

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

1. CONTRACT ID CODE	PAGE	OF	PAGES
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2. AMENDMENT/MODIFICATION NO.	3. EFFECTIVE DATE	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable)
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6. ISSUED BY CODE	7. ADMINISTERED BY (If other than Item 6) CODE
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8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code)	(X)	9A. AMENDMENT OF SOLICITATION NO.
		9B. DATED (SEE ITEM 11)
		10A. MODIFICATION OF CONTRACT/ORDER NO.
		10B. DATED (SEE ITEM 11)
CODE		FACILITY CODE

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers is extended, is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

(a) By completing items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. **FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER.** If by virtue of this amendment your desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

13. THIS ITEM ONLY APPLIES TO MODIFICATION OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

CHECK ONE	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
	D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor is not, is required to sign this document and return _____ copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)	16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)
15B. CONTRACTOR/OFFEROR (Signature of person authorized to sign)	15C. DATE SIGNED
16B. UNITED STATES OF AMERICA (Signature of Contracting Officer)	16C. DATE SIGNED

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This amendment contains two sections, Section I contains actual revisions (adds/changes/deletions) to the solicitation requirements. Section II provides answers to questions which were submitted in reference to the pre-proposal conference. The answers in Section II are provided for clarification purposes only and do not change the requirements in the solicitation.

Section I

1. The Schedule of Items file has been updated and resent to offerors that requested the initial file. The new file is called "Schedule of Items 07-R-0004 New – 3-09." Offerors can request the new file if they have not received it from Teresa Jimenez or Tina Frederico.
2. Attachment 5 has been added referring to the Distribution Price Categories. It has been sent to offerors who have requested the initial Schedule of Items file.
3. The Republic of Georgia is added to the requirements in Zone I and taken out as a Deployment Zone.
4. Croatia is switched from Zone I to Zone II requirements.
5. The (b)(2) section of DFARS 252.212-7001 is checked and the clause is revised to the following:

252.212-7001 Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items (JAN 2009)

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

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

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

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

(2) X 252.205-7000, Provision of Information to Cooperative Agreement Holders (DEC 1991) (10 U.S.C. 2416).

(3) ___ 252.219-7003, Small Business Subcontracting Plan (DoD Contracts) (APR 2007) (15 U.S.C. 637).

(4) ___ 252.219-7004, Small Business Subcontracting Plan (Test Program) (AUG 2008) (15 U.S.C. 637 note).

(5) ___ 252.225-7001, Buy American Act and Balance of Payments Program (JAN 2009) (41 U.S.C. 10a-10d, E.O. 10582).

(6) ___ 252.225-7012, Preference for Certain Domestic Commodities (DEC 2008) (10 U.S.C. 2533a).

(7) ___ 252.225-7014, Preference for Domestic Specialty Metals (JUN 2005) (10 U.S.C. 2533a).

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- (8) ____ 252.225-7015, Restriction on Acquisition of Hand or Measuring Tools (JUN 2005) (10 U.S.C. 2533a).
- (9) ____ 252.225-7016, Restriction on Acquisition of Ball and Roller Bearings (MAR 2006) (Section 8065 of Public Law 107-117 and the same restriction in subsequent DoD appropriations acts).
- (10) ____ 252.225-7021, Trade Agreements (NOV 2008) (19 U.S.C. 2501-2518 and 19 U.S.C. 3301 note).
- (11) ____ 252.225-7027, Restriction on Contingent Fees for Foreign Military Sales (APR 2003) (22 U.S.C. 2779).
- (12) ____ 252.225-7028, Exclusionary Policies and Practices of Foreign Governments (APR 2003) (22 U.S.C. 2755).
- (13)(i) ____ 252.225-7036, Buy American Act--Free Trade Agreements--Balance of Payments Program (JAN 2009) (41 U.S.C. 10a-10d and 19 U.S.C. 3301 note).
- (ii) ____ Alternate I (OCT 2006) of 252.225-7036.
- (14) ____ 252.225-7038, Restriction on Acquisition of Air Circuit Breakers (JUN 2005) (10 U.S.C. 2534(a)(3)).
- (15) ____ 252.226-7001, Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns (SEP 2004) (Section 8021 of Public Law 107-248 and similar sections in subsequent DoD appropriations acts).
- (16) ____ 252.227-7015, Technical Data--Commercial Items (NOV 1995) (10 U.S.C. 2320).
- (17) ____ 252.227-7037, Validation of Restrictive Markings on Technical Data (SEP 1999) (10 U.S.C. 2321).
- (18) ____ 252.232-7003, Electronic Submission of Payment Requests and Receiving Reports (MAR 2008) (10 U.S.C. 2227).
- (19) ____ 252.237-7019, Training for Contractor Personnel Interacting with Detainees (SEP 2006) (Section 1092 of Public Law 108-375).
- (20) ____ 252.243-7002, Requests for Equitable Adjustment (MAR 1998) (10 U.S.C. 2410).
- (21) (i) ____ 252.247-7023, Transportation of Supplies by Sea (MAY 2002) (10 U.S.C. 2631).
- (ii) ____ Alternate I (MAR 2000) of 252.247-7023.
- (iii) ____ Alternate II (MAR 2000) of 252.247-7023.
- (iv) ____ Alternate III (MAY 2002) of 252.247-7023.
- (22) ____ 252.247-7024, Notification of Transportation of Supplies by Sea (MAR 2000) (10 U.S.C. 2631).
- (c) In addition to the clauses listed in paragraph (e) of the Contract Terms and Conditions Required to Implement Statutes or Executive Orders--Commercial Items clause of this contract (FAR 52.212-5), the Contractor shall include the terms of the following clauses, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under this contract:
- (1) 252.225-7014, Preference for Domestic Specialty Metals, Alternate I (APR 2003) (10 U.S.C. 2533a).

