

AMENDMENT OF SOLICITATION MODIFICATION OF CONTRACT				1. CONTRACT ID CODE	PAGE OF PAGES
2. AMENDMENT/MODIFICATION NO. 0024		3. EFFECTIVE DATE 11 December 2009	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable) 1 8	
6. ISSUED BY CODE DEFENSE SUPPLY CENTER PHILADELPHIA DIRECTORATE OF SUBSISTENCE, BLDG. #6 700 ROBBINS AVENUE PHILADELPHIA, PA 19111-5092 POC: LINDA L. FORD/DSCP-FTAE/215-737-7804		SPM300	7. ADMINISTERED BY (If other than Item 6) CODE		
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code)			<input checked="" type="checkbox"/> 9A. AMENDMENT OF SOLICITATION NO. SPM300-08-R-0061		
			<input checked="" type="checkbox"/> 9B. DATED (SEE ITEM 11) 02 MAY 08		
			10A. MODIFICATION OF CONTRACT/ORDER NO.		
			10B. DATED (SEE ITEM 13)		
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.
Offer 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 1 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 you 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 APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS,
IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.**

<input checked="" type="checkbox"/> 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.)

The details of this amendment are provided on the following pages.

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	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA BY _____	16C. DATE SIGNED
<i>(Signature of person authorized to sign)</i>		<i>(Signature of Contracting Officer)</i>	

The following revisions apply to the solicitation:

1. On page 31, add the following clause to the bottom of the page and delete the following statement "THIS PAGE IS BLANK INTENTIONALLY" and page 32 for the clause to continue onto pages 32 and 33.

DLAD 52.216-9065 ECONOMIC PRICE ADJUSTMENT - ACTUAL MATERIAL COSTS FOR SUBSISTENCE PRODUCT PRICE BUSINESS MODEL (NOV 2009)

(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 fixed price per unit charged to DSCP for a product delivered to DSCP's customers. The Contract Unit Price consists of two components: Product 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.

(2) "Product Price" is the most recent DSCP Manufacturer's Price Agreement (MPA) price or the most recent manufacture, grower or private label holder commercial price per unit to the Contractor, exclusive of standard freight. The Product Price shall be based on FOB Origin/Point of Manufacturer. Product Price shall exclude all costs that are to be covered in the Distribution Price, including but not limited to, all transportation, broker and dealer costs and fees, projected general and administrative expenses, COR and VETCOM office space (where applicable), workers compensation insurance as related the Defense Base Act (DBA), the Longshore and Harbor Workers compensation Act, overhead, packaging/marketing/labeling costs, all Non Point of Manufacturer fees, palletization, procurement fees, storage, consolidation, distribution work and pallets and ice for Airlifts.

Exceptions:

a) Airfreight Charges may be included in the Product price for Fresh Fruits and Vegetables (FF&V) when it is necessary to have product flown in for the exclusive use of this contract when the local market's supply cannot support DSCP Customer requirements.

b) A 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 FOB Origin/Nonprofit Agency.(Prices set in accordance with applicable law (FOB Origin/Nonprofit Agency)

For this contract, the Product Price shall be the contractor's last Product Price through close of business 12:00 P.M. local Philadelphia time on the last Monday of each month for submission not later than 12:00 P.M. local Philadelphia time on the last Monday of each month for updating the following month's Ordering Catalog price. The Product Price shall have any and all Product Allowance subtractions made prior to presenting the Product Price to DSCP.

(3) "Product Allowance" is discounts, rebates, and allowances to be passed on to the Government. 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 designated by the manufacturer, grower or private label holder to be passed on to the Government or to similar commercial customers, shall be passed by the Contractor 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.

