantity specified. For example, if an increment were expressed in terms of "over 25,000" the quantity to be used would be 25,000.

(B) The term "Freight" shall include all evaluation factors relative to transportation.

(C) For evaluating offers and for no other purpose, the final destinations for the supplies will be the tentative destinations set forth in the schedule.

(D) [ ] If checked, f.o.b. origin offers will be evaluated based on the following estimated shipping weight and cube;

| Item Number | Weight Per Unit | Cube Per Unit |
|---|---|---|

(Will be indicated in the solicitation)

(ii) Multiply the unit price as adjusted in subparagraph (c)(1)(i) above by the weighted value (i.e., number) assigned below to the quantity increment:

| Item Number | Quantity Increment | Weighted Value Assigned |
|---|---|---|

(2) Add the results obtained in subparagraph (c)(1)(ii) above for all of the quantity increments in the item and divide the total by _____ (the total of the weighted values assigned).

(3) Additional evaluation factors, if any, required to be considered by this solicitation (reduced, however, where appropriate, to a per unit amount based on the estimated quantity) will be added to the amount obtained in subparagraph (c)(2) above.

(d) Award shall be made in accordance with the requirements of applicable law and regulations and at the increment prices offered, with the low Offeror determined in accordance with the above formula. The awarded unit price to be paid under a delivery order shall correspond to the unit price offered for that quantity increment of the item regardless of the number of destinations or stock numbers called for in the order.

(e) An offer which conditions the Government's right to award one item on the concurrent award of one or more other items shall not qualify for award unless each of the items subject to such an all-or-none condition is low when individually evaluated in accordance with paragraph (b) above.

The following paragraph (f) applies only if preceded by an “X” in the block provided in the solicitation:

[ ] (f) Except as may be otherwise provided in the set-aside notice, award under the set-aside shall be in the same increment prices per item awarded to the successful Offeror on the non-set-aside portion, adjusted, however, to reflect transportation, rent free use of Government property and other cost factors which were considered in evaluating offers on the non-set-aside portion. The set-aside award prices shall be subject to the same discount terms as the non-set- aside award prices.

(End of Provision)

**52.247-9028 Premium Transportation.**
As prescribed in 47.305-14(90), insert the following clause:

PREMIUM TRANSPORTATION (APR 2008)

If directed to ship by air freight/air express/express (surface), registered parcel post or priority mail and if the price includes charges for normal surface transportation the difference in cost of premium transportation used in lieu of surface transportation and/or cost of registration shall be shown as a separate item on the invoice. The Contractor agrees to retain related freight bills, or other Transportation billings paid separately, for a period of three years and to furnish such bills to the Government when requested for audit purposes.

(End of Clause)

**52.247-9029 Shipping Instructions.**
As prescribed in 47.305-10(90), insert the following clause:

SHIPPING INSTRUCTIONS (NOV 2011)

Shipping instructions shall be provided with individual delivery orders. Destinations include various Department of Defense using activities and may include Defense Logistics Agency (DLA) depot locations.

(End of Clause)

**52.247-9030 Commercial Shipping Documents.**
As prescribed in 47.305-10(91), insert the following clause:

COMMERCIAL SHIPPING DOCUMENTS (NOV 2011)

(a) Commercial shipping documents are authorized. Packing lists, invoices, and bills of lading must contain the complete shipping address and markings exactly as specified in the Schedule including the Transportation Control Number (TCN), National Stock Number (NSN), Contract Line Item Number (CLIN), Quantity and Unit of Issue, contract/order number, and Shipment Number with a request for the carrier to perpetuate the complete information when delivery is to a port. One copy of the shipping document and one copy of the order, Department of Defense (DD) Form 1155, shall accompany or be included in each shipment.

(b) In addition, for all direct shipments to overseas and domestic consignees, including shipments to consolidation and containerization points, the documentation with complete mark for information is to be placed in a water-resistant envelope securely attached to the outside of the shipping container/exterior pack. (This paragraph is not applicable to shipments to a Government Packing Facility).

(End of Clause)

**52.247-9031 Manufacturer's Loading Practices.**
As prescribed in 47.305-15(90), insert the following clause:

MANUFACTURER'S LOADING PRACTICES (NOV 2011)

To the extent possible shipments will comprise one lot, batch or National Stock Number (NSN). If more than one lot, batch or NSN is included in one shipment, they will be loaded or offered to the carrier for loading in a sorted and segregated manner.

(End of Clause)

**52.247-9032 Delivery Conditions for Transport Trucks, Trucks and Trailers or Tank Wagons.**
As prescribed in 47.305-4(90), insert the following clause:

DELIVERY CONDITIONS FOR TRANSPORT TRUCKS, AND TRUCKS AND TRAILERS, OR TANK WAGONS (BULK PETROLEUM PRODUCTS) (JUL 2008)

(a) Delivery shall be made f.o.b. destination by means of transport truck, truck and trailer, or tank wagon.

(b) Supplies ordered hereunder shall be delivered, all transportation charges paid, to the destination and by means of the transportation equipment specified in the Schedule or, if no specific destination is indicated in the schedule, to the destination specified in the order. Delivery shall be accomplished at Contractor's expense into Government storage or into the type of receiving equipment otherwise specified in the schedule or in the order.

(c) The Contractor shall not be required to deliver a quantity of less than 5000 gallons but, at the Government's option, may be required to deliver into more than one storage tank.

(d) Where delivery is made by tank wagon, such wagon shall be equipped with a minimum of 100 feet of hose. Where delivery is made by transport truck or truck and trailer, such delivery equipment shall be equipped with a minimum of 15 feet of hose.

(e) The Contractor shall provide properly maintained delivery equipment and properly trained delivery personnel to reasonably assure that delivery can be made without damage to vegetation and asphalt pavement adjacent to storage facilities being filled. The Contractor's delivery personnel who have not exercised reasonable care and delivery equipment which is poorly maintained may be refused entrance to the installation by the installation Commander.

(f) The Contractor shall present delivery equipment and product in such condition at destination so as to permit complete off-loading within the prescribed free time. Unless otherwise provided in the schedule, free time shall be in accordance with Clause 52.211-9G58 (Section F).

(g) Title to supplies delivered, and risk of loss thereof, shall pass from the Contractor to the Government when the supplies pass into Government storage or receiving equipment.

(End of Clause)

**52.247-9033 Transport Truck and/or Truck and Trailer Free Time and Detention Rates.**
As prescribed in 47.305-15(90), insert the following clause:

TRANSPORT TRUCK AND/OR TRUCK AND TRAILER FREE TIME AND DETENTION RATES (BULK PETROLEUM PRODUCTS) (JUL 2008)

(a) Upon arrival of Contractor's transport truck or truck and trailer, the receiving activity shall promptly designate the tanks into which the load is to be discharged. Free time will commence at the time the discharge hose is connected to fill pipe at the delivery point specified and will end when discharge is completed. For items involving multiple drops, time between drops will not be included in free time. Contractor shall be paid for detention beyond free time for delays caused by the Government. A minimum of one hour free time is required. Rate for detention shall be comparable to regulated tariffs governing the local area of receiving activity. The offeror shall indicate “free time” and “detention rate” below:

(1) Free time for unloading transport truck or truck and trailer: (Vendor Fill-in)

(2) Rate for detention beyond the free time: (Vendor Fill-in).

(b) The above will not be considered in the evaluation of offers for award, except that free time of less than one hour or detention rates not comparable to regulated tariffs may render an offer unacceptable/bid nonresponsive.

Unless offeror indicates otherwise, free time will be considered unlimited.

(c) Detention costs. Detention costs do not apply to tank wagon deliveries. Detention costs will be the sole responsibility of the activity incurring them. Any invoices for detention costs will be forwarded directly to the activity receiving the product.

(End of Clause)

**52.247-9034 Point of Contact for Transportation Instructions.**
As prescribed in 47.305-13(90), insert the following clause:

POINT OF CONTACT FOR TRANSPORTATION INSTRUCTIONS (NOV 2011)

(a) Defense Contract Management Agency (DCMA) administered orders: Contact the transportation officer at the administering DCMA location.

(b) Defense Logistics Agency (DLA) administered orders: Contact the DLA transportation office for shipping instructions by facsimile to 717-770-2701 or via email to delivery@dla.mil. A return fax number must be included with your faxed request. The DLA Distribution’s hours of operation are Monday through Friday, 7:00 a.m. to 11:00 p.m. and Saturday from 8:00 a.m. to 4:30 p.m. excluding holidays. For urgent requirements and questions, you may call the DLA Distribution at 1-800-456-5507. DLA's distribution planning and management system (DPMS) may be used to obtain transportation instructions in lieu of contacting the transportation office.

(End of Clause)

**52.247-9035 Shipping Instructions (Domestic).**
As prescribed in 47.305-10 (92), insert the following clause:

SHIPPING INSTRUCTIONS (DOMESTIC) (NOV 2011)

Mail instructions (not applicable to Army Post Office (APO) or Fleet Post Office (FPO) addresses):

(a) Route domestic shipments within mail limitations as follows based on the transportation priority (TP) reflected in the "mark for" data with each contract line item number (CLIN). Commercial small parcel carrier (e.g., United Parcel Service (UPS) or Federal Express) is an acceptable mode of shipment to domestic addresses.

(1) Ship all NMCS, 777, and 999, regardless of TP or distance, by commercial small parcel carrier.

(2) Ship TP 1 and 2 (IPD 01-08) by priority mail or most economical comparable mode.

(3) Ship TP 3 (IPD 09-15) and all stock locations (not TP coded) by surface parcel post (Fourth Class) or most economical comparable mode.

(4) The cost of parcel post insurance will not be paid by the Government.

(b) Freight instructions (domestic).

(1) Ship all NMCS, 777, and 999, regardless of TP or distance by commercial small parcel carrier.

(2) For TP 1 and 2 (IPD 01-08) weighing under 250 pounds, use air freight and specify air on the invoice. Exceptions: if destination is within 600 miles of origin, use regular surface transportation.

(3) For all other freight shipments, contact the cognizant transportation officer for delivery and carrier routing instructions.

(4) Advance telephonic notice of delivery must be given by the carrier to the consignee's transportation officer (transport control/prelodge desk) at least 24 hours prior to delivery of freight shipments (other than small parcels). Bills of lading must be annotated to reflect this requirement. Addresses for direct shipments within the contiguous United States (CONUS) and Canada are shown "in the clear" with each individual CLIN on schedule continuation sheet(s) in each order. Addresses for stock shipments are shown with each individual CLIN on schedule continuation sheet(s) in each order.

(End of Clause)

**52.247-9036 Shipping Instructions (Export).**
As prescribed in 47.305-10 (93), 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 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 (94), 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)

**52.247-9038 Shipping Instruction for DLA Direct Acquisitions.**
As prescribed in 47.305-10 (95), insert the following clause:

SHIPPING INSTRUCTION FOR DEFENSE LOGISTICS AGENCY (DLA) DIRECT ACQUISITIONS (NOV 2011)

Freight shipping addresses and scheduling instructions, if applicable, are available. See Defense Logistics Acquisition Directive (DLAD) Procedures, Guidance and Instructions (PGI) 47.305-10. Contractors will need to schedule a delivery appointment prior to arriving at the depot.

(End of Clause)

**52.247-9039 Alaska Remote Supply (Project Code 175).**
As prescribed in 47.305-8(90)(a), insert the following clause:

ALASKA REMOTE SUPPLY (PROJECT CODE 175) (SEP 2009)

The following special requirements and instructions are applicable to project code 175 (cool barge) –

Alaska remote resupply.

(a) Address.

(1) Correspondence.

4DL
833 United States (U.S.) Army Transport Battalion
Attention: MTWSE-TM
4735 East Marginal Way South
Seattle, Washington 98134-2391

Mark for (M/F): Department of Defense (DoD) Activity Address Code (DoDAAC) and the address of the ultimate consignee

(2) Less than truckload and small parcel shipments. The CCP at Defense Distribution Depot San Joaquin will consolidate all less than truckload and small parcel general cargo shipments destined to these locations. The bills of lading must be annotated "For export shipments, call (209) 839-4518 to schedule delivery appointments." These less than truckload and small parcel shipments in support of this project will be consigned to:

SW3225
Defense Distribution San Joaquin
CCP Warehouse 30
25600 South Chrisman road
Tracy, California 95376-5000
Telephone: 209-839-4518

The transportation office must offer all truckload shipments to the Military Traffic Management Command for routing instructions.

(b) Delivery of truck load (TL) deicing fluid.

(1) It is mandatory that bulk shipments of deicing fluid be shipped to arrive at Seattle, Washington by June 1. If a shipment cannot be delivered to the terminal by the delivery cut-off date, contact the traffic manager or prelodge section listed below for shipping instructions:

Phone: (206) 764-6531 Traffic Manager
(206) 764-6540 Prelodge Section
Facsimile: (206) 763-9897 Prelodge Section

(2) Bulk deicing fluid is normally the only bulk liquid handled by water port logistics office (WPLO). All bulk shipments will be coordinated with the WPLO prior to shipment and shipped in commercial tank cars only.

(3) Bulk deicing fluid consigned to WPLO Seattle, Washington, and destined to the Galena station are pumped into government containers in Alaska, in lieu of Seattle. Therefore, the Contractor will lose use of its bulk container for approximately 60 days, while the container is being transported to Alaska and returned to Seattle, Washington.

(4) Port release number. After receipt of the export traffic release and routing instructions from the Military Traffic Management Command (MTMC), shippers shall obtain a port release number from the WPLO prior to tendering the shipment to a carrier. The WPLO can be contacted at (206) 764-6531.

(c) Palletization. Shipping containers shall be palletized in accordance with military handbook (MIL-HDBK) 774.

(d) Defense Transportation Regulation. Shippers must comply with the labeling requirements outlined in the Defense Transportation Regulation, Volume II, DoD 4500.9-R, Chapter 208. The labeling requirements include but are not limited to the following basic information:

(1) Transportation control number (TCN)

(2) Ship to/POE Address. Less than truckload shipments will be consigned to the address shown in (a)(2) above

(3) POD Code - YC6

(4) Ultimate consignee/mark for address. All cargo will pass thru Elmendorf Air Force Base (AFB).

(e) Bills of lading.

(1) For truckload (TL) shipments, mail two copies of the bill of lading to:

4DL - 833 U.S. Army Transport Battalion
Attention: MTWSE-TM
4735 East Marginal Way South
Seattle, Washington 98134-2391

(2) For less than truckload (LTL) shipments, mail copies of the bill of lading to:

Defense Distribution San Joaquin
CCP Warehouse 30
25600 South Chrisman Road
Tracy, California 95376-5000

(3) All bills of lading must be annotated with:

(i) Transportation account code (TAC); and

(ii) Bills of lading consigned to Seattle, Washington will state: Carriers must call Prelodge (206) 764-6540 between 0700 - 1400 hours, Monday through Friday excluding holidays for an appointment at least 24 hours prior to anticipated delivery date."

(End of Clause)

**52.247-9040 Greenland Remote Supply (Project Codes Y31 and 145).**
As prescribed in 47.305-8(90)(b), insert the following clause:

GREENLAND REMOTE SUPPLY (PROJECT CODES Y31 AND 145) (NOV 2011)

Transportation.

(a) Project Code Y31 - Pacer Goose. This paragraph applies only to acquisitions identified with a Project Code of Y31 - Pacer Goose for resupply of units stationed in Greenland. It is imperative that shippers comply with the established delivery cut-off date of 2 June. Shipments that cannot be delivered to the terminal by the delivery cut-off date shall be referred to the Water Freight Terminal, Norfolk, Virginia. Disposition instructions can be obtained from Norfolk by contacting them at (757) 444-4170, Facsimile (757) 444-2352 or 3087. Shipments will not be accepted after the delivery cut-off date.

(1) Small parcel and less than truckload (LTL) shipments. Parcel post, hazardous, and small package shipments will be forwarded to the applicable Ship To address cited on the contract.

(i) Hazardous cargo cannot be mailed to a Contiguous United States (CONUS) port of embarkation (POE). Shipments shall be LTL.

(ii) The Water Freight Terminal does not accept delivery of small parcels shipped via small parcel carrier, i.e., United Parcel Service (UPS) or Federal Express (FedEx).

(iii) Cargo should be delivered by common carrier to the Water Freight Terminal, Norfolk, Virginia. These shipments should be consigned to:

N45631 Transportation Officer
Fleet and Industrial Supply Center
Water Freight Terminal, Building CEP-201
Norfolk, Virginia 23511
phone: (757) 444-1125
facsimile: (757) 444-7149 or -3087

(iv) Bills of lading shall be annotated: "Carrier must call truck control section, building CEP-156, Naval Supply Center, Norfolk, Virginia at (757) 444-4961 or 1125 for appointment 48 hours in advance and furnish carrier name, number of pieces, weight and cube."

(v) Contractors will ensure that all entries on the bill of lading are complete and should include:

(A) Transportation Control Number (TCN);

(B) Transportation Account Code (TAC);

(C) Port of Debarkation (POD);

(D) Total number of pieces, weight, cube (P/W/C) ;

(E) Consignee.

(vi) Copies of bills of lading should be mailed to:

Fleet and Industrial Supply Center (N45631)
Water Freight Terminal (Mail Code 302)
Attention: Pacer Goose Coordinator
1968 Gilbert St., Suite 600
Norfolk, Virginia 23511

(2) Heavyweight shipments. When shipments purchased on contracts weigh in excess of 10,000 pounds, the Contractor must obtain an Export Traffic Release as prescribed in Federal Acquisition Regulation (FAR) 52.247-52 by contacting the Contract Administrative Transportation Office fifteen days

prior to delivery of goods. The Transportation Office will provide you with the shipping instructions and the delivery point.

(i) Contractors will ensure that all entries on the bill of lading are complete and should include:

(A) Transportation Control Number (TCN);

(B) Transportation Account Code (TAC);

(C) Port of Debarkation (POD;)

(D) Total number of pieces, weight and cube (P/W/C);

(E) Export traffic release number (shipments exceeding 10,000 pounds);

(F) Consignee.

(ii) Maximum packaging protection to meet the most hazardous weather conditions, including weatherproofing (plastic wrapped) is required. Cargo not meeting these specifications will be refused. There are no packing and crating facilities at the Water Freight Terminal, Norfolk, VA to correct packing discrepancies.

(b) Project code 145 - Pacer North. This paragraph applies only to acquisitions identified as Project Code 145 - Pacer North for resupply of units stationed in Greenland.

(1) Parcel post shipments. Parcel post shipments will be mailed to applicable APO cited on the contract.

(2) Hazardous material. Hazardous cargo must not be mailed to a contiguous United States (CONUS) port of embarkation (POE). Cargo should be delivered by common carrier. Parcel post shipments are not authorized.

(3) Air clearance instructions. Cargo must be offered for military airlift. To obtain air clearances contact:

Air Force Material Command (AFMC), Air Clearance Authority
Wright Patterson Air Force Base (AFB) (FFO)
Dayton, Ohio 45433-5006
Phone: (937) 257-4946
Fax: (937) 257-3185

Material that is air cleared shall be shipped to:

Transportation Officer
McGuire Air Force Base (AFB) (WRI)
1702 Vandenburg Avenue
Wrightstown, New Jersey 08641-5507
Phone: (609) 724-3434 or (609) 724-2228 (Customer Service Office)

(4) Other Shipments. If cargo cannot be mailed because it is hazardous materials, is military airlift denied, or cargo is not or cannot be packaged for airlift, contact the address listed below for disposition instructions:

21LRS/LGSC
Peterson Field (COS)
950 West Otis Street
Colorado Springs, Colorado 80914-1410
Phone: (719) 556-4955

(5) Heavyweight shipments. When shipments purchased on contracts weigh in excess of 10,000 lbs, the Contractor must obtain an Export Traffic Release as prescribed in Federal Acquisition Regulation (FAR) 52.247-52 by contacting the Contract Administrative Transportation Office fifteen days prior to delivery of goods. The Transportation Office will provide you with the shipping instructions and the delivery point.