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(2) 252.237-7019, Training for Contractor Personnel Interacting with Detainees (SEP 2006) (Section 1092 of Public Law 108-375).

(3) 252.247-7023, Transportation of Supplies by Sea (MAY 2002) (10 U.S.C. 2631).

(4) 252.247-7024, Notification of Transportation of Supplies by Sea (MAR 2000) (10 U.S.C. 2631).

6. DFARS 252.203-7002 Requirement to Inform Employees of Whistleblower Rights (JAN 2009) is added by reference.

7. DFARS 252.209-7001 date changed to JAN 2009.

8. DFARS 252.225-7000 (JAN 2009) is revised to the following:

(a) *Definitions.* "Commercially available off-the-shelf (COTS) item," "domestic end product," "foreign end product," "qualifying country," "qualifying country end product," and "United States" have the meanings given in the Buy American Act and Balance of Payments Program clause of this solicitation.

(b) *Evaluation.* The Government—

(1) Will evaluate offers in accordance with the policies and procedures of Part 225 of the Defense Federal Acquisition Regulation Supplement; and

(2) Will evaluate offers of qualifying country end products without regard to the restrictions of the Buy American Act or the Balance of Payments Program.

(c) *Certifications and identification of country of origin.*

(1) For all line items subject to the Buy American Act and Balance of Payments Program clause of this solicitation, the offeror certifies that—

(i) Each end product, except those listed in paragraphs (c)(2) or (3) of this provision, is a domestic end product; and

(ii) For end products other than COTS items, components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The offeror certifies that the following end products are qualifying country end products:

Line Item Number

Country of Origin

(3) The following end products are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products, i.e., an end product that is not a COTS item and does not meet the component test in paragraph (ii) of the definition of "domestic end product":

Line Item Number

Country of Origin (If known)

9. DFARS 252.225-7040 (JAN 2009) is revised to the following:

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(a) *Definitions.* As used in this clause—

“Combatant Commander” means the commander of a unified or specified combatant command established in accordance with 10 U.S.C. 161.

“Designated operational area” means a geographic area designated by the combatant commander or subordinate joint force commander for the conduct or support of specified military operations.

“Law of war” means that part of international law that regulates the conduct of armed hostilities. The law of war encompasses all international law for the conduct of hostilities binding on the United States or its individual citizens, including treaties and international agreements to which the United States is a party, and applicable customary international law.

“Subordinate joint force commander” means a sub-unified commander or joint task force commander.

(b) *General.*

(1) This clause applies when Contractor personnel are authorized to accompany U.S. Armed Forces deployed outside the United States in—

- (i) Contingency operations;
- (ii) Humanitarian or peacekeeping operations; or
- (iii) Other military operations or military exercises, when designated by the Combatant Commander.

(2) Contract performance in support of U.S. Armed Forces deployed outside the United States may require work in dangerous or austere conditions. Except as otherwise provided in the contract, the Contractor accepts the risks associated with required contract performance in such operations.

(3) Contractor personnel are civilians accompanying the U.S. Armed Forces.

- (i) Except as provided in paragraph (b)(3)(ii) of this clause, Contractor personnel are only authorized to use deadly force in self-defense.
- (ii) Contractor personnel performing security functions are also authorized to use deadly force when such force reasonably appears necessary to execute their security mission to protect assets/persons, consistent with the terms and conditions contained in their contract or with their job description and terms of employment.
- (iii) Unless immune from host nation jurisdiction by virtue of an international agreement or international law, inappropriate use of force by contractor personnel authorized to accompany the U.S. Armed Forces can subject such personnel to United States or host nation prosecution and civil liability (see paragraphs (d) and (j)(3) of this clause).

(4) Service performed by Contractor personnel subject to this clause is not active duty or service under 38 U.S.C. 106 note.

(c) *Support.*

(1)(i) The Combatant Commander will develop a security plan for protection of Contractor personnel in locations where there is not sufficient or legitimate civil authority, when the Combatant Commander decides it is in the interests of the Government to provide security because—

- (A) The Contractor cannot obtain effective security services;

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- (B) Effective security services are unavailable at a reasonable cost; or
- (C) Threat conditions necessitate security through military means.