(4) "Distribution Price (including normal and premium)" 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 costs of contract performance other than Product Price, including but not limited to, operational costs, overhead and profit, all transportation costs from the Prime Vendor's OCONUS distribution facility to customer locations including routine airlift(where applicable), broker and dealer costs and fees, projected general and administrative expenses, COR and VETCOM office space (where applicable), workers compensation insurance as related the Defense Base Act (DBA), the Longshore and Harbor Workers compensation Act, overhead, packaging/marketing/labeling costs, all Non Point of Manufacturer fees, palletization, procurement, storage, consolidation, distribution work and pallets and ice for Airlifts, and any other elements of Distribution Price not defined in this solicitation. The Distribution price shall remain constant for the entire contract period.

(5) "Ordering Catalog" means the electronic listing of items and their corresponding contract unit prices available for ordering under this contract.

(6) "Ordering Month" means from the Sunday (12:01 AM) of the First full week in a calendar month through the last Saturday (11:59 PM) in that calendar month (Eastern Time ET, standard or daylight as applicable).

(c) PRICE ADJUSTMENTS.

(1) General.

(A) 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 B 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. DSCP 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.

(B) All notices and requests for price changes shall be submitted monthly, no later than 12:00 P.M. local Philadelphia time on the last Monday of each month, to be effective in the following Ordering Month's Ordering Catalog prices. The Contractor shall notify the Contracting Officer of its notice/request in the form of an 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 D 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.

(C) 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.

(D) Price change requests that the Contracting Officer questions or finds to be inconsistent with the requirements of this clause shall not be posted until the Contracting Officer specifically authorizes the posting. If the Contracting Officer does not notify the Contractor by close of business local Philadelphia time on the Thursday immediately following the Monday when price changes are due 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.

(E) Should the Contracting Officer determine or question that 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 Thursday immediately following the Monday when price changes are due. If the Contracting Officer cannot determine or 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 liability to the Government. The Contracting Officer may subsequently remove any such item from the Ordering Catalog if the Contractor does not take the appropriate corrective action. 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.

(F) 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 proposal 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 ----

- (A) Supplies for which the Product Price is not affected by such changes;
- (B) Changes in unit prices other than those in or subsequently added in the Ordering Catalog;
- (C) Changes in the quantities of material; and
- (D) 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 unit price increases for each item under this clause during any contract period shall not exceed 10 percent (%) of the initial Contract unit price in such performance period, except as provided below: (Buyer shall insert the appropriate item price ceiling percentage(s) considering market volatility of each item covered by the contract.)

(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)(B) 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 pending or 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) 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 by this clause.

(h) DISPUTES. Any dispute arising under this clause shall be determined in accordance with the “Disputes” clause of the contract.

2. On page 71, paragraph 2(e), revise the first sentence as follows: Upon request, for existing catalog items, for any new items being added to the catalog and for price adjustments to existing catalog items, the Product Price shall be supported with invoice or quote documentation directly from the manufacturer or grower on their letterhead.

3. On page 73, paragraph (B), revise first sentence as follows: Only the product price component of the contract unit price is subject to adjustment under this acquisition in accordance with the DSCP Manufacturer Pricing Agreement and/or DLAD 52.216-9065 Economic Price Adjustment stated herein.

4. On page 73, paragraph (C), revise second sentence to read as follows: However, for FF&V items only, 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 price adjustment period.

5. On pages 85 and 86, delete paragraph XVI PROSPECTIVE PRICE REDETERMINATION (FARS DEV 2008-01 dated 02 May 08) in its entirety and renumber the remaining paragraphs on pages 86 through 101 from XVII thru XXXI to XVI thru XXX.

6. On page 162, paragraph 8, Submission Requirement, revise factors 1 and 2 to read as follows:

Factor 1 – Aggregate Distribution Price

Factor 2 – Weighted Aggregate Product Price

7. On page 164, delete paragraph B(4), in its entirety and renumber the remaining paragraphs from 5,6,7 to 4,5,6. Also revise the new paragraph B(6) as follows:

(6) If “No” to (5) above, explain the difference in brand and/or pack size between the item description and the product offered. Exceptions of any type must be explained.