Contractors will ensure that all entries on the bill of lading are complete and should include:

(i) Transportation Control Number (TCN);

(ii) Transportation Account Code (TAC);

(iii) Port of Debarkation (POD);

(iv) Total number of pieces, weight and cube (P/W/C);

(v) Export traffic release number (shipments exceeding 10,000 pounds); and

(vi) Consignee.

Documentation.

(a) Packing List. A packing list must be attached to the outside of the number one container of each shipment and must contain the following:

(1) Transportation Control Number (TCN);

(2) Shippers name and address;

(3) Consignee;

(4) Requisition number;

(5) List of material;

(6) Item number;

(7) Quantity;

(8) Value (required by Canadian customs); and

(9) Country of manufacturer's origin (required by Canadian customs).

(b) Hazardous Material. Hazardous material shall be packaged in accordance with the applicable modal regulations and comply with the United Nations (UN) testing, marking, labeling and documentation requirements. Required hazardous information must appear on all documentation. At a minimum, include a description of cargo using: proper shipping name, hazard class, UN number, and flashpoint (if applicable). Each shipment will have applicable Material Safety Data Sheets (MSDS) attached to the freight and accompanying documentation.

(c) Defense Transportation Regulation (DTR) documentation. Shippers must comply with the documentation requirements established in the Defense Transportation Regulation, DoD 4500.9-R, Part II.

Marking.

(a) Cargo received at the Port of Embarkation that is not properly marked and identified in accordance with these instructions will be frustrated, meaning that a hold will be placed on the material because of a problem with packaging, marking, labeling, address information, etc. which prevents the material from being forwarded to the consignee. Any or all costs incurred as a result of these delays shall be borne by the consignor.

(1) All cargo will be marked in accordance with military standard (MIL-STD) 129 as cited in this document.

(2) Containers are to be marked with paint or waterproof ink in characters from one to three inches high depending upon the size of the container.

(i) Packages under ten cubic feet maybe marked on one side only. Packages over ten cubic feet must be marked on two sides.

(ii) Containers will be marked with the following:

(A) Transportation Control Number (TCN);

(B) Project code number and title;

(C) Shippers name and address;

(D) Complete "ship to" address as indicated on the award or requisition, including M/F: DoD Activity Address Code and ultimate consignee's address;

(E) Port of Entry (POE);

(F) Port of Discharge (POD);

(G) Consignee;

(H) Gross weight of container and contents; and

(I) Cubic feet of container.

(iii) Each package must be numbered in series (1 of 4, 2 of 4, etc.).

(iv) Packages containing fragile items will be marked "fragile" with red paint or waterproof ink or by affixing an appropriate label to the containers.

(v) All bundles of metal beams, pipe, etc., will be marked by securely affixing two waterproof shipping tags or labels to each bundle. However, due to the paper tag or label frequently being lost or destroyed, it is recommended that metal (aluminum or equal) tags marked with applicable shipping information be secured to two different surfaces of each bundle. If individual pieces are large enough, each bundle may be appropriately addressed by stenciling with a contrasting color of paint.

Packaging.

(a) Cargo for more than one location cannot be mixed in one package. At no time will cargo for multiple overseas consignees be consolidated into a single carton, bundle or pallet.

(b) Suppliers will consolidate items by station destination to the maximum extent possible, but dangerous cargo will not be consolidated with other cargo in containers.

(c) Items in glass containers and hazardous cargo, i.e., battery acid, must be overpacked in wooden boxes. Single packagings are permitted without overpacking (i.e., 55 gallon drums or jerricans).

(d) Lifting eye/plates must be properly installed by the manufacturer on heavy lift and oversized cargo.

(e) 55 gallon drums must be palletized, three drums on a 40" X 48" pallet, with four-way steel strapping. On large orders, please call PACER GOOSE coordinator, Air Force Material Command, Shipper Service Liaison Office, McGuire Air Force Base (AFB), New Jersey, (609) 724-4911, facsimile (609) 724-2917.

(1) Shipping containers shall be palletized in accordance with the requirements cited in current issue of MIL-HDBK-774. Pallets shall be new and unused, and shall be seasoned hardwood or seasoned softwood and meet the requirements for heat-treated pallets.

(2) When palletization is cited as a requirement, any special requirements cited herein shall also apply.

(i) All palletized cargo must not exceed 48" in height, 3000 pounds in weight and cargo on top of the pallet must be flat. Pallets must be able to be stacked on top of another. When the configuration of palletized cargo is in doubt, please call PACER GOOSE Coordinator, Air Force Material Command, Shipper Service Liaison Office, McGuire AFB, New Jersey, (609) 724-4911, Facsimile (609) 724-2917.

(ii) Excess shipping containers, which do not constitute a full pallet course (but have a combined gross weight of 200 pounds or more), must be consolidated in such a manner that the load can be moved in an unbroken state by forklift truck or other mechanical means.

(iii) Excess shipping containers, which do not constitute a full pallet course (but have a combined gross weight of less than 200 pounds), may be consolidated as specified above or may be shipped as loose containers.

(iv) Shipping containers and/or material that cannot be palletized (due to size, configuration, etc.) as specified in the above Item 5 paragraphs shall be unitized by securely strapping the load on a skid base. Shrink or stretch wrap bonding may be used at the Contractor's option.

(v) Bagged goods must be packed with poly-wrap, covered with fiberboard, palletized, shrink or stretch wrapped and secured with plastic banding.

(vi) Metal products, which are susceptible to breakage of retaining bands during shipment (i.e., pipe, angle, sheet, channel, tubing, etc.), will be packaged in bundles squared to the maximum extent, not exceeding 1000 pounds gross, and strapped every 24" using 1-1/4" bands.

(vii) Compressed gas cylinders will be packed and shipped in upright or horizontal position in accordance with 49 Code of Federal Regulations (CFR), Chapter 1, Paragraph 177.840.

(End of Clause)

**52.247-9041 Delivery Times.**
As prescribed in 47.305-4(91), insert the following clause:

DELIVERY TIMES (SEP 2009)

(a) Delivery shall be made between the hours of 7:30 a.m. and 2:00 p.m., local time, on days other than Saturday, Sunday, and legal Federal holidays.

(b) For item(s) small enough to mail, only U.S. Parcel Post delivery is acceptable. Delivery by other small parcel carriers will not be accepted by the Ship To addressee.

(End of Clause)

**52.247-9042 Wartime Utilization of Contract Vehicles (Contingency Contract) (Republic of Korea).**
As prescribed in 47.207-5 (91), insert the following clause:

WARTIME UTILIZATION OF CONTRACT VEHICLES (CONTINGENCY CONTRACT) (REPUBLIC OF KOREA) (DLA ENERGY) (NOV 2011)

(a) Within 30 days after contract award, the Contractor shall identify in writing to the Contracting Officer its transportation assets to be used in the performance of this contract to include those of any subcontracting agreements. Specific information required is: name, address and phone number of the Contractor and applicable sub-Contractor(s), number of vehicles used by Contractor and sub-Contractor to execute contract, license number, cargo capacity and type cargo (JP8) of each vehicle; and name and telephone number of each driver. The Contracting Officer will provide this data to USFK J4 wartime host

nation support division to coordinate with the appropriate Republic of Korea (ROK) ministries to ensure that these assets have been included in the transportation mobilization designation plan. Maintenance and overall responsibility for the Contractor's transportation assets shall remain with the Contractor. The Contractor shall cooperate with the Contracting Officer providing all information that is necessary to ensure that its transportation assets are designated to continue supporting United States (U.S.) requirements in the event of a ROK mobilization.

(b) Once ROK Mobilization is declared, the Contracting Officer or designee will provide the Contractor with a list of ROK-U.S. Movement Control Teams by area to coordinate clearances for hazardous cargo movement. The U.S. ordering officials will, if practicable, submit a requirement request a minimum of seven days in advance of delivery to allow the Contractor adequate time to program and schedule the delivery.

(c) The Contractor shall process requests for highway/road clearance and for additional transportation assets through the appropriate local ROK-U.S. movement control team a minimum of 72 hours prior to scheduled pickup date. To obtain approval to use highways and roadways designated for military use, the Contractor must submit requests using the combined highway clearance request form (see CHQ form 25EK, 10 Jun 05). To request additional trucks and drivers (beyond those previously allocated to support Contractor operations during mobilization), the Contractor must submit a combined movement request (CMR) (see attached CHQ form 26EK, 10 Jun 05). To ensure adequate security and protection for movements, the Contractor shall request military escort on CHQ form 26EK.

(d) The Contractor shall assign a representative responsible for processing combined highway clearances and combined movement requests. This representative shall be responsible for becoming familiar with the combined highway requesting procedures and attending all required training. Training will be conducted in conjunction with combined forces command computer aided exercises (CAX) held each spring and fall. The U.S. Government will provide appropriate training to the Contractor representative in processing and monitoring requests for highway/road clearances and additional assets using the process as established in the current edition of the Command logistics policies and procedures manual. The Government will notify the Contractor representative when ROK mobilization occurs, when it must begin using combined movement procedures, USFK priorities for shipments, and any changes that are required to Contractor shipping schedules.

(End of Clause)

**52.247-9044 Transportation of Wood Products.**
As prescribed in 47.305-14-91, insert the following clause:

TRANSPORTATION OF WOOD PRODUCTS (SEP 2012)

(a) Unless otherwise specified by the Government below in paragraph (b), the contractor may ship supplies by flatbed truck for forklift unloading or using one of the following alternate modes of transportation: open top truck, van, flatcar (rail), boxcar (rail), or gondola (rail). However, if rail is the mode of transportation specified by the Government or elected by the contractor, the contractor is responsible for determining that the consignee is served by a rail siding for delivery.

(b) In lieu of a flatbed truck, supplies will be shipped using the following mode of transportation: [The contract specialist shall insert the appropriate information or state “not applicable”.]

_____

(c) If the consignee is not served by a rail siding and shipment is made by rail, the contractor must arrange for and bear all costs of offloading and transporting to the consignee.

(End of Clause)

**52.247-9045 Alaskan, Hawaiian or Puerto Rican Requirements.**
As prescribed in 47.303-6-90, insert the following clause:

ALASKAN, HAWAIIAN OR PUERTO RICAN REQUIREMENTS (SEP 2012)

(a) This clause covers requirements for delivery to Alaska, Hawaii or Puerto Rico, as specified in the schedule. Offers based on furnishing supplies from a facility located in the same state or commonwealth to which shipment is required, must be based on free on board (f.o.b.) destination to the consignee.

(b) Offers based on the above, in paragraph (a), must specify the shipping point for supplies below:

Shipping point: _____ (The offeror shall fill-in information.)

(End of Clause)

**52.247-9047 Evaluation – Free on Board (F.o.b.) Origin –Special Condition.**
As prescribed in 47.306-1(d)(92), insert the following provision:

EVALUATION – FREE ON BOARD (F.O.B.) ORIGIN – SPECIAL CONDITION (DEC 2011)

(a) Where supplies originating in Canada, Alaska or Hawaii are offered f.o.b. origin outside the contiguous 48 states of the United States and the District of Columbia and the destination is within the United States (U.S.) excluding Alaska and Hawaii, the offer will be evaluated by adding to the f.o.b. origin price of the item the costs for transportation of the supplies by the Government. These transportation costs will be computed so as to include:

(1) All transportation costs from the shipping point in Canada or the port of loading in Alaska or Hawaii, whichever is applicable, to the first point of entry into the United States, excluding Alaska and Hawaii, including all handling, loading, unloading and accessorial services costs and if ocean transportation is applicable, rates will be based on material being shipped on U.S. flag vessels, and

(2) Costs of transportation by land methods from the first point of entry into the U.S., excluding Alaska and Hawaii, to destination.

(End of Provision)

**52.247-9048 Guaranteed Shipping Characteristics.**
As prescribed in 47.305-16 (90), insert the following clause:

GUARANTEED SHIPPING CHARACTERISTICS (DEC 2011)

(a) The shipping characteristics upon which this award is based are as follows:

(1) Type of container: _____

(2) Shipping configuration: _____

(3) Size of container: _____

(4) Number of items per container: _____

(5) Gross weight of container and contents: _____

(6) Palletized/skidded: [ ] Yes [ ] No

(7) Number of containers per pallet/skid: _____

(8) Weight of empty pallet bottom/skid and sides: _____pounds

(9) Size of pallet/skid and contents: _____pounds _____ cube

(10) Number of containers or pallets/skids per railcar: _____

Size of railcar: _____ Type of railcar: _____

(11) Number of containers or pallets/skids per trailer: _____

Size of trailer: _____ Type of trailer: _____

(12) Rate used in evaluation: _____

(13) Tender/tariff: _____

(14) Item: _____

(b) The Contractor agrees that if delivered items exceed the guaranteed shipping weight and cube stated above, the contract price shall be reduced by an amount equal to the difference between the transportation costs computed for evaluation purposes based on the above figures, and the transportation costs that should have been used for evaluation purposes based on correct shipping data.

(End of Clause)

**52.247-9049 Evaluation - Free on Board (F.o.b.) Origin - Shipments Originating in Puerto Rico.** As prescribed in 47.306-1(d)(93), insert the following provision:

EVALUATION - FREE ON BOARD (F.O.B.) ORIGIN - SHIPMENTS ORIGINATING IN PUERTO RICO (DEC 2011)

(a) Water methods of transportation by carriers engaged in container service (sea vans) for offeror's shipping point to the port of discharge in the United States (excluding Alaska and Hawaii) and land

methods of transportation beyond to the ultimate destination in the United States (or water methods beyond if the destination is outside of the United States), will be used in establishing the cost of transportation. Port handling and ocean charges on file and published by the Military Surface Deployment and Distribution Command or the Military Sealift Command (as applicable), as of the date of bid opening (or the closing date specified for receipt of proposals) and effective for the date of the expected initial shipment will be used. Such transportation cost will be added to the bid (or proposal) price in determining the overall cost of the supplies to the Government.

(b) When tentative destinations are indicated, they will be used only for evaluation purposes, the Government having the right to utilize any other means of transportation or any other destination at the time of shipment.

(End of Provision)

**52.247-9050 Evaluation -- Palletized Shipments.**
As prescribed in 47.306-1(d)(94), insert the following provision:

EVALUATION -- PALLETIZED SHIPMENTS (DEC 2011)

Contracts under this solicitation will require that each shipment be palletized. Railroad cars and trucks cannot be fully loaded with pallets as with unpalletized cases. Free on board (f.o.b.) destination offerors should consider this in determining the transportation cost to be included in their price. The Government will also consider this in determining the transportation costs to be used in evaluation of f.o.b. origin offers. For this purpose, each item will be divided into individual shipment quantities which probably offer the most advantageous overall transportation pattern for the Government considering weight, anticipated rates and rail car capacities. All offers will be evaluated to achieve the lowest possible overall cost to the Government. It is possible because of palletizing that a portion of some otherwise low offer will not be accepted because the quantity will not be sufficient to be shipped advantageously.

(End of Provision)

**52.247-9056 Addendum to FAR 52.247-29 Free on board (f.o.b.) Origin.**
As prescribed in 47.305-3-95, insert the following clause:

ADDENDUM TO FAR 52.247-29 FREE ON BOARD (F.O.B.) ORIGIN (SEP 2012)

The offeror/contractor shall identify the location of origin below.

_____ Same as Offeror (the Offeror shall fill in the city and state):

_____ Other (the Offeror shall fill in the city and state):

City: _____

State: _____

(End of Clause)

**52.247-9057 Shipment of Government Property – Government and Contractor Responsibility.**
As prescribed in 47.305-3-96, insert the following clause:

SHIPMENT OF GOVERNMENT PROPERTY - GOVERNMENT AND CONTRACTOR RESPONSIBILITY (SEP 2012)

(a) Pursuant to FAR 52.247-55, the Government property shall be delivered at Government expense to the point specified by the Contractor in his/her offer.

(b) Pursuant to FAR 52.247-34 or FAR 52.247-35, the Contractor upon completion shall return the Government property at the Contractor's expense to the location specified in the contract.

(c) The Government property should be delivered to the Contractor within 60 days after award date.

(d) Confirmation of delivery. The Contractor shall provide written confirmation to the contracting officer upon receipt of the equipment.

(End of Clause)

**52.248-9000 Evaluation of Offers Using Alternate VECP Method.**
As prescribed in 48.2 (90), insert the following provision:

EVALUATION OF OFFERS USING ALTERNATE VALUE ENGINEERING CHANGE PROPOSAL (VECP) (NOV 2011)

(a) The Government has accepted a Value Engineering Change Proposal (VECP), as identified in the purchase order text (POT), which provides a stated alternative production method with respect to all, or some part, of the item being purchased. Consequently, for a prescribed period, the Government must make a Contractor share payment for each unit it purchases on which the Contractor applies the VECP. To determine payment entitlement for the VECP Contractor, offerors are required to indicate which production method(s) shown below is to be used under any contract resulting from this solicitation and the number of units to be produced by each production method selected.

(b) In selecting the method of production, the offeror is stipulating that all units identified to a specific production method below will be delivered using only the production method selected for that number of units.

(c) The Contractor is cautioned that only units identified to be produced under the method(s) selected in this clause will be accepted on the resulting contract unless such contract is formally modified by the Contracting Officer.

(d) The offeror shall select the production method (check one) and number of units to be produced under each selected method (fill-in). Further, if more than one method of production is available under any chosen VECP number, the offeror shall identify the method(s) selected for use.

(e) The offeror hereby agrees to use the following production method (check one):

[ ] Method using specification/drawings without any VECP.

Number of units to be produced using this method _____

[ ] Method using alternate VECP number _____ with a unit shared acquisition savings amount of $_____(royalty), per _____.

Number of units to be produced using this method _____

(f) When the offeror selects an alternate VECP method, an amount equal to the VECP shared acquisition savings rate shall be added to the offer price as an evaluation factor beginning with the _____ unit. However, the evaluation factor shall apply only to those quantities which, at the time of contract award, are scheduled for delivery on or before _____.

(g) Failure to check any block will be deemed to indicate that the offer is based upon using the current requirements without any alternate VECP.

(End of Provision)

**52.248-9001 Exemption from Value Engineering.**
As prescribed in 48.2 (91), insert the following clause:

EXEMPTION FROM VALUE ENGINEERING (NOV 2011)

Federal Acquisition Regulation (FAR) clause 52.248-1, Alternate III, Value Engineering, is not applicable to the first article portion of the acquisition.

(End of Clause)

**52.248-9002 Offers Using Alternate Value Engineering Change Proposal (VECP) Method And Specifications/Drawings.**
As prescribed in 48.2(92), insert the following clause:

OFFERS USING ALTERNATE VALUE ENGINEERING CHANGE PROPOSAL (VECP) METHOD AND SPECIFICATIONS/DRAWINGS (NOV 2011)

Some units supplied under this contract shall be produced using the value engineering change proposal (VECP) numbers identified below and some units shall be produced using the specification/drawing identified in the acquisition item description without using any approved VECP method. Acceptance under this contract of any unit produced other than as identified below is prohibited.

Method: Specification / drawing without VECP
Number of units:
Method: Value engineering change proposals (VECPs)
Number of units:
VECP number(s):

(End of Clause)

**52.249-9000 Administrative Costs of Reprocurement After Default.**
As prescribed in 49.402-6(90), insert the following clause:

ADMINISTRATIVE COSTS OF REPROCUREMENT AFTER DEFAULT (MAY 1988)

If this contract is terminated in whole or in part for default pursuant to the clause included herein entitled "Default," and the supplies or services covered by the contract so terminated are repurchased by the Government, the Government will incur administrative costs in such repurchases. The Contractor and the Government expressly agree that, in addition to any excess costs of repurchase, as provided in paragraph (b) of the "Default" clause of the contract, or any other damages resulting from such default, the Contractor shall pay, and the Government shall accept, the sum of [insert administrative cost figure] as payment in full for the administrative costs of such repurchase. This assessment of damages for administrative costs shall apply for any termination for default following which the Government repurchases the terminated supplies or services, regardless of whether any other damages are incurred and/or assessed.