(ii) The Contracting Officer shall include in the contract the level of protection to be provided to Contractor personnel.

(iii) In appropriate cases, the Combatant Commander may provide security through military means, commensurate with the level of security provided DoD civilians.

(2)(i) Generally, all Contractor personnel authorized to accompany the U.S. Armed Forces in the designated operational area are authorized to receive resuscitative care, stabilization, hospitalization at level III military treatment facilities, and assistance with patient movement in emergencies where loss of life, limb, or eyesight could occur. Hospitalization will be limited to stabilization and short-term medical treatment with an emphasis on return to duty or placement in the patient movement system.

(ii) When the Government provides medical treatment or transportation of Contractor personnel to a selected civilian facility, the Contractor shall ensure that the Government is reimbursed for any costs associated with such treatment or transportation.

(iii) Medical or dental care beyond this standard is not authorized unless specified elsewhere in this contract.

(3) Unless specified elsewhere in this contract, the Contractor is responsible for all other support required for its personnel engaged in the designated operational area under this contract.

(4) Contractor personnel must have a letter of authorization issued by the Contracting Officer in order to process through a deployment center or to travel to, from, or within the designated operational area. The letter of authorization also will identify any additional authorizations, privileges, or Government support that Contractor personnel are entitled to under this contract.

(d) Compliance with laws and regulations.

(1) The Contractor shall comply with, and shall ensure that its personnel authorized to accompany U.S. Armed Forces deployed outside the United States as specified in paragraph (b)(1) of this clause are familiar with and comply with, all applicable—

(i) United States, host country, and third country national laws;

(ii) Provisions of the law of war, as well as any other applicable treaties and international agreements;

(iii) United States regulations, directives, instructions, policies, and procedures; and

(iv) Orders, directives, and instructions issued by the Combatant Commander, including those relating to force protection, security, health, safety, or relations and interaction with local nationals.

(2) The Contractor shall institute and implement an effective program to prevent violations of the law of war by its employees and subcontractors, including law of war training in accordance with paragraph (e)(1)(vii) of this clause.

(e) Pre-deployment requirements.

(1) The Contractor shall ensure that the following requirements are met prior to deploying personnel authorized to accompany U.S. Armed Forces. Specific

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requirements for each category may be specified in the statement of work or elsewhere in the contract.

- (i) All required security and background checks are complete and acceptable.
- (ii) All deploying personnel meet the minimum medical screening requirements and have received all required immunizations as specified in the contract. The Government will provide, at no cost to the Contractor, any theater-specific immunizations and/or medications not available to the general public.
- (iii) Deploying personnel have all necessary passports, visas, and other documents required to enter and exit a designated operational area and have a Geneva Conventions identification card, or other appropriate DoD identity credential, from the deployment center. Any Common Access Card issued to deploying personnel shall contain the access permissions allowed by the letter of authorization issued in accordance with paragraph (c)(4) of this clause.
- (iv) Special area, country, and theater clearance is obtained for personnel. Clearance requirements are in DoD Directive 4500.54, Official Temporary Duty Abroad, and DoD 4500.54-G, DoD Foreign Clearance Guide. Contractor personnel are considered non-DoD personnel traveling under DoD sponsorship.
- (v) All personnel have received personal security training. At a minimum, the training shall—
 - (A) Cover safety and security issues facing employees overseas;
 - (B) Identify safety and security contingency planning activities; and
 - (C) Identify ways to utilize safety and security personnel and other resources appropriately.
- (vi) All personnel have received isolated personnel training, if specified in the contract, in accordance with DoD Instruction 1300.23, Isolated Personnel Training for DoD Civilian and Contractors.
- (vii) Personnel have received law of war training as follows:
 - (A) Basic training is required for all Contractor personnel authorized to accompany U.S. Armed Forces deployed outside the United States. The basic training will be provided through—
 - (1) A military-run training center; or
 - (2) A web-based source, if specified in the contract or approved by the Contracting Officer.
 - (B) Advanced training, commensurate with their duties and responsibilities, may be required for some Contractor personnel as specified in the contract.

(2) The Contractor shall notify all personnel who are not a host country national, or who are not ordinarily resident in the host country, that—

- (i) Such employees, and dependents residing with such employees, who engage in conduct outside the United States that would constitute an offense punishable by imprisonment for more than one year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States, may potentially be subject to the criminal jurisdiction of the United States in accordance with the Military Extraterritorial Jurisdiction Act of 2000 (18 U.S.C. 3621, *et seq.*);

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- (ii) Pursuant to the War Crimes Act (18 U.S.C. 2441), Federal criminal jurisdiction also extends to conduct that is determined to constitute a war crime when committed by a civilian national of the United States;
- (iii) Other laws may provide for prosecution of U.S. nationals who commit offenses on the premises of U.S. diplomatic, consular, military or other U.S. Government missions outside the United States (18 U.S.C. 7(9)); and
- (iv) In time of declared war or a contingency operation, Contractor personnel authorized to accompany U.S. Armed Forces in the field are subject to the jurisdiction of the Uniform Code of Military Justice under 10 U.S.C. 802(a)(10).

