

AUTHORIZED FOR LOCAL REPRODUCTION
PREVIOUS EDITION IS NOT USABLE

STANDARD FORM 1449 (REV. 2/2012)
Prescribed by GSA - FAR (48 CFR) 53.212

19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT

32a. QUANTITY IN COLUMN 21 HAS BEEN

☐ RECEIVED ☐ INSPECTED ☐ ACCEPTED, AND CONFORMS TO THE CONTRACT, EXCEPT AS NOTED: _____

32b. SIGNATURE OF AUTHORIZED GOVERNMENT REPRESENTATIVE		32c. DATE	32d. PRINTED NAME AND TITLE OF AUTHORIZED GOVERNMENT REPRESENTATIVE	
32e. MAILING ADDRESS OF AUTHORIZED GOVERNMENT REPRESENTATIVE			32f. TELEPHONE NUMBER OF AUTHORIZED GOVERNMENT REPRESENTATIVE	
			32g. E-MAIL OF AUTHORIZED GOVERNMENT REPRESENTATIVE	
33. SHIP NUMBER	34. VOUCHER NUMBER	35. AMOUNT VERIFIED CORRECT FOR	36. PAYMENT	37. CHECK NUMBER
<input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL			<input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL	
38. S/R ACCOUNT NO.	39. S/R VOUCHER NUMBER	40. PAID BY		
41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT		42a. RECEIVED BY (<i>Print</i>)		
41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER		42b. RECEIVED AT (<i>Location</i>)		
		42c. DATE REC'D (YY/MM/DD)		42d. TOTAL CONTAINERS

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Standard Element has no Title

SOW

The awardee will be required to have a computer system capable of accepting delivery orders and processing Electronic Data Interchange (EDI) transactions. This contract will require the contractor to have electronic commerce/electronic data interchange EC/EDI capabilities.

All contractors who choose to conduct business with the Department of Defense must now be registered in the System of Award Management (SAM) database. In addition, we encourage all vendors who receive contract awards as a result of this solicitation to access the "Dynamic Small Business Search" feature of SAM to identify potential suppliers and teaming partners for this initiative. You may go to the System of Award Management at www.sam.gov and click on the "Dynamic Small Business Search" button. When making your procurement decisions we encourage your consideration of local business as a means to nurture small business and local economies.

All contractors who receive awards as a result of this initiative are encouraged to utilize the SBA SUBNet database to assist them in further identifying additional small business sources of supply. Vendors may post notices of sources sought for teaming partners and subcontractors on future contracts. Small business can review this web site to identify opportunities in their area of expertise. You may access the SBA PRONet database through the SBA Website at www.sba.gov.

Included in their proposal submission, offerors are required to substantiate Delivered Prices for all items in the Schedule of Items, with invoices / quotes for all groups offered on. See 52.212-1 Addendum "Proposal Submission Information", para. D, item 2, for more information.

CONTRACTOR CODE OF BUSINESS ETHICS (JUNE 2020)

FAR Part 3.1004(a) requires all government contractors to conduct themselves with the highest degree of integrity and honesty. Contractors should have a written code of business ethics and conduct within thirty days of award. To promote compliance with such code of business ethics and conduct, contractors should have an employee business ethics and compliance training program that facilitates timely discovery and disclosure of improper conduct in connection with government contracts and ensures corrective measures are promptly instituted and carried out. A contractor may be suspended and/or debarred for knowing failure by a principal to timely disclose to the Government, in connection with the award, performance, or closeout of a Government contract performed by the contractor or a subcontract awarded there under, credible evidence of a violation of federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in title 18 of the United States Code or a violation of the False Claims Act. (31 U.S.C. 3729-3733).

This solicitation and resulting contract includes FAR clause 52.203-13 - CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT; the contractor shall comply with the terms of the clause and have a written code of business ethics and conduct; exercise due diligence to prevent and detect criminal conduct; promote ethical conduct and a commitment to compliance with the law within their organization; and timely report any violations of federal criminal law involving fraud, conflict of interest, bribery or gratuity violations found in title 18 of the United States Code or any violations of the False Claims Act. (31 U.S.C. 3729-3733). When FAR 52.203-13 is included in the contract, contractors must provide a copy of its written code of business ethics and conduct to the contracting officer upon request by the contracting officer.

RAPID GATE, DEFENSE BIOMETRIC IDENTIFICATION SYSTEM (DBIDS) REQUIREMENT and/or OTHER SECURITY PROGRAMS

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Many bases may require enrollment in a particular system for base security such as RapidGate, the Defense Biometric Identification System (DBIDS), or other similar system(s). Such systems manage access to Department of Defense (DoD) installations, and will not allow entry without clearance. During the contract start-up/ implementation period, the Contractor must contact all customer locations to determine whether enrollment in RapidGate, DBIDS, or another security program is required for access to each location. If RapidGate, DBIDS, or other security enrollment is required, the Contractor must take all necessary steps to obtain this in time for the start of performance under this contract. Failure to have clearance may result in a vendor being turned away from the base and being unable to complete delivery. The Contractor is responsible for any costs associated with RapidGate, DBIDS, and/or other security program enrollment and must ensure that a properly enrolled driver is available for all deliveries. We currently estimate that RapidGate or DBIDS enrollment will cost about \$250 per company and \$200 per enrolled employee for 1 year of access to multiple locations, but the cost of RapidGate, DBIDS or other security enrollment may vary, so the Contractor should contact the specific security system contractor to determine its own costs. If more than one driver is required, enrollment must be obtained for each driver. Note that enrollment can take several weeks, so an awardee that is not already enrolled must begin enrollment at the time of award notification at the latest. If difficulty or delay in enrollment is encountered during the start-up/implementation period, the Contractor MUST contact the specific security system contractor and/or the Security Officer at the applicable customer locations to resolve any issues with processing enrollment so that the Contractor will be able to deliver as required.

For additional information on current base security systems including RapidGate and DBIDS, including enrollment instructions, please visit their websites at www.rapidgate.com and <http://dbids.dmdc.mil/DBIDS> . .

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CHECKLIST - DID YOU REMEMBER TO ?????

- ☐ Fill in Block 17a, of 1449?
- ☐ Fill in Block 17A. Continued, on the bottom of page 3?
- ☐ ☐ Indicate remittance address and DUNS Number block 17B. Continued, on the bottom of page 3, if different, in offer?
- ☐ ☐ **Sign** Block 30a, name in Block 30b, and date in Block 30c.?
- ☐ ☐ Sign and return any/all amendments?
- ☐ ☐ Return one (1) **COMPLETE & SIGNED** copy of the solicitation?
- ☐ ☐ Fill out all certifications and representations in solicitation or submit a copy of your firm's representations and certifications from System for Award Management ("SAM") website?
- ☐ ☐ Submit prices for **every item** listed in the Schedule of Items (Attachment 1)?
- ☐ ☐ Fill out Vendor Name & CAGE Code for Excel Spreadsheet cell "D2" in Attachment 1 for Groups 1, and 2?
- ☐ ☐ Submit Distribution Prices for Tier 1 Excel Spreadsheet cell "H7", Tier 2 Excel Spreadsheet cell "M7", and Tier 3 Excel Spreadsheet cell "N7" for Attachment 1 for Groups 1 and 2?
- ☐ ☐ Checked box stating you intend or do not intend to use one or more facilities as a place of performance under Federal Acquisition Regulation ("FAR") 52.215-6 Place of Performance?
- ☐ ☐ In accordance with the clause above, submit a separate list of places of performance, i.e. distribution centers / warehouse locations that will directly support the proposed customers? Warehouses that function as backups should be designated as such.
- ☐ ☐ Submit proof of a valid / current Perishable Agricultural Commodities Act (PACA) License?
- ☐ ☐ Submit a valid USDA Good Agricultural Practices ("GAP") and Good Handling Practices ("GHP") or independent third-party certifying company audit inspection report(s) / certificate for each place of performance?
- ☐ ☐ Submit required information concerning financial arrangements under which you receive money from your Suppliers. I.e. manufacturer, grower, private label holder, or redistributor (when the Redistributor Exception applies)? Note: a negative response is required. For more information, see 52.212-1, "Proposal Submission Information", para G.
- ☐ ☐ Submit all documents electronically by emailing to Amanda Qualie, Amanda.Quaile@dla.mil; and Vincent Key; Vincent.Key@dla.mil or through the DLA Bid Board System ("DIBBS")?

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CAUTION: The above checklist is for convenience purposes only. This list is not intended to be all-inclusive. Offerors are responsible for carefully reviewing the entire Solicitation to ensure proper submission of all required information.

STATEMENT OF WORK

I. INTRODUCTION

- A. Defense Logistics Agency ("DLA") - Troop Support ("Agency") intends to enter into an indefinite quantity contract(s) ("IQC") with a commercial firm(s) to supply a full-line of United States Department of Agriculture ("USDA") Grade Number 1 or better quality fresh fruits and vegetables ("FF&V") and Shell Eggs (if required) products to Department of Defense ("DoD", or "Troop") and USDA ("School") customers in the Kansas and Missouri Zone. Specific quality requirements per item are included in the Schedule of Items (Attachment 1). Failure to propose the specified quality requirement per item as identified in Attachment 1 may render an offeror's proposal technically unacceptable. If the item's description in Attachment 1 does not provide a specific quality grade, the minimum quality grade that is required to meet the terms of this Solicitation is USDA Grade Number 1.

A successful offeror(s) will be required to source, purchase, store, and deliver a variety of FF&V items to DLA Troop Support customers on an ongoing basis, while at the same time maintaining acceptable fill rates, levels of customer service, and product quality. Therefore, an offeror must currently possess the physical, logistical, and financial resources to serve as a commercial distributor of a variety of FF&V items. It is neither sufficient nor acceptable for an offeror to be a third-party logistics ("3PL") company (i.e. a company that does not intend to serve as the FF&V supplier but instead intends to subcontract out the majority of aspects required by the contract, including but not limited to ordering, warehousing, distribution, etc.). By offering, an offeror affirms its status as a current and functioning commercial distributor of FF&V items. In order to determine whether an offeror meets the technical requirement of being a current and functioning commercial FF&V distributor, the Contracting Officer will require an offeror to provide its current, valid Perishable Agricultural Commodities Act ("PACA") license. In addition, the Contracting Officer will require an offeror to submit a valid Good Agricultural Practices ("GAP")/Good Handling Practices ("GHP") or independent third-party certifying company audit inspection report(s) / certificate for each place of performance identified in the offeror's proposal. The audit report(s) must demonstrate that a passing score(s) was/were received. Please note that a request for the aforementioned information by the Contracting Officer will be used to make a determination of whether or not the offeror meets the technical requirement of being a current and functioning commercial distributor of FF&V. This information is not being sought to determine an offeror's likelihood of success in performing the contract as would be the case in a responsibility analysis.

- B. The aforementioned zone is comprised of (2) Groups in the Kansas and Missouri Zone. Group 1 consists of DoD Troop (Kansas) customers; Group 2 consists of Non-DoD School and Reservations (Kansas and Missouri) customers.. The Agency intends to award one contract per group. Offerors may submit a proposal for both Groups. The offeror must support all of the customers in the Group for which they make an offer. Offerors are required to propose and properly substantiate pricing on all items in the Schedule of Items for each Group on which it offers. Failure to do so may result in their proposal being deemed technically unacceptable and therefore excluded from further consideration for award. Because the Contracting Officer is not obligated to initiate negotiations, each offeror shall submit their most competitive proposal for each Group they have chosen to propose on. Said proposal shall be responsive to all of the Solicitation's requirements and free from any deficiencies.
- C. This solicitation is being issued as 100% Small Business Set-Aside under full and open competition procedures. North American Industry Classification System (NAICS) is 311991 and size standard is 500. A waiver of the Non-Manufacturer rule has not been requested for this acquisition because it is an acquisition for multiple items. In accordance with 13 CFR 121.406(d)(1), if at least 50% of the estimated contract value of an acquisition for multiple items is composed of items that are manufactured by small business concerns, then a waiver of the Non-Manufacturer rule is not required. As such, for this acquisition, it is expected that items comprising at least 50% of the contract value will be manufactured by small business concerns. The contracting officer

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must be immediately notified if it appears as though this requirement will not be met.

- D. This solicitation utilizes the Lowest Price Technically Acceptable ("LPTA") Source Selection Procedure. It contains three tier periods. The length of the contract is 54 months (4.5 years) including all tiers. As part of this selection process, the Agency will incorporate a weighting factor in its evaluation. Said factor will only be applied for evaluation purposes to the Aggregate Distribution Price. Please refer to the Addendum to FAR 52.212-2 contained in this Solicitation for additional information about how each offeror's price, and price components, will be evaluated.
- E. Any award resulting from this Solicitation will be an IQC that is fixed in price subject to the applicable Economic Price Adjustment ("EPA") provision. For additional information regarding the EPA, refer to Section VII of the Solicitation. An IQC will provide for an indefinite quantity, within stated limits, of specific supplies or services to be furnished during a fixed period, with deliveries to be scheduled by placing orders with the contractor (reference FAR 16.504(a)).

II. EFFECTIVE PERIOD OF CONTRACT

- A. Any resulting contract from this Solicitation will not exceed 4.5 years commencing on the effective date of the contract. This includes the 90 day implementation period.

III. TIERS

- A. The 4.5 year contract period is divided into three (3) 18-month tier periods (hereafter individually referred to as "Tiers"). Each Tier affords offerors an opportunity to provide different Distribution Prices, as defined in the EPA provision of the Solicitation, per Tier. Each Distribution Price offered must be expressed as a dollar value (up to two decimal places) and NOT a percentage. If an offeror submits the latter, it will NOT be accepted. If an offeror fails to provide a Distribution Price for any of the Tiers, the Contracting Officer will assume that it is the offeror's intention that no change in Distribution Price was meant after the most recent preceding tier period that included a Distribution Price. For instance, if an offeror proposes a Distribution Price for Tier 1 of \$3.00 and fails to propose anything for Tier 2, the Contracting Officer will interpret that omission as meaning that the \$3.00 Distribution Price pertains to both Tiers.
- B. Although different distribution prices may be offered for each tiered period, the distribution prices for each tiered period will be firm-fixed at the time of award. Contract deliveries may fall outside of the tier effective periods (e.g., an order placed during Tier 1 may be delivered during Tier 2). Prices will be based on the time an order is placed, not when an order is delivered. For example, if an order is placed during Tier 1, but delivery is made during Tier 2, then the prices in effect for that order will be the Tier 1 prices.

IV. ESTIMATED DOLLAR VALUE / GUARANTEED MINIMUM / MAXIMUM

- A. The following chart includes the 18-month estimated dollar value for Tier 1 for each Group, and the overall 4.5-year period, along with the 10% and 300% guaranteed minimum and contract maximum values, respectively. Though the figures in the first two columns are based on estimates, the guaranteed minimum and the contract maximum are both fixed firm dollar amounts. The guaranteed minimum is 10% of the first year (12 months) estimated dollar value and the contract maximum is 300% of the 4.5 year estimate.
- B. **NOTE:** The guaranteed minimum, per group, which is shown in the "Guaranteed Minimum" column below, constitutes the Agency's full legal obligation as to its ordering requirements for that group. The guaranteed minimum covers the entire contract term (inclusive of all tiers) and, once this obligation is met, there is no further ordering obligation on the part of the Agency

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regardless of what tier period said obligation is met within. If multiple groups are awarded under the contract, the aggregate guaranteed minimum and aggregate contract maximum dollar values for those groups apply to the entire contract, and not on a per group basis.

	18 Month Estimate (1st Tier)	4.5 Year Estimated (Total Including all Tiers)	Guaranteed Minimum	300% Max (4.5 Years)
States of Kansas and Missouri Zone				
Group 1- Troops	\$ 1,923,600.00	\$ 5,770,800.00	\$ 128,240.00	\$ 17,312,400.00
Group 2- Schools and Reervations	\$ 7,869,600.00	\$ 23,608,800.00	\$ 524,640.00	\$ 70,826,400.00
Total	\$ 9,793,200.00	\$ 29,379,600.00	\$ 652,880.00	\$ 88,138,800.00

The term "estimate" refers to the Agency's good faith estimate of the requirement for the specific tier periods stated.

V. CONTRACT START-UP PERIOD

- A. For this section and all sections of the Statement of Work hereafter, the term "day or "days" is defined as "calendar days" unless otherwise noted. After an award is made, the Contractor (also referred to as the Awardee) will have up to 90 days to take steps to implement its new contract prior to initial ordering/delivery. Within 15 calendar days after the award is made, the Contractor shall submit a proposed implementation schedule to the Contracting Officer that details all of the necessary steps that are required to ensure proper contract performance. This may include but is not limited to catalog/ordering/invoice testing (STORES and/or FFAVORS), sourcing new items, finalize delivery schedule per customer location, etc. Up to an additional 75 days will be granted for actual completion of the proposed schedule. No more than 90 days after award, however, will be given to complete the schedule and have a fully functional distribution account in place for all customers covered under the contract(s). The timeline for the "start-up" period, as described above, is included in the first 18-month Tier 1 period.

VI. ELECTRONIC ORDERING CATALOGS

An offeror that receives an award will be required to maintain electronic catalogs that list all items available to the customers covered under this solicitation. These catalogs will be either Subsistence Total Order and Receipt Electronic System (STORES) (for Troop contracts) or Fresh Fruits and Vegetables Order Receipt System (FFAVORS) (for School contracts). Each item in the catalog shall contain the corresponding national or local stock number (as appropriate), Government item description, packaging characteristics, unit of issue, and unit price.

A. Catalog Maintenance**1. New Items**

- (a) Prior to commencement of the first order, DLA Troop Support, its customers, and the Contractor will collaborate to identify items not found in the solicited Schedule of Items that will be required to be added to the ordering catalog. This effort is necessary to update the catalog with items that were not required previously due to seasonality and other contingent circumstances unknown to the Contracting Officer at the time of solicitation.

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Neither a Contractor nor customers are permitted to add new items to the catalog without initiating a new item request to the Contracting Officer, which requires a separate fair and reasonable price analysis per item.

- (b) If a customer seeks to order an FF&V item that is not a part of the catalog after the customers' ordering period commences (i.e. post "start-up" period), the Contractor will be afforded a maximum of 20 days to source the item, obtain a stock number from the Agency (in the event that one does not already exist), and add the item to the ordering catalog via an 832 catalog transaction. The final step prior to the item being "live" on the catalog is for the Contracting Officer to determine the item's price "fair and reasonable." Once this is complete, the item should remain a constant within the contractor's inventory, subject to limited seasonal and other availability issues. When requesting all item approvals (including new additions and/or changes to an existing item, such as pack size, etc.) with the Contracting Officer, the Contractor shall use the "Request for New Item" Form (Attachment 2). This form is mandatory and without it, no new items or changes to existing items will be processed by the Contracting Officer.
- (c) Upon receiving the award, it is expected that the Contractor assume the responsibility of introducing new produce items to the customers, as well as showing cost-effective alternatives to their current choices. However, the requirements will ultimately be determined by the customer(s) and added to the ordering catalog by the Contracting Officer per the process outlined above.
- (d) STORES Vendor Reconciliation Tool, the contractor would be responsible for using the Recon Tool. In an effort to improve the payment process, Contractors are required to view what the customer has or has not receipted via the DLA Troop Support STORES website: https://www.stores.dla.mil/stores_web/Admin_Logon.aspx. The Contractor will have access to "un-reconciled" information, i.e., the invoice does not match the receipt because of the quantity and/or price discrepancy or because the customer has not posted a receipt. Both invoice information and receipt information will be available for review on the website by the Contractor. While the Contractor will not have the capability to update customer receipt information, update capability will be available for un-reconciled invoice information for 120 days. It is the Contractor's responsibility to ensure accurate invoices.

FFAVORS Vendor Invoicing Tool, the contractor would be responsible for this invoicing tool. In an effort to improve the payment process, Contractors are required to view what the customer has or has not receipted via the USDA FFAVORS website: <http://www.fns.usda.gov/fdd/fresh-fruits-and-vegetables-order-receipt-system-ffavors>. The Contractor will have access to "un-reconciled" information, i.e., the invoice does not match the receipt because of the quantity and/or price discrepancy or because the customer has not posted a receipt. Both invoice information and receipt information will be available for review on the website by the Contractor. It is the Contractor's responsibility to ensure accurate invoices.