(End of Clause)

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## SUBPART 53.2 – PRESCRIPTION OF FORMS

**53.201 Federal acquisition system.**

**53.201-91 [Reserved.]**

**53.201-92 Contract file content list (DLA Form 678).**

(a) General. DLA Form 678 shall be used as prescribed in 1.690-7(g).

(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) Contract file sections shall be identified by inclusion of a divider annotated with the section identification and title, e.g., "Section A Planning and Solicitation." 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.

(ii) The following sections discuss those elements of contract documentation which merit special attention.

(3) Section A - planning and solicitation.

(i) Tab number 1 PR/MIPR. The file must reflect the manner and extent to which the needs of the requiring activity have been met. It is essential, therefore, that in addition to the basic purchase authority, any changes and justifications be included under this TAB. In the case of amendments, the basis for change must be evidenced, e.g., in those instances where items on the purchase request have been completely lined out or quantities changed, indication must be made of the identity or authority of the individual or activity which requested/authorized the change. In other instances where contracts have

been issued calling for something other than that specified on the PR/MIPR, explanation must be included as to the authority/approval for the change and from whom received. Memoranda must adequately identify individuals referred to in memoranda (e.g., statements such as "this was discussed with and concurred in by Mr. Smith in the supply function" are inadequate). An individual's full name, title, or position, and the individual's relationship to the subject matter of the memorandum must be clearly established; this is of particular importance should postaward questions arise. Requirements shall be revalidated in those instances where excessive time has elapsed between the issuance of the purchase request and consummation of the contract (see 1.693).

(ii) Tab number 2 specification/drawing. These documents in many instances either dictate source selection or indicate to the Contracting Officer the extent of possible competition. Any change either prior or subsequent to solicitation may affect final source selection. When such changes are effected, documentation supporting the change must be included in the file indicating as a minimum: the basis and authority for initiating specification/drawing change; coordination received from appropriate technical personnel; and approval/concurrence of the requiring activity. When specification/drawing changes are initiated/confirmed by the requiring agency on a PR/MIPR amendment, the documentation should be included in tab number 1 with an annotation in tab number 2 identifying the amendment number.

(iii) Tab number 3 acquisition plan/amendments. The acquisition plan will include, as a minimum, the information included in 90.1101. The use of preprinted forms for this purpose is acceptable.

(iv) Tab number 6 non-personal services determination. A statement by the Contracting Officer that the services proposed for acquisition have been determined to be non-personal in nature is not by itself sufficient to meet the requirements of FAR 37.103(a). Such determination must include the reasons and all of the facts which were deemed to substantiate the nonpersonal aspect of the services. Examples of criteria for characterizing services as non-personal rather than personal are set forth in FAR 37.104(d).

(v) Tab number 7 Department of Labor (DOL) Wage Determinations. DOL wage determinations are normally effective for a period of 120 days after issuance and must be in effect at the time of solicitation and at the time of award. When it is necessary to obtain extensions on determinations in order to carry them through the period until award is to be made, the documentation authorizing such extension by the DOL must be included under this tab. A copy of the request and any enclosures sent to DOL shall be included.

(vi) Tab number 8 small business set-aside determination. The determination required under FAR 19.5 must be accurate and complete insofar as the reason given for not having a small business set-aside. Statements such as "a set-aside was not considered because of insufficient quantity" must be supported. The information included in this determination must accurately reflect the consideration given to compliance with FAR 19.5; the information included therein imposes, in turn, a responsibility to make a realistic evaluation of requirements and a current review of possible sources to substantiate the information used in determining the proposed acquisition method.

(vii) Tab number 11 source list. The list of sources initially solicited and those to whom solicitations were subsequently issued as a result of requests are to be included; in the latter case, the date requested solicitation was issued will be indicated.

(viii) Tab number 14 solicitation and amendments. The contract file must include the solicitation document and any amendments thereto. Amendments must accurately reflect their issuance dates. In case of oral solicitations, the requirements of FAR 15.402(f) must be satisfied.

(4) Section B - Preaward support data.

(i) Tab number 18 abstract of offers. Include on the abstract any conditions of the offers which are related to their evaluation; if lengthy, the "Remarks" column shall be annotated with information indicating the location in the offer of the condition, e.g., "See page _____ of the proposal for exception to specification."

(ii) Tab number 19 packaging/transportation/freight rate data. Inclusion of transportation/freight rate data, are essential in determining the manner in which transportation costs were applied in arriving at the evaluated prices. Files must also include sufficient information to substantiate that packaging costs are equitable.

(iii) Tab number 20 cost/pricing data. All cost or pricing data received from the offeror in support of its proposal shall be included under this tab. If any data should be included in correspondence dealing with other matters which are pertinent to the final contract, e.g., delivery schedule, contract clauses, etc., the original correspondence will be filed under this tab and a cross-reference (or copy of such correspondence) placed in tab number 44.

(iv) Tab number 21 audit report/waiver/field pricing report. When field pricing support is requested from the cognizant contract Management Agency activity pursuant to FAR 15.404-2(a), the report obtained, together with any attached assist reports shall be included under this tab.

(v) Tab number 25 certificate of current cost or pricing data. Often a Contractor will provide a certificate of current cost or pricing data at the close of the negotiation session and will subsequently confirm, by letter, details of the agreements reached. In some instances, the confirming letter will include data which, although previously discussed and accepted, have not previously been presented in writing. In such cases, the certificate of current cost or pricing data presented at the close of negotiations becomes invalid; a new certificate must be obtained to reflect the Contractor's last data submission upon which the final price agreement was concluded.

(vi) Tab number 29 bid/offer evaluation worksheets, computer run. **(**Include documentation pertinent to source selection.)

(vii) Tab number 30. This tab will be used to incorporate, when applicable, information received from a cognizant ACO relative to the acceptability of the Contractor's disclosure statement when the firm has indicated submission of same.

(5) Section C - Other support data.

(i) Tab number 34 unsuccessful bid/proposal. Include the notification to the offerors (either that already issued or that proposed to be issued) that bids/offers were unacceptable and the reasons therefor.

(ii) Tab number 36 determination of late/bid proposal. All actions taken in accordance with the procedures prescribed under FAR 14.304 and 15.412 shall be included under this tab.

**53.201-93 Request for waiver of preaward contract review and approval (DLA Form 1694).** DLA Form 1694 shall be used as prescribed in 1.690-8.

53.204 Administrative matters.

53.204-70 DD Form 350, Individual Contracting Action Report.

(b) Part B of the DD Form 350.

Block B4, Completion Date. When preparing a template (see 4.670-6(b)(4)(i)) use this item to enter the expiration date.

Block B5A, Contractor Identification Number. This block is for reporting the Contractor's nine position DUNS number according to DFARS 253.204-70(b)(5)(ii)(A).

Block B5B, Commercial and Government Entity (CAGE) Code. The additional reporting requirement at Subpart 90.9, Updating Small Disadvantaged Business Status and Women-Owned Business Status in the DD Form 350 CAGE File, applies when the small disadvantaged business status or women-owned business status is incorrect in DCARS.

Block B7, Type of Obligation. For DLA contracting offices, the DCARS will generate Code 3 to indicate a template record whenever an IDC is being reported pursuant to 4.670-6(b)(4)(i), or when a template record is being created for a blanket purchase agreement (BPA) or Federal Supply Schedule.

Block B12C, System or Equipment Code. Enter the three position DLA Weapons or System code from the Purchase Request trailer or other source. If not known or the item in B12A is not part of a listed weapon or system, enter "000." DCARS will convert these data into the DoD codes for DoD reporting purposes.

(c) Part C of DD Form 350.

Block C2, Reason Not Synopsized. Enter Code A, Urgency, only when Item C9, Authority for Other Than Full & Open Competition, is coded 2A and Item C8, Solicitation Procedures is coded N, Other Than Full and Open Competition.

Line C3, Extent Competed: Enter "A" on this line (in accordance with DFARS 253.204-70, line C3(A)(3), full and open procedures after exclusion of sources) whenever award is made as a set-aside to a service-disabled veteran-owned small business entity. For sole-source SDVOSB awards, enter "A" on this line (in accordance with DFARS 253.204-70, line C3(A)(3), full and open competition after exclusion of sources – set-asides) whenever more than one offer is received; if only one offer is received, enter "D" on this line (in accordance with DFARS 253.204-70, lines C3(A)(3) and C3(D), not competed). For both set-asides and sole-source awards to SDVOSBs, also code Block C8 in accordance with the instructions below.

Block C7, Number of Offers Received. Offers, for the purpose of completing C7, shall only be offers from responsible Contractors capable of satisfying Government requirements. If an offer is an alternate offer and is rejected, or if award must be made before evaluation can be completed, the alternate offer is not to be counted.

Line C8, Solicitation Procedures: Enter “K” on this line (in accordance with DFARS 253.204-70, line C8(B)(8), set-aside) whenever award is made as a set-aside to a service-disabled veteran-owned small business (SDVOSB) entity. Enter “N” here (in accordance with DFARS 253.204-70, line C8(B)(9), authority for other than full and open competition) whenever award is made on a sole-source basis to an SDVOSB.

Line C9, Authority for Other Than Full and Open Competition: Enter “5A” on this line (in accordance with DFARS 253.204-70, line C9(B)(11), authorized by statute) whenever award is made on a sole-source basis to a service-disabled veteran-owned small business entity.

(d) Part D of DD Form 350.

The DFARS requires blocks D2, D3, D5, D7, and D8 be blank under certain circumstances. If the Contracting Officer completes any of these items in one of those circumstances, the DCARS will convert the entry to a blank and pass the record to DoD in the required format. Block D4E, Premium Percent. DLA contracting offices may enter "000" for this item when D4B is coded A or B and D4C is Coded A. The DCARS will convert the record passed to DoD into the required format.

Line D1, Type of Contractor, line D1(E), Veteran-Owned Small Business: Enter “A” on this line (in accordance with DFARS 253.204-70, line D1(E)(1), service-disabled veteran), whenever award is made (including set-asides or sole-source awards) to a service-disabled veteran-owned small business entity.

Line D4, Set-Aside or Preference Program, line D4(A), Type of Set-Aside: Even though the instructions at DFARS 253.204-70, line D4(A)(2), have not been updated to reflect set-asides for service-disabled veteran-owned small businesses, the DLA Contract Action Reporting System (DCARS) is able to accommodate the reporting of the SDVOSB set-aside or sole-source award. Enter “M” on this line whenever award is made as a set-aside to a service-disabled veteran-owned small business entity; enter “N” if award is made to an SDVOSB on a sole-source basis.

Block D5, Ethnic Group. For DLA, if the Small Disadvantaged Business Concern Representation, (see DFARS 252.219-7000), indicates the offeror is claiming eligibility in the Minority Small Business and Capital Ownership Development Program, Section 8(a) of the Small Business Act, then the ethnic group must also be completed and the appropriate code entered. This item must be completed for all awards made to a small disadvantaged business.

(e) Part E of DD Form 350.

Block E9 may be entered in Part E of the DD Form 350 in the margins or on the reverse side for manual reports. DCARS will provide for these items on the input screen.

(5) Block E9, National Stock Number. Enter the 13 position National Stock Number (NSN) or Local Stock Number (LSN) which defines the item of supply. Do not enter dashes, slants, or similar punctuation marks and do not show spaces between numbers or letters in the stock number. Leave blank when acquiring services (position 1 of B12A is alpha). If more than one NSN or LSN is the subject of this action, enter the stock number of the predominant item as determined by dollar value. If no stock number applies, enter the FSC shown in B12A followed by the word "NONE" without spaces between the two (e.g., "8905NONE").

(g) Special instructions for DD Forms 350 on actions of $25,000 or less under the Small Business Competitiveness Demonstration Program.

(2)(i) Block B5A, Contractor Identification Number. Enter the Contractor's nine position DUNS number.

**53.204-71 DD Form 1057, Monthly Contracting Summary of Actions $25,000 or Less.**

(d) When local procedures combine two or more actions into a single award or modification, it may be necessary to split the action into two or more lines in parts B through F. Any portion with a dollar value of more than $25,000 shall be reported on DD Form 350. These procedures will permit accurate reporting of set-asides and other actions which would either not be reported or reported with an incorrect dollar value if reported as a single action. Examples include but are not limited to the following:

(i) One part of the action was unrestricted while the other part involved one or more socioeconomic programs such as set-asides; or

(ii) One part of the action involved Foreign Military Sales and the remainder did not.

**53.205 Publicizing contract actions.**

**53.205-90 Contract announcement (DLA Form 1693).**
DLA Form 1693 shall be used as prescribed in 5.303.

**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, DFARS 219.602-1 and DLAD 19.602-1.

(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.

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## SUBPART 90.2 – TRAINING

### 90.201 Granting credit for course requirements fulfilled by alternate methods.

**90.201-1 Scope and delegations.**
These procedures apply to all acquisition work force members at DLA activities subject to the DLAD (see 1.103). The heads of contracting activities have the authority to evaluate experience, education, or alternate training completed and to determine if it fulfills the requirements of mandatory DoD contracting courses. This authority may be delegated, without power of redelegation to those officials authorized to select, appoint, and terminate the appointment of contracting officers by 1.603-1(90).

**90.201-2 Procedures and documentation.**
Applications for credit by alternate methods will be made on the DD Form 2518, Fulfillment of DoD mandatory training requirement, as outlined in DoD 5000.52-M. A copy of each DD Form 2518 along with a statement of the alternate method determined to be equivalent will be forwarded to J73 for reporting purposes.

### 90.202 Waivers.

**90.202-1 Definition.**
A waiver is defined as exempting someone from taking a course without certifying that the person has gained knowledge from experience, formal education or other training. Fulfillment of requirements by alternate methods shall not be considered or used as a "waiver" of requirements.

**90.202-2 Policy and procedures for requesting waivers.**
Acquisition personnel will normally fulfill mandatory training requirements by course completion or alternate methods, therefore, waivers are discouraged. Requests for waivers will be forwarded to J73 for evaluation and processing.

## SUBPART 90.3 – SELECTION OF CONTRACTS TO BE TERMINATED FOR CONVENIENCE IN EVENT OF UNEXPECTED DECELERATION

### 90.301 Policy.
Terminations for convenience will be based on individual decisions resulting from a comparison of costs for termination and excess position of items versus the need for release of obligated funds for higher priority use.

### 90.302 Responsibilities.
The decision to terminate a contract for the convenience of the Government is the joint responsibility of the commodity manager and the contracting officer at the cognizant Defense supply center (DSC). In those cases where the contract resulted from a military interdepartmental purchase request (MIPR), the decision to terminate for convenience is the responsibility of the MIPR initiator; however, the contracting officer, upon request, must inform the initiator of all elements which have any bearing on the status of the contract.

### 90.303 Procedures.

**90.303-1 General procedures.**
Upon receipt of a request for a cutback in contract quantities from the cognizant commodity manager, the following information will be utilized in selecting the contract for termination:

(a) Ascertain all current contracts for items involved.

(1) Determine the undelivered portion of each contract.

(2) Consider supplies in transit (i.e., under a f.o.b. destination contract) as deliveries, unless the contractor is delinquent and a notice to terminate for default has been sent to the contractor.

(3) Determine what deliveries, if any, are delinquent.

(4) Determine whether the delinquency is excusable or inexcusable.

(5) Contract quantities scheduled for direct delivery to users are not subject to termination action unless specifically so designated.

(b) If delinquency is considered inexcusable, terminate for default where appropriate.

(c) Where termination for default is not appropriate or where additional quantities remain to be cut back after termination for default, proceed in the selection of contracts to be terminated for convenience.

(1) First choice should be where contractors are agreeable to total or partial termination (voluntary or no cost settlement).

(2) Consider the following factors.

(i) Contracts involving contractors' commercial item.

(ii) Contracts awarded as rated orders.

(iii) Contracts for mandatory acquisition.

(iv) Contracts most recently awarded and those providing for longest production lead time where production has not progressed to an appreciable degree.

(v) Contracts awarded at the highest price and work down pricewise.

(vi) Partial termination of all contracts where two or more contractors are involved in lieu of total termination of a few.

(d) The dollar amount of potential settlement claims should be estimated with the assistance of DCMA. Consider the following in estimating the claim:

(1) Unit price of undelivered items;

(2) Raw material on hand and/or on order;

(3) Components on hand or on order;

(4) Work in process;

(5) Unamortized startup costs;

(6) Percentage of completion;

(7) Current commercial value and saleability of the item involved; and/or

(8) Disposal actions required, taking into consideration recoupment through sales of items to be disposed.

**90.303-2 Operation procedures.**

(a) The supply function or the MIPR initiator will advise the contracting function to cancel an item by quantities and consignee. The supply function or the MIPR initiator will be required to indicate all open purchase requests and/or contracts when requesting information upon which to base a termination decision or when requesting cancellation by item and consignee.

(b) Contracting and production, using procedures in 90.303, will determine what portion of each open contract should be terminated.

(c) If the contracting function's decision indicates that the supply function's original request should be revised, the decision will be coordinated with the Supply function and elevated to the supply chain HCA. The final authority for deciding whether or not to terminate, when substantial claims are involved, is the center commander/director.

(d) Upon completion of above actions, the Contracting function will issue the termination notice with a copy to DCMA for termination settlement action.

## SUBPART 90.4 – [RESERVED]

*(Revised March 22, 2012 through PROCLTR 2012-30)*

## SUBPART 90.5 – CONTRACT REVIEW PROCEDURES

**90.501 Checklists - individual contract reviews.**

The following contract review checklists have been developed for use as guides by DLA contracting officers and buyers in their individual contract reviews. The checklists may be modified to suit the needs of the contracting activity. Standard DLA-wide forms are not prescribed in order to permit development of local checklists.

(a) Contract review checklist – supplies and/or services.

Contractor: _____

Contract number: _____ Dollar value: $_____

Brief description of supplies or services with quantity, unit price, extension, and/or total price:

1. Does the center/activity have the authority to purchase this item? (DFARS 208.70)

Tab number 1 Purchase Request (PR)/ Military Interdepartmental Purchase Request (MIPR).

2. Is the PR or MIPR in the file? (53.201-92(b)(3)(i))

3. Are amendments approved by appropriate authority and are they attached? (53.201-92(b)(3)(i))

4. Is an option quantity included? (FAR 17.202)

Tab number 2 Specification/drawing.

5. Is the purchase description prepared in accordance with FAR 11.000?

Tab number 3 Acquisition plan/amendments (FAR/DFARS/DLAD 7.1).

6. Is information sufficient to support proposed method of acquisition (Sealed Bid - Competitive Proposals)? (FAR 6.401)

7. Was the acquisition plan approved at a level above the buyer in accordance with 7.102(91)?

8. Were market surveys and market research performed in accordance with 7.102(90)?

9. Is the required delivery schedule realistic?

10. If option proposed, authorized/appropriate? (FAR 17.202)

11. Does the acquisition plan define S&S requirements (items, quantities, delivery terms), ensure S&S capability is developed, and include S&S testing in accordance with 7.104(b)(91) and 17.9303(c)? Does the acquisition plan provide all the information required in 90.1101(b)(18) regarding S&S?

Tab number 4 Justification for other than full and open competition.

12. Was contracting without providing for full and open competition justified? (FAR 6.303-1)

Tab number 5 Determination and findings.

13. Was a justification for use of option prepared? (FAR 17.205(a))

14. If the option is not to be evaluated, was a determination approved at a level above the contracting officer? (FAR 17.206(b))

15. If for full and open competition after exclusion of sources, was a D&F prepared? (FAR 6.202(b)(1))

Tab number 6 Nonpersonal services determination.

16. If nonpersonal services involved, was determination issued? (53.201-92(b)(3)(iv))

Tab number 7 Department of Labor (DOL) wage determination.

17. Was a wage determination requested? YES NO N/A (53.201-92 (b)(3)(v))

18. If a wage determination was obtained, is it current or does file contain documentation authorizing extension?

Tab number 8 Small business set-aside determination.

19. Does information provided support the determination? (FAR 19.501(c)/DLAD 53.201-92(b)(3)(vi))

20. Is withdrawal/modification of the initial set-aside determination explained? (FAR 19.506(c))

Tab number 9 Buy American act.