(f) *Processing and departure points.* Deployed Contractor personnel shall—

- (1) Process through the deployment center designated in the contract, or as otherwise directed by the Contracting Officer, prior to deploying. The deployment center will conduct deployment processing to ensure visibility and accountability of Contractor personnel and to ensure that all deployment requirements are met, including the requirements specified in paragraph (e)(1) of this clause;
- (2) Use the point of departure and transportation mode directed by the Contracting Officer; and
- (3) Process through a Joint Reception Center (JRC) upon arrival at the deployed location. The JRC will validate personnel accountability, ensure that specific designated operational area entrance requirements are met, and brief Contractor personnel on theater-specific policies and procedures.

(g) *Personnel data.*

- (1) The Contractor shall enter before deployment and maintain data for all Contractor personnel that are authorized to accompany U.S. Armed Forces deployed outside the United States as specified in paragraph (b)(1) of this clause. The Contractor shall use the Synchronized Predeployment and Operational Tracker (SPOT) web-based system, at <http://www.dod.mil/bta/products/spot.html>, to enter and maintain the data.
- (2) The Contractor shall ensure that all employees in the database have a current DD Form 93, Record of Emergency Data Card, on file with both the Contractor and the designated Government official. The Contracting Officer will inform the Contractor of the Government official designated to receive this data card.

(h) *Contractor personnel.*

- (1) The Contracting Officer may direct the Contractor, at its own expense, to remove and replace any Contractor personnel who jeopardize or interfere with mission accomplishment or who fail to comply with or violate applicable requirements of this contract. Such action may be taken at the Government's discretion without prejudice to its rights under any other provision of this contract, including the Termination for Default clause.
- (2) The Contractor shall have a plan on file showing how the Contractor would replace employees who are unavailable for deployment or who need to be replaced during deployment. The Contractor shall keep this plan current and shall provide a copy to the Contracting Officer upon request. The plan shall—

- (i) Identify all personnel who are subject to military mobilization;

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- (ii) Detail how the position would be filled if the individual were mobilized; and
- (iii) Identify all personnel who occupy a position that the Contracting Officer has designated as mission essential.

(3) Contractor personnel shall report to the Combatant Commander or a designee, or through other channels such as the military police, a judge advocate, or an inspector general, any suspected or alleged conduct for which there is credible information that such conduct—

- (i) Constitutes violation of the law of war; or
- (ii) Occurred during any other military operations and would constitute a violation of the law of war if it occurred during an armed conflict.

(i) *Military clothing and protective equipment.*

(1) Contractor personnel are prohibited from wearing military clothing unless specifically authorized in writing by the Combatant Commander. If authorized to wear military clothing, Contractor personnel must—

- (i) Wear distinctive patches, arm bands, nametags, or headgear, in order to be distinguishable from military personnel, consistent with force protection measures; and
- (ii) Carry the written authorization with them at all times.

(2) Contractor personnel may wear military-unique organizational clothing and individual equipment (OCIE) required for safety and security, such as ballistic, nuclear, biological, or chemical protective equipment.

(3) The deployment center, or the Combatant Commander, shall issue OCIE and shall provide training, if necessary, to ensure the safety and security of Contractor personnel.

(4) The Contractor shall ensure that all issued OCIE is returned to the point of issue, unless otherwise directed by the Contracting Officer.

(j) *Weapons.*

(1) If the Contractor requests that its personnel performing in the designated operational area be authorized to carry weapons, the request shall be made through the Contracting Officer to the Combatant Commander, in accordance with DoD Instruction 3020.41, paragraph 6.3.4.1 or, if the contract is for security services, paragraph 6.3.5.3. The Combatant Commander will determine whether to authorize in-theater Contractor personnel to carry weapons and what weapons and ammunition will be allowed.

(2) If the Contracting Officer, subject to the approval of the Combatant Commander, authorizes the carrying of weapons—

- (i) The Contracting Officer may authorize the Contractor to issue Contractor-owned weapons and ammunition to specified employees; or
- (ii) The *[Contracting Officer to specify the appropriate individual, e.g., Contracting Officer's Representative, Regional Security Officer]* may issue Government-furnished weapons and ammunition to the Contractor for issuance to specified Contractor employees.

(3) The Contractor shall ensure that its personnel who are authorized to carry weapons—

- (i) Are adequately trained to carry and use them—

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(A) Safely;

(B) With full understanding of, and adherence to, the rules of the use of force issued by the Combatant Commander; and

(C) In compliance with applicable agency policies, agreements, rules, regulations, and other applicable law;

(ii) Are not barred from possession of a firearm by 18 U.S.C. 922; and

(iii) Adhere to all guidance and orders issued by the Combatant Commander regarding possession, use, safety, and accountability of weapons and ammunition.

(4) Whether or not weapons are Government-furnished, all liability for the use of any weapon by Contractor personnel rests solely with the Contractor and the Contractor employee using such weapon.