2. Catalog Pricing

- (a) Schedule of Items Pricing: Items priced in the Schedule of Items (see Attachment 1) will be included in the ordering catalog following award. Schedule of Items will be determined fair and reasonable prior to award. The final proposed price for each item in the Schedule of Items will be fixed as the catalog price during the first two weeks of customer ordering.
- (b) Contractor-Requested Catalog Price Changes: Upon award, all items included in the Solicitation's Schedule of Items that ultimately are included in the ordering catalogs have been deemed "fair and reasonable" from a pricing standpoint by the Contracting Officer. No further analysis is necessary with regard to those prices until said prices are subject to change per a request by the Contractor under the terms of the EPA provision. In accordance with said provision, a Contractor is permitted to submit a bi-weekly adjustment request for any items found on the catalog when consistent with actual price changes of said items encountered by the Contractor as reflected in the commercial market. When such a request occurs, the Contracting Officer is

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required to make an entirely new "fair and reasonable" determination of that item's new requested price. Prices are to be adjusted downward or upward, as appropriate, according to "last receipt" price, as defined under the EPA terms of this solicitation. If the new requested price cannot be found "fair and reasonable" by the Contracting Officer, the last approved price will remain effective for purposes of the ordering catalog and the Contractor shall continue support of that item(s) for Agency customers the following two-week period and beyond until a new "fair and reasonable" price is approved. The Contracting Officer's failure to approve a Contractor's request for a bi-weekly adjustment of a price will NOT result in the automatic removal of the corresponding item from the following ordering period's ordering catalog. In a circumstance where an item's price is "held over" from a prior two-week period, having not been adjusted due to the Contracting Officer's rejection of a subsequent bi-weekly price adjustment request (i.e. newly proposed price cannot be determined "fair and reasonable"), it is expected that the terms of the EPA provision continue to be strictly adhered to. It is unacceptable, and a breach of said terms, if a Contractor uses a "held over" price to overcharge the Government at a point when that price exceeds the item's true price as paid by the Contractor in its business, which reflects commercial market conditions for that item. Therefore, in the "held over" scenario as described above as well as all scenarios encountered during contract performance, price decreases are expected when and where applicable. Please note that the Contracting Officer has wide discretion in managing the above-described processes and resolving any resulting issues.

- (c) Contractor-Requested Catalog Additions: Before an item is added to the catalog, the Contractor is required to submit to the Contracting Officer the "Request for New Item" Form as previously addressed (see Attachment 2). Said request shall include the stock number, Government item description including the quality grade of the item, proposed unit price with a corresponding supplier invoice or quote (quotes permitted in very limited circumstances as approved by the Contracting Officer; e.g. Contractor never purchased item before or stale prices due to seasonality), and previously agreed upon distribution price. **The request is due by 9:00 A.M. Eastern Time (ET) (standard or daylight as applicable) on the Monday prior to Wednesday's catalog updates. Please note that meeting this deadline does not guarantee that the item's price will be approved as "fair and reasonable" nor does it mean that the Contracting Officer will have been able to complete his/her review of the request prior to the time necessary to incorporate it into the following ordering period's ordering catalog.** The Contracting Officer will review the catalog addition request and upon determining the price fair and reasonable will contact the Contractor to indicate acceptance. The Contractor shall then include the item on the next scheduled Wednesday catalog update after the request is approved. Should the proposed price fail to be determined "fair and reasonable," the Contracting Officer will conduct negotiations with the Contractor. If, after negotiations, the proposed price still cannot be determined "fair and reasonable," the item will not be added to the catalog.
- (d) Pricing Requirements: The Contractor's catalog prices, as awarded, constitute the initial catalog prices. These prices are in effect during the first two ordering weeks (from the first day at 12:00 AM (Eastern Time (ET), standard or daylight as applicable) through 11:59 PM on the 14th day). The prices shall remain in effect for all subsequent ordering periods, except as otherwise adjusted in accordance with the EPA provision.

VII. ECONOMIC PRICE ADJUSTMENT ("EPA") - ACTUAL MATERIAL COSTS FOR SUBSISTENCE FRESH FRUITS & VEGETABLES ("FF&V" or "Produce") AND SHELL EGGS MODEL

A. Warranties. For any items covered by this EPA language, the Contractor warrants that:

1. Contract Unit Price and the components of the Contract Unit Price, i.e. Delivered Price and Distribution Price, shall not include allowances for any portion of the contingency covered by this language; and

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2. Price adjustments requested during the performance of the contract shall be computed in accordance with the provisions of this language.

B. Definitions. As used throughout this language the term:

1. **"Contract Unit Price"** means the total price per unit of a particular item charged to the Government for a product delivered to customers under this contract. The Contract Unit Price consists of two separate and distinct components: 1) Delivered Price, less Rebates/Discounts, and 2) Distribution Price. The unit price sum of these two components shall be rounded up or down to the nearest cent, to determine the Contract Unit Price.

2. **"Delivered Price"**

- (i) "Delivered Price" means the commercial manufacturer, grower, or private label holder price per unit charged to the Contractor, inclusive of standard freight to the Contractor's facility/facilities, for the purchase of a representative quantity of the item as compared to orders under this contract. Delivered Price is the manufacturer, grower, or private label holder price that is input into the Contractor's purchasing system as the starting basis for its pricing to customers prior to applying or deducting any additional costs or expenses, such as distribution, overhead, profit, rebates/discounts, or other costs/expenses stemming from separate financial arrangements. Delivered Price shall be substantiated with an actual invoice paid by the Contractor. In limited circumstances, quotations may be used to substantiate a Delivered Price, but only with specific approval of the Contracting Officer. The Delivered Price shall not include costs to be included in the Distribution Price.

(A) Redistributor Exception:

On a case by case basis, for a specific item or stock keeping unit ("SKU"), a contiguous United States (CONUS) redistributor's most recent commercial price per unit, inclusive of standard freight to the Contractor's facility/facilities to the Contractor of a representative quantity of product as compared to orders under the contract may be used to establish Delivered Price. A redistributor's commercial price may only be used to establish Delivered Price when the redistributor's price for the quantity ordered is equal to or lower than a manufacturer's, grower's, or private label holder's current market price for a representative quantity of product inclusive of rebates/discounts. The Contracting Officer must specifically approve the use of this exception. When seeking approval for the use of this exception, at a minimum, the Contractor must supply invoices from the redistributor. Quotes from the redistributor are unacceptable. Additional supporting documentation (e.g., published price list, manufacturer letter, or similar proof of price comparison) may be required. The determination of whether the supporting documentation offered is sufficient to establish a manufacturer's, grower's, or private label holder's current market price, as well as the decision to permit the use of this exception, rests solely with the Contracting Officer.

3. **"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 component includes all costs associated with the Contractor's performance that are not included in the Delivered Price, including, but not limited to: human resources, insurance, special packaging, overhead, profit, transportation from the Contractor's facility or other place of performance to the end customers, split-case fees, ancillary in-house processing fees, subcontractor costs, etc.

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4. **"Grower"** means the business concern that raises produce for marketing.
5. **"Manufacturer"** mean the business concern that, with its own facilities, performs primary activities of processing or transforming agricultural products into the end item being acquired.
6. **"Ordering Catalog"** means the electronic listing of items and Contract unit prices available for ordering under this contract.
7. **"Ordering Period"** means from Sunday at 12:00 AM (Eastern Time (ET), standard or daylight as applicable) through 11:59 PM on the second Saturday following.(i.e. the 14th day).
8. **"Private Label Holder"** means:
- (i) A manufacturer or grower with whom the Contractor holds an ownership and/or financial interest, or ownership and/or financial interest in a specific item(s) produced by a manufacturer or grower;
 - (ii) An entity holding an intellectual property interest, whether by ownership or license, in the label under which product is being sold in the commercial marketplace; or
 - (iii) An entity holding exclusive marketing and/or sales authority of a product, or one holding property rights in a proprietary product formula.
9. **"Rebates/Discounts"** means all rebates, discounts, product allowances, food show discounts, early payment discounts (other than qualifying early payment discounts as may be defined elsewhere in this contract), and any other rebates, discounts, economic incentives, or similar financial arrangements available at the manufacturer, grower, private label holder, or redistributor level that ultimately reduces the Contractor's price paid for a product supplied under the contract. In accordance with this language as well as other provisions of this contract, and subject to any applicable exceptions, all rebates/discounts shall be passed on to the Government via a reduced catalog price for the item to which the rebates/discounts pertain (i.e. "off invoice"). Any rebates/discounts that cannot be applied as an up-front price reduction must be submitted to the Contracting Officer via check payable to the U.S. Treasury, with an attached itemized listing of all customer purchases by line item, including contract number, call number, purchase order number and contract line item number ("CLIN").
10. **"Redistributor"** means an entity independent of the contractor that operates in the existing commercial marketplace and from which the contractor purchases product for purposes of consolidating quantities and/or obtaining lower delivered prices. Examples may include: brokers, dealers, distributors, and buying groups.
11. **"Standard Freight"** means the published list price or prevailing market rate for transportation of items ordered under this contract from the manufacturer, grower, private label holder, or redistributor (when the Redistributor Exception applies) to the Contractor's facility/facilities. Standard Freight must be documented in an invoice; however, quotes may be an acceptable form of substantiation in limited circumstances and if authorized by the Contracting Officer. Standard freight may include certain ancillary costs associated with transportation which are consistent with commercial practice in the produce industry, including, but are not limited to, pallets, temperature recording devices, Tectrol, etc.
- (i) In the event that the Contractor picks up its own product directly from a manufacturer, grower, private label holder, or redistributor (when the Redistributor Exception applies) on an F.O.B Origin basis, or arranges for

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delivery transportation from a third party source other than the manufacturer, grower, private label holder, or redistributor (when the Redistributor Exception applies), the standard freight cost shall be based on market tariffs/conditions and consistent with prevailing market rates. At no time shall that cost exceed the manufacturer's, grower's, private label holder's, or redistributor's, or such entity's carrier's freight price normally payable by the Contractor for inbound shipments of such products and quantities to the Contractor's facility(ies).

C. Price adjustments.**1. General.**

- (i) All Contract Unit Prices must be fixed and remain unchanged until changed pursuant to this language or other applicable provision of the contract. Only the Delivered Price component of the Contract Unit Price is subject to adjustment under this section. After the first ordering period, if the Contractor's Delivered Price changes for any or all Contract Unit Prices, the Contract Unit Price shall be changed in the next period's ordering catalog upon the Contracting Officer's approval of the Contractor's request, which must be submitted in accordance with paragraph (iii) below, by the same dollar amount of the change in the Delivered Price, subject to the limitations in paragraphs C.2 and D, below. Any price changes approved by the Contracting Officer shall become effective at the beginning of the next ordering period. All ordering catalog unit prices computed in accordance with this section 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 the order is placed, regardless of any changes in the Contract Unit Price occurring before delivery or in any subsequent ordering period.
- (ii) Delivered Prices included in the catalog must equal the Contractor's last receipt price for the item as reflected in an invoice (or quote in limited circumstances) for a representative quantity compared to typical Government purchases. For the purpose of the contract catalog, the "last receipt price" means the price of the product charged on the most recent invoice at the time the price change is requested. For example, if by Wednesday (i. e. the day price change requests are due to the Contracting Officer) the Contractor had recently received two invoices for the product in question, one on Monday and one on Tuesday, then the most recent invoice is the one from Tuesday (assuming it contains a representative quantity as described above). It is important to note that a Delivered Price must in almost all cases be justified using an invoice as described in this paragraph. Use of a quote is only permitted in extremely limited circumstances, such as when an item has not been purchased before by the Contractor or the price of the item is stale due to seasonality and other similar issues. Outside of those limited circumstances, which will be reviewed and approved by the Contracting Officer on a case-by-case basis, a Delivered Price will not be substantiated by using the price of an item that is the latest to arrive at the Contractor's facility but does not yet have an invoice to support it. Ultimately, the invoice (or quote in limited circumstances) justifying the Delivered Price request is subject to review by the Contracting Officer at the time the request is made.
- (iii) Updates to the Delivered Price: All notices and requests for new item Delivered Prices and price changes shall be submitted bi-weekly, no later than 12:00 p.m. (Noon) Eastern Time on Wednesday to be effective in the following ordering period's ordering catalog. Invoices submitted to support price change requests shall also identify all rebates/discounts that will be subtracted from the requested delivered prices when calculating the revised contract unit prices that would go on the catalog. The Contractor shall notify the Contracting Officer of its notice/request in the form of an electronic data interchange ("EDI") 832 transaction set when using STORES or an update to FFAVORS web. 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 EDI

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832/FFAVORS Web price changes in accordance with paragraph (v) below, the price change transaction sets will post in the next ordering period'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 ordering period'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 periods. 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, documentation regarding rebates/discounts, and any other substantiating information from the Contractor and any and all of its suppliers in the supply chain, including the manufacturer, grower, private label holder, or redistributor.
- (v) Price change requests that the Contracting Officer questions or finds to be inconsistent with the requirements of this provision shall not be posted until the Contracting Officer specifically authorizes the posting. If the Contracting Officer does not notify the Contractor by 9:00 a.m. Eastern Time each Friday 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 period. The posting of updated prices in the ordering catalog, calculated in accordance with this section, constitutes a modification to this contract. No further contract modification is required to effect this change. Any changes that post to the ordering catalog do not constitute a waiver of any of the rights delineated elsewhere in the Solicitation, any resulting contract(s), or otherwise by law or regulation.
- (vi) Should the Contracting Officer determine that, or question whether, a price change request contained an erroneous Contract 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 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 9:00 a.m. Eastern Time on Friday. 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 retained on the catalog at the most recent previously-approved price consistent with current market conditions. In the alternative, the Contracting Officer may authorize the removal of an item.
- (vii) In the event of a price change not posting or an ordering catalog Contract Unit Price not computed in accordance with this section, resulting in an incorrectly increased or decreased Contract Unit Price, upon discovery of such occurrence the Contractor shall immediately notify the Contracting Officer in writing and promptly thereafter correct its ordering catalog. In the event of an erroneous price increase in the ordering catalog, the Contractor shall submit a refund, including interest if applicable, for any amounts paid to the Contractor resulting from the erroneous price. In the event of an erroneous price decrease in the ordering catalog, the Contractor may submit a request for an equitable adjustment in the amount of the undercharge for consideration by the Contracting Officer. The request may be entertained 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 will not be entitled to reimbursement if the undercharge was the fault or negligence of the Contractor.

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2. Limitations. All adjustments under this section will 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 Contract Unit Prices that the Contracting Officer determines are computed incorrectly (i.e. not adhering to the Contract Unit Price definition in this provision) and/or increases in Contract Unit Prices that the Contracting Officer determines are not fair and reasonable.

D. Upward ceiling on economic price adjustment. The aggregate of Delivered Price increases for each item under this section during the entire contract period shall not exceed 130% for Department of Defense (DoD) Troop and 140% for United States Department of Agriculture (USDA) School customers, and 100% for United States Department of Agriculture (USDA) Reservations customers 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 language will be required that will exceed the Delivered Price ceiling for any item, the Contractor shall promptly notify the Contracting Officer in writing of the expected increase. In the event that the latest actual market price for an item does result in a Delivered Price that exceeds the allowable ceiling price under the contract, the Contractor shall immediately notify the Contracting Officer in writing or via its EDI 832/FFAVORS Web price change request no later than the time specified in paragraph C.1.(iii), above. With either such notification, the Contractor shall include a revised ceiling that 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. The price change shall be posted for the following period's ordering catalog. If an actual increase in the Delivered Price would raise the price for an item above its current ceiling, and the Contracting Officer and Contractor cannot negotiate a fair and reasonable price below the ceiling or if the Contracting Officer does not issue a contract modification to raise the ceiling, the Contracting Officer may reject the price change and direct that the item be retained on the contract at the last approved price. If the Contracting Officer decides to retain the item, the contractor shall continue to perform with the item at the last approved price. In the alternative, the Contracting Officer may authorize the removal of an item. The decision regarding whether to modify the contract, retain the item, or remove the item rests solely with the Contracting Officer.

E. Downward limitation on economic price adjustments. There is no downward limitation on the aggregated percentage of decreases that may be made under this section.

F. Price Audit. The Contracting Officer may require the Contractor to submit invoices and other documentation from all subcontractors at all tiers and/or all suppliers or persons in the Delivered Price supply chain, up to and including the grower, manufacturer, and/or redistributor, for the purpose of confirming Delivered Prices charged to the Government, as well as to substantiate all rebate/ discounts applicable to orders under the contract. In performing the price audit, the Government shall have the right to examine 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 section and any other terms and conditions of the contract. Such price audits may occur up to twice a year (except as provided for below) 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. In addition to price audits, the Government may conduct additional examinations of records, as required by the Contracting Officer to ensure contract compliance.

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G. Final invoice. The Contractor shall include a statement on the final invoice for each order that the amounts invoiced hereunder have applied all decreases required or authorized by this section.

H. Disputes. Any dispute arising under this section shall be determined in accordance with the "Disputes" clause of the contract.

VIII. REBATES/DISCOUNTS AND PRICE-RELATED PROVISIONS (COMPONENT PRICE MODEL FOR PRODUCE)

A. Terms used in this provision shall have the same definition as those included in Economic Price Adjustment (EPA) language, included in Section VII.

B. Rebates/Discounts

1. All NAPA discounts, food show discounts, early payment discounts (except Qualifying Early Payment discounts discussed herein), and other discounts, rebates, allowances, economic incentives, financial arrangements, or other benefits, which reduce the Contractor's price paid for products supplied under this contract or which are otherwise attributable to products sold under this contract, shall be passed to the Government via a reduced catalog price. Any Rebates/Discounts that cannot be applied as an up-front price reduction must be submitted via check payable to the U.S. Treasury, with an attached itemized listing of all customer purchases by line item, including contract number, call number, purchase order number and contract line item number ("CLIN"). Instructions for identifying discounts, rebates, allowances or other economic incentives or benefits that shall be provided to the Government or retained by the Contractor are set forth in the submission requirements in the Business Proposal/Pricing and in the Management Reports section of the Statement of Work.
2. The Contractor shall employ prevailing commercial methods in the pursuit of discounts, rebates, allowances or other economic incentives or benefits for the Government throughout the period of performance of this contract.
3. The Contractor may retain Qualifying Early Payment discounts that meet the following conditions:
 - (i) The Early Payment discount is an incentive to encourage payment earlier than the normal payment due date;
 - (ii) The Early Payment discount is consistent with commercial practice;
 - (iii) The Early Payment discount is routinely given by the manufacturer, grower, private label holder, or redistributor to their customers, other than the Contractor, at the same discount rate and under the same conditions as provided to the Contractor;
 - (iv) The Early Payment Discount is not established, requested, or negotiated for the purpose of avoiding giving DLA Troop Support a lower cost or application of a rebate/discount resulting in a higher invoice price;
 - (v) The Early Payment discount is no more than 2 percent of the manufacturer's, grower's, private label holder's, or redistributor's invoice and the early payment is required within 10 days to obtain the discount; and
 - (vi) The contractor actually made the required payment within the time period required to receive the discount.
4. The Government may require the contractor to submit invoices and other documentation from all subcontractors (as defined in FAR Part 44.101) and/or any entity in the delivered price supply chain to substantiate or identify any Rebates/Discounts. If the Contracting Officer determines, after reviewing an invoice or other documentation, that a Rebate/Discount should have been, but was not, passed on to the Government, the Government shall be entitled to a refund in the amount of the overcharges, inclusive of interest. If the Contractor believes it erroneously credited a rebate/discount to the Government, Contractor may submit a request for an equitable adjustment for the amount of the undercharge. The request may be entertained if the

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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 will not be entitled to reimbursement if the undercharge was the fault or negligence of the Contractor.

5. The Contracting Officer, and/or authorized representative(s), shall have the right to examine and audit the Contractor's records relevant to pricing under the contract, including records related to the existence and proper accounting of rebates, discounts, etc. The Government may also review/audit the Contractor's electronic purchasing system to confirm that the Delivered Price of a product sold to the Government is accurate.
6. Failure on the part of the Contracting Officer to identify non-compliance with this provision or to challenge the Contractor's erroneous interpretation of this provision shall not constitute waiver or a defense against the Government's entitlement to any of Rebates/Discounts or any other remedies afforded by this section, the contract, or other applicable laws and regulations.

IX. DOMESTIC NON-AVAILABILITY DETERMINATION - FRESH FRUITS AND VEGETABLES

- A. A Class Domestic Non-Availability Determination ("DNAD") for Federal Supply Class 8915, Fresh Fruits and Vegetables (FF&V), dated 16 May 2008 was approved and is in effect for the DLA Troop Support/DLA Produce Long-Term Contracts. This DNAD establishes a limited Berry Amendment waiver to the requirements of DFARS 252.225-7012, Preference for Certain Domestic Commodities, which is applicable to this Solicitation. As a result of the DNAD, non-domestic FF&V may be supplied under this contract when domestic FF&V of satisfactory quality and sufficient quantity cannot be procured as and when needed at U.S. market prices. This determination will remain in effect until these circumstances have changed and the DNAD is formally rescinded.
- B. The DNAD as applied affects resulting contracts supporting Department of Defense customers (i.e. Troops) only.
- C. Notwithstanding this DNAD, the USDA requires that fresh produce supplied via its Federal Entitlement for the USDA School Lunch Program must be from a domestic source. Therefore, the aforementioned DNAD does not impact or negate the Government's requirement for domestic produce in its contracts supporting Non-Department of Defense customers (i.e. Schools).