21. If applicable, has a non-availability determination been prepared and approved pursuant to DFARS 225.102/DLAD 25.102?

Tab number 11 Source list

22. List includes those initially solicited and those added as a result of requests, with dates for the latter? (53.201-92(b)(3)(vii))

23. Is the list excessively long? (FAR 14.205-4(a))

24. Is the list annotated as to "no bids" received? (FAR/DLAD 14.205-2)

Tab number 12 Presolicitation notice.

25. Should a pre-invitation notice (FAR 14.205-4(c)) or pre-solicitation notice (FAR 15.201(c)(5)) have been used?

26. Should a draft RFP ((FAR/DLAD 15.201(c)(6)) have been used?

Tab number 13 Synopsis.

27. Copy of transmittal in file?

28. In proper format? (FAR 5.207/DFARS 205.207)

29. No synopsis; justification adequate? (FAR 5.202)

30. Was adequate time allowed? (FAR 5.203)

Tab number14 Solicitation and amendments.

31. Was the solicitation issued in a timely manner?

32. Do solicitation provisions reflect PR or MIPR requirements?

33. If an oral solicitation, does file contain justification for its use? (FAR 15.203(f))

34. Bidding time/request for proposal (RFP) response time adequate? (FAR 5.203 and 14.202-1)

35. Format in accordance with FAR 14.201-1 (an invitation for bid (IFB)) or 15.204-1 (RFP)?

36. Were amendments sent to all originally solicited? (FAR 14.208/15.206)

37. Were amendments properly dated? yes no not applicable (N/A ) (53.201-92 (b)(3)(viii)

38. Are solicitation clauses and provisions current/complete? (FAR 14.201-6/15.209)

39. Does the solicitation include evaluation factors? (15.612-90(a)/15.304)

40. Does the solicitation address surge and sustainment (S&S) requirements, capability, and testing as outlined in the acquisition plan (90.501(a)12)?

Tab number 18 Abstract of offers.

41. Abstract of bids/proposals: (FAR 14.403)

(1) Signed and dated?

(2) All bids/offers entered properly?

(3) Exceptions noted? (53.201-92(b)(4)(i))

Tab number 19 Packaging/transportation/freight rate data

42. Packaging/transportation/freight rate data obtained and determined to be adequate? (53.201-92(b)(4)(ii))

Tab number 20 Cost/pricing data.

43. Were cost or pricing data requested in the solicitation? (FAR 15.403-5)

44. When cost or pricing data are required, has the contracting officer obtained the certificate of current cost or pricing data? (FAR 15.406-2)

45. If cost or pricing data are not required but the information other than cost or pricing needed to has to help establish price reasonableness or cost realism? (FAR 15.404-3)

46. If cost or pricing data submitted, is it in file?

47. If cost or pricing data were required, has the contracting officer indicated the extent to which he/she has relied on the data and recognized as inaccurate, incomplete or non-current any cost or pricing data submitted? (FAR 15.406-3(a)(6)

48. If cost or pricing data were or were not requested, does the file provide the exception used and basis for it? (FAR 15.406-3(a)(5))

Tab number 21 Audit report, waiver, or field pricing report.

49. Was field pricing support obtained (DCAA audit; DCAA pricing/technical report)? FAR 15.404-2 and DFARS 215.404-2))

50. If so, does the file contain all pricing support information? FAR 15.406-2(b)(2))

51. Was independent price analysis performed by the cost/price analysis element? (15.404-1(a)(90))

Tab number 22 Price/cost analysis.

52. If sole bid received, is the file documented to reflect actions taken and rationale used to determine the reasonableness of prices? (14.408-2(90))

53. Was weighted guidelines analysis prepared? (FAR 15.404-4(c)(2)/ DFARS 215.404-71

54. If prior contracts were used in the price analysis, were the price reasonableness determinations of those contracts stated? yes no N/A (FAR/DLAD 15.404-1(b)(2)(ii))

55. Were realistic negotiation objectives established? (15.406-1)

Tab number 23 Prenegotiation briefing memorandum.

56. Was the prenegotiation briefing presented to appropriate authority prior to negotiations? (15.406-1(b)(91))

57. Does the prenegotiation briefing memorandum clearly establish basis for negotiating position?

58. Does it include all of the required elements? (15.406-1(b)(92))

59. Was basis for decision to negotiate, or decision to accept the initial offer without discussion, documented? (FAR 15.306(a)(3) and DLAD 15.406-1(b)(92)

60. Is the prenegotiation briefing memorandum signed and dated?

61. Was a comparative schedule (spread sheet) prepared as required by 15.406-1(b)(92)(4)?

62. If negotiation objectives were changed or exceeded, was prenegotiation briefing authority notified? (15.406-1(b)94)

Tab number 24 Price negotiation memorandum.

63. Were negotiations conducted on an individual cost element basis?

64. Was the option quantity considered in negotiations? (15.403-4(a)(1)(i)(90) and 15.403-4(b)(90)(i))

65. Was rent-free use of Government property considered in the negotiations?

66. Was authority obtained for rent-free use from cognizant administrative contracting officer?

67. Was appropriate contract type selected?

68. Was a common cutoff date for negotiations established with all offerors? (FAR 15.307(b))

69. Does the price negotiation memorandum (PNM) format conform with FAR 15.406-3(a)/DFARS 215.406-3(a)/DLAD 15.406-3(a))?

70. Does the PNM clearly and conclusively support price reasonableness determination? (DLAD 15.406-3(a)(ii))

71. Is the statement of same included in the PNM?

72. Is the PNM signed and dated?

73. Does the PNM document any negotiated changes to the S&S provisions (including those related to handling surge investments at the end of the contract), document (where it occurs) inability to obtain S&S capability and alternative plans as required in 17.9304(g)(3), and include a finding that any surge investments proposed are the most cost effective solutions?

Tab number 25 Certificate of cost or pricing data.

74. Was a certificate of current cost or pricing data obtained? (FAR 15.406-2)

75. Were option requirements included?

Tab number 27 Preaward survey or waiver.

76. Was a preaward survey conducted or a document executed by the contracting officer to not request PAS? (FAR 9.106 and DLAD 9.106-1)

Tab number 28 Equal Employment Opportunity (EEO) clearance

77. If the preaward survey report recommendation is not followed, has the case been reviewed and concurred in by the Chief of the Contracting Office? (9.105-2(b))

78. If $10 million or more, was the equal employment opportunity clearance report obtained? (FAR 22.805(a))

Tab number 29 Bid or offer evaluation.

79. Was evaluation conducted in accordance with solicitation criteria? (FAR 15.305(a))

80. Was price considered where technical evaluation is required? (FAR 15.304(c)(i))

Tab number 30 Cost Accounting Standards (CAS) coverage.

81. Is this a CAS-covered contract? (FAR 30.201-1)

82. If a disclosure statement is required, did the contractor:

(1) Submit the same?

(2) Execute a certificate of monetary exemption?

(3) Execute certificate of interim exemption?

(4) Execute a certificate of previously submitted disclosure statement?

Tab number 34 Unsuccessful bids or proposals.

83. Were nonresponsive determinations reviewed and concurred? (FAR 9.105-2)

84. Is there a non-responsibility determination in file? (FAR 9.105-2(a))

85. Unsuccessful bids/proposals included in the file?

86. Were unsuccessful bidders/offerors notified promptly? (DLAD 14.409-1(b)/FAR 15.503)

87. If a small business determined to be non-responsible, was a certificate of competency obtained? If not, why not? (FAR 19.6)

Tab number 35 Mistake in bid or mistake in proposal.

88. Does the file contain the administrative determination required by FAR 14.407-3(e)/DFARS 214.407-3(e)?

89. Concurrence by counsel obtained? (FAR 14.407-3(f))

Tab number 36 Determination of late bid/proposal.

90. Disposition of late bids/proposals adequately documented? (FAR 14.304-3 and FAR 15.208)

Tab number 37 Contract announcement.

91. Was the contract announcement forwarded? (FAR 5.303 /DFARS 205.303/DLAD 5.303)

Tab number 38 Individual contract action report.

92. Is the Individual Contracting Action Report, in the file? (DFARS 204.670-3)

Tab number 39 Local contract review comments.

93. Have all local CRO comments been addressed prior to forwarding for DLA HQ review? (1.690-7(b))

Section C - Other support data.

94. Was a subcontracting plan for small and small disadvantaged business concerns obtained and approved, if required? (FAR 19.702)

95. If a plan was not obtained, was a determination made that subcontracting possibilities do not exist? (FAR 19.705-2(c))

96. If royalty payments involved, did General Counsel, DLA HQ concur? (FAR 27.204-1(b)/DLAD 27.000-90)

97. Should this item be referred to the competition advocate?

98. Is the contractor on the "Parties Excluded from Procurement Programs?" (FAR 9.405(b))

99. If a warranty provision contemplated, were the criteria of FAR 46.7 considered?

100. If provision for progress payments contemplated, is it appropriate? (FAR 32.501)

101. Were negotiations conducted with all responsible offerors within a competitive range? (FAR 15.306(d))

102. Were offerors notified of any changes in the Government's requirements? (FAR 15.206)

103. Were acknowledgments of changed requirements confirmed in writing by offerors? (FAR 14.303 and 15.411)

104. Were proposals marked with the date and time of receipt? (FAR 15.207(a))

105. Were requirements revalidated per 1.693?

106. Were the documentations required in DLAD 17.9307 included in the contract file?

Tab number 43 Award/contract and correspondence.

107. If the contract authorizes use of Government supply sources, are mechanisms in place to monitor appropriate usage? (51.102(f)(1))

108. Was the proper award document utilized (SF 26, SF 33, or SF 1449)? (FAR 15.414)

109. Does contract agree in all respects with contractor's bid/proposal?

109. If a single signature document, does it reflect contractor's letter/message amendments?
YES NO N/A

110. Is arithmetic correct? (Extensions and totals)

111. Is contract being awarded within bid/proposal acceptance period? (FAR 14.408-1(a)/52.215-16(e))

112. Does the contract file contain the approvals required in 17.9304(b)(7)(vi)(A) and 52. 217-

9006 for any exceptions taken?

113. Adequately funded? (FAR 32.702)

Remarks:_____

(b) Contract review checklist - construction.

Contractor_____ Dollar Value$_____
Contract Number_____ Project_____
Location_____

1. Does the contract meet the criteria for a construction contract? (FAR 36.102) Yes No N/A

2. Have funds been approved under provisions of the annual Military Construction Appropriation Act? Is any other funding source appropriate?

3. Were sealed bidding procedures used? (FAR 36.103(a))

4. Were specifications prepared in accordance with FAR Part 11? (FAR 36.202)

5. Was an independent Government estimate prepared?

a. Was it prepared in as much detail as though the Government were competing for award? (FAR 36.203(a))

b. Was it marked FOUO prior to bid opening and was it filed with the other bids? Was the FOUO designation removed after bid opening? (DFARS 236.203(c))

c. Was the Government estimate recorded on the abstract of bids?

6. Did the advance notice and/or solicitation indicate the estimated price range of the procurement? (FAR 36.204)

7. Was a liquidated damages clause included in the contract? (DFARS 236.206)

8. Is a firm fixed-price contract anticipated? (FAR 36.207)

9. Were appropriate arrangements made for prospective offerors to inspect the work site and to have the opportunity to examine data? Was a record kept of the identities and affiliations of those who inspected the work site? Did the solicitation contain a site inspection provision?

10. Was a presolicitation notice issued? (FAR 36.302)

11. Was the presolicitation notice synopsized? (FAR 5.204)

12. Was a wage determination issued? Did the specifications include same? (FAR 36.303(c)(1))

13. Was a SF 308, Request for Determination and Response to Request, used to request an installation or individual wage determination? Yes No N/A

14. Are modifications to the Department of Labor (DOL) wage determination time-date stamped?

15. If an amendment to the wage rate was issued, were procedures for amending the solicitation followed?

16. Was adequate time allowed between issuing and opening the solicitation? (FAR 36.303(a))

17. Did the solicitation contain all the information required by FAR 36.303(c)(1) through (10), to include the following?

a. wage determination;

b. clause at FAR 52.236-1, Performance of Work by the Contractor;

c. magnitude of the construction;

d. period of performance;

e. site inspection arrangements;

f. information concerning facilities;

g. information concerning prebid conference;

h. special qualification or experience; and

i. reporting requirements.

18. Were the clauses prescribed by FAR 36.501 through 36.521, and DFARS 236.570 included, as appropriate?

19. Did the solicitation specify the requirement for bonds, the penal sum for each bond, and the deadlines for submitting acceptable bonds? (FAR 28.102-2 and 28.102-3)

20. Was an adequate bid bond submitted with the bid?

21. Are the bid bonds signed by an agent of an approved corporate surety listed in the Treasury circular?

22. Was the original of the bonds submitted with the bid?

23. Are the penal amounts of performance and payment bonds correct? (FAR 28.102-2(a)(1) and (b)(1))

24. Were bid bonds and performance and payment bonds considered in the determination of responsibility?

25. Were performance evaluation reports used in making the determination of responsibility? (DFARS 236.201(c)(2))

26. If prequalification was used, was the approval of the HCA obtained? (DFARS 236.272)

27. If more than one item is subject to statutory cost limitation, is a separate schedule provided. Is the bid unbalanced? (FAR 36.205)

28. Does the notice of award include the information prescribed by FAR 36.304? YES NO N/A

a. Identify the invitation for bids.

b. Identify the contractor's bid.

c. State the award price.

d. Advise contractor that required payment and performance bonds must be promptly executed and returned to the contracting office.

e. Specify the date of commencement of work, or advise that a notice to proceed will be issued.

29. Are the prescribed forms for construction contracts used? (FAR 53.236-1) (See also FAR 53.301-24, 53.301-25, and 53.301-25-A)

a. SF 1417, Pre-Solicitation Notice (Construction Contract)

b. SF 1442, Solicitation, Offer and Award (Construction, Alteration, or Repair)

30. If period of performance is more than one month, are progress payments authorized?

31. Was the clause at DFARS 252.232-5 included for progress payments? (FAR 32.111(a)(5))

32. Is a construction warranty clause approved for usage? (FAR 46.710(e)(1))

33. Does the small or small disadvantaged business concern meet the size standards of FAR 19.102?

34. Is the required insurance clause in the contract? (FAR 28.3, 52.228-5)

35. Are specific affirmative action goals for the geographical area established? If not known, have instructions been requested from the Director, DLA Acquisition (J7) or DCMA-O? (FAR 22.804)

36. Has all Government-furnished property been described in detail in the schedule?

37. Has the solicitation been totally set-aside for small business and appropriate clauses included for procurements estimated below $2 million? (DFARS 219.502-2)

38. Have the potential offerors been allowed enough time to submit bids? (i.e., 30 days minimum, or a justification to reduce the bidding time made by the contracting officer) (FAR 14.202-1)

| |
|---|
| 39. If funds are contingent upon the availability of another fiscal year funding, does the solicitation contain the proper clauses pertaining to the Funds Availability? (FAR 32.705-1(a)) |
| 40. Has a qualified COR been assigned? |

## SUBPART 90.6 – [RESERVED]

## SUBPART 90.7 – DAR CASE FORMAT

**90.700 Scope of subpart.**
This subpart prescribes a uniform structure for all cases submitted to the DAR Council for formal consideration.

**90.701 Purpose.**
The case format serves two important functions.

(a) First, the prescribed structure for presenting the proposed case provides a very useful and clear exposition of the issues to assist the DAR Council in considering cases in a timely and efficient manner. By clearly setting out how the current regulations are perceived to be inadequate and the specific changes that will remedy the described situation, the case structure minimizes misunderstandings and helps avoid the delay that necessarily results when additional information or clarification is required from the party initiating a case.

(b) Second, the mandatory minimal information is necessary to comply with various Federal statutes, Executive Orders, or higher level regulations that require those who propose rules, either initially or by way of revision to existing regulations, to analyze and attempt to mitigate the burdens which the proposed rules may place on the public in general, and small businesses in particular. The case format appropriately places initial responsibility for identifying and considering those burdens on the party proposing that the FAR or DFARS be amended. For these reasons, cases that do not follow the prescribed format will be returned with appropriate guidance to the initiator.

**90.702 Case format.**
Every DAR case recommending an amendment to the FAR or the DFARS will consist of at least two parts: The statement of the case, and the two essential attachments discussed at 90.703-2. The initiator should provide any additional attachments or other documents which would be helpful to a more complete understanding of the issues.

**90.703 Case statement.**
The statement of the case shall be in the form of a memorandum, without signature block, to the Director, DAR Council; be in the format of: I. Problem; II. Recommendation; and III. Discussion, and be forwarded via a cover letter signed by the chief of the contracting office to DLA HQ, attention: J71.

**90.703-1 Problem section.**
The problem section should succinctly discuss an existing problem in the procurement process. A simple statement that some part of the FAR or DFARS should be changed, however, is not an adequate description of a problem upon which the DAR Council will act. As the foundation for every DAR case, the statement of the problem should convey as accurately and completely as possible the factual or legal reasons necessitating regulatory revision.

**90.703-2 Recommendation section.**

(a) The recommendation section consists of two elements: Citation of the specific language to be added, deleted, or revised in the FAR or DFARS (Tab A of the DAR case memorandum), and citation of certain documentation responsive to four collateral requirements mandated by Federal statutes, Executive Orders, and higher level regulations (Tab B of the DAR case memorandum).

(b) Tab A shall set forth as much of the pertinent section or paragraph of the FAR or the DFARS as is necessary to show the desired change in context. The language to be added should be enclosed in brackets and any deletions should be shown as lined through. Tab B shall contain the elements described as collateral requirements.

**90.703-3 Discussion section.**

(a) The discussion section should provide any background information, including prior DAR cases that are relevant to the current issues, which will assist the DAR Council in understanding the problem. This section should also demonstrate clearly how the recommended revisions to the FAR or DFARS will solve the problem identified.

(b) While the discussion should be succinct and to the point, if the initiator believes the recommendations may have side effects or disadvantages that are pertinent to the DAR Council's consideration, these should be addressed. Though the FAR and DFARS iterates the policy not "...to stifle the development of new techniques or methods of procurement," cases should not be proposed which cannot be justified in terms of administrative effort or expenditure of Government resources.

(c) Accordingly, the discussion section of the case shall include a justification that considers the full operations of the regulatory process, including DLA HQ review, committee analysis, DAR Council analysis, CAA Council analysis, publication for comment and review of comments, and other applicable steps.

**90.704 Deviations.**

(a) Requests for approval of a class deviation shall contain Problem, Recommendation and Discussion sections that adequately demonstrate a need for, and estimate the duration of, the deviation (see 90.703), and be forwarded to DLA HQ, attention: J71, via a cover letter signed by the Supply Chain HCA (unless delegated to the CCO) or the CCO for those DLA organizations with J7serving as the HCA. In addition, DFARS 201.402(3) prescribes certain specific types of information which must be supplied in support of any requested deviation.

(b) Deviation requests should be written as persuasively as possible. Initiators should address the regulation as it is currently written and specify what needs to be changed to institute or to continue their required practices; describe the peculiarities of their situation that make the deviation necessary; what alternatives have been tried or considered to avoid the deviations; and why the deviation is the best choice. In the case of extension requests, either propose a permanent change or describe efforts made to alleviate the need for the deviation.

## SUBPART 90.9 – [RESERVED]

**90.901 [Reserved.]**

## SUBPART 90.10 – ADMINISTRATION OF DLAD

**90.1001 Administration and explanation.**
The administration and explanation of the DLAD is the responsibility of the Director, DLA Acquisition (J7).

## SUBPART 90.11 – ACQUISITION PLANNING

**90.1101 Contents of written acquisition plans.**
Paragraphs conform with FAR 7.105 and DFARS 207.105.

(a) Acquisition background and objectives.

(1) Statement of need. The statement of need shall include:

(i) The nomenclature, a brief nontechnical description, and general statement of use or purpose the acquisition is intended to satisfy.

(ii) Identification of requiring activity.

(iii) A statement as to whether or not the supplies are stocked.