(5) Upon redeployment or revocation by the Combatant Commander of the Contractor's authorization to issue firearms, the Contractor shall ensure that all Government-issued weapons and unexpended ammunition are returned as directed by the Contracting Officer.

(k) *Vehicle or equipment licenses.* Contractor personnel shall possess the required licenses to operate all vehicles or equipment necessary to perform the contract in the designated operational area.

(l) *Purchase of scarce goods and services.* If the Combatant Commander has established an organization for the designated operational area whose function is to determine that certain items are scarce goods or services, the Contractor shall coordinate with that organization local purchases of goods and services designated as scarce, in accordance with instructions provided by the Contracting Officer.

(m) *Evacuation.*

(1) If the Combatant Commander orders a mandatory evacuation of some or all personnel, the Government will provide assistance, to the extent available, to United States and third country national Contractor personnel.

(2) In the event of a non-mandatory evacuation order, unless authorized in writing by the Contracting Officer, the Contractor shall maintain personnel on location sufficient to meet obligations under this contract.

(n) *Next of kin notification and personnel recovery.*

(1) The Contractor shall be responsible for notification of the employee-designated next of kin in the event an employee dies, requires evacuation due to an injury, or is isolated, missing, detained, captured, or abducted.

(2) In the case of isolated, missing, detained, captured, or abducted Contractor personnel, the Government will assist in personnel recovery actions in accordance with DoD Directive 2310.2, Personnel Recovery.

(o) *Mortuary affairs.* Mortuary affairs for Contractor personnel who die while accompanying the U.S. Armed Forces will be handled in accordance with DoD Directive 1300.22, Mortuary Affairs Policy.

(p) *Changes.* In addition to the changes otherwise authorized by the Changes clause of this contract, the Contracting Officer may, at any time, by written order identified as a change order, make changes in the place of performance or Government-furnished facilities,

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equipment, material, services, or site. Any change order issued in accordance with this paragraph (p) shall be subject to the provisions of the Changes clause of this contract.

(q) *Subcontracts*. The Contractor shall incorporate the substance of this clause, including this paragraph (q), in all subcontracts when subcontractor personnel are authorized to accompany U.S. Armed Forces deployed outside the United States in—

- (1) Contingency operations;
- (2) Humanitarian or peacekeeping operations; or
- (3) Other military operations or military exercises, when designated by the Combatant Commander.

10. In section, 10. ITEM PRICING AND CATALOG CHANGES, under 3. Distribution Price, C., the following was included "However, for FF&V items only (Zone III)," to complete the sentence "However, for FF&V items only (Zone III), when multiple sources are being utilized and more than one manufacturer's product is received prior to a catalog update, the contractor shall establish the product price based on the mix of invoices received post the previous redetermination period."

11. FAR 52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders -- Commercial Items (Feb 2009) is revised as follows:

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

- (1) 52.222-50, Combating Trafficking in Persons (FEB 2009) (22 U.S.C. 7104(g)).
- (2) 52.233-3, Protest After Award (AUG 1996) (31 U.S.C. 3553).
- (3) 52.233-4, Applicable Law for Breach of Contract Claim (OCT 2004) (Pub. L. 108-77, 108-78).

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

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

(2) 52.203-13, Contractor Code of Business Ethics and Conduct (Dec 2008) (Pub. L. 110-252, Title VI, Chapter 1 (41 U.S.C. 251 note)).

(3) 52.219-3, Notice of Total HUBZone Set-Aside (Jan 1999)(15 U.S.C. 657a).

(4) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Jul 2005) (if the offeror elects to waive the preference, it shall so indicate in its offer)(15 U.S.C. 657a).

(5) [Reserved]

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

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

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

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

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

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

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- (8) 52.219-8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d)(2) and (3)).
- (9) (i) 52.219-9, Small Business Subcontracting Plan (Apr 2008)(15 U.S.C. 637 (d)(4).)
- ___ (ii) Alternate I (Oct 2001) of 52.219-9.
- ___ (iii) Alternate II (Oct 2001) of 52.219-9.
- ___ (10) 52.219-14, Limitations on Subcontracting (Dec 1996)(15 U.S.C. 637(a)(14)).
- (11) 52.219-16, Liquidated Damages—Subcontracting Plan (Jan 1999)(15 U.S.C. 637(d)(4)(F)(i)).
- ___ (12) (i) 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (Oct 2008)(10 U.S.C. 2323) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).
- ___ (ii) Alternate I (June 2003) of 52.219-23.
- ___ (13) 52.219-25, Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting (Apr 2008)(Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
- ___ (14) 52.219-26, Small Disadvantaged Business Participation Program—Incentive Subcontracting (Oct 2000)(Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
- ___ (15) 52.219-27, Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside (May 2004) (15 U.S.C. 657 f).
- ___ (16) 52.219-28, Post Award Small Business Program Rerepresentation (June 2007) (15 U.S.C. 632(a)(2)).
- (17) 52.222-3, Convict Labor (June 2003)(E.O. 11755).
- (18) 52.222-19, Child Labor—Cooperation with Authorities and Remedies (Feb 2008) (E.O. 13126).
- (19) 52.222-21, Prohibition of Segregated Facilities (Feb 1999).
- (20) 52.222-26, Equal Opportunity (Mar 2007)(E.O. 11246).
- ___ (21) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sep 2006)(38 U.S.C. 4212).
- ___ (22) 52.222-36, Affirmative Action for Workers with Disabilities (Jun 1998)(29 U.S.C. 793).
- ___ (23) 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sep 2006)(38 U.S.C. 4212).
- ___ (24) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201).
- (25) 52.222-54, Employment Eligibility Verification (Jan 2009). (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in 22.1803.)
- ___ (26) (i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Items (May 2008)(42 U.S.C. 6962(c)(3)(A)(ii)). (Not applicable to the acquisition of commercially available off-the-shelf items.)
- ___ (ii) Alternate I (May 2008) of 52.223-9 (42 U.S.C. 6962(i)(2)(C)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