X. ADDITION OF NEW CUSTOMERS

- A. Adding Customers within the Contract's Geographic Distribution Region/Zone:
 1. After contract award, there may be instances when new customers request support of their fresh produce requirements. Additional DoD and/or Non-DoD federal government customers that request DLA Troop Support produce support may be added to the contract without any new acquisition or competition process, if the customer(s) is/are within the geographic distribution region/zone covered by this contract.
 2. The decision as to whether a potentially new customer is within the contract region or zone and, thus, will be added to the contract without further competition and at the existing contract prices, will be the sole decision of the DLA Troop Support Contracting Officer.
 3. Pursuant to the above, the Contracting Officer will instruct the Contractor to include the customer(s) at the effective contract prices applicable to that distribution zone/region.
- B. Adding Customers outside the Contract's Geographic Distribution Region/Zone:

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1. This provision applies to the following customers:

- (a) A new DoD or Non-DoD federal customer that is deemed by the Contracting Officer to be outside the contract's geographic distribution region/zone.
- (b) An existing DoD or non-DoD federal customer that is deemed by the Contracting Officer to be outside the contract's geographic distribution region/zone but has been previously supported on a separate contract covering a geographic distribution region/zone.

2. The customers described in paragraph B.1., above, and their produce requirements, may be added to any contract resulting from this solicitation as follows:

- (a) In the judgment of the Contracting Officer, the customer(s) at issue is/are located in an area that is considered adjacent or proximal to the geographic distribution region/zone of the resulting contract. In a circumstance where the customer is located in an area that is adjacent or proximal to multiple existing produce contracts, the decision of which contract is most satisfactory to the Government for purposes of adding the customer(s) will be the sole decision of the Contracting Officer, taking into consideration numerous factors, including but not limited to those contained in this provision. Further, to that end, it is the Contracting Officer's sole decision as to which existing contractors available in the aforementioned region/zone (s) will be solicited for the support of the customer(s).

- (i) The Contracting Officer will request distribution price proposals to support the subject new customer(s). Prior to any customer being added to the resulting contract, the Contracting Officer shall determine all proposed prices to be fair and reasonable. To this end, negotiations may be required, in which the same processes and procedures contained within the instant solicitation may be employed.

- (b) In the judgment of the Contracting Officer, the customer(s) at issue is/are not located in an area adjacent or proximal to the geographic distribution region/zone of the resulting contract, and/or the anticipated customer requirement is insubstantial, the customer(s) will not be added.

C. Under no circumstance may the resulting contract's maximum dollar value be exceeded with the addition of any customer(s) and its respective produce requirements.

XI. CUSTOMER SERVICE

- A. Troop, USDA, and other customers conduct periodic food menu boards and similar meetings that the Contractor may be required to attend. At these meetings, the customers typically review their internal business practices and may request that the Contractor show new products, demonstrate produce preparation, and/or provide nutritional information.
- B. The Contractor shall provide at least one full-time Customer Service representative to maintain continuous contact with all of the ordering customers, as well as at least one back-up representative.
- A. As an industry expert, the Contractor shall assume the responsibility of introducing new FF&V items to the customers, as well as to show cost-effective alternatives to their current choices, if the customer so desires. (For procedures to add items, see New Items paragraph under the Section VI. Electronic Ordering Catalogs.) However, the decision as to which items are ultimately included in the Ordering Catalog are at the discretion of the customer(s) and the Contracting Officer.

XII. ORDERING SYSTEMS

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A. Subsistence Total Order & Receipt Electronic System ("STORES"): DOD customers will order using the STORES catalog as applicable. The Contractor is responsible for establishing and maintaining the STORES catalog in accordance with the STORES Catalog Vendor User Guide (Attachment 3).

1. Accessed via the Internet, STORES is the Government's translator/ordering system that is capable of accepting orders from any of the Services', i.e. Army, Air Force, Navy, or Marines, individual ordering systems and translating them into an Electronic Data Interchange ("EDI") format. In addition, this information is passed to DLA Troop Support for the purposes of contractor payment and customer billing.
2. Troop customers will be able to order all of their requirements through STORES. The System will transmit orders to the Contractor and DLA Troop Support.
3. The Contractor is required to interface with STORES and must be able to support the following EDI transactions:

810 Electronic Invoice
820 Payment Voucher Information
832 Catalog (Outbound - Vendor to DLA Troop Support)
850 Purchase Order
861 Receipt
997 Functional Acknowledgement

Note: A complete description of these transaction sets is included in the "EDI Implementation Guidelines" and can be found at <http://www.dla.mil/TroopSupport/Subsistence/Doing-Business-with-Sub/STORES/>, click STORES and EDI Requirements.

4. The Contractor shall have access to the Internet and be able to send and receive electronic mail (email).
5. Unit prices must be formatted not more than two (2) places to the right of the decimal point in all ordering catalogs. Standard rounding methods must be applied. For example, a price of \$2.215 or higher must be rounded up to \$2.22 and a price of \$2.214 or lower must be rounded down to \$2.21.
6. Contractors are required to utilize the Government's item descriptions on all electronic ordering catalogs (832 transmissions) as well as on its invoices, delivery ticket to customer and 810 invoice transaction set.
7. The Contractor will utilize the DLA Troop Support invoice reconciliation process, or other such systems as may become available, to the maximum extent, towards the goal of correcting invoices early and facilitating the payment process.
8. In the event the STORES system or the Contractor's interface is not operational, the Contractor must provide alternate ways for the customer to order (e.g., by fax, by phone, pick up orders, etc.) Be aware that even in this situation, however, it is mandatory that the Contractor subsequently place the same order through STORES when it becomes operational again in order to effect obligation/receipt/payment.
9. Public Key Infrastructure ("PKI")/ External Certificate Authorities ("ECA") Certificates: The Department of Defense ("DoD") PKI Certificate will be required for all DoD users. A DoD PKI certificate will be required for all contractors. The requirement for PKI certificates is implemented in accordance with DoD security policy promoting secure electronic

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transactions.

(a) Obtaining a PKI certificate:

- (i) Contractors who do not work on-site at a Department of Defense facility may purchase a DoD PKI certificate from one of three External Certificate Authorities ("ECAs"). The ECAs are vendors who provide digital certificates to DoD's industry partners who are using their own equipment or working in non - Governmental facilities. Certificate prices range from \$99 - \$179 per certificate per year, with volume discounts at some ECAs. A list of ECAs is available at the following web address: https://www.transactionservices.dla.mil/daashome/pki_contacts.asp.
- (ii) Each contractor must fully comply with the DoD requirement to implement PKI in order for our information systems to remain secure and viable.

A. Fresh Fruits and Vegetable Order Receipt System: USDA customers (School customers) will utilize the FFAVORS Web catalog as applicable. The Contractor, upon award, will be provided a User ID and password to Log in and receive orders through FFAVORS Web, a web-based ordering system. The Contractor is responsible for establishing and maintaining the FFAVORS WEB catalog in accordance with the FFAVORS Web Manual (Attachment 4).

- 1. Accessed via the Internet. FFAVORS WEB is the Government's ordering system for USDA Customers. It is capable of accepting orders from the schools.
- 2. School customers will be able to order all of their requirements through FFAVORS WEB. The system will transmit orders to the Contractor and DLA-Troop Support.
- 3. In the event that the FFAVORS WEB system is not operational, the Contractor must provide alternate ways for the customer to order (e.g., by fax, by phone, pick up orders). Be aware that even in this situation, however, it is mandatory that the Contractor subsequently place the same order through FFAVORS when it becomes operational again in order to effect obligation/receipt/payment.

XIII. ORDER PLACEMENT, LEAD TIME, and ADJUSTMENTS/CANCELLATION OF ORDERS

- A. The minimum order requirement for any resultant contract is \$150.00. This requirement shall be based on the aggregate total of orders for a specific delivery date to all customers located within a particular military base or delivery location.
- B. **Troop customers** shall place their orders to accommodate at a minimum a 2-day lead time, i.e "skip day" delivery. For example, an order placed on Monday, September 1st would have a required delivery date of Wednesday, September 3rd. Orders may be placed with a longer lead time not to exceed 21 days in advance of the requested delivery date. See Attachment 3 Delivery Schedule.
- C. **School customers** shall place their orders to accommodate at a minimum a 4-day lead time. For example, an order placed on Monday, September 1st would have a required delivery date of Friday, September 5th. See Attachment 3 Delivery Schedule.
- D. All invoice pricing will be based upon the Contract Unit Price at time of order by the customer(s). Therefore, for any item ordered on a Friday to be delivered the following ordering period, pricing will be based upon the catalog price in effect the day of order

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(Friday in this example), regardless of whether the unit price for that item subsequently changes as part of the next ordering period's ordering catalog updates.

C. Once submitted through the applicable electronic ordering system (i.e. STORES or FFAVORS), an order may be cancelled by a customer up to 24 hours before scheduled delivery via written notification to the Contractor and the Contracting Officer. Within less than 24 hours from delivery, an order may be cancelled by mutual agreement between the customer and the Contractor. In the event of an act of God, such as extreme weather, the specific situation regarding a cancelled delivery will be dealt with in an equitable manner by the Contracting Officer, who has the ultimate authority and discretion to resolve said issues.

D. Adjustments - For procedures discussing adjustments to order, refer to Attachment 4 (FFAVORS and STORES manuals).

XIV. ITEM AVAILABILITY

A. Contractors must have the ability to provide to the customers a wide range of FF&V items in sufficient quantities to fill all customer requirements and maintain the overall 98% contract fill rate. All supplies shall be delivered on a "fill or kill" per line item basis (i.e. If a Contractor cannot fill a line item, the line item dies). Therefore, item substitutions are not authorized.

B. Contractors shall notify the customer within 24 hours (for Troop customers) or within 72 hours (for School customers) of required delivery date/time of the non-availability of any particular ordered item, whether in whole or in part. The customer may choose to replace the non-available item with another item from the contract catalog by placing a new, separate order for the item in STORES or FFAVORS, as applicable. Assuming the proper procedure is followed, this circumstance (i.e. replacement of a not in stock "NIS" item with a separate order for another catalog item) will not negatively impact a Contractor's fill rate.

XV. REPACKAGING & SPLITTING OF CASES

A. For some items, DLA customers, particularly Schools, may require smaller pack sizes than are commonly available in the commercial marketplace. Such items are included in the instant Schedule of Items and may be added at a later date during contract performance. It is incumbent on the Contractor to determine how it will supply these items in accordance with the required pack sizes. In so doing, the Contractor may decide to split cases and repackage product at its own facility.

B. Splitting cases and repackaging product, as described in the preceding paragraph, do not constitute processing, and, therefore, do not meet the conditions of a private label holder, as defined in Section VII. Accordingly, the Contractor is prohibited from including any costs associated with its own in-house splitting of cases and repackaging product in the Contractor's Delivered Price. Instead, the costs associated with in-house splitting cases and repackaging product must be included in the Contractor's Distribution Price.

XVI. PACKAGING, PACKING, LABELING, AND MARKINGS

A. All labeling, packaging and packing shall be in accordance with good commercial practice. Shipping containers shall comply with the National Motor Freight Classification and Uniform Freight Classification Code.

B. To ensure that the carrier and the receiving activity properly handle and store items, standard commercial precautionary markings such as "KEEP REFRIGERATED" shall be used on all cases when appropriate.

C. Protection during inclement weather is required. All products that are susceptible and sensitive to temperature must be protected by any means to prevent damage.

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XVII. DELIVERY INSTRUCTIONS

- A. Contractors shall ensure all products are delivered in sanitary trucks that are of a commercially acceptable standard. All delivery trucks must be equipped with a lift gate to expedite the offloading of products. Trucks shall maintain proper temperatures in accordance with standard commercial practices. Deliveries shall be FOB Destination to all delivery points. Delivery will be completed when the Contractor has unloaded the order(s) from the vehicle and placed them on the dock, and customer receiving personnel has accepted the delivery ticket, in accordance with Section XVIII below. All items will be delivered to customer locations free of damage and with all packaging and packing intact. The Contractor shall remove all excess pallets used for delivery from the delivery point. See Attachment 3 Delivery Schedule.
- B. Customers' delivery schedules (days and times), routes, and stop-off sequences will be coordinated and verified with the customers on a post-award basis by the Contractor immediately following award and on an annual basis as required. In general, each Troop customer receives three deliveries per week. in general, School customer receives one delivery per week. However, these schedules may be revised as necessary on a case-by-case basis at the approval of the Contracting Officer at no additional cost to the Government.
- C. Products for individual customers/dining facilities must be segregated. Many of the military bases have more than one delivery point. All products shall be palletized and segregated by drop-off point and loaded into the delivery vehicle in reverse drop sequence. The intent is to provide expeditious off-loading capability and delivery to the customers.
- D. The Contractor shall ensure that the personnel loading and delivering the product provide professional, prompt, and efficient service to the customer. Failure to adhere to these standards will be reported to the Customer Representative and the Contracting Officer by the affected customer(s) whereby appropriate corrective action will be coordinated with the Contractor.

XVIII. INSPECTION AND ACCEPTANCE

- A. Inspection and acceptance of products will be performed at destination. The inspection is normally limited to identity, count and condition; however, this may be expanded if deemed necessary by either the military Veterinary Inspector, Dining Facility Manager, Food Service Advisor/Officer, or the Contracting Officer. Delivery vehicles may be required to stop at a central location for inspection before proceeding to the assigned delivery point(s). In addition, the delivery vehicles will be inspected for cleanliness and condition. Supplies transported in vehicles that are unsanitary, or which are not equipped to maintain prescribed temperatures, may be rejected without further inspection. Failure to identify latent defects or similar issues at time of acceptance will not absolve the Contractor of its liability or preclude the customer from obtaining an appropriate remedy upon the timely discovery of said defects or issues after-the-fact. In this circumstance, the customer shall notify the Customer Representative who will coordinate with the Contracting Officer in seeking an appropriate resolution.
- B. The authorized Government receiving official at each delivery point is responsible for inspecting and accepting products as they are delivered. The delivery ticket shall not be signed prior to the inspection of each product. All overages/shortages/returns are to be noted on the delivery ticket by the receiving official and truck driver. The authorized Government receiving official's signature and printed name on the delivery ticket is required for acceptance of the product. The contractor MUST ensure that both the receiving official's and the truck driver's signature, printed name, and title are legible. Failure to adhere to this requirement can severely limit the Contracting Officer's judgment, which may result in disputes going against the Contractor.
- C. Delivery Ticket and related information. No electronic invoice may be submitted for payment until acceptance is verified.

1. Troops: The Contractor shall provide three copies of the delivery ticket with the shipment. The first copy is provided to

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the receiving official (i.e. the customer) who will use the delivery ticket as the new receipt document. The Contractor (or its agent) will retain the second copy for invoicing and the Contractor will forward the final copy (Either as the driver leaves the base or faxed/emailed within 24 hours of delivery) to the Logistics Center "LC" or Industrial Supply Center "ISC" located at the prospective Base.

2. Schools: The Contractor shall provide two copies of the delivery ticket with the shipment. The first copy is provided to the receiving official (i.e. the customer) who will use the delivery ticket as the new receipt document. The second copy will be retained by the Contractor (or its agent) for invoicing.

XIX. AUTHORIZED RETURNS

A. The Contractor shall accept returns under the following conditions:

1. Products shipped in error.
2. Products damaged in shipment.
3. Products with concealed or latent damage.
4. Products that are recalled.
5. Products that do not meet shelf life requirements.
6. Products that do not meet the minimum quality requirements as defined for the items listed in the schedule.
7. Products delivered in unsanitary delivery vehicles.
8. Products delivered that fail to meet the minimum/maximum specified temperature.
9. Quantity excess as a result of catalog error by the Contractor.
10. Products that are not from a sanitarily approved source.
11. Products that do not comply with DFARS 252.225-7012 Preference for Certain Domestic Commodities (Berry Amendment), if no exception to this clause is applicable (see DNAD explanation above).
12. Any other condition not specified above that is deemed by the customer to be valid reasons for return, confirmed by the Contracting Officer within his/her discretion.

XX. REJECTION/RETURN PROCEDURES

- A. In the event an item is returned for any of the reasons cited in Section XIX., the delivery ticket/invoice shall be annotated as to the item(s) rejected/returned. These items shall then be deducted from the delivery ticket/invoice. The invoice total must be adjusted to reflect the correct dollar value of the shipment. Replacements will be authorized based on the customer's needs. On an as-needed basis determined by customer need, same day re-delivery of items that were previously rejected shall be made, so that the customer's food service requirements do not go unfulfilled for that day. The re-delivered items will be delivered under a separate invoice utilizing the same call number, contract line item number, and purchase order number for the discrepant line. These re-deliveries will not constitute an emergency order requirement.
- B. In the event a product is rejected after initial delivery is made, the Contractor will pick up the rejected product or make other disposition arrangements deemed acceptable by the customer. Credit due to the ordering activity as a result of the rejected product being returned, will be handled through a receipts adjustment process in STORES or FFAVORS, as applicable. If the Contractor has already been paid for the product, a claim will be issued through DLA TROOP SUPPORT's financial system and the Contractor shall promptly pay the claimed amount. In all cases, one (1) copy of the credit memo is to be given to the customer and one (1) copy of the credit memo is to be sent to the DLA TROOP SUPPORT Contracting Officer.
- C. It is a requirement of this solicitation that product shall be inspected upon receipt as promptly as practicable. However, failure to

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promptly inspect or accept supplies shall not relieve the contractor from responsibility, nor impose liability on any of the customers, for nonconforming supplies. See clause 52.212-4, paragraph (o) and addendum to clause 52.212-4, paragraph 1.

XXI. INVOICING

- A. Each delivery will be accompanied by the Contractor's delivery ticket/invoice. The customer shall sign all copies of the invoice/delivery ticket. **Any changes must be made on the face of the delivery ticket/invoice; attachments are not acceptable.** See Section XVIII, para. C.
- B. No paper invoices shall be submitted to DFAS for payment. For all orders placed via STORES and sent via EDI transaction set 850, invoicing for payment is to be filed electronically using EDI transaction set 810 (see <https://www.troopsupport.dla.mil>, Select supply chains: Select Subsistence, Select Information: Select Stores & EDI Requests for EDI guidelines).
- C. For all orders downloaded via USDA's customer ordering website FFAVORS web, invoicing for payment shall be done via invoice link from FFAVORS web homepage, <http://www.fns.usda.gov/fdd/ffavors.htm>.
- D. All invoices submitted by the Contractor must be "clean", i.e. all debits and/or credits must be reflected on the invoice prior to its submission. The Contractor is required to ensure the accuracy of its invoices. The Reconciliation Tool in STORES and/or Invoicing Tool in FFAVORS Web provides the Contractor the ability to ensure said accuracy.
- E. **All internal debit/credit transactions must be completed prior to the submission of the invoice.** Invoice lines that do not contain the correct invoice data and/or contain incorrect quantities delivered or prices charged will be rejected. The Contractor will be responsible for correction and re-submission.
- F. The same invoice cannot be submitted with different dollar amounts.
- G. The 810 invoices do not go through a testing phase. The Contractor immediately begins sending its invoices in once it has successfully sent its first 850 purchase order.
- H. Any manually keyed, or emergency, orders must contain the word "Emergency" in the Purchase Order field when the invoice is submitted for payment. In addition, the CALL number and contract line item number (CLIN) will be entered as "9999" on the invoice. Failure to follow this procedure may result in the rejection of the Contractor's invoice.
- I. **For catch weight items, standard rounding methods must be observed, i.e. less than .5 is rounded down; greater than or equal to .5 is rounded up. All weights must be rounded to whole pounds using standard rounding methods.** Any line submitted for other than whole numbers will be rejected and require correction and re-submission by the Contractor. Note: Currently, no catch weight items apply to this Solicitation. This does not preclude the possibility that catch weight items may be added in the future for certain items.
- J. Unit prices and extended prices must be formatted not more than two (2) places to the right of the decimal point. Standard rounding methods must be applied. For example, a price of \$2.215 or higher must be rounded up to \$2.22 and a price of \$2.214 or lower must be rounded down to \$2.21.
- K. Although invoices must be submitted electronically via an 810 Electronic Invoice; the following address must appear in the "Bill To" or "Payment Will Be Made By" block of the Contractor's invoice.

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DFAS - Columbus Center (SL4701)

Attn: DFAS-BVDP

P. O. Box 369031

Columbus, OH 43236-9031

Each invoice shall contain sufficient data for billing purposes. This includes, but is not limited to:

1. Contract Number
2. Call or Delivery Order Number
3. Purchase Order Number
4. DoD Activity Address Code (DODAAC)
5. Contract line item numbers (CLINs) listed in numeric sequence (CLIN order)
6. Item nomenclature
7. Local Stock Number (LSN) or National Stock Number (NSN), as applicable
8. Quantity purchased per item in DLA Troop Support's unit of issue
9. Total dollar value on each invoice (reflecting changes to the shipment, if applicable)

L. Invoice transactions may be submitted to DLA Troop Support daily. All internal debit/credit transactions must be completed prior to the submission of the invoice. Invoice lines that do not contain the correct invoice data and/or contain incorrect quantities delivered or prices charged will be rejected. The Contractor will be responsible for correction and re-submission.