(iv) The technical and contractual history.

(A) The history shall include a description of efforts to:

*(1)* Facilitate the use of commercial items (e.g., removing unnecessarily restrictive features of requirements documents).

*(2)* Obtain/acquire/develop a complete technical data package free of proprietary rights suitable for full and open competition; or

*(3)* Have restrictive features of specifications removed; or

*(4)* Develop a clear, unambiguous statement of work.

(B) Contract performance history for the same or similar supplies or services, e.g., name(s) of contractors(s), type of contracts, dollar value, degree of competition, acquisition authority, award date, unit price, contractor size status, contractor performance history (including delivery and quality performance) and significant problems encountered (customer complaints, nature of protests or Congressional inquiries).

(v) Discussion of previous APEC reviews.

(3) Cost. Provide the estimated dollar value of the acquisition, the quantity proposed to be acquired, and the anticipated unit price.

(4) Capability or performance. Discuss the basis for the decision to use the requirements document(s) being used for this acquisition. Provide a copy of the requirements document(s) to be used. Discuss commercial equivalency. If interim requirements documents descriptions are proposed, provide estimated completion date and any pertinent industry comments to date. Discuss previous problems with requirements document(s) and efforts made to resolve those problems.

(5) Delivery or performance-period requirements. Provide estimates of production lead times. Describe whether supplies or services are required by specified times to support other supplies, services, systems, or program requirements. Describe management considerations of the supplies, as appropriate, e.g., depot capabilities, stock rotational requirements, and shelf life. Describe production surveillance reporting requirements. If the acquisition is structured with a base and/or option period of performance greater than one year that includes more than one year's worth of requirements in that base and/or option, describe the results of the analysis required by 17.104(a) identifying benefits of recommended period of performance length and associated guaranteed minimum quantities (if applicable).

(b) Plan of action.

(1) Sources.

(i) (A) Discuss the nature, extent, and results of the market survey and any market research performed or requested in support of the acquisition strategy developed. For long term contracts, confirm that market research was conducted by ISTs and SMSGs to determine availability of surplus material; and that, if market research indicated all or a portion of the recommended buy (RB) quantity of an item was available as surplus material, the RB quantity for that item was reduced by the quantity that was available as surplus and the quantity removed from the LTC was acquired separately, using whatever procedures were appropriate to the circumstances (e.g., competitive solicitation, emergency support procedures for high priority requirements, etc.)

(B) Confirm that business rules for LTCs were followed. See FAR Part 10 and state whether the acquisition will be conducted under FAR Part 12). Conduct and report the results of bundling or consolidation analysis, as appropriate; see sections 7.107, 7.170, and 10.001.

(ii) Discuss applicability of socioeconomic requirements, e.g., small business set-asides, 8(a), and small disadvantaged business, HUBZone or service-disabled veteran-owned small business contracting, and results of discussions with small business representatives, including any conclusions as to whether the proposed action constitutes a bundling or consolidation of contract requirements, and whether bundling or consolidation analysis has been or will be conducted. Also consider use of such sources as Javits-Wagner-O'Day Act-("AbilityOne"-) qualified agencies for the blind or other severely disabled. Discuss any pertinent foreign purchase/sales matters. Discuss applicability of progress payments, economic price adjustments, bid guarantees, or performance bonds.

(2) Competition.

(i) Discuss alternative supplies, services, systems or programs which could be acquired using full and open competition if use of full and open competition is not planned. If appropriate, discuss the tradeoffs of use of such substitutes in terms of price differences, quality, and acquisition and production lead time. Discuss alternative acquisition strategies which have been considered or could be used to provide for increased competition.

(A) Describe the activity competition advocate's (see FAR 6.5) actions to date relative to the supplies/services proposed to be acquired including a description of efforts to have restrictive aspects of specifications, technical data, or statements of work revised/deleted; a summary of discussions with the military departments, or other requiring activity, and industry relative to alternatives to increase competition. Discuss feasibility of use of full and open competition with exclusion of a source to establish an alternative source or sources (FAR 6.202(a)).

(B) Describe strategies for developing/achieving competition for current and future acquisitions.

(C) Identify sources to be solicited. Discuss efforts/plans for developing or locating additional sources, including discussions with industry, trade associations, use of presolicitation notices, and advance notices in the Commerce Business Daily or Federal Business Opportunities ("FedBizOpps").

(D) Include the activity competition advocate's comments on the plan.

(b)(4)(i) Guidance supplementing FAR 7.105(b)(4)(i)).
When discussing contract type selection, address any use of time and material/labor hour CLINS or contract type and clearly show why no other contract type can suffice for the requirement. Discuss strategy to migrate T&M/LH use to other contract types and contract administration measures for mitigating risk.

(5) Budgeting and funding. Describe the type of funds, stock funds or operations and maintenance funds, which are proposed to be used for the acquisition.

(13) Logistics considerations.

(i) Depot, ICP, DCMA, and military service component impact statement. As part of acquisition plans, attach copies of Depot, DLA ICP, DCMA, and military service component impact statement(s) which address the downstream effects of implementing prime vendor arrangements, direct vendor delivery, vendor managed inventory or any other strategy that affects depots traditional functions, or workload/resources at DLA ICPs, DCMA organizations, or Military Service components.

(A) If possible, this effect should be quantified in terms of the number of NSNs that will no longer be processed by the depots, the amount of storage space that will become available for other uses, and the timeframe over which these items will no longer be shipped to depots (show number of NSNs for each time period). The decision to convert to DVD should be explained as being economically sound for the ICP/Agency (including quantitative justification), or required as a performance objective of the acquisition and resultant contract, (e.g., because the customers delivery requirements dictate DVD support), or as contributing to Agency success in achieving goals set by Congress, OSD, or other policy-making entities.

(B) Additionally, acquisition plans should list any FSCs or NSNs included in the proposed contracting instrument that are assigned for management by an ICP other than the one executing the contract, and provide documentation that the other DLA center(s) is aware of the proposed contract coverage, timetable, and inventory drawdown. An explanation of the reasons for including the NSNs in the proposed contract should be provided (i.e., natural/traditional fit within the industry, allows total logistics support to a particular customer, etc.). Plans should also address whether Center resource managers and union representatives have been apprised of any potential workforce implications. Acquisition plans should address/include plans for accommodating any potential workforce impact (e.g., retraining).

(C) Plans should include an assessment of potential impact to Military Service component(s) and verification that the Service has been apprised of this potential impact.

(ii) Describe requirements for use of, or plans to use, qualified products lists, qualified manufacturers lists, or other qualification requirements (see FAR Subpart 9.2). Provide the number of products/sources on such lists. Describe plans for qualifying additional products/sources. Discuss methods to be used to determine quality/compliance with requirements, e.g., first article test requirements, production test, in-process surveillance, inspection and acceptance criteria, or any other special test requirement. Discuss alternatives to the above and criteria for waiving same. Describe production surveillance and any production progress reporting requirements.

Describe any requirements for certification, licensing, or approval by Government control agencies. Discuss any use of certificate of conformance or certificate of quality compliance.

(iii) Explain the nature of patents, copyrights, or proprietary data. Identify plans to acquire rights to data.

(14) Government-furnished property. Discuss the rationale for use of any Government-furnished material (GFM).

(15) Contractor use of Government supply sources. For contractor(s) authorized use of DLA-managed supply sources, describe the diversion control mechanism(s) in place to ensure access is limited to authorized items in authorized quantities, and contractor use of DLA supplies is proper. (See 51.102(f)(1).)]

(16) Environmental and energy conservation objectives. Discuss any environmental considerations. Include DLA Form 1664, Record of Determination - Environmental Evaluation, to indicate whether an environmental document is required in accordance with DLAD 1000.22, Environmental Considerations in DLA actions in the United States. Contracting actions involving significant quantities of toxic and hazardous chemicals, pesticides, radioactive items, fossil fuels, or animal products made from endangered species are not categorically excluded under DLAD 1000.22 and require preparation and submission of an environmental document to accompany the acquisition plan.

(18) Contract administration. Plans should include an assessment of potential impact to DCMA workload and identify the milestone date by which DCMA will be apprised of this potential impact (e.g., no need for quality assurance representatives (QARs) where there was previous need, no DD250s to be processed for acceptance, etc.). This date should allow DCMA sufficient time to plan for any resource impact.

(19) Other considerations.

(B)(1) Explain how the acquisition addresses definition of S&S requirements, the contractor's development of capability to meet S&S requirements, and ability to test (i.e., validate) that S&S capability. Provide the basis for development of the surge and/or sustainment requirements. If surge and/or sustainment requirements are not included, provide basis for their exclusion, and identify the alternative means of obtaining surge and/or sustainment capability. Identify potential need for industrial preparedness funds for S&S solutions, the approach for handling S&S investments at the end of the contract, and whether the surge investments will be considered Government property. If S&S items will be added after award of the contract, address definition of S&S requirements, contractor's assessment of S&S capability, and S&S testing for the added items. Provide all language concerning S&S to be used in soliciting concepts or proposals (i.e., BAA, addendum to BAA, RFP).

(S-90) Describe phase-out and disposition plans for any current or due-in stocks for supplies being replaced.

(S-91) Include projected annual requirements, stock levels planned, feasible alternatives to those levels, and acquisition cycle. Describe mobilization requirements, if applicable. (See Subpart 17.93.)

**90.1102 Acquisition plan format.**
An illustrative acquisition plan format is provided as follows.

| |
|---|
| Acquisition plan<br><br>PR/MIPR Number:.....Date Received:.....Buyer:..... |

Item Description:.....Delivery Schedule:.....

Quantity:.....Estimated Unit Price:.....Estimated Total Price:.....

Supply criticality (priority):.....
Purchase history

Date Quantity Unit Price Method of Acquisition Competitive Offers

____ _____ _____ Sealed Bid____ Negotiation____Number___$ Range_____

Considerations

100% Set-Aside
Small Business Partial None
Small Disadvantaged Business ..... ..... .....

Quantity/period option: (% or period) Price escalation: %

Progress payments: prior buys (Yes or No) current buy (Yes or No)

First article test: _____

Request for Exception or Not Required
Cost/Pricing Date:
Open Contracts:....
Warranty: ....Yes ....No
GFP Involved: ....Yes ....No

Proposed Method of Acquisition

a. Sealed Bid .....
b. Negotiation ..... Written .....Oral.....

Rationale for Not Using Sealed Bidding:

/ / Time does not permit solicitation, submission, and evaluation of sealed bids.

/ / Award will be made on a basis of other than price and other price-related factors alone.

/ / It is necessary to conduct discussions with offerors about their offers.

/ / A reasonable expectation of receiving more than one sealed bid does not exist.

Type contract/order contemplated._____
If fixed-price with economic price adjustment, specify EPA clause number/title _____ and (if applicable) index source, number, and name _____.
If time and materials/labor hours, discuss why no other contract type is being considered.

Market survey results. Discuss the nature and results of market survey: _____

Market research: Discuss purpose, nature, extent, involved personnel/offices and results/status 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 and DLAD 10.001 and 11.004): _____

Provision for competition.

a. Complete, unrestrictive technical data package to be included or referenced in the solicitation. _____ Yes _____ No

b. Full and open competition.....

c. Full and open competition after exclusion of sources .....

d. Other than full and open competition .10 U.S.C.2304(c).....

(Except for acquisitions conducted under category c. above, when the response to a. is "No," the acquisition is other than full and open competition and a justification for other than full and open competition is normally required (see FAR Subpart 6.3). No justification is required for small business set-asides (see 6.203(b)(90)).

Schedule Date:.....
Issue Solicitation
Open/Close
Solicitation Evaluate/Review
Award

Remarks:

Signature - Buyer: ..... Date: .....
Signature Approving Official:..... Date: .....

**90.1103 [Reserved.]**

## SUBPART 90.12 – POSTAWARD PRICE REVIEWS

**90.1201 Simplified acquisition price review program.**

(a) Defense supply centers shall perform a monthly postaward price analysis of 60 line items from separate awards, selected from the total universe of the previous month's central simplified acquisitions (excluding purchases by secondary and tertiary field activities). The review shall be performed by the DSC cost and price analysis element. The purpose of this program is to identify significant and/or repetitive overpricing and to take corrective action as may be required including feedback on contracting deficiencies noted during the reviews. When an unreasonable price is indicated, appropriate action to resolve the overpricing shall be taken, including action pursuant to Subpart 42.71, if applicable. A review of an item is to be deemed completed only when a determination has been reached that overpricing: (1) did not occur; or, (2) did occur, and a refund has been collected and processed; or, (3) did occur, but all efforts to obtain a refund were unsuccessful, and a decision has

been made that no further action is warranted. Other steps, such as initiating action for competitive acquisition of previously sole source items and/or revision of specifications, shall also be accomplished as needed.

(b) A record of postaward price analysis results, including the information necessary to provide summary data contained in the following format, shall be maintained by the cost and price analysis element.

Simplified acquisition postaward price review program

Defense Supply Center_____

Report for the _____ Period FY 200 __

I. Review reconciliation: Number

A. Beginning balance reviews in process:
B. Reviews initiated during quarter:
C. Reviews completed during quarter:
D. Ending balance reviews in process:

II. Completed reviews (from I.C. above): Automated Manual

A. Number determined not overpriced:
B. Number determined overpriced:
C. Number for which sufficient price data could not be obtained to make a determination:

III. Corrective Action (from II.B. above): Number Savings

A. Price reductions:
B. Refunds:
C. Cancellations-repurchases:
D. Other (Specify, e.g., action initiated for competitive acquisition, commercial alternate found, action initiated to revise specifications.):

## SUBPART 90.13 – STREAMLINED SOLICITATIONS FOR ENERGY CONTRACTS (DEVIATION)

**90.1300 Scope.**
On 28 June 1990, the Deputy Assistant Secretary of Defense (Procurement) approved as permanent DLAD coverage the DLA Energy deviation request to use streamlined solicitations for petroleum and coal acquisitions. Under the deviation, DLA Energy is permitted to omit a variety of clauses and substitute tailored clauses for other clauses normally required by FAR and DFARS.

**90.1301 FAR clauses/provisions.**

52.219-13 Utilization of Women-Owned Small Businesses.
The clause is not necessary to the acquisition of petroleum, petroleum-related services or coal because both subcontracting opportunities and the existence of woman-owned business in these commodities are minimal. DLA Energy has retained the certification clause to document those businesses that are women-owned.

52.222-28 Equal Opportunity Preaward Clearance of Subcontracts, and 52.244-1 and Alt. I Subcontracts (Fixed Price Contracts).

These clauses are not applicable to petroleum, petroleum-related services or coal because contracts are fixed price or fixed price with economic price adjustment and unpriced modifications are not issued.

52.227-1 Authorization and Consent, and 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement.
These clauses are not necessary to the acquisition of petroleum, petroleum-related services, or coal because patent considerations are not involved.

52.229-3 Federal, State, and Local Taxes, 52.229-4 Federal, State, and Local Taxes (Noncompetitive Contract), and 52.229-5 Taxes - Contracts Performed in U.S. Possessions or Puerto Rico.
A substitute DLA Energy clause was developed to simplify, consolidate and tailor the FAR clauses to petroleum, petroleum related services, and coal. The FAR clauses only address after imposed/after relieved Federal taxes and do not address such circumstances for state and local taxes applicable to DLA Energy procurement. The FAR clauses also require contract prices inclusive of all applicable Federal, State and local taxes. This is not acceptable to DLA Energy since some taxes at all levels are excluded from certain fuel products under Government use criteria in the Internal Revenue codes.

52.247-1 Commercial Bill of Lading Notations.
This clause is not necessary because the Government does not require prepayment of freight charges on petroleum or coal shipments.

52.247-54 Diversion of Shipment under Free on Board (f.o.b.) Destination Contracts.
This clause is not necessary to the acquisition of petroleum because this area is covered in other DLA Energy transportation clauses. The portions of this clause covering the use of paid freight bills to evidence delivery do not apply to petroleum shipments. Petroleum product deliveries are evidenced by delivery ticket copies and properly executed DD Forms 250. The portions of the clause limiting truck shipment reimbursement to 70 percent of the lowest published tariff is inappropriate for petroleum. Equitable adjustments for transportation are accomplished consistent with the methodology used to evaluate transportation.

Additional clauses are to be omitted:

52.214-6 Explanation to Prospective Bidders.
52.214-9 Failure to Submit Bid.
52.214-3 Amendments to Invitations for Bids.
52.214-12 Preparation of Bids.
52.227-3 Patent Indemnity.
52.246-23 Limitation of Liability.

These clauses are excluded from DLA Energy streamlined solicitations because they are superfluous to DLA Energy contracting or serve no useful purpose. Instructions for submitting amendments are sent with the amendments themselves. Fuel specifications require no explanation. Bid/offer preparations guidance is included in the schedule. Elaborate proposals are not a possibility. Patent and liability limitations are not applicable.

52.214-14 Place of Performance - Sealed Bid, and 52.215- 6 Place of Performance.
When a bidder or offeror submits a bid or offer, either the offeror tells us where the place of performance is located, or it is of no consequence. As a result, this clause serves no useful purpose in DLA Energy contracts.

52.246-1 Contractor Inspection Requirements.
This clause was streamlined out of non-petroleum contracts only (coal and services). The subject matter in this clause is covered by other DLA Energy clauses.

The subject matter of the following clauses is contained in DLA Energy special transportation clauses.

52.247-29 Free on Board (f.o.b.) Origin.
52.247-30 Free on Board (f.o.b.) Origin, Contractor's Facility.
52.247-31 Free on Board (f.o.b.) Origin, Freight Allowed.
52.247-32 Free on Board (f.o.b.) Freight Prepaid.
52.247-59 Free on Board (f.o.b.) Origin - Carload and Truckload Shipments.

52.219-14 Limitations on Subcontracting.
Domestic bulk petroleum requires small business manufacturers offering on set-aside requirements to refine at least 90% of the offered quantity. This is pursuant to 49 Federal Register 5037, February 9, 1984 (13 C.F.R. 121.2, fn. 4 (1989)). This clause is unnecessary in domestic bulk petroleum contracts.

52.219-15 Notice of Participation by Organizations for the Handicapped.
Handicapped organizations do not supply any products or services acquired by DLA Energy.

**90.1302 - DFARS clauses/provisions.**

252.243-7001 Pricing of Contract Modifications.
The price of petroleum is based on market-conditions, not cost, thus making this clause unnecessary for DLA Energy.

The following clauses are unnecessary in acquisitions for petroleum, petroleum related services, and coal. Domestic acquisitions rarely, if ever, involve supplies which have been transported from outside the United States by sea. Overseas bunkers, into-plane, and storage also do not involve ocean transportation. Nearly all shipments to overseas posts, camps, and stations take place by land; those few made by water are nearly all within foreign territorial waters and therefore subject to foreign cabotage laws, so that no U.S. flag vessels are available. Bulk fuels shipments are rarely on other than an f.o.b. origin basis, so that ocean shipment of end items is managed by the Military Sealift Command.

252.247-7022 Representation of Extent of Transportation by Sea.
252.247-7023 Transportation of Supplies by Sea.
252.247-7024 Notification of Transportation of Supplies by Sea.

**90.1303 DLA Energy clauses and provisions.**
The following DLA Energy tailored clauses have been approved for use in streamlined solicitations.

52.229-9F15 Federal, State and Local Taxes (Deviation) (DLA Energy).
52.246-9FC3 Quality Provisions (Coal) (DLA Energy).
52.247-9FA1 Delivery Conditions for Tank Cars, Boxcars, Trucks, Transport Trucks, Trucks and Trailers Tank Wagons, Pipeline or Lighters (DLA Energy).
52.247-9FH1 Shipment and Routing (DLA Energy).