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- ___ (27) 52.223-15, Energy Efficiency in Energy-Consuming Products (Dec 2007) (42 U.S.C. 8259b).
- ___ (28) (i) 52.223-16, IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products (Dec 2007) (E.O. 13423).
___ (ii) Alternate I (Dec 2007) of 52.223-16.
- ___ (29) 52.225-1, Buy American Act--Supplies (Feb 2009)(41 U.S.C. 10a-10d).
- ___ (30) (i) 52.225-3, Buy American Act –Free Trade Agreements – Israeli Trade Act (Feb 2009) (41 U.S.C. 10a-10d, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, Pub. L. 108-77, 108-78, 108-286, and 109-169).
___ (ii) Alternate I (Jan 2004) of 52.225-3.
___ (iii) Alternate II (Jan 2004) of 52.225-3.
- X (31) 52.225-5, Trade Agreements (Nov 2007) (19 U.S.C. 2501, *et seq.*, 19 U.S.C. 3301 note).
- ___ (32) 52.225-13, Restrictions on Certain Foreign Purchases (Jun 2008) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).
- ___ (33) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (Nov 2007) (42 U.S.C. 5150).
- ___ (34) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov 2007) (42 U.S.C. 5150).
- ___ (35) 52.232-29, Terms for Financing of Purchases of Commercial Items (Feb 2002) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).
- ___ (36) 52.232.30, Installment Payments for Commercial Items (Oct 1995)(41 U.S.C. 255(f), 10 U.S.C. 2307(f)).
- ___ (37) 52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration (Oct. 2003)(31 U.S.C. 3332).
- ___ (38) 52.232-34, Payment by Electronic Funds Transfer—Other Than Central Contractor Registration (May 1999)(31 U.S.C. 3332).
- ___ (39) 52.232-36, Payment by Third Party (May 1999)(31 U.S.C. 3332).
- ___ (40) 52.239-1, Privacy or Security Safeguards (Aug 1996)(5 U.S.C. 552a).
- ___ (41) (i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006)(46 U.S.C. Appx 1241(b) and 10 U.S.C. 2631).
___ (ii) Alternate I (Apr 2003) of 52.247-64.

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

[Contracting Officer check as appropriate.]

- ___ (1) 52.222-41, Service Contract Act of 1965 (Nov 2007)(41 U.S.C. 351, *et seq.*).
- ___ (2) 52.222-42, Statement of Equivalent Rates for Federal Hires (May 1989)(29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).

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___ (3) 52.222-43, Fair Labor Standards Act and Service Contract Act -- Price Adjustment (Multiple Year and Option Contracts) (Nov 2006)(29 U.S.C.206 and 41 U.S.C. 351, *et seq.*).

___ (4) 52.222-44, Fair Labor Standards Act and Service Contract Act -- Price Adjustment (Feb 2002)(29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).

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

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

___ (7) 52.237-11, Accepting and Dispensing of \$1 Coin (Sep 2008)(31 U.S.C. 5112(p)(1)).

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

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

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

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

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

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (Dec 2008) (Pub. L. 110-252, Title VI, Chapter 1 (41 U.S.C. 251 note)).

(ii) 52.219-8, Utilization of Small Business Concerns (May 2004)(15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$550,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

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

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(iv) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sep 2006)(38 U.S.C. 4212).

(v) 52.222-36, Affirmative Action for Workers with Disabilities (June 1998)(29 U.S.C. 793).

(vi) 52.222-39, Notification of Employee rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201).

(vii) 52.222-41, Service Contract Act of 1965, (Nov 2007), flow down required for all subcontracts subject to the Service Contract Act of 1965 (41 U.S.C. 351, *et seq.*)

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

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

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

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

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

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

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

12. The following FAR Clauses are renamed. Where applicable, all references to "JWOD" are changed to AbilityOne (formerly JWOD).