M. Invoice Reconciliation. The following tools have been developed to provide an additional method for the Contractor to ensure the accuracy of its own internal accounting process.

1. For STORES: **Vendor Reconciliation Tool** - In an effort to improve the payment process, Contractors are required to view what the customer has or has not receipted via the DLA Troop Support STORES website: https://www.stores.dla.mil/stores_web/Admin_Logon.aspx. The Contractor will have access to "un-reconciled" information, i.e., the invoice does not match the receipt because of the quantity and/or price discrepancy or because the customer has not posted a receipt. Both invoice information and receipt information will be available for review on the website by the Contractor. While the Contractor will not have the capability to update customer receipt information, update capability will be available for un-reconciled invoice information for 120 days. It is the Contractor's responsibility to ensure accurate invoices.
2. For FFAVORS: **Invoicing Tool** - In an effort to improve the payment process, Contractors are required to view what the customer has or has not receipted via the USDA FFAVORS website: <http://www.fns.usda.gov/fdd/fresh-fruits-and-vegetables-order-receipt-system-ffavors>. The Contractor will have access to "un-reconciled" information, i.e., the invoice does not match the receipt because of the quantity and/or price discrepancy or because the customer has not posted a receipt. Both invoice information and receipt information will be available for review on the website by the Contractor. It is the Contractor's responsibility to ensure accurate invoices.

XXII. PRICE AUDITS

A. Price Audits. Contractors are advised that the Government may conduct price verification analysis of the Contractor's performance on the resulting contract in the following manner:

1. At the Contracting Officer's discretion, an internal Price Verification Team in conjunction with the Contracting Officer may require the Contractor to provide copies of specific invoices from suppliers, as defined in the EPA provision of this Solicitation, covering up to 100 items that were included on the catalog at a given time.

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2. The Price Verification Team will request the above documentation in writing and the Contractor will have thirty (30) days after the request to furnish the documentation.

3. A report of overcharges and undercharges (if applicable) will be forwarded to the Contractor, and the Contractor may be required to pay the Government for the net amount owed for overcharges. The Government reserves all rights and remedies provided by law or under the contract in addition to recovering any overcharges. Undercharges will be evaluated by the Contracting Officer on a case-by-case basis consistent with other terms and conditions of the solicitation and resulting contract.

1. The Government may elect to expand / reduce the scope of the price verification analysis, and frequency of future analyses, as deemed appropriate by the Contracting Officer.

B. The Government reserves the right to conduct additional price audits as necessary in the opinion of the Contracting Officer to verify price accuracy and potentially recoup any overcharges. In such instances, the Contractor will be required to submit invoices and any other supporting price documentation that the Contracting Officer deems appropriate.

XXIII. FILL RATE

A. Order fill rates shall be calculated by the Contractor on an on-time, per order basis and tracked for monthly submission to the Contracting Officer/Account Manager. To ensure accuracy in the Contractor's reported fill rates, the Government will utilize its own internal data for comparison purposes. The fill rate shall be calculated as follows and shall not include mis-picks, damaged cases or rejected items (**No other method of calculating fill rate will be accepted**):

$$\frac{\text{Cases accepted} * 100}{\text{Cases ordered}} = \text{fill rate \%}$$

B. Definitions:

1. Cases Accepted: Product that the customer has received and receipted not including damaged cases, rejected items, or mis-picks.

2. Cases Ordered: Product ordered by a customer through STORES or FFAVORS.

C. Contractor is required to maintain at a minimum a **98.0%** fill-rate.

D. The Contractor will submit a monthly report, by customer, to the DLA Troop Support Contracting Officer with the following information:

1. Fill Rate

2. List of all items that were Not in Stock, Returned, Damaged, and/or Mis-picked.

XXIV. HOLIDAYS

A. All orders are to be delivered on the specified delivery date, except for Federal holidays, as outlined below. When a scheduled delivery day falls on one of these days, delivery should occur on the next business day, unless otherwise agreed to by the customer.

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New Year's Day Labor Day
Martin Luther King Jr's Birthday Columbus Day
Presidents' Day Veterans Day
Juneteenth Thanksgiving Day
Memorial Day Christmas Day
Independence Day

- B. Note: Holidays falling on a Saturday are normally observed on the preceding day (Friday); holidays falling on a Sunday are normally observed on the following day (Monday).

XXV. EMERGENCY ORDERS

- A. Troop requirements can accelerate and surge during wartime, civil emergencies, natural disasters, adverse weather or other conditions. Therefore, last minute ordering may take place as necessary to fulfill customers' requirements.
- B. For Troop customers only, the Contractor will provide up to one emergency order per month per customer at no additional cost to the Government. As specified by the customer, all emergency order(s) for supplies must be same day or next day. Expeditious fulfillment of the emergency requirement is imperative. Unless otherwise noted by the Contractor, the Contractor's Tailor Vendor Logistics Specialist ("TVLS") or Customer Service Representative ("CSR") will be the point of contact for emergency orders, and will vet the appropriateness of such a request.

XXVI. FOOD DEFENSE

- A. DLA Troop Support Subsistence Directorate provides world-wide subsistence logistics support during peace time as well as during regional conflicts, contingency operations, national emergencies, and natural disasters. At any time, the United States Government, its personnel, resources and interests may be the target of enemy aggression to include espionage, sabotage, or terrorism. This increased risk requires DLA Troop Support to take steps to ensure measures are taken to prevent the deliberate tampering and contamination of subsistence items. The Contractor must ensure that products and/or packaging have not been tampered with or contaminated throughout the growing, storage, and delivery process. The Contractor must immediately inform DLA Troop Support Subsistence of any attempt or suspected attempt by any party or parties, known or unknown, to tamper with or contaminate subsistence supplies.
- B. As the holder of a contract with the Department of Defense, the Contractor should be aware of the vital role it plays in supporting the Agency's customers. It is incumbent upon the Contractor to take all necessary actions to secure product delivered to all military customers, as well as any applicable commercial destinations.
- C. Accordingly, the Contractor shall submit a Food Defense Plan prior to the start of performance under any resultant contract to describe what steps it has taken and will take to prevent product tampering and contamination. The Contractor will also describe what steps have been or will be taken that relate to overall plant security and food safety. The Contractor must describe in detail the types of measures in place or scheduled to be put in place for the performance period of this contract. (NOTE: to download a copy of the DLA Troop Support Food Defense Checklist please go to the following website: http://www.dla.mil/Portals/104/Documents/TroopSupport/Subsistence/FoodSafety/FoodQuality/food_defense_check.pdf or contact the applicable Contracting Officer or the DLA Troop Support Quality Audits & Food Defense Branch). Contractors should include specific security measures relating to, but not limited to, the following areas:

1. Employee Identification

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2. Background checks where applicable
3. Control of access to plant facility, gates and doors at the facility
4. Internal Security
5. Training and security awareness
6. Product Integrity
7. Transportation Security

D. The DLA Troop Support Produce Quality Audit Team will review Food Defense during Produce Quality Audits / Quality Systems Managements Visits (QSMVs), as part of the USDA-AMS Good Agricultural Practices ("GAP") & Good Handling Practices ("GHP") Audits (<http://www.ams.usda.gov/services/auditing/gap-ghp>), to verify the implementation, compliance and effectiveness of the Contractor's Food Defense Plan/Program.

XXVII. PRODUCT QUALITY

A. Pathogens: The Contractor will use prevailing commercial practice for testing of pathogens including, but not limited to, E. Coli, Listeria Monocytogenes, Salmonella, Shigella, and Coagulase Positive Staph Aureus.

B. Shelf-life: All products delivered shall be as fresh as possible and within the Growers/Packers' original shelf life (i.e., Best if Used-by-Date, Expiration Date, or other markings). Applicable products shall be identified with readable open code such as "Best-Used-by- Date", "Sell-by-Date", date of production, or similar marking indicating the end of the guaranteed freshness date. In addition, the Contractor must comply with the following shelf-life requirements for fresh-cut fresh fruits and vegetables, ready-to-eat salads, cole slaw, etc.:

1. Individual bags/containers must be marked with a 14-day shelf life from the date of production. All products must be received by the customer with at least 50% of recommended shelf life remaining. If the manufacturer-recommended shelf life is less than 14 days, the Contracting Officer must be notified in advance and approve the shelf-life. Any deviation from these requirements must be approved prior to customer delivery, in writing, by the Contracting Officer.

C. Shell Eggs: Shell eggs must comply with the Federal Food, Drug, and Cosmetic Act ("FFDCA"), 21 USCS §301 et seq. and 21 CFR Part 100 - 169. Contractor's Facility and shell eggs product shall also comply with other applicable State and Federal regulations and standards (For example: 21 CFR 115.50(b)(2); 7 CFR Part 56; US Standards, Grades, and Weight Classes for Shell Eggs (AMS 56); Good Manufacturing Practices (GMPs), etc.). Shell eggs must originate from a sanitarily approved source as indicated in the contract. Joint Government (DLA Troop Support /USDA-AMS) Sanitation and Food Defense Audits will be performed during DLA Produce Quality Audits/QSMVs or other visits by DLA Troop Support Quality Auditors and USDA-AMS Auditors as deemed appropriate.

1. Temperature Requirements: All refrigerated storage areas and transport ambient temperatures for shell eggs cannot exceed 45 degrees Fahrenheit.
2. Markings/Labeling Requirements: For cartons (6-Eggs, 12-Eggs, 18-Eggs, etc.) and loose pack (a flat which contains 30-Eggs per flat), both of which are packed into a 15 or 30-dozen case, should have the USDA Grademark (shield) on the cartons. Shell egg cases/shipping containers must be stamped with the USDA Grade AA or A stamp (depending on the declared quality). A copy of the Grading Certificate (Form, PY-210S) shall be provided with the shipment of shell eggs upon customer request, during DLA Troop Support Quality Audits, or as requested by the Contracting Officer. Shipping containers/cases shall be marked/labeled with Plant Name, Address, Date of Pack, expiration (expiration not to exceed 30 days from day eggs were packed in cartons), Size Identification, quantity, Grade, etc.

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3. Shelf Life: Shell eggs shall have a minimum of 14 days' shelf life remaining when delivered to DLA customers, unless otherwise authorized by Contracting Officer and the customer.

D. Commercial standards shall be used to maintain temperatures appropriate for individual produce items during storage and delivery to DLA Troop Support customers.

1. Level of Product Quality:

(a) All items must meet or exceed the Government's item description of their assigned Government stock number and the specified US Grade.

(b) When designating an item as a match for the DLA item in the Schedule of Items listed in the instant Solicitation, the item must be:

- (i) Identical in respect to packaging when the DLA unit of issue is not described by weights (e.g. pound or ounce).
- (ii) Equivalent in respect to grade or fabrication.

XXVIII. QUALITY PROGRAM

A. A Manufacturer, Grower, Private Label Holder or Redistributor selection or certification program shall be used to ensure standardized product quality for each item supplied and/or listed in the stock catalogs, regardless of supplier. The product quality shall be equal to that described in the pertinent item specification and/or specified US Grade Standard.

B. The Contractor shall develop and maintain a quality program for the product acquisition, warehousing, and distribution to assure the following:

- 1. Standardized product quality.
- 2. Wholesome product by veterinary standards.
- 3. The usage of First-In, First-Out ("FIFO") principles and/or First-Expired, First-Out ("FEFO").
- 4. Product shelf life managed and monitored (by date of pack/production of the item).
- 5. Items are free of damage.
- 6. Correct items and quantities are selected and delivered.
- 7. Ensure requirements of the Berry Amendment are met, when applicable.
- 8. Customer satisfaction is monitored.
- 9. Product discrepancies and complaints are resolved and corrective action is initiated.
- 10. Supplier, FDA, or DoD initiated food recalls are promptly reported to customers and DLA Troop Support Contracting Officer.
- 11. Compliance with EPA and OSHA requirements.
- 12. Distressed or salvaged items or products shall not be used.
- 13. Applicable food products delivered originate from a source listed as a Sanitarily Approved Food Establishment for Armed Forces Procurement and/or listed in the USDA-AMS Good Agricultural Practices ("GAP") Verification Directory or the USDA-AMS Good Handling Practices ("GHP") Verification Directory for fresh fruits and vegetables, as applicable. Bulk Fresh fruits and vegetables suppliers must be inspected and listed under the USDA-AMS GAP and/or the GHP Directory.
- 14. Hazard Analysis and Critical Control Point ("HAACP") protocol, if applicable.

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15. Commercial standards are used to maintain temperatures appropriate for individual items.

- C. The Contractor shall, for all places of performance, maintain a USDA GAP/GHP certificate AND be listed in the USDA-AMS GAP or GHP Verification Directory for a full range of fresh fruits and vegetables throughout the period of contract performance. The USDA GAP/GHP certificate must demonstrate a passing score, and specifically passing with respect to the following parts: General, Wholesale Distribution (6) and Preventive Food Defense (7). Failure to obtain and maintain a USDA GAP/GHP certificate will be considered a breach of contract. Further information, including inspection requirements, can be found at <https://www.ams.usda.gov/services/auditing/gap-ghp>.

XXIX. WAREHOUSING AND SANITATION PROGRAM/STORED PRODUCT PEST MANAGEMENT

- A. The Contractor shall develop and maintain a sanitation program and a stored product pest management program for food and other co-located non-food items that comply with industry standard programs such as the Code of Federal Regulations, Title 21, part 110, Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Human Food, the Federal Insecticide, Fungicide and Rodenticide Act, 7 USCS §136 et seq., as well as all pertinent state and local laws and regulations. Records of inspections performed by the Contractor, its subcontractor, or other recognized industry association hired by the Contractor shall be maintained and made available to the Government at the Contracting Officer's request. Any findings by the Contractor or its agent documenting a critical sanitation deficiency shall be reported immediately to the Contracting Officer with an attached report of corrective action.

XXX. PRODUCT SANITARILY APPROVED SOURCE REQUIREMENTS AND SANITARY CONDITIONS

- A. Applicable food products (food products include bulk fresh fruits and vegetables), including pre-cut and packaged fruits, vegetables and salads, mushrooms, sprouts, etc., delivered to customers listed in this solicitation, as well as any customer added at a later date, shall originate either from an establishment (this includes suppliers/subcontractors or direct farm deliveries) listed in the "Directory of Sanitarily Approved Establishments for Armed Forces Procurements" or one which has been inspected under the guidance of the United States Department of Agriculture ("USDA"). The USDA Guidance for fresh fruits and vegetables is the USDA-AMS Good Agricultural Practices ("GAP") Verification Directory or the USDA-AMS Good Handling Practices ("GHP") Verification Directory for fresh fruits and vegetables, as applicable. Bulk Fresh fruits and vegetables suppliers must be inspected and listed under the USDA-AMS GAP and/or the GHP Directory.

B. 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 Public Health Command (USAPHC) Circular 40-1, Worldwide Directory of Sanitarily Approved Food Establishments for Armed Forces Procurement, (Worldwide Directory) (available at <http://phc.amedd.army.mil/topics/foodwater/ca/Pages/DoDAApprovedFoodSources.aspx>). Compliance with the current edition of DoD Military Standard 3006A, 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.

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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) Shell eggs may be supplied from establishments listed in the USDA, Agriculture Marketing Service (AMS) search engine results. The search engine can be found at https://apps.ams.usda.gov/plantbook/Query_Pages/PlantBook_Query.asp

3. Establishments exempt from Worldwide Directory listing. Refer to AR 40-657/NAVSUPINST 4355.4H/MCO P1010.31H, Veterinary/Medical Food Safety, Quality Assurance, 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, 5301 Shawnee Road, Alexandria, VA 22312; 1-888-584-8332; or download from web site: https://armypubs.army.mil/epubs/DR_pubs/DR_a/pdf/web/r40_657.pdf) For the most current listing of exempt plants/products, see the Worldwide Directory (available at: <http://phc.amedd.army.mil/topics/foodwater/ca/Pages/DoDAprovedFoodSources.aspx>).

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.

C. 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.

XXXI. QUALITY SYSTEMS MANAGEMENT VISITS & PRODUCE QUALITY AUDITS

A. See Attachment 5, "Quality Systems Management Visits & Produce Quality Audits".

XXXII. RECALL PROCEDURES REQUIREMENTS

A. In the event that a product recall is initiated by the USDA, the Contractor, or the Contractor's supplier or manufacturer, the Contractor shall follow the procedures as outlined below:

1. Immediately notify the following personnel:

- (a) Customers that have received the recalled product.
- (b) DLA Troop Support Contracting Officer.
- (c) DLA Troop Support Account Manager.
- (d) DLA Troop Support Customer Safety Officer at (215) 737- 2922.

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2. Provide the following information to the DLA Troop Support Consumer Safety Officer:

- (a) Reason for recall
- (b) Type of recall, i.e., Type I, II or III.
- (c) Description of product.
- (d) Amount of product.
- (e) List of customers that have received product.
- (f) Name and phone number of responsible person (Recall Coordinator).

3. The Contractor shall provide a Final Status Report of Recall, when completed, to the DLA Troop Support Consumer Safety Officer.

4. At the discretion of the affected customers, the Contractor shall either replace at no additional cost or adjust the invoice quantity for any recalled product.

B. In the event of a DoD All Food and Drug Acts ("ALFOODACT") notification resulting from a product recall, the Contractor shall provide the following information within 72 hours after recall notification (ALFOODACT) to their Contracting Officer (KO), Contracting Specialist, Tailored Vendor Logistics Specialist (TVLS) and/or Contracting Officer Representative (COR). Additionally, this information will be sent to the DLA Troop Support Subsistence Food Safety Office at dscpconssafofc@dla.mil:

- 1) ALFOODACT 201X-XXX
- 2) DLA Contract Number:
- 3) Unit of Measure:
- 4) Quantity Currently in Stock:
- 5) List of customers that received product AND (a-h) for each customer:
 - a. Customer name and location:
 - b. DLA Purchase Order Number:
 - c. Vendor Invoice Number:
 - d. Item Stock number (LSN, NSN):
 - e. Quantity Shipped:
 - f. Date Shipped:
 - g. Value of Affected Product:
 - h. Amount of credit due:

XXXIII. PERISHABLE AGRICULTURAL COMMODITIES ACT ("PACA") LICENSE

A. All offerors must possess a valid PACA license at the time they submit their initial proposals. Proof of a current, valid PACA license must be submitted with the offeror's proposal or the offer may be deemed technically unacceptable and removed from further award consideration. See Addendum to FAR 52.212-1 for further details regarding this proposal submission requirement. Additionally, upon award, the Contractor must maintain a valid PACA license throughout the life of the contract. Failure to do so may result in termination of the contract.

XXXIV. NON-COMPETE PROVISION

A. The offeror warrants that upon receiving the award, it will not actively promote, engage, or market any of the customers on this

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acquisition away from the resultant DLA Troop Support contract and onto a fresh fruits and vegetable subsistence contract or account of any other Government agency or commercial entity. This prohibition is in effect during the life of the resultant contract, and restricts competition in the specific area or zone that is the subject of this acquisition. A violation of this term may result in the Contracting Officer terminating the contract, documenting this action as part of the awardee's past performance data, and taking other appropriate recourse as permitted by the contract or applicable regulations and law.

XXXV. LOCAL PURCHASE (SCHOOLS)

- A. DLA Troop Support and the USDA support the use of local purchase to the maximum extent practicable. Therefore, Contractors are encouraged to source local produce taking into consideration price, availability, quality, and other factors.
- B. For purposes of this solicitation and resulting contract, "local purchase" is defined as product purchased from growers or manufacturers within the state the customer is located, within the contract zone, or from a state bordering the state in which the customer is located.
- C. For contracts using FFAVORS catalogs, Contractors are required to include state of origin information for all products in the FFAVORS catalog. FFAVORS includes a data field for this purpose.
- D. Within 45 days after contract award, the successful Contractor(s) for schools will submit to the Contracting Officer a Local Purchase Procurement plan which will include the following elements:
 - 1. A list of specific items that the contractor currently purchases locally;
 - 2. A list of local growers from which the contractor sources product;
 - 3. Plans to expand the purchase of local items; and
 - 4. A list of resources that might assist in efforts to source more local products.
- E. Contractors may be required to attend information sessions related to local sourcing and promotion of local products.