## SUBPART 90.14 – RECOUPMENT ACTIVITY REPORTING

**90.1400 Sample reporting.**
Illustrative recoupment activity reports are provided as follows:

15 April 1995 Report
A. FY95, 1st Quarter

1. Recoupments

a. $ _____ non-conformances reported/records established between October and December 94
b. $ _____ demanded/requested against this amount
c. $ _____ recouped against this amount

2. Express warranties

a. $ _____ non-conformances reported/records established between October and December 94, for which the warranty period was still in effect
b. $ _____ demanded against this amount
c. $ _____ recouped against this amount

3. Recoupment breakdown (A1c + A2c)

a. $ _____ part of (A1c + A2c) covered by monetary reimbursement
b. $ _____ part of (A1c + A2c) covered by replacements

B. FY95, 2nd Quarter

1. Recoupments

a. $ _____ non-conformances reported/records established between January and March 95
b. $ _____ demanded/requested against this amount
c. $ _____ recouped against this amount

2. Express warranties

a. $ _____ non-conformances reported/records established between January and March 95, for which the warranty period was still in effect
b. $ _____ demanded against this amount
c. $ _____ recouped against this amount

3. Recoupment breakdown (B1c + B2c)

a. $ _____ part of (B1c + B2c) covered by monetary reimbursement
b. $ _____ part of (B1c + B2c) covered by replacements

Cumulative:

1. Recoupments

a. $ _____ nonconformances reported/records established between Oct 94 and March 95 (A1a + B1a)
b. $ _____ demanded/requested against this amount (A1b + B1b)
c. $ _____ recouped against this amount (A1c + B1c)

2. Express warranties

a. $ _____ nonconformances reported/records established between Oct 94 and March 95, for which the warranty period was still in effect (A2a + B2a)
b. $ _____ demanded against this amount (A2b + B2b)
c. $ _____ recouped against this amount (A2c + B2c)

3. Recoupment breakdown (A1c + B1c + A2c + B2c)

a. $ _____ part of the overall total recoupment covered by monetary reimbursement (A3a + B3a)
b. $ _____ part of the overall total recoupment covered by replacements (A3b + B3b)

A. FY95, 1st Quarter

1. Recoupments

a. $ _____ non-conformances reported/records established between October and December 94
b. $ _____ demanded/requested against this amount
c. $ _____ recouped against this amount

2. Express warranties

a. $ _____ non-conformances reported/records established between October and December 94, for which the warranty period was still in effect
b. $ _____ demanded against this amount
c. $ _____ recouped against this amount

3. Recoupment breakdown (A1c + A2c)

a. $ _____ part of (A1c + A2c) covered by monetary reimbursement
b. $ _____ part of (A1c + A2c) covered by replacements

B. FY95, 2nd Quarter

1. Recoupments

a. $ _____ non-conformances reported/records established between January and March 95
b. $ _____ demanded/requested against this amount
c. $ _____ recouped against this amount

2. Express warranties

a. $ _____ non-conformances reported/records established between January and March 95, for which the warranty period was still in effect
b. $ _____ demanded against this amount
c. $ _____ recouped against this amount

3. Recoupment breakdown (B1c + B2c)

a. $ _____ part of (B1c + B2c) covered by monetary reimbursement
b. $ _____ part of (B1c + B2c) covered by replacements

C. FY95, 3rd Quarter
1. Recoupments

a. $ _____ non-conformances reported/records established between April and June 95
b. $ _____ demanded/requested against this amount
c. $ _____ recouped against this amount

2. Express warranties

a. $ _____ non-conformances reported/records established between April and June 95, for which the warranty period was still in effect
b. $ _____ demanded against this amount
c. $ _____ recouped against this amount

3. Recoupment breakdown (C1c + C2c)

a. $ _____ part of (C1c + C2c) covered by monetary reimbursement
b. $ _____ part of (C1c + C2c) covered by replacements

Cumulative:

1. Recoupments

a. $ _____ non-conformances reported/records established between Oct 94 and June 95 (A1a + B1a + C1a)
b. $ _____ demanded/requested against this amount (A1b + B1b + C1b)
c. $ _____ recouped against this amount (A1c + B1c + C1c)

2. Express warranties

a. $ _____ non-conformances reported/records established between Oct 1994 and June 95, for which the warranty period was still in effect (A2a + B2a + C2a)
b. $ _____ demanded against this amount (A2b + B2b + C2b)
c. $ _____ recouped against this amount (A2c + B2c + C2c)

3. Recoupment breakdown (A1c + B1c + C1c + A2c + B2c + C2c)

a. $ _____ part of the overall total recoupment covered by monetary reimbursement (A3a +B3a + C3a)
b. $ _____ part of the overall total recoupment covered by replacements (A3b + B3b + C3b)

Continue in this manner according to the following schedule:

| Report Date | Period Covered | Number of Quarters (plus cumulative) |
|---|---|---|

| | | |
|---|---|---|
| 31 Oct 95 | Oct 94 - Sep 95 | 4 |
| 31 Jan 96 | Oct 94 - Dec 95 | 5 |
| 30 Apr 96 | Oct 94 - Mar 96 | 6 |
| 31 Jul 96 | Oct 94 - Jun 96 | 7 |
| 31 Oct 96 | Oct 94 - Sep 96 | 8 |
| 31 Jan 97 | Oct 94 - Dec 96 | 9 |
| 30 Apr 97 | Oct 94 - Mar 97 | 10 |
| 31 Jul 97 | Oct 94 - Jun 97 | 11 |
| 31 Oct 97 | Oct 94 - Sep 97 | 12 |
| 31 Jan 98 | Jan 95 - Dec 97 | 12 |
| 30 Apr 98 | Apr 95 - Mar 98 | 12 |

The following are examples:

A. FY95, 1st Quarter

1. Recoupments

a. $ _____ non-conformances reported/records established between October and December 94
b. $ _____ demanded/requested against this amount
c. $ _____ recouped against this amount

2. Express warranties

a. $ _____ non-conformances reported/records established between October and December 94, for which the warranty period was still in effect
b. $ _____ demanded against this amount
c. $ _____ recouped against this amount

3. Recoupment breakdown (A1c + A2c)

a. $ _____ part of (A1c + A2c) covered by monetary reimbursement
b. $ _____ part of (A1c + A2c) covered by replacements

B. FY95, 2nd Quarter

1. Recoupments

a. $ _____ non-conformances reported/records established between January and March 95
b. $ _____ demanded/requested against this amount
c. $ _____ recouped against this amount

2. Express warranties

a. $ _____ non-conformances reported/records established between January and March 95, for which the warranty period was still in effect
b. $ _____ demanded against this amount
c. $ _____ recouped against this amount

3. Recoupment breakdown (B1c + B2c)

a. $ _____ part of (B1c + B2c) covered by monetary reimbursement
b. $ _____ part of (B1c + B2c) covered by replacements

C. FY95, 3rd Quarter

1. Recoupments

a. $ _____ nonconformances reported/records established between April and June 95
b. $ _____ demanded/requested against this amount
c. $ _____ recouped against this amount

2. Express warranties

a. $ _____ nonconformances reported/records established between April and June 95, for which the warranty period was still in effect
b. $ _____ demanded against this amount
c. $ _____ recouped against this amount

3. Recoupment breakdown (B1c + B2c)

a. $ _____ part of (B1c + B2c) covered by monetary reimbursement
b. $ _____ part of (B1c + B2c) covered by replacements

D. FY95, 4th Quarter (Report the same categories of information)

E. FY96, 1st Quarter (Report the same categories of information)

*** (The asterisks represent all quarters from FY96, 2nd quarter *** } through FY97, 3rd quarter.)

L. FY97, 4th Quarter

1. Recoupments

a. $ _____ non-conformances reported/records established between July and Sep 97
b. $ _____ demanded/requested against this amount
c. $ _____ recouped against this amount

2. Express warranties

a. $ _____ non-conformances reported/records established between July and Sep 97, for which the warranty period was still in effect
b. $ _____ demanded against this amount
c. $ _____ recouped against this amount

3. Recoupment breakdown (L1c + L2c)

a. $ _____ part of (L1c + L2c) covered by monetary reimbursement
b. $ _____ part of (L1c + L2c) covered by replacements

Cumulative:

1. Recoupments

a. $ _____ non-conformances reported/records established between Oct 94 and Sep 97 (A1a + B1a + C1a + D1a + E1a + F1a + G1a + H1a + I1a + J1a + K1a +L1a)
b. $ _____ demanded/requested against this amount (A1b + B1b + C1b + D1b + E1b + F1b ...L1b)
c. $ _____ recouped against this amount (A1c + B1c + C1c + D1c + E1c + F1c ... L1c)

2. Express warranties

a. $ _____ non-conformances reported/records established between Oct 94 and Sep 97, for which the warranty period was still in effect (A2a + B2a + C2a + D2a + E2a + F2a + G2a + H2a + I2a + J2a + K2a + L2a)
b. $ _____ demanded against this amount (A2b + B2b + C2b + D2b + E2b + F2b ... L2b)
c. $ _____ recouped against this amount (A2c + B2c + C2c + D2c + E2c + F2c ... L2c)

3. Recoupment breakdown (A1c + B1c + C1c + D1c + E1c + F1c + G1c +H1c + I1c + J1c + K1c + L1c + A2c + B2c + C2c + D2c + E2c + F2c +G2c + H2c + I2c + J2c + K2c + L2c)

a. $ _____ part of the overall total recoupment covered by monetary reimbursement (A3a + B3a + C3a + D3a + E3a + F3a ... L3a)
b. $ _____ part of the overall total recoupment covered by replacements (A3b + B3b + C3b + D3b + E3b + F3b ... L3b)

Note: Three dots ( ... ) represent the intervening fiscal quarters, all of which should be reported.

## SUBPART 90.15 – PERFORMANCE BASED LOGISTICS (PBL) ACQUISITION PROCESS

*(Revised September 19, 2012 through PROCLTR 2012-49)*

### 90.1501 Requirement.

(a) Performance based logistics (PBL) acquisitions are a major contributor to ensure the Agency continues to improve combat support to the warfighter while reducing investment costs in inventory and infrastructure. PBLs support program managers' and military services' goals of improving weapon system support through contractual performance metrics that support increased availability, increased reliability, reduced mean down time, and reduced ownership/lifecycle costs. Contracting officers shall consider use of PBLs in all supply procurements in support of a weapon system or systems and other supply or services procurements where use of an outcome-based approach is appropriate, and include a statement in the acquisition plan to address the rationale for determining whether a PBL is or is not appropriate.

(b) The Defense Logistics Agency (DLA) has established a structured approach to serve as a model for managing and executing PBL contracts. This process will be implemented by each primary level field activity (PLFA) for all contracts which meet the definition of a PBL contract. (See Part 2.)

(c) The purpose of this guidance is to outline the procurement role in the PBL acquisition process and to ensure participants involved are aware of and understand all aspects of the PBL contracting process. Given the dollar value, complexity, and importance of these types of contractual arrangements, there is a need to implement a program management approach that integrates business strategies with the acquisition process and enhances the Agency's ability to provide the best support available to its customers. It is also imperative that DLA align its PBL approach fully with both the customer's requirements and financial posture and that the PBL arrangement remains consistent with the acquisition strategies established and owned by the service program manager.

(d) PBL acquisitions may support a full weapon system, sub-system(s), commodities or components, a maintenance process, or a supply sub-process. Requirements originate from an identified need to enhance support in any of these areas through a contracting vehicle that produces measurable performance outcomes, rather than simply providing parts or technical services. The need for a PBL support arrangement may originate from many sources, including the weapon system Program Manager, DLA demand or supply chain, industry, or service industrial sites. The Program Manager/Program Executive Office must approve PBL arrangements that support full systems or major sub-systems and extensive service coordination and concurrence must be obtained for PBL support procurements. It is also helpful to have senior level "Champions" identified on both the Government and Industry side. PBL procurements often are difficult and require strong advocates to steer the team through legacy and transactional support mindsets.

(1) The scope of a PBL contract will be based upon one or more of the following Integrated Logistics Support (ILS) elements. The scope of the ILS elements included will be determined by the Service customer, in most cases the Service PM or ICP Weapons Manager. Performance outcomes must be outlined based upon the individual elements to be supported by the PBL contract. ILS elements include the following elements: 1) maintenance planning, 2) supply support, 3) support and test equipment/equipment support, 4) manpower and personnel, 5) training and training support, 6) technical data, 7) computer resources support, 8) facilities, 9) packaging, handling, storage, and transportation (PHS&T), and 10) design interface.

(e) In order to ensure successful PBL contracting implementation and to ensure that the appropriate level of buy-in is obtained from all responsible parties, PBL acquisitions will be developed in an integrated product team (IPT) environment. For PBL procurements that include both consumable and DLRs, the IPT should be co-chaired by DLA and the managing Service(s). The team will be efficiently comprised of representatives from both within and outside the organization – Government and Industry (Industry for consultation, when appropriate, but not as formal members of the IPT). With a structured and integrated process in place, DLA can achieve even greater benefits through the sharing of information, lessons learned, best practices, and a multi-functional approach to acquiring PBL support.

**90.1502 PBL contracting process and milestone review and approvals.**

(a) The PBL acquisition process will consist of four phases: Phase I – Strategic Sourcing; Phase II - Acquisition Planning; Phase III – Solicitation Phase; and Phase IV – Contract Award/Implementation. This section will discuss each aspect of the overall acquisition process.

(1) Phase I. Strategic Sourcing – Requirements Development Process.

(i) The program manager or service ICP or DLA customer operations personnel have the lead in identifying PBL support candidates and developing requirements. A Performance Based Agreement (PBA) with the customer is the foundation for the overall PBL support strategy, including the objectives and metrics. It is critical that the PBA be re-evaluated to ensure alignment with customer requirements during the lengthy administrative leadtime for PBL procurements.

(ii) The following actions take place during this phase:

Development of PBL objectives
Development of a metrics plan
Identification of candidate NSNs
Analysis of historical information
Completion of market research
Development of small business profile
Identification of core compliancy issues

(2) Phase II. Acquisition Planning

(i) In this phase, the cross functional IPT team is formed, the acquisition strategy is developed, economic feasibility analyzed, and procurement documents are drafted. The acquisition planning phase is characterized by a large amount of collaboration and refinement of documents. The appropriate Supply Chain is responsible for developing a detailed contract schedule or milestone schedule and assigning a lead for tracking actions and progress.

(ii) The IPT is comprised of appropriate process owners with stakeholder coordination and in some cases participation, depending upon the size and complexity of the acquisition. The IPT should function as an integrated team throughout the entire acquisition process to ensure all issues, concerns, and needs are appropriately addressed when pursuing the best value solution. IPT members may include, but should not be limited to technical specialists, engineers, demand planners and supply planners, item managers, quality assurance specialists, contract specialists, legal counsel, contract review and/or pricing analysts, financial analysts, weapon system support managers, supplier relationship managers, customer representatives, industry representatives (for consultation, when appropriate, but not as formal members of the IPT; appropriate measures will be taken to preserve procurement integrity and protect procurement information from improper disclosure to industry representatives), and the Program Manager (or designee). The procurement professional is a key member of the IPT during this phase as they are responsible for drafting procurement documents and communicating with the contractor if the PBL procurement is being developed using the Alpha contracting process.

(iii) When developing the acquisition plan, the integrated team should develop an approach that is appropriate to satisfying the requirement, consistent with sound business practices and based on the degree of risk involved. The team should also establish the managerial approach that will be used to direct and monitor all elements of the acquisition to achieve the goals and objectives of the Program Manager.

(iv) The IPT will develop a performance work statement (PWS), statement of objectives (SOO) or statement of work (SOW), as appropriate, to satisfy the requirements, goals and objectives of the Program Manager. The IPT will analyze additional requirements to determine which contract performance requirements, if any, should be subject to award, incentive fees, or disincentives.

(v) For PBLs that include support of DLRs, the PBL may include a contractual requirement for the Contractor to partner with a military service maintenance/repair depot for the repair of material. The depot acts as a “sub” to the Contractor, and their relationship is captured in a Commercial Services Agreement. This approach is used to satisfy statutory and DoD requirements for use of maintenance/repair depots. It is the responsibility of the contracting officer to determine the status of items covered by the PBL acquisition and ensure that contract terms and conditions ensure compliance with statutory and DoD requirements (see DoDI 4151.20, Depot Maintenance Core Capabilities Determination Process, and DoDI 4151.21, Public-Private Partnerships for Depot-Level Maintenance, for further information).

(vi) Planned contract type. Contract types (e.g. firm fixed price (FFP), fixed price incentive, fixed price with economic price adjustment) most likely to motivate contractors to perform at optimal levels shall be chosen, with consideration given to risk assessment and reasonable risk-sharing by the Government and the contractor(s). If acquiring commercial items under FAR Part 12, use of incentives is permitted as long as the incentive is based on factors other than costs, e.g. performance or delivery. From a contract type perspective, the goal is to award fixed price contracts. This arrangement is most compatible with the affordability objectives of PBL support arrangements, i.e., they should cost the same as traditional support, or less. The fixed price structure also is most compatible with the desire to shift risk and ownership to the contractor. Finally, FFP contracts create inherent incentives for the contractor to reduce costs, reduce transactions and touch-times; all of which are key to the objective of reducing cost. The inherent risk of entering into fixed price contracts early in a program when firm requirements are relatively unknown may necessitate the use of cost type contracts. As a general rule, legacy systems or components should be supported under firm fixed price PBL contracts. For early lifecycle programs cost type contracts may be considered, until risk factors associated with a fixed price contract type are minimized. Along those lines, PBL strategies will generally have a phased contract approach over the life cycle of the system and its support functions. Cost reimbursement contracts will graduate to fixed price contracts over time. When incentive contracts are used they should include tailored cost reporting to enable appropriate contract management and to facilitate future cost estimating and price analysis.

(vii) Solicitations and contracts targeted to large business should consider impacts on small business and should use creative subcontracting strategies for mitigating any impacts on small businesses. Bundling and consolidation requirements must be considered and addressed.

(viii) The PCO must determine whether the PBL is a supply or services contract. While both may be possible determinations, the DLA preference is for the use of supply contracts for its PBLs. The determination should be based on a thorough review of the statement of work and CLIN structure.

(ix) PBL contracts may be priced in a variety of ways depending on the contractual arrangement, item being supported, performance required by the Government, and a number of other factors. Some simple PBL type arrangements may be priced on an individual item basis (i.e., the contractor is paid by the number of items delivered). As the arrangement moves closer to a full-PBL type contract, unit pricing becomes less preferred. One form of performance based pricing is “power by the hour” where a contractor is paid a set price for each hour that a system operates at or above a specific performance level. PCOs must ensure that a correlation exists between flying hours or other applicable metric and usage in order to use this technique. A second form of performance based pricing is where the contractor is paid a set price for a period of support. DLA’s preference is for the pricing strategy for PBL contracts to be at the program level, i.e. based upon the overall savings. This allows the maximum level of flexibility to the contractor in supporting the outcomes required by the metrics.

(x) Also important to note, is that in any pricing scenario unit pricing will likely still be needed to support customer billing requirements, especially important in the working capital environment. The negotiated bill of materials for the PBL would be the likely source for this type information and may be required to be provided to the financial community prior to award and periodically during contract performance. It is important to remember that in these full-PBL type contracts, individual item level pricing must still be included in order to provide for non-PBL support (e.g. for FMS customers or operational needs). Additionally, an evaluation should also be conducted based upon the cost of each segment of the PBL (for example, each ILS element being supported) and in some cases for each item being support (for example, a PBL contract for Repairables and consumables). Use of different lines of accounting may be appropriate, and diligence must be paid to ensure the appropriate use of funds. The PCO will provide guidance in development of a CLIN structure to support multiple lines of accounting.

(xi) Exit strategy. A PBL procurement should have an exit strategy that ensures seamless customer support at the end of the PBL contract or the discontinuation of the PBL contract before its final expiration date (for example, due to funding constraints or contractor performance issues). This exit strategy should also be scalable, i.e., outlined in a progressive systematic manner whereby the supplier returns material and data back to Government management considering ongoing performance requirements.

(xii) It is important to note that there is no “one size fits all” PBL support strategy. The PM and IPT team will tailor the metrics and scope of the PBL model to the operational requirements of the system or component and ensure that a business model that allows for a win/win relationship with industry is developed.