52.215-9005 ABILITYONE (FORMERLY CALLED JAVITS-WAGNER-O'DAY ACT ("JWOD")) ENTITY SUPPORT EVALUATION (DEC1997) DLAD

52.215-9006 ABILITYONE (FORMERLY CALLED ABILITYONE (FORMERLY CALLED JAVITS-WAGNER-O'DAY ACT ("JWOD")) ENTITY SUPPORT—CONTRACTOR (DEC 1997) DLAD

13. The Capability Assessment Plan (CAP) language on surge was revised to the "first 45 days" from the "first 15 days" throughout the solicitation.

14. Evaluation Factor I, Experience/Past Performance, Sub-factor A, Experience. "on the battlefield" has been removed from paragraph one.

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Section II

1. Q. In reference to pages 165 of the Solicitation (including Amendment 1).
Shouldn't [the surge period in the Capability Assessment Plan (CAP)] it be the first 45 days and not 15 days?
A. Yes, the surge is defined as the first 45 days. This was corrected via this amendment.
2. Q. Which sites currently require drink dispensers?
A. The number of facilities that have drink dispensers changes frequently, therefore providing a number would be of no benefit.
3. Q. How can offerors present an invoice if no product is currently procured as required by this solicitation method of procurement and therefore prices will not be reflected as FOB origin?
A. Per Amendment 2, the preference of invoices over quotes is no longer applicable and the offeror can provide quotes with the required elements per the pricing requirements.
4. Q. Deadline is currently March 2nd. Will it be postponed? If so, until when?
A. The solicitation closing date has been extended until April 2nd.
5. Q. On slide #37, what is the difference b/w Field #6 and #8?
A. The 6th field is if the item is customarily carried in the offeror's inventory while the 8th field indicates whether the offeror is offering an invoice or quote in the business proposal.
6. Q. Pg 96 Non-Appropriated funds – Air Force Items – Does Brinker Intl. set the product price?
A. Yes, Brinker Intl sets the product price.
7. Q. Pg 164-165 of the solicitation – it references an Excel document titled "Distribution Category Pricing."
A. This has been included via this amendment and is labeled Attachment 5. The spreadsheet is available on the Fed Biz Opps website or can be requested via email from Teresa.Jimenez@dla.mil and/or Tina.Frederico@dla.mil.
8. Q. There are some spreadsheet formulas missing on the "Central Asia Price Proposal" sheet. Could these be added and a new "Schedule of Items" be redistributed?
A. A new file was sent out to the persons who requested the initial file.
9. Q. Does the offeror need to enter any information into columns AG-AJ on the price proposal?
A. Yes, only if the offeror is not offering the exact match item.
10. Q. Please define the word manufacturer. Would Sysco label items be considered FOB/Manufacturer? Texas Best? Ocean Direct?
A. Please refer back to the Product Price definition in the solicitation, specifically, Section E, as stated below.
Upon request, for existing catalog items, for any new items being added to the catalog and for price redeterminations to existing catalog items, the Product Price shall be supported with invoice or quote documentation directly from the

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manufacturer or grower on their letterhead. Where the address of the Brand Name Owner differs from the location where the product is actually manufactured, this documentation from the Brand Name Owner must identify both addresses and the product price, as identified above. If exception 1 applies, the Product Price shall be supported with invoice or quote documentation directly from the point of purchase in the foreign country. The documentation must be fully traceable to the country of origin and the airfreight charge must be separately stated on the invoice. When the airfreight charge covers items other than those provided for by this contract, a separate subtotal reflecting the pro rata share of the total airfreight that is attributed to the product price of the items that are covered by this contract shall be stated as well. If exception 3 applies, the Product Price shall be supported with invoice or quote documentation directly from the nonprofit agency participating in the program operated by the Committee for Purchase From People Who Are Blind or Severely Disabled (the Committee) under the Javis-Wagner-O'Day Act (JWOD) (41 U.S.C 46-48c). Early payment discount terms shall be specified on all invoices and/or quotes. Documents not in English will be accompanied by a copy translated into English and documents not denominated in American dollars will include a copy converted to American dollars at the exchange rate specified using the FXConverter on the OANDA Currency Site (<http://www.oanda.com>) as of the close of business on the effective date of the document.

11. Q. In reference to pages 81 of the Solicitation (including Amendment 1)

Who will bear the costs if the PV accepts the FF&V from supplier and then the Customer(s) rejects them? The PV? DSCP/E? Customer(s)? Will FF&V deliveries only be added to scheduled deliveries or will the PV have to make additional deliveries for FF&V?

A. If the need to deliver FF&V as GFM arises, customer rejections will be handled between DSCPE, the customer and the supplier. The cost will not be borne by the PV. FF&V deliveries will be coordinated so that product can be shipped with scheduled PV deliveries.

12. Q. In reference to pages 161, point (1) of the Solicitation (including Amendment 1)

Paragraph mentions "...discuss the extent experience AND past performance...". Is this correct?

A. Yes and via this amendment "on the battlefield" has been deleted.

13. Q. In reference to pages 164, point 2, of the Solicitation (including Amendment 1)

Please clarify "....flowchart of your firm's distribution channel...." for each category of item?