XXXVI. MANAGEMENT REPORTS

- A. The Contractor shall electronically transmit the following reports to the DLA Troop Support Contracting Officer and Account Manager on a monthly basis. All reports shall be cumulative for a one (1) month period and submitted no later than the seventh day of the following month (e.g., for the reporting period of January 1 through January 31, the reports must be received by February 7).
 - 1. Product Line Listing (Manufacturer, Grower, Private Label Holder and Redistributor, collectively referred to as "Supplier"): This report shall list all items purchased along with quantity and dollar value. It shall be sorted by Supplier and annotate whether the Supplier is a large business or small business and whether the Supplier is local or non-local.
 - 2. Fill Rate Report: The fill-rate is calculated by dividing the number of cases accepted by the customer by the number of cases ordered. No other method of calculating fill rates should be included. Mis-picks and damaged or rejected cases should not be included in this calculation. The report should specify fill rates per customer and an overall average fill-rate for all customers under the contract for the month being reported.
 - 3. Rebates, Discounts, Allowances and Other Economic Incentives (collectively referred to as "Incentives"):

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- (a) All incentives for the prior month (i.e. the month being reported) that have been passed along to DLA Customers or that are due to the US Government shall be summarized by listing each customer and the incentive amount per line item. Also include the Supplier (see definition in section A.1. above) offering the incentive and the product usage. The total should be per customer and per order.
- (b) Also, the Contractor must report on any and all financial arrangements under which the Contractor: (i) receives money from any of the Contractor's suppliers, and (ii) asserts that such money is not an incentive that is owed to the Government under the terms of this solicitation and the resulting contract. The Contractor must report the name of each supplier that provided money to the Contractor during the month, a brief description of each financial arrangement, and, the respective dollar amount received for each financial arrangement. If a new financial arrangement (i.e. an arrangement that was not previously provided in the Contractor's proposal under this solicitation) is reported, then the monthly report must also explain why the Contractor believes that the new financial arrangement should not be considered an incentive that would be owed to the Government under the terms of the resultant contract. This explanation is not required in the monthly report if the explanation was previously provided with the Contractor's proposal under this solicitation.
- (c) The above reports shall be prepared in documents that include the Contractor's own letterhead. Said reports shall be signed by the appropriate official within the Contractor's organization holding the requisite authority to bind the Contractor and act on its behalf for purposes of this reporting. By signing such reports, the Contractor certifies that it understands the reporting requirements, that it understands the relevant contractual terms and conditions, and that the information provided is true and accurate.
4. DNAD: On a monthly basis, the Contractor shall create and electronically transmit an excel spreadsheet to the Contracting Officer with the stock number, item description, case count, pounds, and dollar value of non-domestic orders filled during the month. The Contractor shall code the EDI 832 Ref 03 (Foreign Source Indicator) with "Y" for each item that is foreign product and "N" for each item that is not foreign product. NOTE: The DNAD report is required only for Troop contracts because the Contractor is prohibited from providing any non-domestic products under the USDA contracts (i.e. contracts supporting School customers).
5. Financial Status Reports: In order to help track timely payments, an accounts receivable report shall be submitted on a monthly basis, at a minimum. Many Contractors elect to submit this report, in the form of a spreadsheet, on a weekly basis. The report should contain customer identification, invoice number, call number, invoice amount, amount paid, credit adjustments, and balance due. This information is necessary to help alleviate payment problems as soon as possible. However, the submission of this report does not relieve the Contractor's responsibility to monitor the STORES and FFAVORS Reconciliation tool, as detailed in section XXI.
6. Customer Service Report: The Contractor shall develop and provide a report summarizing all discrepancies, complaints and all positive feedback from ordering activities and the respective resolutions by providing details of each customer service incident, including any customer service visits.
7. Descending Dollar Value Report: Sorted by line item; each line is to contain, at a minimum: DLA Troop Support stock number, Item Description, pack or size, brand description, quantity, and total dollar value of units shipped. Dollar amounts will be totaled. This report shall be organized by individual customer accounts and by the total customer base in

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each zone.

- B. The Contractor will also submit an annual report on the status of its performance regarding its Local Purchase Plan. The report will enable DLA and its customers to provide assistance as needed in identifying local sources. See Section XXXV for detailed information.

XXXVII. CONTRACT ADMINISTRATION INFORMATION

- A. Contract Authority: The DLA Troop Support Contracting Officer is the only person authorized to approve changes, or modify any requirement of the contract. Notwithstanding any provisions contained elsewhere in the contract, said authority remains solely with the DLA Troop Support Contracting Officer.

1. In the event that the Contractor effects any change at the direction of any person other than the DLA Troop Support Contracting Officer, the change will be considered to have been made without authority and no adjustment will be made. The Contracting Officer must authorize any modification or costs associated with a change in writing.
2. Requests for information on matters related to this contract, such as an explanation of terms or contract interpretation, shall be submitted to the DLA Troop Support Contracting Officer.

- B. Payments: DFAS Columbus Center is the payment office for this acquisition.

1. Payment of delivery orders will be made in accordance with the terms and conditions of Paragraph (i) of FAR Clause 52.212-4 "Contract Terms and Conditions - Commercial Items" that is incorporated by reference into this solicitation.
2. Payment will be made within 10 days after the receipt of a proper invoice; however, payment is still subject to the terms and conditions of the Prompt Payment Act (31 U.S.C. 3903). All 810 electronic invoices must be submitted with accurate, sufficient, clean data before any payment can be made. As previously noted, it is the Contractor's obligation to submit such an invoice and, absent such an invoice, no payment will be due for purposes of the Prompt Payment Act.
3. The Contractor is responsible to use MyInvoice for detailed summary of payments (line by line analysis) which can be found at: <https://wawf.eb.mil/>.
4. The Government intends to make payments under the resultant contract by electronic funds transfer ("EFT") based on the information contained in the System for Award Management Registration ("SAM"). FAR Clause 52.232-33, "Payment by Electronic Funds Transfer- System for Award Management" is incorporated by reference.

- C. Administration:

1. The Contracting Officer from the DLA Troop Support Supplier Operations - Produce and Market Fresh Division will perform administration of the contract. The DLA Troop Support Contracting Officer must approve any changes to the resultant contract.

52.212-1 Instructions to Offerors-Commercial Items (Jun 2020)

(a) *North American Industry Classification System (NAICS) code and small business size standard.* The NAICS code(s) and small business

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size standard(s) for this acquisition appear elsewhere in the solicitation. However, the small business size standard for a concern which submits an offer in its own name, but which proposes to furnish an item which it did not itself manufacture, is 500 employees.

(b) *Submission of offers.* Submit signed and dated offers to the office specified in this solicitation at or before the exact time specified in this solicitation. Offers may be submitted on the [SF 1449](#), letterhead stationery, or as otherwise specified in the solicitation. As a minimum, offers must show --

(1) The solicitation number;

(2) The time specified in the solicitation for receipt of offers;

(3) The name, address, and telephone number of the offeror;

(4) A technical description of the items being offered in sufficient detail to evaluate compliance with the requirements in the solicitation. This may include product literature, or other documents, if necessary;

(5) Terms of any express warranty;

(6) Price and any discount terms;

(7) "Remit to" address, if different than mailing address;

(8) A completed copy of the representations and certifications at FAR [52.212-3](#) (see FAR [52.212-3\(b\)](#) for those representations and certifications that the offeror shall complete electronically);

(9) Acknowledgment of Solicitation Amendments;

(10) Past performance information, when included as an evaluation factor, to include recent and relevant contracts for the same or similar items and other references (including contract numbers, points of contact with telephone numbers and other relevant information); and

(11) If the offer is not submitted on the [SF 1449](#), include a statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation. Offers that fail to furnish required representations or information, or reject the terms and conditions of the solicitation may be excluded from consideration.

(c) *Period for acceptance of offers.* The offeror agrees to hold the prices in its offer firm for 30 calendar days from the date specified for receipt of offers, unless another time period is specified in an addendum to the solicitation.

(d) *Product samples.* When required by the solicitation, product samples shall be submitted at or prior to the time specified for receipt of offers. Unless otherwise specified in this solicitation, these samples shall be submitted at no expense to the Government, and returned at the sender's request and expense, unless they are destroyed during preaward testing.

(e) *Multiple offers.* Offerors are encouraged to submit multiple offers presenting alternative terms and conditions, including alternative line items (provided that the alternative line items are consistent with [subpart 4.10](#) of the Federal Acquisition Regulation), or alternative commercial items for satisfying the requirements of this solicitation. Each offer submitted will be evaluated separately.

(f) Late submissions, modifications, revisions, and withdrawals of offers.

(1) Offerors are responsible for submitting offers, and any modifications, revisions, or withdrawals, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that offers or revisions are due.

(2)

(i) Any offer, modification, revision, or withdrawal of an offer received at the Government office designated in the solicitation after the exact time specified for receipt of offers is "late" and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and-

(A) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of offers; or

(B) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers; or

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(C) If this solicitation is a request for proposals, it was the only proposal received.

(ii) However, a late modification of an otherwise successful offer, that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(3) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the offer wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(4) If an emergency or unanticipated event interrupts normal Government processes so that offers cannot be received at the Government office designated for receipt of offers by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation or other notice of an extension of the closing date, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(5) Offers may be withdrawn by written notice received at any time before the exact time set for receipt of offers. Oral offers in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before the exact time set for receipt of offers, subject to the conditions specified in the solicitation concerning facsimile offers. An offer may be withdrawn in person by an offeror or its authorized representative if, before the exact time set for receipt of offers, the identity of the person requesting withdrawal is established and the person signs a receipt for the offer.

(g) *Contract award (not applicable to Invitation for Bids)*. The Government intends to evaluate offers and award a contract without discussions with offerors. Therefore, the offeror's initial offer should contain the offeror's best terms from a price and technical standpoint. However, the Government reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary. The Government may reject any or all offers if such action is in the public interest; accept other than the lowest offer; and waive informalities and minor irregularities in offers received.

(h) *Multiple awards*. The Government may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in the Schedule, offers may not be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the offeror specifies otherwise in the offer.

(i) Availability of requirements documents cited in the solicitation.

(1)

(i) The GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101-29, and copies of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained for a fee by submitting a request to-

GSA Federal Supply Service Specifications Section

Suite 8100 470 East L'Enfant Plaza, SW

Washington, DC 20407

Telephone (202) 619-8925

Facsimile (202) 619-8978.

(ii) If the General Services Administration, Department of Agriculture, or Department of Veterans Affairs issued this solicitation, a single copy of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained free of charge by submitting a request to the addressee in paragraph (i)(1)(i) of this provision. Additional copies will be issued for a fee.

(2) Most unclassified Defense specifications and standards may be downloaded from the following ASSIST websites:

(i) ASSIST (<https://assist.dla.mil/online/start/>).

(ii) Quick Search (<http://quicksearch.dla.mil/>).

(iii) ASSISTdocs.com (<http://assistdocs.com>).

(3) Documents not available from ASSIST may be ordered from the Department of Defense Single Stock Point (DoDSSP) by-

(i) Using the ASSIST Shopping Wizard (<https://assist.dla.mil/wizard/index.cfm>);

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(ii) Phoning the DoDSSP Customer Service Desk (215) 697-2179, Mon-Fri, 0730 to 1600 EST; or

(iii) Ordering from DoDSSP, Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 19111-5094, Telephone (215) 697-2667/2179, Facsimile (215) 697-1462.

(4) Nongovernment (voluntary) standards must be obtained from the organization responsible for their preparation, publication, or maintenance.

(j) *Unique entity identifier.* (Applies to all offers that exceed the micro-purchase threshold and offers at or below the micro-purchase threshold if the solicitation requires the Contractor to be registered in the System for Award Management (SAM).) The Offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "Unique Entity Identifier" followed by the unique entity identifier that identifies the Offeror's name and address. The Offeror also shall enter its Electronic Funds Transfer (EFT) indicator, if applicable. The EFT indicator is a four-character suffix to the unique entity identifier. The suffix is assigned at the discretion of the Offeror to establish additional SAM records for identifying alternative EFT accounts (see FAR [subpart 32.11](#)) for the same entity. If the Offeror does not have a unique entity identifier, it should contact the entity designated at www.sam.gov for unique entity identifier establishment directly to obtain one. The Offeror should indicate that it is an offeror for a Government contract when contacting the entity designated at www.sam.gov for establishing the unique entity identifier.

(k) [Reserved]

(l) *Debriefing.* If a post-award debriefing is given to requesting offerors, the Government shall disclose the following information, if applicable:

(1) The agency's evaluation of the significant weak or deficient factors in the debriefed offeror's offer.

(2) The overall evaluated cost or price and technical rating of the successful and the debriefed offeror and past performance information on the debriefed offeror.

(3) The overall ranking of all offerors, when any ranking was developed by the agency during source selection.

(4) A summary of the rationale for award;

(5) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror.

(6) Reasonable responses to relevant questions posed by the debriefed offeror as to whether source-selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.

(End of Provision)

Addendum to 52.212-1

The following paragraphs of 52.212-1 are amended as indicated below:

1. Paragraph (b), Submission of Offers.

b. Email and DIBBS are an acceptable form of transmission for submission of initial proposals or revisions to proposals submitted in response to this solicitation. E-mailed submissions should be sent to Amanda Quaile, amanda.quaile@dla.mil, and Vincent Key vincent.key@dla.mil by January 25, 2023 3:00 PM EDT. Limit the file size of any individual email attachment to 5MB, and the total size of any email to 10MB. Multiple email submissions may be required. If submitting multiple emails as a proposal submission, label each email with a number (e.g., 1 of 8), accordingly. After transmitting an email submission, offerors should confirm receipt of all emails with the intended recipients.

c. Facsimile is not an acceptable form of transmission for submission of initial proposals or revisions to initial proposals submitted in response to this solicitation. As directed by the Contracting Officer, facsimile may be used during discussions/negotiations, if discussions/negotiations are held, for proposal revisions, including Final Proposal Revisions.

2. Paragraph (c), Period for Acceptance of Offers, is revised as follows:

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Period of acceptance is **180** days.

3. Paragraph (h), Multiple Awards, is revised to add the following:

The Government intends to make two (2) awards, one (1) for each Group based on the technically acceptable offer with the lowest aggregate evaluated price. The Government reserves the right to award more than one Group and up to both Groups to one offeror if that offeror is the lowest price, technically acceptable offer for each group. In the event that one offeror is the awardee for two Groups, the Groups may be issued under a single contract. Offerors shall submit their best proposal for each Group independently due to the Government's right to make separate awards for Groups 1 and 2. Offerors are required to offer on and properly substantiate pricing for all items in the Schedule of Items for each Group offered on; failure to do so may result in exclusion from award consideration.

PROPOSAL SUBMISSION INFORMATION

A. Pricing

1. An offeror's price proposal shall consist of prices submitted for each of the items found in the Schedule of Items (Attachment 1). The Schedule of Items is a grouping of items expected to be ordered by the customers along with the estimated quantities. The items found in the Schedule of Items represent 100% of the estimated dollar value for that particular Group. Offerors are required to submit their Contract Unit Price for each item, broken down into the corresponding Delivered Price and Distribution Price components. Pricing will be based on the following formula:

$$\text{Contract Unit Price} = (\text{Delivered Price} - \text{Rebates/Discounts}) + \text{Distribution Price}$$

See Economic Price Adjustment section of this solicitation for price component definitions.

2. Formatting of Prices: Prices shall be formatted to no more than two places to the right of the decimal point, for example, \$2.50. In the event that the offeror submits a price that exceeds this limitation, the price will be rounded up or down using standard rounding methods. For example, a price of \$2.215 or higher will be rounded up to \$2.22 and a price of \$2.214 or lower will be rounded down to \$2.21.
3. Distribution Prices - Multiple Groups and Tiers:
 - a. Multiple Groups. The offeror is permitted to submit a separate Distribution Price for each Group. In this instance, "Group" refers to a distinct and separate set of customers that require produce support (i.e. Troops vs. Schools). In the event that an offeror includes a Distribution Price for only one Group but through its proposal submission clearly indicates that it had intended to submit a proposal for multiple Groups covered by the Solicitation (i.e. submits pricing for all items contained in the Schedule of Items for all Groups), the Contracting Officer will interpret the offeror's omission of a separate Distribution Price for the other Group as its willingness to retain the same Distribution Price as the Group it was provided for and apply it to all Groups. Per this provision, this interpretation by the Contracting Officer is reasonable and acceptable by the offeror.
 - b. Tiers. Only one Distribution Price shall be offered for all items in each Tier. Offerors may propose a different Distribution Price per Tier. As described above in paragraph A.3.a., if an offeror fails to propose a Distribution Price for all of the Tiers, the Contracting Officer will utilize the last proposed Tier and apply it onward for each subsequent

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Tier. For instance, an offeror proposes a Distribution Price of \$3.00 for Tier 1 and fails to provide any Distribution Price for Tier 2. The Contracting Officer will apply the \$3.00 Distribution Price from Tier 1 to Tier 2. This application is reasonable and acceptable by the offeror per the terms of this section.

B. Schedule of Items: Pricing

1. The Schedule of Items in Attachment 1 represents 100% of the estimated dollar value of this procurement. Offerors must submit pricing for all items in the Schedule of Items.
2. Estimated quantities for each tier (3 separate Tiers, consisting three (3) 18-month time periods) are indicated next to each item and are for information and evaluation purposes only.
3. Offerors are to submit proposed prices in accordance with the definitions of the separate price components identified in Section VII, B of the Statement of Work. The Delivered Prices proposed must reflect those prices that were paid by the offeror for the various items during the Sunday, December 11, 2022 through Saturday, January 14, 2023 with the product invoice (quotes may be accepted in very limited circumstances per Contracting Officer discretion as stated in paragraph D.2. below) and accompanying freight invoice. The offeror's proposed Contract Unit Prices must be in a format that identifies the Delivered Price, minus any applicable Rebates/Discounts, and the Distribution Price as separate entries, then totaled together as one lump sum (i.e. the Contract Unit Price). For example, if the Delivered Price is \$20.00, the applicable Rebates/Discounts equal \$0.25, and the Distribution Price is \$3.00 an offeror's proposed Contract Unit Price for that item should be indicated as follows:

$$(\$20.00 - \$0.25) + \$ 3.00 = \$ 22.75$$

(Prices used for illustrative purposes only)

- (a) An offeror shall NOT submit only the Contract Unit Price. All three components, as demonstrated above, shall be provided for each item.
- (b) Delivered Prices, applicable Rebates/Discounts, and Distribution Prices for all items are to be submitted according to the Government's Unit of Issue. There are NO exceptions to this requirement. Failure to do so may result in an offeror's proposal being deemed technically unacceptable and therefore eliminated from further consideration for award. Please note that all items listed in the Solicitation's Schedule of Items will ultimately become part of the Contractor's catalog.
- (c) Any favorable pricing terms, i.e. Rebates/Discounts, as well as any other terms the offeror represents in its proposal, should be available and utilized during the performance of the contract if the offeror is selected as the awardee. Therefore, it is required that the offeror be accurate in its reporting of said Rebates/Discounts. **TO BE CLEAR:** All offerors are on notice that the Contracting Officer expects each's proposal to accurately reflect the way in which that offeror intends to perform the contract if it is selected as the awardee. It is unacceptable to propose favorable terms that are inaccurate, false, or unrealistic for the purpose of misleading the Contracting Officer and tainting the evaluation process so that the offending offeror receives an award. Such behavior, when discovered, will result in immediate adverse action against the offeror or contractor as permitted by the terms of this Solicitation and resulting contract, applicable regulations, laws, or otherwise.

C. Distribution Prices

1. The offeror shall provide Distribution Prices for each Group (i.e. Troops vs. Schools) and for each Tier, as discussed in paragraph A.3 of this section. Each Distribution Price shall reflect performance costs on a per-case basis. Each Group may have a different Distribution Price. Also, each Tier may have a different Distribution Price, but each Tier's

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Distribution Price shall apply to all items during the entire Tier period.

2. Unlike Delivered Prices (as discussed further below), Distribution Prices shall remain constant for the entirety of each individual contract Tier. As such, the Distribution Price for Tier 1 does not have to be equal to the Distribution Price for Tier 2. These prices can differ or remain the same as the Tier 1 price; but ultimately will remain constant for the duration of each Tier period.