(xiii) During the acquisition planning process phase the initiative must be evaluated in terms of economic feasibility. The Acquisition Business Case Analysis (BCA) is a document that identifies viable functional alternatives and presents economic and technical arguments for carrying out alternatives over an acquisition life cycle to achieve stated business objectives. The Acquisition BCA is designed to identify costs and benefits that the Defense Logistics Agency (DLA) will realize through the initiation of supply and services acquisition strategies. This analysis will help determine the alternative that is in the Government's best interest. The BCA process compares DLA's current "as-is" (status quo) benefits and costs of doing business to the benefit and costs of viable acquisition alternatives. (Reference DLA Instruction “Acquisition Business Case Analysis”).

(3) Phase III. Solicitation Phase

(i) The third phase of PBL development is the solicitation phase. In this phase, acquisition documents are signed, the acquisition is solicited, proposals are developed and audited, negotiations occur, and a final BCA is completed. It is in this phase where the procurement professional plays the largest role – although the other IPT members are also directly involved.

(ii) The Contracting Officer is the Government official authorized to legally negotiate and sign Government contracts. It is the duty of the CO to solicit, evaluate, negotiate, award, and administer the PBL. That said, a successful contract requires ongoing interaction between the contracting officer and the requirements office. The PCO should anticipate difficult and protracted negotiations. In the event that proposals and negotiations indicate that meeting all solicitation requirements may result in a cost higher than the requiring activity anticipates, the issue must be fully coordinated with the customer to ensure that requirements can be met within available or anticipated funding, and for a determination by the requiring activity of whether to decrease or revise requirements. Although the PCO is responsible for the “fair and reasonable” price determination related to PBL cost, the program must be affordable in the eyes of the customer to proceed to award. The financial sponsor may also require a final validation of the cash impact to the working capital funds.

(4) Phase IV. Contract award/implementation.

(i) In this phase, the contract is awarded and implementation begins. It is critical that prior to award the contract has a contract performance management plan. There is a need to provide enhanced monitoring of contractor performance and to ensure satisfactory administration of PBL acquisitions. Therefore, the contracting officer, in conjunction with the IPT, shall develop a contract performance management plan to delineate responsibilities for specific administration functions. The plan requires coordination within the IPT to include the Customer Support Representatives, the customer, and the Defense Contract Management Agency (DCMA), where appropriate. The plan shall describe the method of managing performance (measuring/tracking metrics and incentives) after award, identify specific roles and functions (include specific responsibilities for the contracting officer, COR (if applicable), ordering officer, DCMA, and program manager).

(ii) Performance review board. Consider establishing a performance review board. The board should be comprised of appropriate representatives within the PLFAs as well as customer representatives such as operational command, Service program managers, DCMA, and Service ICP weapon system managers. The purpose of the board is to oversee contract performance. This can be done on a periodic basis such as monthly, quarterly, etc., and may also serve as the review/approval forum for award fees, incentives, and disincentives in accordance with the associated plan. Responsibilities of the board include:

(A) Assessment of contractor performance against established, measurable standards incorporated into the contract.

(B) Re-assessment of logistical benefits and costs based on measured/tracked data and analyzed against the documented baseline decision analysis.

(C) Validating and updating the BCA prior to exercise of each option, upon significant changes during contract performance, and at completion of contract performance.

**90.1503 Integrated acquisition review board.**

(a) The IARB is the decision authority to be executed at the decision review points for all major PBL acquisitions. The reviews associated with each decision point will typically address business and acquisition strategies, risks, trade-offs, and the assessment of exit criteria as the acquisition progresses through the phases. (See 1.690.)

(b) The SPE retains the authority to review any high-visibility, special interest acquisition.

(c) Waiver of IARB review and approval requirements may be requested by the chief of the contracting office, under exceptional circumstances. The request for waiver shall be submitted to the DLA Acquisition Operations Division (J72), must include the rationale and justification for the waiver, and should address the minimum requirements under each milestone, to the extent practicable. Waivers are granted by the SPE on a case-by-case basis.

## SUBPART 90.16 – STRATEGIC SUPPLIER ALLIANCE (SSA)

**90.1600 Strategic Supplier Alliance Policy.**

(a) Each DLA supply chain will continually review the supplier base for potential strategic supplier alliance candidates. At a minimum, each supply chain will review the supplier business base and nominate new SSA candidates annually. A mandatory review will be conducted in conjunction with the end of the fiscal year and the strategic materiel sourcing program review. Supply chain leadership may conduct additional reviews and propose SSA candidates at any time.

(b) Each SSA supplier will be assigned a supplier relationship manager (SRM). The SRM resides physically at the DLA location most appropriate to the supplier and is a permanent member of the Joint Steering Group (JSG). The SRM will manage DLA's overall relationship with the SSA supplier. A single SRM may be assigned more than one SSA to manage.

(c) Each SSA will identify associated CAGE codes. Once an SSA is established, DLA contracting officers, regardless of supply chain, shall obtain coordination on all non-competitive contracting actions associated with SSA CAGE codes with the responsible SRM before award.

(d) DLA supply chains may use agreements, contracts, and alliances created and managed by non-DLA activities in SSA efforts.

(e) DLA supply chains may pursue participation in non-DLA sponsored SSAs.

(f) See DLA HQ J72 management website http://www.dla.mil/Acquisition. for additional program information.

(g) All SSA charters will include the following paragraph:

"The Defense Logistics Agency (DLA), _____, and _____ have initiated efforts to identify opportunities across the spectrum of the Supplier and Government organizations to improve customer support, procurement, quality, program management, engineering, and program integration in order to further improve support to the warfighter. In all matters that arise under the Alliance, the parties commit to a broad-based, cooperative approach."

**90.1601 Strategic supplier alliance process.**
The strategic supplier alliance (SSA) process consists of four phases: Need determination, infrastructure development, implementation, and monitoring and measurement.

(a) Need determination.

(1) Identify alliance candidates.

(i) All SSA candidates must be suppliers that conduct single-source business with DLA over an extended and defined period. DLA suppliers with competitive and single-source business may be examined for SSA improvements in accordance with this policy. However, competitively procured items may only become part of the SSA under a separate contract with the supplier after a competitive award.

(b) DLA supply chains nominate SSA candidates to DLA HQ. The nominating supply chain creates the SSA nomination package. This information will be used to determine if an SSA presents a value-added opportunity to DLA and as a source document to assign the responsible supply chain. (Projected end state - supply chain assignments will not experience significance change until business systems modernization reaches full operational capability.) SSA nominating packages include the following information:

(i) Identification of all potential DoD stakeholders in the SSA.

(ii) Nomination of the supplier candidate identified by corporate name and potential CAGE code (include all associated CAGE codes).

(iii) Identification of the industry segmentation of the CAGE(s) and the federal supply class(es) of the single -source NSNs.

(iv) Obligations and annual demand values of single-source business with candidate supplier. The package will use a 3-year business base.

(v) A list of the single-source NSNs and contract count of the single-source business. The package will use a 3-year business base.

(vi) A brief description of the business rationale for a SSA with the candidate supplier.

(vii) Additional information as needed.

(c) The nominating supply chain shall disseminate the SSA nominating package to all DLA center SSA POCs for review and comment. The DLA center SSA POCs are DLA Troop Support– P, DLA Land and Maritime – P, DLA Aviation– KI.

(d) The nominating supply chain submits the SSA nomination package to DLA HQ J72. DLA HQ J72 reviews all SSA nomination packages. A determination of approval-to-proceed or disapproval will be made within 5 business days. DLA HQ J72 will provide rationale for any disapproval. Disagreements between supply chains and their detachments shall be adjudicated by the DLA HQ J72.

| Supply Chain Assignments by Location (detachments may be located at multiple locations) | Supply Chain |
|---|---|
| DLA Aviation | Aviation |
| DLA Land and Maritime | Land, Maritime |
| DLA Troop Support | Medical, subsistence, clothing and textiles, construction and equipment |

(e) Once DLA HQ grants approval-to-proceed to the SSA effort, all supply chains will be notified by DLA HQ J72. The responsible supply chain officially initiates contact with the supplier candidate for interest in establishing an SSA. The responsible supply chain determines the best strategy to approach a supplier candidate. Format of the approach is at the discretion of the responsible supply chain. DLA HQ level contact or support with efforts to communicate with the supplier candidate will be made available to the responsible supply chain, if requested. Contact with nominated SSA suppliers may be delayed to accommodate stakeholders. SSA initiatives will be added to the DLA SSA Strategic Execution plan when the nominated supplier accepts the invitation to begin establishment of an SSA.

(f) Once a supplier candidate agrees to begin SSA discussions, the responsible supply chain arranges the initial meeting with the supplier to introduce the SSA concept, if necessary. Initial meetings with the supplier candidate should include SSA education, fact-finding, discovery, and benefit discussions. The initial meeting may include DoD stakeholder representatives and others as determined by the responsible supply chain.

(g) Identification of stakeholders. The term “stakeholder” refers to DoD government activities only. The SSA candidate is known as the “supplier.”

(1) The responsible supply chain will identify and make contact with all stakeholders to determine potential interest in participation. All DLA supply chains will be contacted to review inter-agency stakeholder status. DLA customer relationship managers (CRMs) are potential stakeholders. Non-DLA stakeholders may include, but are not limited to, the Military Services, multiple activities within a Military Service, DCMA, and other Federal Agencies. Non-DLA stakeholder point(s) of contact (POCs) are pursued on a case-by-case (individual SSA) basis by the responsible supply chain.

(2) When planning any meeting with the Military Services to discuss strategic issues regarding a specific supplier or DLA’s general SSA program, the responsible supply chain must coordinate with DLA HQ J72 by

providing the purpose of meeting, proposed date/time/location/duration, and attendee listing. E-mail is acceptable.

(3) Additional stakeholders may be added to the SSA effort at any point.

(4) Each stakeholder identifies desired benefits. When notified that an SSA effort has been approved-to-proceed and stakeholders have been identified, the responsible supply chain will request and coordinate benefit analysis from all stakeholders. Each stakeholder must articulate desired benefits and planning assumptions. The responsible supply chain will consolidate stakeholder input.

(5) Stakeholders meet to determine SSA focus/common strategic goals and establish plan of action and milestones (POA&M) for the SSA. Once benefit analysis has begun among the stakeholders, the responsible supply chain conducts an SSA focus meeting. Ideally, the focus meeting should occur prior to contact with the candidate supplier. Stakeholder participation in SSAs is a go/no-go decision. A go decision indicates a stakeholder will join DLA in the SSA process. A no-go decision indicates the stakeholder will not take part in DLA SSA efforts.

(i) The focus meeting must discuss and document the basic goals and objectives of the SSA.

(ii) The focus meeting must document an overall plan of action and milestones (POA&M).

(iii) The focus meeting must negotiate and document a go/no-go decision schedule. An affirmative decision (GO) to participate is required by an established decision date.

(iv) The responsible supply chain shall invite DLA HQ J72 to attend SSA focus meetings. If DLA HQ J72 is unable to attend, the responsible supply chain shall provide minutes.

(6) SSA “go/no go” decision by all stakeholders.

(i) After the focus meeting, all DoD stakeholders will conduct internal coordination concerning the proposed SSA. If no focus meeting is held, stakeholders need only respond to the responsible supply chain to register their intentions (go/no-go). DoD stakeholders must respond affirmatively (go) to the responsible supply chain in accordance with the established schedule to participate in the SSA. If a DoD stakeholder expresses a no-go decision, its status as a stakeholder is removed from the SSA effort. A “no-go” activity may continue unilaterally with the candidate supplier or rejoin the effort at a later time.

(ii) Once all stakeholders have made a go/no-go decision, the responsible supply chain shall develop the overall SSA strategy based upon the benefit analysis and focus meetings. In coordination with stakeholders, the responsible supply chain drafts the SSA charter to formalize the relationship. Each individual SSA charter is tailored to the supplier as negotiated.

(7) SSA charter routed for signature by senior leadership

(i) The responsible supply chain shall submit the SSA charter to DLA HQ J72 when the final version has been negotiated with the supplier and DoD stakeholders. DLA HQ J72 will coordinate the charter for signature by DLA-D. The responsible supply chain will determine what other stakeholder signature(s) are to be included on the charter. The responsible supply chain will obtain these DoD stakeholder signature(s), and the supplier signature in the order cited in paragraph b below. The responsible supply chain will sponsor any signature ceremonies. SSA supplier signatory level must be at a level equal to or greater than the Director of

DLA. The responsible supply chain will ensure enough SSA charter copies are available for each signatory to have a charter with original signatures.

(ii) Sequence of charter signatures:

(Signatories: only DLA-D and supplier) – DLA-D, then the supplier

(Signatories: Multiple DoD Stakeholders, DLA-D, and supplier) – Various DoD stakeholders, then DLA-D, then the supplier

(iii) There may be cases when DLA joins a SSA alliance initiated by a military service. The DLA Director's signature on a Military Service-initiated charter signifies DLA's SSA participation with the supplier.

(iv) Once signed by all parties, the responsible supply chain will distribute charter originals and copies as needed. An SSA charter will remain on file at DLA HQ J72. When additional DoD stakeholders join the SSA after the charter has been signed, use an addendum to the SSA charter if no significant changes to the charter are anticipated. Minimum DLA signatory level on SSA charter addendums is a DLA center Commander/Director/Administrator. Create a new charter for significant changes advanced by a new DoD stakeholder and approved at the executive committee level. The responsible supply chain is responsible for the creation, coordination, and execution of any modifications or addendums to the existing charter. DLA HQ J72 must be notified prior to changes in any SSA charter.

(h) Infrastructure development. The responsible supply chain will formally establish the following SSA team structures with the supplier and stakeholders: executive committee, joint steering group, and improvement teams.

(1) Establish Executive Committee. The Executive Committee should be established at the SES/Flag or GS-15/O-6 level. Industry partner (supplier) committee members must be at a commensurate level. For DLA, the executive committee includes Center Commanders/Directors and/or Deputies, the Supply Chain HCA, and responsible supply chain Directorate Level. DLA HQ, Director, DLA Acquisition (J7) and J72 are standing members of the executive committee. DLA HQ J72 will be notified of all executive committee meetings and may be the only representative for Director, DLA Acquisition (J7). Under routine participation, the executive committee meets as deemed appropriate by the Commander/Director or Deputy Commander of the Supply Chain.

(2) Establish Joint Steering Group (JSG). The Joint Steering Group (JSG) will be established initially with stakeholders at the GS-14 level or above. Industry partner (supplier) committee members will be at a commensurate level. For DLA, the JSG includes the cognizant Supplier Relationship Manager (SRM), Supplier Team Leads, and Business Unit Leader. Agency customer relationship managers (CRMs) identified as stakeholders will be invited to become core members of the JSG. Face-to-face meetings are expected quarterly. Video teleconferences may be utilized as needed throughout the year.

(3) JSG develops objectives for each SSA goal and the roles and responsibilities.

(4) Once the JSG is established, the JSG meets to evaluate and refine the pre-charter focus goals, objectives, and plan of action and milestones (POA&Ms). The JSG will identify initial SSA improvement opportunities and outcomes. As part of the JSG, the responsible supply chain details the SSA execution strategy:

(i) The JSG will develop the SSA execution strategy to a specific plan of action.

(ii) The JSG will determine targets of opportunity, for example, high priority NSNs, pricing methodologies, etc..

(iii) The JSG will establish improvement teams for each improvement opportunity as required, and prioritize improvement opportunities.

(iv) The JSG will establish POA&Ms for each improvement opportunity.

(v) The JSG will create and attach metrics to assess performance of the SSA.

(5) Based upon the aforementioned JSG items, the responsible supply chain will document and update the SSA execution strategy.

(6) Executive committee approves goals, objectives, and improvement opportunities. Once the SSA execution strategy has been developed, the JSG will return to the executive committee for approval. The JSG obtains Executive Committee "buy-in" for each improvement opportunity. Each improvement opportunity with executive committee approval is immediately available for implementation.

(i) Implementation. The responsible supply chain will monitor all contract actions related to the SSA.

(1) Two criteria must be met to brief the DLA Director that a SSA has been formally implemented:

(i) A signed and completed SSA charter.

(ii) A new contract or a modification to an existing contract has been awarded to the SSA supplier. The new contract or modification must include performance criteria and improved business practices identified by the alliance members. The award shall include DLA items. Use of a non-DLA contractual instrument is acceptable. In cases where improvements do not result in an immediate contractual action, a decision will be made by DLA HQ, J72, that significant result(s) from SSA process improvement(s) have been accomplished.

(2) For SSAs that have already been implemented, a "refocusing" meeting may be necessary when new stakeholders join the effort. The responsible supply chain will arrange and host any "refocusing" meetings with existing stakeholders to examine new targets of opportunity brought by the new stakeholder. "Refocusing" meetings will be completed within 30 days of a new stakeholder's declaration of intent to join the SSA. The responsible supply chain will determine if a "refocusing" meeting is required and whether the addition of a stakeholder will necessitate change(s) to the SSA charter.

(j) JSG assigns champion and creates an improvement team for each improvement opportunity if required. Improvement teams are established (by the JSG) as necessary at the appropriate expertise level. Skill sets of members must be sufficient to work through identified improvement opportunities. Improvement teams may also include CRMs. Improvement team meetings are held as required. Improvement opportunities shall be prioritized by the JSG.

(1) JSG assigns adequate resources to each improvement team. If resources are insufficient for all improvement opportunities, the Executive Committee/JSG will dedicate available resources according to the established priority.

(2) Each improvement team develops POA&M and metrics.

(3) JSG approves improvement team's POA&M and metrics.

(4) Improvement teams are empowered to work the issues and recommend solutions.

(5) JSG oversees implementation of improvement opportunities.

(k) Monitoring and measurement.

(1) The responsible supply chain will continually ensure the SSA is reviewed and reassessed to determine if changes need to be made to the alliance focus or if additional stakeholders need to be included.

(2) The JSG shall manage (monitor and measure) the performance of the SSA through Supplier Readiness Review metrics. Each DLA SSA corporate contract shall be measured using the following Supplier Readiness Review Metrics:

- Growth: adding items to the contracts within the SSAs
- Delivery based on the requirements of the individual contracts. Metrics should cover stock and DVD as appropriate.
- Quality
- Cost reductions and/or price controls through the partnership
- Back order performance
- PLT reduction
- ALT reduction
- Percent of annual demand for a given supplier covered by the items placed on contract

(3) As business systems modernization and Agency practices mature, measurements are expected to refine and align with the Key Performance Indicators.

(4) Each improvement team briefs progress and results to the JSG. The Executive Committee will manage all Milestones/POA&Ms set by the JSG and the improvement teams. If at any time, the supplier disengages from SSA efforts, the SRM will immediately inform DLA HQ and all stakeholders of the supplier's position. A stakeholder's focus meeting may be reconvened, as necessary, to terminate the effort or adjust strategy.

(5) JSG provides periodic status to the Executive Committee. Executive Committee meetings are held at the request of the JSG or as requested by the Executive Committee.

(6) Executive committee and JSG reassess goals, objectives and improvement opportunities.

(7) JSG reviews measurements and takes action as needed.

**90.1602 SSA definitions.**

Executive Committee. Senior management committee comprised of a member from each stakeholder organization and the supplier. Responsibilities include SSA oversight and review and approval of all SSA activities. This committee exists for the life of the Alliance.

Charter. Document stating the commitment of each organization to partner in a Strategic Supplier Alliance and signed by the senior government and corporate executive of each alliance organization.

Improvement Opportunities. Targeted problem issues or identified Best Practices that need to be investigated, analyzed and resolved by the Improvement Teams.

Improvement Team. A team established by the SSA Joint Steering Group to address a specifically identified improvement opportunity. Membership is from all stakeholder organizations and the supplier and is cross-functional to represent areas which the specific improvement can affect. This team exists for a specific period of time, which is dependent on the scope and resolution of the identified improvement opportunity.

Goals. An agreed upon set of outcomes which the SSA works toward achieving.

Joint Steering Group (JSG). Day-to-day SSA management committee comprised of members from all stakeholder organizations and the supplier. Responsibilities include focusing the SSA on goals, objectives and improvement opportunities; establishing and managing improvement teams and monitoring overall SSA progress. This committee exists for the life of the Alliance.