A. The offeror must show how the product will be procured and the distribution channel it will take to arrive OCONUS.

14. Q. In reference to pages 165, point (5) of the Solicitation (including Amendment 1)

Please clarify "...description of logistical technology with regard to asset visibility".

A. The offeror must describe the technology used to provide the Government total asset visibility.

15. Q. In reference to pages 170 of the Solicitation (including Amendment 1).

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Which country CPI is being used?

A. The US CPI.

16. Q. In reference to pages 172, part B Item/Product Price, point 2.a.3 of the Solicitation (including Amendment 1) and in the rest of the solicitation it mentions that the quantities are for the whole period (i.e. base + 2 options). What is correct? 2 years? or 5 years?

A. The schedule of item quantities are based on the based period of two (2) years.

17. Q. To clarify, on page 167 of the solicitation, it states that "the manufacturer's invoices should reflect the prices effective within thirty (30) days prior to the solicitation issue date. If invoices are not available for that time period, the most recent invoices shall be submitted reflecting the last purchase made for the item." From page 3, the proposal states that "The invoice or supplier's quote that you submit must be dated within two weeks of submission of your proposal." Please clarify which statement regarding invoices is correct.

A. Invoices can be from November 30, 2008 through January 30, 2009. The emphasis is to provide recent invoices to validate the offeror's price.

18. Q. Regarding page 54 of the solicitation, "For Zone III, the PV will be responsible for purchasing and delivering these items from a local approved source". Can DSCP provide the list of local approved sources?

A. Yes, please request via email to Teresa.Jimenez@dla.mil and Tina.Frederico@dla.mil.

19. Q. On page 156 of the solicitation under Subfactor A, Distribution and Resources it states: "The offeror must provide total warehouse capacity (dry, chill and freeze) and firm's open warehouse capacity (include pick slot and reserve slot) and facility design capacity on annual basis by dollar value as it relates to the volume of this contract." Please clarify what is meant by the phrase "facility design capacity on an annual basis by dollar value as it relates to the volume of this contract."

A. The offeror must describe the annual warehouse design capacity that will be allotted to this contract.

20. Q. Question by John as to whether the Minimum of 15% was reasonable/realistic and would any consideration be put to it being raised?

A. It was explained that DSCP does consider 15% to be a reasonable percentage at this time and that the risk should be incorporated into the offer made in the proposals.

21. Q. Verbal comment regarding currency fluctuation clause possibly being incorporated.

A. The answer to this is No and DSCP is not in a position to make such decisions on future currency fluctuations. As a result the offeror should include this risk in the distribution fees that are offered.

22. Q. Question on the Pre-Proposal Conference slide 42 concerning the date required on invoices and quotes.

A. Invoices can be from November 30, 2008 through January 30, 2009. The emphasis is to recent invoices to validate the offeror's price.

23. Q. Question was asked on whether the closing date for the solicitation will be extended?

A. The closing date of the solicitation has been extended to April 2, 2009.

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24. Q. Will DSCP issue an addendum spreadsheet to the Schedule of Items workbook for the offeror to submit Category/Distribution Prices as part of Attachment 1 as referenced in the RFP (page 164)?

A. Please refer to the answer to question number 7.

25. Q. Is there a specific date/time period that the manufacturer's quotes have to be valid?

A. Yes, the offeror must agree to hold the prices in its offer firm for the minimum of 120 calendar days from the date specified for receipt of offers.

26. Q. Reference solicitation page 152, Section I, General Information, it states that: "For offerors submitting proposals on more than one zone, technical information pertaining to each zone should be clearly labeled as to the vendor and zone." Questions: If an offeror intends to bid an alternate proposal combining two or more of the zones (for example, Zone I + II), is it a requirement that the offeror bid each of those separately to provide a basis of comparison? Or can the offeror bid only one of the Zones and the Alternate (for example, bid only Zone I and an alternate as Zone I + II without bidding a Zone II)?

A. The offeror may bid on one of the Zones and also provide an alternate proposal of combining more than one zones without bidding separately on each individual zone.

27. Q. Regarding page 66 of the solicitation, under Notes it states. "Offerors are advised that there are currently no established DTS routes for Zone III. Therefore, distribution fees offered for Zone III must include the cost of commercial transportation. If/when reliable DTS routes become available, distribution fees will be renegotiated with the awardee." Question: For Zone III, DSCP has stated that DTS is not available into Zone III but will be provided to the offeror's OCONUS facility. In the interest of providing a level playing field for all bidders, are there any constraints as to the location of this OCONUS facility. Must it be an established facility which DTS is currently supporting or can the offeror assume DTS will service a location in closer proximity to Zone III (for example, Ukraine)?

A. The answer is – there are no constraints as to where an offeror's OCONUS platform should be. The facility does not need to be determined by current DTS routes. DTS routes will be established as needed.

28. On page 156 of the solicitation, it states to "Include in the discussion your reserve inventory and/or let down control procedures and the level of automation." Please clarify what is meant by "let down control procedures."

A. "Reserve inventory and let down control procedures" refers to the offeror's methods used for the replenishment of the warehouse inventory pick slots.