D. Delivered Prices

1. The offeror is required to submit pricing on all items within the Schedule of Items. For evaluation purposes, an offeror's proposed prices on the Schedule of Items shall reflect the offeror's Delivered Prices, as previously defined, that were effective during the date range noted in paragraph 3 of B. Schedule of Items: Pricing.
2. As part of the evaluation process and requirement for proposal submission, the Government requires offerors to substantiate all of its proposed Delivered Prices with an invoice / quote from the manufacturer, grower, private label holder, or redistributor (collectively referred to as "Supplier") along with the corresponding freight invoice. The line item number must be clearly marked on each invoice (product and freight) to identify the invoice's corresponding item. The preferred documentation is the manufacturer, grower, or private label holder invoice. If a particular line item was not stocked during that time period, a written quote from a manufacturer, grower or private label holder may be accepted. However, please note that anything other than an invoice, such as quotes, are the exception to the rule and may not be satisfactory to the Contracting Officer in substantiating an offeror's Delivered Price. If unsatisfactory to the Contracting Officer, said price will be unacceptable and treated as though the offeror didn't submit a price at all. This situation may result in the offeror's proposal being deemed technically unacceptable and removed from further consideration for award. If an offeror does not have an invoice, the offeror needs to explain why, e.g. not in season, do not carry, etc. As stated, the Government has a strong preference for invoices over market quotes or other documentation. All invoices, quotes, or other documentation must be from sources that the offeror currently uses or plans to use to support the resultant contract. All invoices (or quotes, when approved by the contracting officer) must be based on quantities that are representative of the quantities expected to be purchased under the contract. For example, an invoice for a quantity of 1 will not be accepted when the Government routinely purchases quantities well in excess of that amount. Conversely, an invoice (or quotes, when approved by the contracting officer) based upon a quantity significantly larger than expected to be purchased under the contract will not be accepted. Quotes shall not be used for the purpose of submitting a price lower than an existing invoice price within the offeror's possession for the particular time period required by the Solicitation. This type of gamesmanship (i.e. lowballing) threatens the integrity of the procurement process and runs afoul of the clear intention of this Solicitation. As such, it will not be tolerated. By submitting a quote, the offeror is certifying that it did not purchase, nor have in stock, the item for the time period being evaluated. Information that is later obtained by the Contracting Officer that casts doubt on the veracity of this certification will be handled as appropriate per the terms of this Solicitation and resulting contract, applicable regulations, laws, or otherwise. The Contracting Officer has the sole authority and ultimate discretion in addressing the above-identified situations and scenarios and ultimately deciding on what information is acceptable and substantiates an offeror's proposed Delivered Prices.

Any quote must be presented in the following manner:

- (a) Detailed on Manufacturer, Grower, or Private Label Holder letterhead;
- (b) Date price quote was supplied;
- (c) Time period price quote is effective; to include expiration date;
- (d) Quantity covered by price quote;
- (e) Manufacturer, Grower, or Private Label Holder part number; and
- (f) Manufacturer, Grower, or Private Label Holder's point of contact: including name, title, address, and phone numbers.

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E. Contract Unit Prices

- Prices must not extend more than two places to the right of the decimal point. Standard rounding methods must be observed. For example, a delivered price of \$2.215 or higher must be rounded up to \$2.22 and a price of \$2.214 or lower must be rounded down to \$2.21.
- If an offeror carries a variety of brands for the same item, the price submitted shall be for the lowest priced, technically acceptable, item that meets the Government's minimum requirements.
- All items procured under the resultant contract are subject to all contractual clauses and regulations, including, but not limited to, DFARS 252.225-7012, Preference for Certain Domestic Commodities, and the requirement that items be procured from a sanitarily approved source.
- Offerors are required to submit a spreadsheet containing the following information (Attachment 1):
 - Government Item Number
 - Stock Number
 - Average Gov't Case Weight: Provided.
 - Item Description: Government Item Description.
 - Estimated Quantity: Quantity provided.
 - Unit of Issue: Self-explanatory. Note: Unit of Issue must be the same as that identified in the Government's Schedule of Items.
 - Delivered Price (DEP): The price you actually paid for the item minus any applicable Rebates/Discounts, as substantiated by a Manufacturer, Grower, or Private Label Holder invoice or quote. In limited circumstances as described above, this price may be substantiated by a Redistributor's invoice (Redistributor Exception). Conversely, under no circumstances will a quote be accepted from a Redistributor.
 - Tier 1 Distribution Price (DIP): Your Tier 1 distribution price.
 - Contract Unit Price: (Delivered Price - Rebates/Discounts) + Distribution Price.
 - Total Delivered Price: (Delivered Price - Rebates/Discounts) * Estimated quantity.
 - Total Distribution Price: Distribution price * Estimated quantity.
 - Total Evaluated Price: Total Delivered Price + Total Distribution Price.
 - Tier 2 Distribution Price: Your Tier 2 distribution price.
 - Tier 3 Distribution Price: Your Tier 3 distribution price.

F. Instructions for Proposal Spreadsheet - Attachment 1

- Please fill in the white boxes only for each Group. For *Group 1*, Troops Kansas and Missouri customers, fill in Delivered Price (including Freight) cells G7 to G43. For *Group 2*, Schools Missouri and Kansas Reservations customers, fill in Delivered Price (including Freight) cells G7 to G45. The offeror may propose different Distribution Prices for each Group and for each Tier, but all items within each Tier shall have the same distribution price. The offeror must submit Tier period Distribution Prices by filling in cells **H7 for Tier 1, M7 for Tier 2 and N7 for Tier 3 for Groups 1, and 2 in Attachment 1**. The spreadsheet will automatically calculate your total evaluated price for each Tier. All prices must be rounded to two places to the right of the decimal point using standard rounding methods (see paragraph A.2. above). If an offeror does not submit Distribution Prices for the Tier periods, the offeror's proposal may be rejected as technically unacceptable. **Distribution Prices by Tier are to be expressed in dollars and cents only.** An offeror may elect to offer no change in the Distribution Prices over the life of the contract. If you are not changing tier period Distribution Prices, all offerors must fill in cells **M7 Tier 2 and N7 Tier 3 with the same distribution pricing as the "Tier 1 Price" column**. Failure to do so will be read as the offeror's intention to have the most recent preceding Tier distribution price apply to the subsequent Tier periods. As a reminder, all offerors must submit **ONE DISTRIBUTION PRICE** per Tier that will apply to every item in a Group in the Schedule of Items. Multiple Distribution Prices within a Tier period will not be accepted.
- When preparing the spreadsheet, totals must appear in the rows titled "TIER 1 EVALUATION", "TIER 2 EVALUATION", "TIER 3 EVALUATION" and "TOTAL EVALUATION INCLUDING ALL TIERS".

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G. Financial Arrangements: As part of a proposal, an offeror must submit, on signed letterhead, a list identifying any and all financial arrangements under which the offeror:

- (i) receives money from any of the offeror's suppliers, and
- (ii) asserts that such money is not a rebate, discount, or other economic incentive that would be owed to the Government under the terms of this solicitation and the resulting contract.

The offeror must provide the name of each supplier with whom the contractor has such a financial arrangement(s), provide a brief description of each financial arrangement, provide written agreement, and explain why the offeror believes that each financial arrangement should not be considered a rebate, discount, or other incentive that would be owed to the Government under the terms of this solicitation and the resulting contract.

Note: A negative response is required.

H. Proposal Submission: Each offeror must submit:

- (i) a signed copy of the solicitation (and amendments, if applicable),
- (ii) all solicitation attachments (including Attachment 1 with proposed prices),
- (iii) signed financial arrangement information,
- (iv) a copy of a valid PACA License, and
- (v) a valid GHP / GAP audit for each place of performance. Failure to do so may render an offeror's proposal technically unacceptable.
- (vi) invoices or quotes substantiating all delivered prices, and corresponding freight invoices.

No hard copy is required when submitting a proposal through email.

For email submissions, offerors are reminded to limit the file size of any required documents being emailed, i.e., signed copy of the solicitation, amendments, completed Attachment 1, PACA license, financial arrangement letter, completed list of Places of Performance, valid USDA Good Agricultural Practices and Good Handling Practices or independent third-party certifying company audit inspection reports / certificates, invoices, etc. No individual document submitted should be greater than 5MB and no entire email should be larger than 10 MB. Multiple emails are likely necessary. When submitting multiple emails as a proposal submission, label each email with a number (e.g., 1 of 8), accordingly. In addition, label each individual document according to submission requirement with which it corresponds.

52.212-2 -- Evaluation -- Commercial Items.

This provision is incorporated by reference.

Addendum to FAR 52.212-2

The following paragraphs of 52.212-2 are amended or added as indicated below:

(a) The Government will award a contract(s) resulting from this solicitation to the responsible offeror(s) whose offer(s) conforming to the solicitation will be most advantageous to the Government, price and other factors considered. Lowest Price Technically Acceptable (LPTA) source selection procedures will be used as the source selection method in this procurement. The following factors shall be used to evaluate offers:

1. Technical Acceptability - A technically acceptable offer is an offer that takes no exceptions to the terms and conditions in the solicitation and complies fully with all submission requirements, including submissions relating to the two subfactors listed below. A

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proposal that takes exception to solicitation terms and conditions or that fails to comply with all submission requirements may be deemed technically unacceptable and, thus, may be found ineligible, and removed from further consideration, for the award. By submitting a proposal with no exceptions, an offeror is confirming it possesses the necessary facilities, equipment, technical skills and capacity to successfully provide all items required by this solicitation. The following sub-factors will be evaluated and must be found acceptable for a proposal to be eligible for award:

A. Perishable Agricultural Commodities Act (PACA) License - The offeror shall possess and submit proof of a valid current PACA license.

B. Good Agricultural Practices (GAP) and Good Handling Practices (GHP) Audit - The offeror shall submit a valid, current USDA GAP/GHP audit report / certificate covering a full range of fresh fruits and vegetables for each place of performance identified in the offeror's proposal. The audit report must demonstrate a passing score, and specifically passing in the following parts: General, Wholesale Distribution (Section 6) and Preventive Food Defense (Section 7). In lieu of a USDA GAP/GHP audit report / certificate, the offeror may submit an audit report / certificate conducted by a recognized private independent third-party certifying company certifying to an industry recognized food safety standard that exceeds all aspects of the USDA GAP/GHP audit report / certificate requirements. The audit report(s) must demonstrate that a passing score(s) was/were received. NOTE: Offerors relying on a non-USDA GAP/GHP audit report / certificate must agree to have a USDA GAP/GHP audit report / certificate for each place of performance by the start of contract performance.

2. Pricing - Pricing is required for all items found in the Schedule of Items (for each Group, if applicable) and for all tiers. Failure to offer pricing for all items and failing to properly substantiate all pricing for all tiers may result in a proposal being removed from consideration for award as technically unacceptable. The Government will perform an aggregate price analysis on all items found in the Schedule of Items (for each Group, if applicable). To determine an offeror's Evaluated Aggregate Price, the Weighted Aggregate Distribution Price will be added to the Aggregate Delivered Price. Please refer to paragraph (d) of this provision for further details regarding these price components. The award(s) will be made on the basis of the lowest Evaluated Aggregate Price (for each Group, if applicable) of proposals meeting or exceeding the acceptability standards for non-price factors. The Government reserves the right to remove item(s) from the Schedule of Items or do a common item comparison if offerors do not submit pricing for all items. Prior to award, the offered prices of the presumptive awardee(s) will be evaluated on an individual line-item basis to determine whether each price is fair and reasonable using analytical techniques deemed appropriate by the Contracting Officer in her/his complete discretion.

(b) Options are not included in this solicitation.

(c) A written notice of award or acceptance of an offer, mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

(d) Price Components:

1. Weighted Aggregate Distribution Price:

Aggregate Distribution Price is obtained by first multiplying the proposed distribution price for each item in the Schedule of Items by the item's estimated quantity to calculate the total distribution price for each item. Then, the total distribution prices of all items will be added together to determine the total distribution price for tier 1. The total distribution price for each subsequent tier will also be calculated. The total distribution prices for all tiers will be added together to determine the Aggregate Distribution Price. The Aggregate Distribution Price is then multiplied by a weighting factor of 6 to arrive at the Weighted Aggregate Distribution Price. Note:

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the weighting factor is applied only to the overall Aggregate Distribution Price (not on a line item basis), and is to be used for evaluation purposes only. The Government's use of a weighting factor of 6 for distribution pricing is done in order to more accurately balance the significance of the pricing components and their respective impact on any subsequent contract(s) issued under this solicitation.

2. Aggregate Delivered Price:

The Aggregate Delivered Price is obtained by first multiplying the proposed delivered price of each item in the Schedule of Items by the item's estimated quantity to calculate the total delivered price for each item. Then, the total delivered prices of all items will be added together to determine the total delivered price for tier 1. The total delivered price for each subsequent tier will also be calculated. The total delivered prices for all tiers will be added together to determine the Aggregate Delivered Price.

3. Evaluated Aggregate Price:

The Evaluated Aggregate Price is obtained by adding the Weighted Aggregate Distribution Price and and Aggregate Delivered Price together.

4. For purposes of the Price Proposal Evaluation, Weighted Aggregate Distribution Price and Aggregate Delivered Price are considered equal. This equality is accounted for mathematically by applying a weighting factor of 6 (based on current Government data) to the Aggregate Distribution Price.

52.212-4 -- Contract Terms and Conditions -- Commercial Items.

(a) Inspection/Acceptance. The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not possible, the government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights --

(1) Within a reasonable time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) Assignment. The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C.3727). However, when a third party makes payment (e.g., use of the Government wide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

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(c) Changes. Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) Disputes. This contract is subject to 41 U.S.C. chapter 71, Contract Disputes. Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) Definitions. The clause at FAR 52.202-1, Definitions, is incorporated herein by reference.

(f) Excusable delays. The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) Invoice.

(1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include --

(i) Name and address of the Contractor;

(ii) Invoice date and number;

(iii) Contract number, line item number and, if applicable, the order number;

(iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;

(v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;

(vi) Terms of any discount for prompt payment offered;

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(vii) Name and address of official to whom payment is to be sent;

(viii) Name, title, and phone number of person to notify in event of defective invoice; and

(ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer -- System for Award Management, or 52.232-34, Payment by Electronic Funds Transfer --Other Than System for Award Management), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(2) Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR part 1315.

(h) Patent indemnity. The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) Payment.

(1) Items accepted. Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) Prompt Payment. The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and prompt payment regulations at 5 CFR Part 1315.

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(3) Electronic Funds Transfer (EFT). If the Government makes payment by EFT, see 52.212-5(b) for the appropriate EFT clause.

(4) Discount. In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(5) Overpayments. If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall --

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the --

(A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number, if applicable;

(C) Affected line item or subline item, if applicable; and

(D) Contractor point of contact.

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(6) Interest.

(i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in 41 U.S.C. 7109, which is applicable to the period in which the amount becomes due, as provided in (i)(6)(v) of this clause, and then at the rate applicable for each six-month period at fixed by the Secretary until the amount is paid.

(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) Final decisions. The Contracting Officer will issue a final decision as required by 33.211 if --

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(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days;

(B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see 32.607-2).

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(v) Amounts shall be due at the earliest of the following dates:

(A) The date fixed under this contract.

(B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on

--

(A) The date on which the designated office receives payment from the Contractor;

(B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(vii) The interest charge made under this clause may be reduced under the procedures prescribed in 32.608-2 of the Federal Acquisition Regulation in effect on the date of this contract.

(j) Risk of loss. Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

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(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) Taxes. The contract price includes all applicable Federal, State, and local taxes and duties.

(l) Termination for the Government's convenience. The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) Termination for cause. The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) Title. Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) Warranty. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) Limitation of liability. Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) Other compliances. The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) Compliance with laws unique to Government contracts. The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. chapter 37, Contract Work Hours and Safety Standards; 41 U.S.C. chapter 87, Kickbacks; 41 U.S.C. 4712 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. chapter 21 relating to procurement integrity.

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(s) Order of precedence. Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

(1) The schedule of supplies/services.

(2) The Assignments, Disputes, Payments, Invoice, Other Compliances, Compliance with Laws Unique to Government Contracts, and Unauthorized Obligations paragraphs of this clause.

(3) The clause at 52.212-5.

(4) Addenda to this solicitation or contract, including any license agreements for computer software.

(5) Solicitation provisions if this is a solicitation.

(6) Other paragraphs of this clause.

(7) The Standard Form 1449.

(8) Other documents, exhibits, and attachments.

(9) The specification.

(t) Reserved

(u) Unauthorized Obligations.

(1) Except as stated in paragraph (u)(2) of this clause, when any supply or service acquired under this contract is subject to any End Use License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

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(i) Any such clause is unenforceable against the Government.

(ii) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an "I agree" click box or other comparable mechanism (e.g., "click-wrap" or "browse-wrap" agreements), execution does not bind the Government or any Government authorized end user to such clause.

(iii) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.

(2) Paragraph (u)(1) of this clause does not apply to indemnification by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

(v) Incorporation by reference. The Contractor's representations and certifications, including those completed electronically via the System for Award Management (SAM), are incorporated by reference into the contract.

ADDENDUM 52.212-4

The following paragraph(s) of 52.212-4 are amended as indicated below:

1. Paragraph (a), Inspection/Acceptance, is revised to add the following:

"Inspection and acceptance of products will be performed at destination. The authorized Government receiving official for each customer is responsible for signing for and accepting products when they are delivered. The final disposition decision rests with the food service officer and/or the authorized Government receiving official.

2. Paragraph (c), Changes, is deleted in its entirety and replaced with the following:

(c) Changes.

(1) In addition to bilateral changes, the Contracting Officer, at his/her discretion, may unilaterally invoke any of the contingency options set forth in this contract

(2) The Contracting Officer may at any time, by unilateral written order, make changes within the general scope of this contract in any one or more of the following:

(i) Method of shipment or packing;

(ii) Place, manner, or time of delivery.

(3) If such change causes an increase or decrease in the cost of, or time required for, performance for any part of the work under this contract, the Contracting Officer shall make equitable adjustment in the contract price, the delivery schedule, or both, and shall modify

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the contract.

(4) The Contractor must assert its right to an adjustment under this clause within thirty (30) days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(5) 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.

3. Paragraph (m), Termination for Cause.

Delete paragraph (m) in its entirety and substitute the following:

(m) Termination for Cause. The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If this contract is terminated in whole or in part for cause, 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, or any other damages resulting from such default, the Contractor shall pay, and the Government shall accept, the sum of \$1350.00 as payment in full for the administrative costs of such repurchase. This assessment of damages for administrative costs shall apply for any termination for cause following which the Government repurchases the terminated supplies or services together with any incidental or consequential damages incurred because of the termination. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

PID Data - Custom Clause

Insert (copy and paste) text for the PID information here

Part 12 Clauses

52.204-13 SYSTEM FOR AWARD MANAGEMENT MAINTENANCE (OCT 2018) FAR

52.204-25 PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (AUG 2020) FAR

ADDENDUM TO 52.212-4 CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS

(Insert desired/appropriate text here)

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<p>Part 12 Clauses (CONTINUED)</p> <p>CLAUSES ADDED TO PART 12 BY ADDENDUM</p> <p>252.203-7000 REQUIREMENTS RELATING TO COMPENSATION OF FORMER DOD OFFICIALS (SEP 2011) DFARS</p> <p>252.203-7002 REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (SEP 2013) DFARS</p> <p>252.203-7003 AGENCY OFFICE OF THE INSPECTOR GENERAL (AUG 2019) DFARS</p> <p>252.204-7003 CONTROL OF GOVERNMENT PERSONNEL WORK PRODUCT (APR 1992) DFARS</p> <p>252.204-7004 LEVEL I ANTITERRORISM AWARENESS TRAINING FOR CONTRACTORS (FEB 2019) DFARS</p> <p>252.204-7009 LIMITATIONS ON THE USE OR DISCLOSURE OF THIRD-PARTY CONTRACTOR REPORTED CYBER INCIDENT INFORMATION (OCT 2016) DFARS</p> <p>252.204-7012 SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING (DEC 2019) DFARS</p> <p>252.204-7015 NOTICE OF AUTHORIZED DISCLOSURE OF INFORMATION FOR LITIGATION SUPPORT (MAY 2016) DFARS</p> <p>252.205-7000 PROVISION OF INFORMATION TO COOPERATIVE AGREEMENT HOLDERS (DEC 1991) DFARS</p> <p>L02 ELECTRONIC ORDER TRANSMISSION (JUN 2020)</p> <p>Offerors shall select one of the following alternatives for paperless order transmission:</p> <p>[] American National Standards Institute (ANSI) X12 Standards through a value added network (VAN) approved by DLA Transaction Services; or</p> <p>[] Electronic mail (email) award notifications containing web links to electronic copies of the Department of Defense (DD) Form 1155, Order for Supplies or Services.</p> <p>Offerors must register on the DLA Internet Bid Board System (DIBBS) (https://www.dibbs.bsm.dla.mil/) to receive email notification. If the offeror elects ANSI/VAN order transmission, DLA will send Electronic Data Interchange (EDI) transaction sets at time of award. The contractor shall acknowledge receipt of transaction sets with a functional acknowledgement or order receipt message within 24 hours. If the contractor receives the award transaction set on a weekend or Federal holiday, the contractor shall acknowledge receipt on the next business day. This acknowledgement will confirm that the contractor's interface with the system is working as needed for contract ordering.</p> <p>Offerors can obtain information regarding EDI, ANSI X12 transactions, and VANs approved by DLA Transaction Services at Defense Automatic Addressing System (DAAS) Value Added Network List (https://www.transactionservices.dla.mil/daashome/edi-vanlist-dla.asp).</p> <p>Offerors should direct questions concerning electronic ordering to the appropriate procuring organization point of contact below:</p> <p>DLA Land and Maritime, Helpdesk.EBS.L&M.LTCs@dlamail</p> <p>DLA Troop Support, dlaedigroup@dlamail</p> <p>DLA Aviation, avnprocsysproceddiv@dlamail, phone # 804-279-4026</p> <p>252.209-7004 SUBCONTRACTING WITH FIRMS THAT ARE OWNED OR CONTROLLED BY THE GOVERNMENT OF A COUNTRY THAT IS A STATE SPONSOR OF TERRORISM (MAY 2019) DFARS</p> <p>52.211-17 DELIVERY OF EXCESS QUANTITIES (SEP 1989) FAR</p> <p>52.212-5</p> <p>52.212-5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders --Commercial Products and Commercial Services.</p> <p>As prescribed in 12.301(b)(4), insert the following clause:</p> <p>Contract Terms and Conditions Required To Implement Statutes or Executive Orders --Commercial Products and Commercial Services (May</p> <p style="text-align: right;">CONTINUED ON NEXT PAGE</p>		

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Part 12 Clauses (CONTINUED)

2022)

(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 products and commercial services*:

- (1) [52.203-19](#), Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).
- (2) [52.204-23](#), Prohibition on *Contracting* for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Nov 2021) (Section 1634 of Pub. L. 115-91).
- (3) [52.204-25](#), Prohibition on *Contracting* for Certain Telecommunications and Video Surveillance Services or Equipment. (Nov 2021) (Section 889(a)(1)(A) of Pub. L. 115-232).
- (4) [52.209-10](#), Prohibition on *Contracting* with Inverted Domestic Corporations (Nov 2015). (5) [52.233-3](#), Protest After Award (Aug 1996) ([31 U.S.C. 3553](#)).
- (6) [52.233-4](#), Applicable Law for Breach of Contract *Claim* (Oct 2004) (Public Laws 108-77 and 108-78 ([19 U.S.C. 3805 note](#))).