Responsible supply chain. The DLA supply chain managing the SSA.

Objectives. Tasks to be accomplished in order to achieve goals.

Plan of Action and Milestones (POA&M). The roadmap developed to chart the course from SSA determination, via development and implementation, through monitoring and measurement.

Stakeholder. Those government activities with a declared interest in the SSA business relationship with the supplier; includes all DLA centers, DLA HQ, DoD activities (Military Services, DCMA, etc.). For purposes of these instructions, those activities that decline participation in the SSA are not stakeholders. The SSA supplier is identified as the "supplier" to differentiate government-internal activities from all-participant activities.

Strategic Supplier Alliance (SSA). A DLA/customer/supplier partnership that transcends purchasing transactions to develop strategies and improvement opportunities that facilitate the sharing of information and which combines the purchasing power and knowledge of the customer and fully engages the supplier's capabilities to deliver superior value.

Supplier. For the purposes of SSAs, suppliers are industry partners identified as critical to meeting customer expectations and mission readiness subsequent to a DLA business profile analysis.

Supplier Relationship Manager (SRM). A position designated by DLA that manages partnerships with key suppliers and seeks to deliver significant return on investment to the enterprise. This individual serves as the single point of contact and subject matter expert for assigned supplier(s). Additionally, the SRM collaborates across the DLA enterprise to meet customer and supplier expectations.

## SUBPART 90.17 – [RESERVED]

## SUBPART 90.18 – "PRICE PENDING" ITEMS

### 90.1800 Background.

(a) This part describes the policy and procedures for adding "price pending" items to long-term contracts (LTCs).

(b) Definition: As used in this part, 'price pending" items represent supplies or services that are included in LTCs when pricing and the price reasonableness determination has been deferred pending the identification of an actual demand and the implementation of a pre-established pricing methodology or mechanism that has been agreed upon by the Government and vendor providing the supplies or service.

(c) Under limited circumstances "price pending" items may be included in LTCs. This may be appropriate for strategic material sourcing (SMS) items and/or items that do not have a reliable price history and the future demands are not definite.

(d) The chief of the contracting office must approve, in writing, the inclusion of "price pending" items prior to the issuance of the solicitation. The inclusion of "price pending" items may be considered only if all the following circumstances are present:

(1) Candidate items are SMS readiness items (weapon system indicator codes (WSIC) F, L, T, G, M, W, H, P and X), as well as other items, having very low or no anticipated projected demands for the next three years (from the date of the award) making it impractical to obtain pricing or pricing information;

(2) A determination of whether the item is commercial or non-commercial should be documented;

(3) A determination has been made that the items are only available on a sole source basis from the contractor;

(4) The item must be included in a group of items considered for a LTC;

(5) A not-to-exceed delivery schedule must be established for the items;

(6) The contractor must agree to supply the items once a demand is identified; and,

(7) A pre-established agreed upon pricing methodology items consistent with the applicable policies and guidelines of the FAR and DLAD must be incorporated into a strategic supplier alliance or contract. This should be accomplished during negotiations of the SSA agreement or the contract. The chief of the contracting office should consider amending established SSA agreements to include the agreed upon pricing methodology. The price must be determined reasonable before the item(s) is purchased.

(e) The contract must include appropriate language providing for the addition of NSNs as the price is definitized, within the scope of the contract.

(f) Additionally, contracting officers should consider if surplus is available to meet the requirement before considering price pending items.

## SUBPART 90.19 – COMPETITIVE SOURCING AND HIGH PERFORMING ORGANIZATIONS (HPOs)

### 90.1901 Letter of obligation (LoO) issuance, acceptance, and key personnel roles and responsibilities.

(a) This guidance establishes agency-wide policy for LoO issuance, acceptance, and roles and responsibilities of key personnel associated with the LoO. It is applicable to LoOs resulting from competitive sourcing competitions under Office of Management and Budget (OMB) Circular A-76 and the establishment of high

performing organizations (HPOs). The LoO is a formal agreement between the government and the in-house service provider that incorporates the cost and performance obligations that the Most Efficient Organization (MEO) or HPO shall meet throughout the performance period.

(b) LoOs will be issued upon completion of the contest period for competitive sourcing competitions or prior to nominating an activity for HPO designation by the Deputy Under Secretary of Defense (Installations and Environment). Subject to J-75 concurrence, the procuring contracting officer (PCO) will issue a LoO to either the agency tender official (ATO) or the official responsible for the performance of the MEO for competitive sourcing competitions, or to the official responsible for the performance of the HPO when HPOs are established. The ATO and the official responsible for the performance of the MEO/HPO will hereafter be called the LoO designee.

(c) The administrative contracting officer (ACO) will administer the LoO, including monitoring and enforcing adherence to performance requirements and standards, negotiating and executing modifications, resolving disputes, exercising options, assessing quality of performance and accepting services and work, and terminating performance when appropriate. The ACO will appoint a contracting officer's representative (COR) in the Continuing Government Activity (CGA) to monitor and accept services provided by the MEO/HPO. The COR will monitor the MEO/HPO performance in accordance with the quality assurance surveillance plan (QASP) to ensure compliance with the acceptable performance levels specified in the LoO.

(d) The LoO designee is responsible for the success of the MEO/HPO and has oversight responsibility for controlling quality and cost of the MEO/HPO in its execution of and adherence to the LoO overall performance periods. The LoO designee's signature on the LoO signifies acceptance of its requirements, and the LoO designee thereby commits that the MEO/HPO shall meet the LoO's cost and performance goals for all performance periods. The LoO designee may delegate authority over the MEO/HPO to a designee, but cannot delegate responsibility. The LoO designee's responsibilities shall be reflected in the performance plan for the individual appointed as the LoO designee. The LoO designee shall not be in the same rating chain as the ACO.

**90.1902 LoO change requests for MEOs and HPOs.**

(a) This guidance establishes Defense Logistics Agency (DLA) policy for requesting review and approval of LoO change requests. Proper processing and documentation of changes to LoO requirements, cost changes, and resulting modifications is necessary to comply with recent policy on post-competition and HPO accountability and reporting; see OMB Memorandum for the President's Management Council, April 13, 2007, subject: Validating the Results of Public-Private Competition; and, OMB Circular A-76, Attachment B, Paragraph E.4, "Monitoring Performance."

(b) LoO change requests must be submitted using the mandatory template at PGI 90.1902(b) and shall be fully documented in writing. This documentation shall include a detailed explanation that justifies why the change is needed, if the MEO/HPO initiated the change, how the specific dollar amount requested is calculated, and an analysis of its cost impact. Each LoO change request that impacts the Agency cost estimate (ACE) shall be inputted by the MEO/HPO into COMPARE (or equivalent OSD-approved costing methodology or system) and have cost details on COMPARE adjustments to Lines 1 thru 6 on the standard competition form across performance periods attached.

(c) LoO change requests resulting in a modification package must be coordinated with the COR prior to submittal to the appropriate approving official (see 90.1902(g)). The COR or designated representative will update the adjusted baseline cost to reflect the change, compare it to the updated LoO ACE to measure the cost impact of the change request to projected gross savings across performance periods, and provide a summary of this analysis in the request package when it is forwarded to the appropriate approving official. The Requiring Activity (RA) Commander, Director, or Senior Executive Service (SES) member (if not also the approving

authority) will review any change request that exceeds $1 million and provide appropriate recommendations and comments to the approving official. LoO changes will be documented in accordance with OMB Circular A-76, Attachment B, Subparagraph E.4.(4), "maintain the currency of the contract file, consistent with FAR Subpart 4.8, for contracts, MEO letters of obligation, and fee-for-service agreements."

(d) Procurements or acquisition actions that typically justify LoO change requests include the following:

(1) Expanded requirements or increase in workload in excess of that designated in the Request for Proposal (RFP).

(2) Changes to performance requirements such as Acceptable Performance Levels, or establishing/ changing the significance levels of nonconforming performance (e.g., critical, major, minor).

(3) Clarification of requirements; the need for these is often identified by the CGA during QASP implementation or while performing assessments.

(4) Policy changes initiated by statute, executive order, regulation, the Office of the Secretary of Defense, Headquarters DLA, or the RA.

(5) Conditions beyond the MEO/HPO's control, such as RA-imposed hiring freezes and/or manpower reductions, Office of Personnel Management directed pay rate and benefits adjustments, or new collective bargaining agreements.

(e) Situations that are not appropriate as the basis for LoO change requests are given in paragraphs (1) and (2) below. These types of changes will be documented by the initiator and reported to the ACO in order to assess actual MEO/HPO cost and performance against the Agency Tender/HPO. The documentation will become part of the LoO file.

(1) RA decision, when none of the above justifiable factors are present, to allow an MEO/HPO to adjust its current year "spending plans" in order to prevent mission failure.

(2) Conditions such as high civilian personnel turnover and/or inability to hire at the proposed grade/skill/hours available (e.g., part-time vs. full-time; temporary vs. permanent; upgrading positions for retention purposes) within the MEO/HPO.

(f) If the change would result in an increase of 30 percent or more in the MEO's operating costs or total capital investment, a new competition will be conducted before an agency source can be used to perform the work. (See OMB Circular A-76, paragraph 5.d. and Attachment D, Definitions, regarding expansions.)

(g) Approval authority for LoO change requests is determined by calculating the value of change requests using the impact over the entire performance period, including option periods. Approval authority thresholds are as follows:

(1) The ACO will approve or disapprove change requests up to $1 million in value.

(2) The chief of contracting office will approve or disapprove all change requests that exceed $1 million in value, but are less than or equal to $10 million.

(3) The head of contracting activity (HCA) will approve or disapprove change requests that exceed $10M.

(h) For requests equal to or under $10 million, coordination and approval/disapproval of the change request decision will occur within four work weeks after the change request package is received by the RA CGA. For change requests that exceed $10 million, the request will be submitted to the HCA for approval with a copy furnished to J7. The ACO will report all newly-approved change requests to J7 no later than 30 days after the end of each quarter.

(i) The LoO change request submitter may request review by the next higher approval authority when a change request up to $10 million is disapproved. The request must be submitted within 10 working days from date of disapproval to be considered. The next higher approval authority has 10 working days after the request is received to resolve the matter.

(j) If the approving authority determines that urgent and compelling circumstances require that a change be implemented before a change request can be approved through the normal process, the approving authority may authorize the LoO designee to proceed with the change on an interim basis not to exceed 4 weeks. This interim approval does not eliminate the requirement to process a change request in accordance with this policy. The approval authority's action, including supporting rationale, will be fully documented in the contract file and will be included in the change request submitted in accordance with this policy.

**90.1903 A-76 standard competition milestones.**

(a) This guidance establishes policy regarding major acquisition milestones for competitive sourcing competitions under OMB Circular A-76. Competitive sourcing acquisitions will consist of three major acquisition milestones, hereafter called Milestones A, B, and C. These milestones occur at key decision points in the acquisition life cycle for standard competitions conducted under OMB Circular A-76.

(b) Milestone A – Announcement and Release of Solicitation Decisions. Milestone A has two decision points: the decision to announce the competition; and, the decision to release the solicitation for proposals. The two decision points are described below.

(1) Milestone A1 – Competition announcement decision: The Senior Procurement Executive (SPE) will make the decision to proceed with formal announcement of the competition. The RA's preliminary planning team will provide a decision briefing and preliminary planning report to the SPE. General Counsel (DLA General Counsel), J74, the A-76 Contracting Office (DLA Land and Maritime), the Acquisition Operations Division (J72), and the servicing DLA Human Resources Center will advise the SPE on the RA's readiness to proceed with announcement. The SPE will decide at the briefing, in consultation with the RA's Commander or Director, if a competition announcement should be made, if additional information is needed before making an announcement, or if an alternative course of action should be pursued in lieu of a competition.

(2) Milestone A2 – Decision to release the solicitation for proposals: The Source Selection Authority (SSA) will make the decision to release the RFP. The SSA is responsible for the review and approval of the solicitation's performance work statement, instructions, conditions, and notices to offerors or respondents, and evaluation factors for award; as well as reviewing and approving the acquisition plan and the source selection plan. The SSA will appoint a Source Selection Advisory Council (SSAC) to review the acquisition plan, source selection plan, and RFP in order to advise the SSA on the solicitation's readiness for release. The SSAC will be comprised of senior-level representatives from the DLA General Counsel, the A-76 Contracting Office (DLA Land and Maritime), Human Resources Directorate (J1), the appropriate Headquarters DLA business office that has oversight of the RA, J72, Financial Operations Directorate (J8), and the RA. The SSA will appoint an individual from the SES to chair the SSAC. The A-76 Program Manager will serve as the acting chairman in the absence of the SSAC chairman.

(c) Milestone B – SSA performance decision. The SSA will make the performance decision, which per OMB Circular A-76 marks the formal completion of the A-76 competition. The SSA's performance decision is formalized by certifying the Standard Competition Form and is based on the recommendation from the SSAC, which reviews the source selection evaluations from the Source Selection Evaluation Board, the Price Evaluation Board, and the Contracting Officer's evaluation of socioeconomic programs proposals from commercial offerors. While the SSA may use reports and analyzes prepared by others, the performance decision must represent the SSA's independent judgment. The performance decision serves as the basis for awarding the competition to the agency tender, commercial offeror, or public-reimbursable tender.

(d) Milestone C – Competitive sourcing post-award accountability review. A special Integrated Acquisition Review Board (IARB) chaired by the DLA SPE will meet to conduct a post-award accountability review within 90 days after 1 year of full operations by the service provider (SP). IARB membership will be in accordance with 7.104-90. The ACO will review and report on the SP's performance and cost of operations, as applicable, and on any approved changes to the contract or letter of obligation to the IARB. The ACO will make a recommendation to the IARB regarding continued performance by the SP. The IARB will take the ACO's report and recommendations under consideration and issue a determination on corrective actions to be taken, if any.

**90.1904 Monitoring responsibilities.**

(a) This section includes policy regarding the activities and responsibilities that occur following a performance decision under Office of Management and Budget Circular (OMB) A-76, Performance of Commercial Activities, or the designation of an activity as a High Performing Organization (HPO), and establishes agency-wide policy for implementing post-award performance monitoring of Service Providers (SP). A service provider may be a most efficient organization (MEO), private contractor, or public reimbursable source resulting from a competitive sourcing competition, or an activity designated as an HPO by the Department of Defense (DOD) Competitive Sourcing Official (CSO) or by the Defense Logistics Agency (DLA) CSO pursuant to DLAD 90.1906(c)(2). All performance monitoring of the service provider will be performed by the requiring activity's (RA) continuing government activity (CGA) in support of the Administrative Contracting Officer (ACO).

(b) A post-award conference will be held after contract award for a private offeror, issuance of a letter of obligation (LoO) to an MEO or HPO, or issuance of an inter-service support agreement (ISSA) for a public reimbursable tender. The purpose of the conference is to review the contract/Letter of Obligation (LoO)/ISSA requirements and phase-in/transition to ensure all parties have a clear understanding of the performance requirements, transition/phase-in plan of action and milestones, reports/submittals, change request procedures, and roles and responsibilities. Key participants will include the Procuring Contracting Officer (PCO) and the ACO issuing and administering the contract/LoO/ ISSA, the CGA's Contracting Officer's Representative (COR), the RA's transition team leader (if one has been appointed), and the LoO designee for MEOs/HPOs or the contractor, as appropriate.

(c) The CGA is responsible for monitoring the service provider's performance in accordance with the RA's quality assurance surveillance plan (QASP) to assure that the SP is performing to the acceptable performance levels (APLs) in the performance work statement (PWS). The CGA will monitor the service provider throughout all authorized performance periods and report results through the COR to the ACO. The monitoring will include assuring service provider compliance with the terms of the PWS, inspecting and evaluating the service provider's quality control program, and transition during contract or LoO startup and closeout.

(d) The ACO will submit monthly reports to J7 thru J72 during transition and quarterly reports for the first twelve months of full performance for a post-award competition service provider. Following the Milestone C

review by a special Integrated Acquisition Review Board (IARB), the ACO will continue to submit quarterly reports to J7thru J72 or as otherwise directed by the IARB. The ACO will submit quarterly reports to J7 thru J72 for HPOs beginning with the first full quarter of performance. ACO reports will focus on actual costs, performance against APLs, modifications, change requests/requests for equitable adjustments currently under review, and, if service provider performance is unsatisfactory, steps being taken to address this, including status of the service provider's corrective action improvement plan and current surveillance results of those activities rated unsatisfactory.

**90.1905 Department of Defense commercial activities management information system (DCAMIS).**

(a) This section establishes agency-wide policy for the administration and use of DCAMIS. DCAMIS is the DOD database of record established to meet official reporting requirements on the conduct of A-76 competitions and the results from implementing A-76 decisions and HPOs. It is a web-based execution tracking system for the DOD Competitive Sourcing Program, which provides competition/HPO-specific data for a myriad of high-level government users (e.g., program managers, DOD components, Office of the Secretary of Defense (OSD), OMB, Government Accountability Office, Congress). Requiring activity commercial activities program offices (CAPOs) will use DCAMIS as the source for the data described in the DCAMIS A-76 Users Guide, October 1, 2007.

(b) The acquisition programs and business operations division (J74) is responsible for administering DCAMIS for DLA and for reviewing all cost and performance data input into DCAMIS.

(c) The requiring activity commercial activities program offices are responsible for inputting and validating all cost and performance data into DCAMIS for competitive sourcing MEOs/contractors and HPOs. Requiring activity commercial activities program offices may delegate responsibility for inputting cost and performance data down to the CGA level. Access to DCAMIS will be limited on a "need to know" basis; no access will be provided to service provider personnel. J74 will review and approve all DLA requests for access to DCAMIS.

**90.1906 MEO Re-competes / Competing HPOs.**

(a) This section establishes agency-wide policy for deciding, during the final year of performance in the LoO, whether an MEO should be re-competed or an HPO competed (see Pub. L 110-187, section 323, amending 10 USC 2461(a)(4)). Under the program budget review process, all MEOs and HPOs will be programmed for competition announcement to take place six months after the completion of their final performance period. Six to nine months prior to the end of the final performance period as established in the LoO, MEOs and HPOs will be reviewed by a special IARB. The IARB will review performance for all periods completed up to but not including the final year of performance specified in the LoO, and may also consider performance during the final year to the extent information is available . The review will be based on assessments provided by the RA and ACO, as well as any supplemental independent assessments that have been conducted. The Senior Procurement Executive (SPE) may convene a special IARB at any time based on ACO reports of unacceptable or declining performance by an MEO/HPO.

(b) The assessment will consider at least the following factors, and may also consider other relevant factors:

(1) LoO cost compliance: actual cost against adjusted LoO cost (including approved modifications);

(2) LoO performance compliance: quality of performance as measured against LoO requirements, to include acceptable performance levels;

(3) Overall change in authorized LoO cost from original LoO cost;

(4) Overall change in requirements (nature/extent; present/anticipated); and,

(5) Market assessment (contracting officer only).

(c) The ACO/RA will brief the review/assessment to the IARB. Following the briefing the IARB will recommend to the DLA CSO the most advantageous course of action to the Agency from the following options:

(1) Initiate preliminary planning to compete the requirement covered by the existing LoO;

(2) Extend the MEO/HPO for up to five more years as an Agency-recognized MEO/HPO; or,

(3) Take an alternative course of action (e.g., managed reduction, business process re-engineering, organizational realignment, etc.)

(d) If the DLA CSO decision is to compete the requirement covered by the existing LoO, the existing LoO will be allowed to expire at the end of the final performance period in order to allow the RA to use MEO/HPO resources to prepare for the competition.

(e) If the DLA CSO decision is to extend performance under the LoO for up to five additional years, the PCO will issue a new LoO effective the day following the previous LoO's expiration. The RA, ACO, and extended MEO/HPO must comply with DLAD LoO policy with the following exceptions:

(1) DCAMIS will not be used unless the MEO/HPO is recognized by OSD.

(2) No "Milestone C" IARB is required for an extended MEO, unless otherwise directed by the SPE.