8. On page 164, paragraph (iii) A. Item/Unit Price, revise the second sentence to read as follows: After 30 days, the prime vendor may be permitted to change the product price of non Manufacturer Pricing Agreements (MPAs) items as offered in the schedule of items and in accordance with the DLAD 52.216-9065, as specified in this solicitation.

9. On page 172, at the bottom of the page, revise the Price Factor as follows:

I. Aggregate Distribution Price

II. Weighted Aggregate Product Price

10. On page 177-178, delete and replace the Price Evaluation Process as follows:

Price Evaluation Process

The Government will evaluate limited pricing data with initial proposals and during discussions, in accordance with FAR 15.4, “Contract Pricing.” The Government will evaluate the offeror’s pricing on the items listed in the Schedule of Items. Included in this process is the evaluation of options. The following business proposal/pricing factors will be used.

FACTOR I. Aggregate Distribution Price

Factor I, Aggregate Distribution Price, is obtained by multiplying each distribution price by its estimated quantity, and totaling the results for all distribution prices, normal and premium, for the base and option year periods.

FACTOR II. Weighted Aggregate Product Price

Factor II, Weighted Aggregate Product Pricing is obtained by multiplying each product price for the base and option year periods by its respective estimated quantity and totaling the results, and then multiplying the resulting number by 0.30, for evaluation purposes only.

Total Evaluated Price

The Aggregate Distribution Price (Factor 1) is more important than Aggregate Product Prices (Factor II) since distribution prices are fixed throughout the life of the contract. Therefore, it is considered more important than Product Prices that may be adjusted throughout the life of the contract, in accordance with economic price adjustment provisions. Thus, for evaluation purposes only, the aggregate product price is reduced, or weighted, as stated in discussion of Factor II above. The aggregate distribution and weighted aggregate product prices will be added to obtain a total evaluated price. This evaluated price will be used to determine the lowest overall cost to the Government, and will be used for evaluation purposes only. Even though aggregate prices will be used as the evaluation factors for the Business Proposals, individual line items will be evaluated and individual outliers will be identified and reviewed to determine if offered prices are unbalanced. Offers may be rejected if they lack balance. The information requested on the "Schedule of Items," attachment 2 and attachment 4 (to include sheets a, b, and c), will be evaluated using price analysis techniques. Quotes and/or invoices will be individually evaluated in accordance with the submission requirements.

If MPA items are added to this solicitation via solicitation amendment, the fixed MPA item product price will be used for evaluation of the market basket schedule of items for all offerors. The offerors will not be required to have commercial agreements in place with the MPA holders at this time. The Contracting Officer will automatically substitute each offerors market basket product price with the fixed MPA product price despite whether the offered product price is higher or lower than the fixed MPA product price.

To be acceptable, the firm's price proposal must be complete, balanced, and reasonable. Proposals that are unrealistic in terms of technical or schedule commitments, or unrealistically low in price, will be considered indicative of a lack of understanding of the solicitation requirements.

To insure an objective price evaluation, the pricing of all offerors are to be based on the exact item in our schedule of items. When offerors qualify the salient characteristics of an item or items in the schedule and or when the government detects (through a relative pricing review and or a review of supporting invoices or quotes) that the pricing proposed is on an item which differs from the schedule of items description then the government reserves the right to employ remedies such as:

(a) Where an insignificant number of items differ from the schedule of item descriptions, those items will be eliminated from the evaluation of all offerors;

(b) Single serve items with small quantity differences may be evaluated without adjustment, as any additional quantity provides no additional value; and

(c) Larger, generally case size items, with quantity differences may be evaluated on a per pound or similar basis.

(d) After discussions are held, if a significant number of items differ from the schedule of item descriptions then the offeror may be eliminated from the competitive range.

11. On page 179, revise FAR 52.216-1 as follows:

The Government contemplates award of a firm fixed price/fixed price with economic price adjustment contract resulting from this solicitation.