(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 products and commercial services*:

[*Contracting Officer check as appropriate.*]

X (1) [52.203-6](#), Restrictions on Subcontractor Sales to the Government (Jun 2020), with *Alternate I* (Nov 2021) ([41 U.S.C. 4704](#) and [10 U.S.C. 2402](#)).

X (2) [52.203-13](#), Contractor Code of Business Ethics and Conduct (Nov 2021) ([41 U.S.C. 3509](#)).

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

X (4) [52.204-10](#), Reporting Executive Compensation and First-Tier Subcontract Awards (Jun 2020) (Pub. L. 109-282) ([31 U.S.C. 6101 note](#)).

 (5) [Reserved].

 (6) [52.204-14](#), Service Contract Reporting Requirements (Oct 2016) (Pub. L. 111-117, section 743 of Div. C).

 (7) [52.204-15](#), Service Contract Reporting Requirements for Indefinite-Delivery Contracts (Oct 2016) (Pub. L. 111-117, section 743 of Div. C).

X (8) [52.209-6](#), Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed

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Part 12 Clauses (CONTINUED)

for *Debarment*. (Nov 2021) ([31 U.S.C. 6101 note](#)).

X(9) [52.209-9](#), Updates of Publicly Available Information Regarding Responsibility Matters (Oct 2018) ([41 U.S.C. 2313](#)).

_(10) [Reserved].

_(11) [52.219-3](#), Notice of *HUBZone* Set-Aside or Sole-Source Award (Sep 2021) ([15 U.S.C. 657a](#)).

_(12) [52.219-4](#), Notice of Price Evaluation Preference for *HUBZone Small Business Concerns* (Sep 2021) (if the *offeror* elects to waive the preference, it *shall* so indicate in its *offer*) ([15 U.S.C. 657a](#)).

_(13) [Reserved]

X(14) (i) [52.219-6](#), Notice of Total Small Business Set-Aside (Nov 2020) ([15 U.S.C. 644](#)).

X (ii) *Alternate I* (Mar 2020) of [52.219-6](#).

_(15) (i) [52.219-7](#), Notice of Partial Small Business Set-Aside (Nov 2020) ([15 U.S.C. 644](#)).

_(ii) *Alternate I* (Mar 2020) of [52.219-7](#).

X(16) [52.219-8](#), Utilization of *Small Business Concerns* (Oct 2018) ([15 U.S.C. 637\(d\)\(2\)](#) and (3)).

_(17) (i) [52.219-9](#), Small Business Subcontracting Plan (Nov 2021) ([15 U.S.C. 637\(d\)\(4\)](#)).

_(ii) *Alternate I* (Nov 2016) of [52.219-9](#).

_(iii) *Alternate II* (Nov 2016) of [52.219-9](#).

_(iv) *Alternate III* (Jun 2020) of [52.219-9](#).

_(v) *Alternate IV* (Sep 2021) of [52.219-9](#).

_(18) (i) [52.219-13](#), Notice of Set-Aside of Orders (Mar 2020) ([15 U.S.C. 644\(r\)](#)).

_(ii) *Alternate I* (Mar 2020) of [52.219-13](#).

X(19) [52.219-14](#), Limitations on Subcontracting (Sep 2021) ([15 U.S.C. 637s](#)).

_(20) [52.219-16](#), Liquidated Damages --Subcontracting Plan (Sep 2021) ([15 U.S.C. 637\(d\)\(4\)\(F\)\(i\)](#)).

_(21) [52.219-27](#), Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (Sep 2021) ([15 U.S.C. 657f](#)).

X(22) (i) [52.219-28](#), Post Award Small Business Program Representation (Sep 2021) ([15 U.S.C. 632\(a\)\(2\)](#)).

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 (ii) Alternate I (Mar 2020) of [52.219-28](#).

 (23) [52.219-29](#), Notice of Set-Aside for, or Sole-Source Award to, Economically Disadvantaged *Women-Owned Small Business Concerns* (Sep 2021) ([15 U.S.C. 637\(m\)](#)).

 (24) [52.219-30](#), Notice of Set-Aside for, or Sole-Source Award to, *Women-Owned Small Business Concerns* Eligible Under the Women-Owned Small Business Program (Sep 2021) ([15 U.S.C. 637\(m\)](#)).

 (25) [52.219-32](#), Orders Issued Directly Under Small Business Reserves (Mar 2020) ([15 U.S.C. 644\(r\)](#)).

 (26) [52.219-33](#), Nonmanufacturer Rule (Sep 2021) ([15U.S.C. 637\(a\)\(17\)](#)).

 X (27) [52.222-3](#), Convict Labor (Jun 2003) (E.O.11755).

 X (28) [52.222-19](#), Child Labor-Cooperation with Authorities and Remedies (Jan 2022) (E.O.13126).

 X (29) [52.222-21](#), Prohibition of Segregated Facilities (Apr 2015).

 X (30) (i) [52.222-26](#), Equal Opportunity (Sep 2016) (E.O.11246).

 (ii) Alternate I (Feb 1999) of [52.222-26](#).

 X (31) (i) [52.222-35](#), Equal Opportunity for Veterans (Jun 2020) ([38 U.S.C. 4212](#)).

 (ii) Alternate I (Jul 2014) of [52.222-35](#).

 X (32) (i) [52.222-36](#), Equal Opportunity for Workers with Disabilities (Jun 2020) ([29 U.S.C. 793](#)).

 (ii) Alternate I (Jul 2014) of [52.222-36](#).

 X (33) [52.222-37](#), Employment Reports on Veterans (Jun 2020) ([38 U.S.C. 4212](#)).

 X (34) [52.222-40](#), Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496).

 X (35) (i) [52.222-50](#), Combating Trafficking in Persons (Nov 2021) ([22 U.S.C. chapter 78](#) and E.O. 13627).

 (ii) Alternate I (Mar 2015) of [52.222-50](#) ([22 U.S.C. chapter 78](#) and E.O. 13627).

 (36) [52.222-54](#), Employment Eligibility Verification (*May 2022*) (Executive Order 12989). (Not applicable to the *acquisition* of commercially available off-the-shelf items or certain other types of *commercial products* or *commercial services* as prescribed in FAR [22.1803](#).)

 (37) (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.)

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_(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.)

_(38) [52.223-11](#), *Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons* (Jun 2016) (E.O. 13693).

_(39) [52.223-12](#), *Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners* (Jun 2016) (E.O. 13693).

_(40)(i) [52.223-13](#), *Acquisition of EPEAT®-Registered Imaging Equipment* (Jun 2014) (E.O.s 13423 and 13514).

_(ii) *Alternate I* (Oct 2015) of [52.223-13](#).

_(41) (i) [52.223-14](#), *Acquisition of EPEAT®-Registered Televisions* (Jun 2014) (E.O.s 13423 and 13514).

_(ii) *Alternate I* (Jun 2014) of [52.223-14](#).

_(42) [52.223-15](#), *Energy Efficiency in Energy-Consuming Products* (May 2020) ([42 U.S.C. 8259b](#)).

_(43) (i) [52.223-16](#), *Acquisition of EPEAT®-Registered Personal Computer Products* (Oct 2015) (E.O.s 13423 and 13514).

_(ii) *Alternate I* (Jun 2014) of [52.223-16](#).

X (44) [52.223-18](#), *Encouraging Contractor Policies to Ban Text Messaging While Driving* (Jun 2020) (E.O. 13513).

_(45) [52.223-20](#), *Aerosols* (Jun 2016) (E.O. 13693).

_(46) [52.223-21](#), *Foams* (Jun 2016) (E.O. 13693).

_(47) (i) [52.224-3](#) *Privacy Training* (Jan 2017) (5 U.S.C. 552 a).

_(ii) *Alternate I* (Jan 2017) of [52.224-3](#).

X (48) [52.225-1](#), *Buy American-Supplies* (Nov 2021) ([41 U.S.C. chapter 83](#)).

_(49) (i) [52.225-3](#), *Buy American-Free Trade Agreements-Israeli Trade Act* (Nov 2021) ([41 U.S.C. chapter 83](#), [19 U.S.C. 3301](#) note, [19 U.S.C. 2112](#) note, [19 U.S.C. 3805](#) note, [19 U.S.C. 4001](#) note, Pub. L. 103-182, 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, 110-138, 112-41, 112-42, and 112-43).

_(ii) *Alternate I* (Jan 2021) of [52.225-3](#).

_(iii) *Alternate II* (Jan 2021) of [52.225-3](#).

_(iv) *Alternate III* (Jan 2021) of [52.225-3](#).

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Part 12 Clauses (CONTINUED)

_(50) [52.225-5](#), Trade Agreements (Oct 2019) ([19 U.S.C. 2501](#), *et seq.*, [19 U.S.C. 3301](#) note).

_X(51) [52.225-13](#), Restrictions on Certain Foreign Purchases (Feb 2021) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

_(52) [52.225-26](#), Contractors Performing Private Security Functions Outside the *United States* (Oct 2016) (Section 862, as amended, of the *National Defense* Authorization Act for Fiscal Year 2008; [10 U.S.C. 2302](#)Note).

_(53) [52.226-4](#), Notice of Disaster or *Emergency* Area Set-Aside (Nov 2007) ([42 U.S.C. 5150](#)).

_(54) [52.226-5](#), Restrictions on Subcontracting Outside Disaster or *Emergency* Area (Nov2007) ([42 U.S.C. 5150](#)).

_(55) [52.229-12](#), Tax on Certain Foreign *Procurements* (Feb 2021).

_(56) [52.232-29](#), Terms for Financing of Purchases of *Commercial Products* and *Commercial Services* (Nov 2021) ([41 U.S.C. 4505](#), [10 U.S.C. 2307\(f\)](#)).

_(57) [52.232-30](#), Installment Payments for *Commercial Products* and *Commercial Services* (Nov 2021) ([41 U.S.C. 4505](#), [10 U.S.C. 2307\(f\)](#)).

_X(58) [52.232-33](#), Payment by Electronic Funds Transfer-System for Award Management (Oct2018) ([31 U.S.C. 3332](#)).

_(59) [52.232-34](#), Payment by Electronic Funds Transfer-Other than System for Award Management (Jul 2013) ([31 U.S.C. 3332](#)).

_(60) [52.232-36](#), Payment by Third Party (*May* 2014) ([31 U.S.C. 3332](#)).

_(61) [52.239-1](#), Privacy or Security Safeguards (Aug 1996) ([5 U.S.C. 552a](#)).

_(62) [52.242-5](#), Payments to *Small Business Subcontractors* (Jan 2017) ([15 U.S.C. 637\(d\)\(13\)](#)).

_(63)

(i) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (Nov 2021) ([46 U.S.C. 55305](#) and [10 U.S.C. 2631](#)).

_(ii) *Alternate I* (Apr 2003) of [52.247-64](#).

_(iii) *Alternate II* (Nov 2021) 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 products and commercial services*:

[Contracting Officer check as appropriate.]

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Part 12 Clauses (CONTINUED)

_(1) [52.222-41](#), Service Contract Labor Standards (Aug 2018) ([41 U.S.C. chapter 67](#)).

_(2) [52.222-42](#), Statement of Equivalent Rates for Federal Hires (May 2014) ([29 U.S.C. 206](#) and [41 U.S.C. chapter 67](#)).

_(3) [52.222-43](#), Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (Multiple Year and *Option* Contracts) (Aug 2018) ([29 U.S.C. 206](#) and [41 U.S.C. chapter 67](#)).

_(4) [52.222-44](#), Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (May 2014) ([29 U.S.C. 206](#) and [41 U.S.C. chapter 67](#)).

_(5) [52.222-51](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (May 2014) ([41 U.S.C. chapter 67](#)).

_(6) [52.222-53](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements (May 2014) ([41 U.S.C. chapter 67](#)).

_(7) [52.222-55](#), Minimum Wages for Contractor Workers Under Executive Order 14026 (Jan 2022).

_(8) [52.222-62](#), Paid Sick Leave Under Executive Order 13706 (Jan 2022) (E.O. 13706).

X (9) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations (Jun 2020) ([42 U.S.C. 1792](#)).

(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*, as defined in FAR [2.101](#), on the date of award of this contract, 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)

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Part 12 Clauses (CONTINUED)

(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in this paragraph (e)(1) in a subcontract for *commercial products* or *commercial services*. 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 (Nov 2021) ([41 U.S.C. 3509](#)).
- (ii) [52.203-19](#), Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).
- (iii) [52.204-23](#), Prohibition on *Contracting* for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Nov 2021) (Section 1634 of Pub. L. 115-91).
- (iv) [52.204-25](#), Prohibition on *Contracting* for Certain Telecommunications and Video Surveillance Services or Equipment. (Nov 2021) (Section 889(a)(1)(A) of Pub. L. 115-232).
 - (v) [52.219-8](#), Utilization of *Small Business Concerns* (Oct 2018) ([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 the applicable threshold specified in FAR [19.702](#)(a) on the date of subcontract award, the subcontractor *must* include [52.219-8](#) in lower tier subcontracts that offer subcontracting opportunities.
- (vi) [52.222-21](#), Prohibition of Segregated Facilities (Apr 2015).
- (vii) [52.222-26](#), Equal Opportunity (Sep 2015) (E.O.11246).
- (viii) [52.222-35](#), Equal Opportunity for Veterans (Jun 2020) ([38 U.S.C. 4212](#)).
- (ix) [52.222-36](#), Equal Opportunity for Workers with Disabilities (Jun 2020) ([29 U.S.C. 793](#)).
- (x) [52.222-37](#), Employment Reports on Veterans (Jun 2020) ([38 U.S.C. 4212](#)).
- (xi) [52.222-40](#), Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause [52.222-40](#).
- (xii) [52.222-41](#), Service Contract Labor Standards (Aug 2018) ([41 U.S.C. chapter 67](#)).
- (xiii)
- (A) [52.222-50](#), Combating Trafficking in Persons (Nov 2021) ([22 U.S.C. chapter 78](#) and E.O 13627).
- (B) *Alternate I* (Mar 2015) of [52.222-50](#) ([22 U.S.C. chapter 78](#) and E.O. 13627).
- (xiv) [52.222-51](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (May2014) ([41 U.S.C. chapter 67](#)).
- (xv) [52.222-53](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements (*May* 2014) ([41 U.S.C. chapter 67](#)).

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(xvi) [52.222-54](#), Employment Eligibility Verification (*May 2022*) (E.O. 12989).

(xvii) [52.222-55](#), Minimum Wages for Contractor Workers Under Executive Order 14026 (*Jan 2022*).

(xviii) [52.222-62](#), Paid Sick Leave Under Executive Order 13706 (*Jan 2022*) (E.O. 13706).

(xix)

(A) [52.224-3](#), Privacy Training (*Jan 2017*) ([5 U.S.C. 552a](#)).

(B) *Alternate I* (*Jan 2017*) of [52.224-3](#).

(xx) [52.225-26](#), Contractors Performing Private Security Functions Outside the *United States* (*Oct 2016*) (Section 862, as amended, of the *National Defense Authorization Act for Fiscal Year 2008*; [10 U.S.C. 2302 Note](#)).

(xxi) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations (*Jun 2020*) ([42 U.S.C. 1792](#)). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6.

(xxii) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (*Nov 2021*) ([46 U.S.C. 55305](#) 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 products* and *commercial services* a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of clause)

C03 CONTRACTOR RETENTION OF SUPPLY CHAIN TRACEABILITY DOCUMENTATION (JUN 2020)

52.216-18 ORDERING (AUG 2020) FAR

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule. Such orders may be issued from **date of award through contract expiration** through [insert dates].

(b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.

(c) If mailed, a delivery order or task order is considered "issued" when the Government deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic commerce methods only if authorized in the Schedule.

(End of clause)

52.216-19 ORDER LIMITATIONS (OCT 1995) FAR

As prescribed in [16.506\(b\)](#), insert a clause substantially the same as follows:

(a) Minimum order. When the Government requires supplies or services covered by this contract in an amount of less than **\$150.00** [insert dollar figure or quantity], the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.

(b) Maximum order. The Contractor is not obligated to honor --

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Part 12 Clauses (CONTINUED)

- (1) Any order for a single item in excess of **\$25,000.00** [insert dollar figure or quantity];
- (2) Any order for a combination of items in excess of **\$100,000.00** [insert dollar figure or quantity]; or
- (3) A series of orders from the same ordering office within **7** days that together call for quantities exceeding the limitation in paragraph (b)(1) or (2) of this section.

(c) If this is a requirements contract (i.e., includes the Requirements clause at subsection **52.216-21** of the Federal Acquisition Regulation (FAR)), the Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitations in paragraph (b) of this section.

(d) Notwithstanding paragraphs (b) and (c) of this section, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within **1** days after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

(End of clause)

52.216-22 INDEFINITE QUANTITY (OCT 1995) FAR

As prescribed in **16.506(e)**, insert the following clause:

(a) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The Contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the "maximum." The Government shall order at least the quantity of supplies or services designated in the Schedule as the "minimum."

(c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after **90 days from contract expiration**. [insert date].

(End of clause)

252.225-7001 BUY AMERICAN AND BALANCE OF PAYMENTS PROGRAM - BASIC (DEC 2017) DFARS

252.225-7001 BUY AMERICAN AND BALANCE OF PAYMENTS PROGRAM—BASIC (DEC 2017), ALT I (DEC 2017) DFARS

252.225-7002 QUALIFYING COUNTRY SOURCES AS SUBCONTRACTORS (DEC 2016) DFARS

252.225-7012 PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES (DEC 2017) DFARS

(a) Definitions. As used in this clause --

"Component" means any item supplied to the Government as part of an end product or of another component.

"End product" means supplies delivered under a line item of this contract.

"Qualifying country" means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia
Austria
Belgium
Canada
Czech Republic

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Part 12 Clauses (CONTINUED)

Denmark
Egypt
Estonia
Finland
France
Germany
Greece
Israel
Italy
Japan
Latvia
Luxembourg
Netherlands
Norway
Poland
Portugal
Slovenia
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.

“Structural component of a tent” --

- (i) Means a component that contributes to the form and stability of the tent (e.g., poles, frames, flooring, guy ropes, pegs);
- (ii) Does not include equipment such as heating, cooling, or lighting.

“United States” means the 50 States, the District of Columbia, and outlying areas.

“U.S.-flag vessel” means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.

(b) The Contractor shall deliver under this contract only such of the following items, either as end products or components, that have been grown, reprocessed, reused, or produced in the United States:

- (1) Food.
- (2) Clothing and the materials and components thereof, other than sensors, electronics, or other items added to, and not normally associated with, clothing and the materials components thereof. Clothing includes items such as outerwear, headwear, underwear, nightwear, footwear, hosiery, handwear, belts, badges, and insignia.
- (3)(i) Tents and structural components of tents;
 - (ii) Tarpaulins; or
 - (iii) Covers.
- (4) Cotton and other natural fiber products.
- (5) Woven silk or woven silk blends.
- (6) Spun silk yarn for cartridge cloth.
- (7) Synthetic fabric, and coated synthetic fabric, including all textile fibers and yarns that are for use in such fabrics.
- (8) Canvas products.
- (9) Wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles).
- (10) Any item of individual equipment (Federal Supply Class 8465) manufactured from or containing fibers, yarns, fabrics, or materials listed in this paragraph (b).

(c) This clause does not apply --

- (1) To items listed in section 25.104(a) of the Federal Acquisition Regulation (FAR), or other items for which the Government has determined that a satisfactory quality and sufficient quantity cannot be acquired as and when needed at U.S. market prices;

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Part 12 Clauses (CONTINUED)

(2) To incidental amounts of cotton, other natural fibers, or wool incorporated in an end product, for which the estimated value of the cotton, other natural fibers, or wool --

- (i) Is not more than 10 percent of the total price of the end product; and
- (ii) Does not exceed the simplified acquisition threshold in FAR Part 2;

(3) To waste and byproducts of cotton or wool fiber for use in the production of propellants and explosives;

(4) To foods, other than fish, shellfish, or seafood, that have been manufactured or processed in the United States, regardless of where the foods (and any component if applicable) were grown or produced. Fish, shellfish, or seafood manufactured or processed in the United States and fish, shellfish, or seafood contained in foods manufactured or processed in the United States shall be provided in accordance with paragraph (d) of this clause;

(5) To chemical warfare protective clothing produced in a qualifying country; or

(6) To fibers and yarns that are for use in synthetic fabric or coated synthetic fabric (but does apply to the synthetic or coated synthetic fabric itself), if --

- (i) The fabric is to be used as a component of an end product that is not a textile product. Examples of textile products, made in whole or in part of fabric, include%
 - (A) Draperies, floor coverings, furnishings, and bedding (Federal Supply Group 72, Household and Commercial Furnishings and Appliances);
 - (B) Items made in whole or in part of fabric in Federal Supply Group 83, Textile/leather/furs/apparel/findings/tents/flags, or Federal Supply Group 84, Clothing, Individual Equipment and Insignia;
 - (C) Upholstered seats (whether for household, office, or other use); and
 - (D) Parachutes (Federal Supply Class 1670); or
- (ii) The fibers and yarns are para-aramid fibers and continuous filament para-aramid yarns manufactured in a qualifying country.

(d)(1) Fish, shellfish, and seafood delivered under this contract, or contained in foods delivered under this contract --

- (i) Shall be taken from the sea by U.S.-flag vessels; or
- (ii) If not taken from the sea, shall be obtained from fishing within the United States; and

(2) Any processing or manufacturing of the fish, shellfish, or seafood shall be performed on a U.S.-flag vessel or in the United States.

(End of clause)

252.225-7051 PROHIBITION ON ACQUISITION OF CERTAIN FOREIGN COMMERCIAL SATELLITE SERVICES (DEC 2018) DFARS

252.225-7052 RESTRICTION ON THE ACQUISITION OF CERTAIN MAGNETS, TANTALUM, AND TUNGSTEN (OCT 2020) DFARS

252.226-7001 UTILIZATION OF INDIAN ORGANIZATIONS, INDIAN-OWNED ECONOMIC ENTERPRISES, AND NATIVE HAWAIIAN SMALL BUSINESS CONCERNS (SEP 2004) DFARS

52.227-1 AUTHORIZATION AND CONSENT (JUN 2020) FAR

52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (JUN 2020) FAR

52.232-17 INTEREST (MAY 2014) FAR

52.232-40 PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (DEC 2013) FAR

252.232-7006 WIDE AREA WORKFLOW PAYMENT INSTRUCTIONS (DEC 2018) DFARS

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

“Department of Defense Activity Address Code (DoDAAC)” is a six position code that uniquely identifies a unit, activity, or organization.

“Document type” means the type of payment request or receiving report available for creation in Wide Area WorkFlow (WAWF).

“Local processing office (LPO)” is the office responsible for payment certification when payment certification is done external to the entitlement system.

(b) *Electronic invoicing.* The WAWF system is the method to electronically process vendor payment requests and receiving reports, as authorized by DFARS 252.232-7003, Electronic Submission of Payment Requests and Receiving Reports.

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Part 12 Clauses (CONTINUED)

(c) *WAWF access.* To access WAWF, the Contractor shall-

- (1) Have a designated electronic business point of contact in the System for Award Management at <https://www.acquisition.gov>; and
- (2) Be registered to use WAWF at <https://wawf.eb.mil/> following the step-by-step procedures for self-registration available at this web site.

(d) *WAWF training.* The Contractor should follow the training instructions of the WAWF Web-Based Training Course and use the Practice Training Site before submitting payment requests through WAWF. Both can be accessed by selecting the "Web Based Training" link on the WAWF home page at <https://wawf.eb.mil/>

(e) *WAWF methods of document submission.* Document submissions may be via web entry, Electronic Data Interchange, or File Transfer Protocol.

(f) *WAWF payment instructions.* The Contractor must use the following information when submitting payment requests and receiving reports in WAWF for this contract/order:

- (1) *Document type.* The Contractor shall use the following document type(s).

(Contracting Officer: Insert applicable document type(s).)

Note: If a "Combo" document type is identified but not supportable by the Contractor's business systems, an "Invoice" (stand-alone) and "Receiving Report" (stand-alone) document type may be used instead.)

- (2) *Inspection/acceptance location.* The Contractor shall select the following inspection/acceptance location(s) in WAWF, as specified by the contracting officer.

(Contracting Officer: Insert inspection and acceptance locations or "Not applicable.")

- (3) *Document routing.* The Contractor shall use the information in the Routing Data Table below only to fill in applicable fields in WAWF when creating payment requests and receiving reports in the system.

Routing Data Table*

Field Name in WAWF	Data to be entered in WAWF
Pay Official DoDAAC	
Issue By DoDAAC	
Admin DoDAAC	
Inspect By DoDAAC	
Ship To Code	
Ship From Code	
Mark For Code	
Service Approver (DoDAAC)	
Service Acceptor (DoDAAC)	
Accept at Other DoDAAC	
LPO DoDAAC	
DCAA Auditor DoDAAC	
Other DoDAAC(s)	

*(*Contracting Officer: Insert applicable DoDAAC information or "See schedule" if multiple ship to/acceptance locations apply, or "Not applicable.")*

- (4) *Payment request and supporting documentation.* The Contractor shall ensure a payment request includes appropriate contract line item and subline item descriptions of the work performed or supplies delivered, unit price/cost per unit, fee (if applicable), and all relevant back-up documentation, as defined in DFARS Appendix F, (e.g. timesheets) in support of each payment request.

- (5) *WAWF email notifications.* The Contractor shall enter the e-mail address identified below in the "Send Additional Email Notifications" field of WAWF once a document is submitted in the system.

(Contracting Officer: Insert applicable email addresses or "Not applicable.")

(g) *WAWF point of contact.*

- (1) The Contractor may obtain clarification regarding invoicing in WAWF from the following contracting activity's WAWF point of contact.

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<p>Part 12 Clauses (CONTINUED)</p> <p><i>(Contracting Officer: Insert applicable information or "Not applicable.")</i></p> <p>(2) For technical WAWF help, contact the WAWF helpdesk at 866-618-5988. (End of clause)</p> <p>252.232-7010 LEVIES ON CONTRACT PAYMENTS (DEC 2006) DFARS</p> <p>52.233-3 PROTEST AFTER AWARD (AUG 1996) FAR</p> <p>52.242-13 BANKRUPTCY (JUL 1995) FAR</p> <p>52.242-15 STOP-WORK ORDER (AUG 1989) FAR</p> <p>52.242-17 GOVERNMENT DELAY OF WORK (APR 1984) FAR</p> <p>252.243-7002 REQUESTS FOR EQUITABLE ADJUSTMENTS (DEC 2012) DFARS</p> <p>(a) The amount of any request for equitable adjustment to contract terms shall accurately reflect the contract adjustment for which the Contractor believes the Government is liable. The request shall include only costs for performing the change, and shall not include any costs that already have been reimbursed or that have been separately claimed. All indirect costs included in the request shall be properly allocable to the change in accordance with applicable acquisition regulations.</p> <p>(b) In accordance with 10 U.S.C. 2410(a), any request for equitable adjustment to contract terms that exceeds the simplified acquisition threshold shall bear, at the time of submission, the following certificate executed by an individual authorized to certify the request on behalf of the Contractor:</p> <p style="padding-left: 40px;">I certify that the request is made in good faith, and that the supporting data are accurate and complete to the best of my knowledge and belief.</p> <p style="text-align: center;">(Official's Name)</p> <p style="text-align: center;">(Title)</p> <p>(c) The certification in paragraph (b) of this clause requires full disclosure of all relevant facts, including</p> <p style="padding-left: 40px;">(1) Certified cost or pricing data, if required, in accordance with subsection 15.403-4 of the Federal Acquisition Regulation (FAR); and</p> <p style="padding-left: 40px;">(2) Data other than certified cost or pricing data, in accordance with subsection 15.403-3 of the FAR, including actual cost data and data to support any estimated costs, even if certified cost or pricing data are not required.</p> <p>(d) The certification requirement in paragraph (b) of this clause does not apply to</p> <p style="padding-left: 40px;">(1) Requests for routine contract payments; for example, requests for payment for accepted supplies and services, routine vouchers under a cost-reimbursement type contract, or progress payment invoices; or</p> <p style="padding-left: 40px;">(2) Final adjustments under an incentive provision of the contract.</p> <p style="text-align: center;">(End of clause)</p> <p>252.244-7000 SUBCONTRACTS FOR COMMERCIAL ITEMS (OCT 2020) DFARS</p> <p>52.246-2 INSPECTION OF SUPPLIES FIXED PRICE (AUG 1996) FAR</p> <p>252.246-7007 CONTRACTOR COUNTERFEIT ELECTRONIC PART DETECTION AND AVOIDANCE SYSTEM (AUG 2016) DFARS</p> <p>252.246-7008 SOURCES OF ELECTRONIC PARTS (MAY 2018) DFARS</p> <p>52.247-34 F.O.B. DESTINATION (NOV 1991) FAR</p> <p>252.247-7023 TRANSPORTATION OF SUPPLIES BY SEA -- BASIC (FEB 2019) DFARS</p> <p style="text-align: right;">CONTINUED ON NEXT PAGE</p>		

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Part 12 Clauses (CONTINUED)

(a) Definitions. As used in this clause --

"Components" means articles, materials, and supplies incorporated directly into end products at any level of manufacture, fabrication, or assembly by the Contractor or any subcontractor.

"Department of Defense" (DoD) means the Army, Navy, Air Force, Marine Corps, and defense agencies.

"Foreign-flag vessel" means any vessel that is not a U.S.-flag vessel.

"Ocean transportation" means any transportation aboard a ship, vessel, boat, barge, or ferry through international waters.

"Subcontractor" means a supplier, materialman, distributor, or vendor at any level below the prime contractor whose contractual obligation to perform results from, or is conditioned upon, award of the prime contract and who is performing any part of the work or other requirement of the prime contract.

"Supplies" means all property, except land and interests in land, that is clearly identifiable for eventual use by or owned by the DoD at the time of transportation by sea.

(i) An item is clearly identifiable for eventual use by the DoD if, for example, the contract documentation contains a reference to a DoD contract number or a military destination.

(ii) "Supplies" includes (but is not limited to) public works; buildings and facilities; ships; floating equipment and vessels of every character, type, and description, with parts, subassemblies, accessories, and equipment; machine tools; material; equipment; stores of all kinds; end items; construction materials; and components of the foregoing.

"U.S.-flag vessel" means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.

(b)(1) The Contractor shall use U.S.-flag vessels when transporting any supplies by sea under this contract.

(2) A subcontractor transporting supplies by sea under this contract shall use U.S.-flag vessels if --

(i) This contract is a construction contract; or

(ii) The supplies being transported are --

(A) Noncommercial items; or

(B) Commercial items that --

(1) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it subcontracts for f.o.b. destination shipment);

(2) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or

(3) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

(c) The Contractor and its subcontractors may request that the Contracting Officer authorize shipment in foreign-flag vessels, or designate available U.S.-flag vessels, if the Contractor or a subcontractor believes that --

(1) U.S.-flag vessels are not available for timely shipment;

(2) The freight charges are inordinately excessive or unreasonable; or

(3) Freight charges are higher than charges to private persons for transportation of like goods.

(d) The Contractor must submit any request for use of foreign-flag vessels in writing to the Contracting Officer at least 45 days prior to the sailing date necessary to meet its delivery schedules. The Contracting Officer will process requests submitted after such date(s) as expeditiously as possible, but the Contracting Officer's failure to grant approvals to meet the shipper's sailing date will not of itself constitute a compensable delay under this or any other clause of this contract. Requests shall contain at a minimum --

(1) Type, weight, and cube of cargo;

(2) Required shipping date;

(3) Special handling and discharge requirements;

(4) Loading and discharge points;

(5) Name of shipper and consignee;

(6) Prime contract number; and

(7) A documented description of efforts made to secure U.S.-flag vessels, including points of contact (with names and telephone numbers) with at least two U.S.-flag carriers contacted. Copies of telephone notes, telegraphic and facsimile message or letters will be sufficient for this purpose.

(e) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and the Maritime Administration, Office of Cargo Preference, U.S. Department of Transportation, 400 Seventh Street SW, Washington, DC 20590, one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information:

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Part 12 Clauses (CONTINUED)

- (1) Prime contract number;
- (2) Name of vessel;
- (3) Vessel flag of registry;
- (4) Date of loading;
- (5) Port of loading;
- (6) Port of final discharge;
- (7) Description of commodity;
- (8) Gross weight in pounds and cubic feet if available;
- (9) Total ocean freight in U.S. dollars; and
- (10) Name of steamship company.

(f) If this contract exceeds the simplified acquisition threshold, the Contractor shall provide with its final invoice under this contract a representation that to the best of its knowledge and belief --

- (1) No ocean transportation was used in the performance of this contract;
- (2) Ocean transportation was used and only U.S.-flag vessels were used for all ocean shipments under the contract;
- (3) Ocean transportation was used, and the Contractor had the written consent of the Contracting Officer for all foreign-flag ocean transportation; or
- (4) Ocean transportation was used and some or all of the shipments were made on foreign-flag vessels without the written consent of the Contracting Officer. The Contractor shall describe these shipments in the following format:

*	ITEM DESCRIPTION	CONTRACT LINE ITEMS	QUANTITY
TOTAL			

(g) If this contract exceeds the simplified acquisition threshold and the final invoice does not include the required representation, the Government will reject and return it to the Contractor as an improper invoice for the purposes of the Prompt Payment clause of this contract. In the event there has been unauthorized use of foreign-flag vessels in the performance of this contract, the Contracting Officer is entitled to equitably adjust the contract, based on the unauthorized use.

(h) If the Contractor indicated in response to the solicitation provision, Representation of Extent of Transportation by Sea, that it did not anticipate transporting by sea any supplies; however, after the award of this contract, the Contractor learns that supplies will be transported by sea, the Contractor shall --

- (1) Notify the Contracting Officer of that fact; and
- (2) Comply with all the terms and conditions of this clause.

(i) In the award of subcontracts, for the types of supplies described in paragraph (b)(2) of this clause, including subcontracts for commercial items, the Contractor shall flow down the requirements of this clause as follows:

- (1) The Contractor shall insert the substance of this clause, including this paragraph (i), in subcontracts that exceed the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.
- (2) The Contractor shall insert the substance of paragraphs (a) through (e) of this clause, and this paragraph (i), in subcontracts that are at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.

(End of clause)

52.249-8 DEFAULT (FIXED-PRICE SUPPLY AND SERVICE) (APR 1984) FAR

52.251-1 GOVERNMENT SUPPLY SOURCES (APR 2012) FAR

52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998) FAR

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

FAR: <https://www.acquisition.gov/?q=browsefar>

DFARS: <https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html>

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DLAD: <http://www.dla.mil/HQ/Acquisition/Offers/DLAD.aspx>

(End of clause)

52.253-1 COMPUTER GENERATED FORMS (JAN 1991) FAR

252.225-7048 EXPORT CONTROLLED ITEMS (JUN 2013) DFARS

52.232-39 UNENFORCEABILITY OF UNAUTHORIZED OBLIGATIONS (JUN 2013) FAR

Attachments

List of Attachments

Description	File Name
ATTACH_Attachment_3	ATTACHMENT 3 - REQUEST FOR NEW ITEM.pdf
ATTACH_Attachment_4	ATTACHMENT 4 - STORES AND FFAVORS MANUALS.pdf
ATTACH_Attachment_5	ATTACHMENT 5 - QSMV AND QUALITY AUDITS.pdf
ATTACH_Attachment_1__Schedule_of_Items	Attachment 1 - Schedule of Items.xlsx
ATTACH_Attachment_2__Delivery_Schedule	Attachment 2- Delivery Schedule.xls

Part 12 Provisions

52.212-1 INSTRUCTIONS TO OFFERORS - COMMERCIAL ITEMS (JUN 2020) FAR
PROVISIONS ADDED TO PART 12 BY ADDENDUM

52.203-18 PROHIBITION ON CONTRACTING WITH ENTITIES THAT REQUIRE CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS OR STATEMENTS-REPRESENTATION (JAN 2017) FAR

252.203-7005 REPRESENTATION RELATING TO COMPENSATION OF FORMER DOD OFFICIALS (NOV 2011) DFARS

252.204-7008 COMPLIANCE WITH SAFEGUARDING COVERED DEFENSE INFORMATION CONTROLS (OCT 2016) DFARS

252.209-7998 REPRESENTATION REGARDING CONVICTION OF A FELONY CRIMINAL VIOLATION UNDER ANY FEDERAL OR STATE LAW (DEVIATION 2012-O0007) (MAR 2012)

(a) In accordance with section 514 of Division H of the Consolidated Appropriations Act, 2012, none of the funds made available by that Act may be used to enter into a contract with any corporation that was convicted of a felony criminal violation under any Federal or State law within the preceding 24 months, where the awarding agency is aware of the conviction, unless the agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government.

(b) The Offeror represents that it is [] is not [] a corporation that was convicted of a felony criminal violation under a Federal or State law within the preceding 24 months.

(End of provision)

252.209-7999 REPRESENTATION BY CORPORATIONS REGARDING AN UNPAID DELINQUENT TAX LIABILITY OR A FELONY CONVICTION UNDER ANY FEDERAL LAW (DEVIATION 2012-O0004) (JAN 2012)

(a) In accordance with sections 8124 and 8125 of Division A of the Consolidated Appropriations Act, 2012,(Pub. L. 112-74) none of the funds made available by that Act may be used to enter into a contract with any corporation that-

(1) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless the agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government.

(2) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless the agency has considered suspension or debarment of the corporation and made a determination that this action

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Part 12 Provisions (CONTINUED)

is not necessary to protect the interests of the Government.

(b) The Offeror represents that-

(1) It is [] is not [] a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability,

(2) It is [] is not [] a corporation that was convicted of a felony criminal violation under a Federal law within the preceding 24 months.

(End of provision)

52.215-20 REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA AND DATA OTHER THAN CERTIFIED COST AND PRICING DATA (OCT 2010) FAR

(a) Exceptions from cost or pricing data.

(1) In lieu of submitting cost or pricing data, offerors may submit a written request for exception by submitting the information described in the following paragraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.

(i) Identification of the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(ii) Commercial item exception. For a commercial item exception, the offeror shall submit, at a minimum, information on prices at which the same item or similar items have previously been sold in the commercial market that is adequate for evaluating the reasonableness of the price for this acquisition. Such information may include-

(A) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities;

(B) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market;

(C) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.

(2) The offeror grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the offeror's determination of the prices to be offered in the catalog or marketplace.

(b) Requirements for cost or pricing data. If the offeror is not granted an exception from the requirement to submit cost or pricing data, the following applies:

(1) The offeror shall prepare and submit cost or pricing data and supporting attachments in accordance with Table 15-2 of FAR 15.408.

(2) As soon as practicable after agreement on price, but before contract award (except for unpriced actions such as letter contracts), the offeror shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.406-2.

(End of provision)

L09 REVERSE AUCTION (OCT 2016)

52.216-1 TYPE OF CONTRACT (APR 1984) FAR

As prescribed in [16.105](#), complete and insert the following provision

The Government contemplates award of a **Fixed Price, with EPA, Indefinite Quantity Contract (IQC)** contract resulting from this solicitation.

(End of provision)

252.225-7000 BUY AMERICAN STATUTE - BALANCE OF PAYMENTS PROGRAM CERTIFICATE (NOV 2014) DFARS

(a) *Definitions.* "Commercially available off-the-shelf (COTS) item," "component," "domestic end product," "foreign end product," "qualifying country," "qualifying country end product," and "United States," as used in this provision, have the meanings given in the Buy American and Balance of Payments Program --Basic 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 statute or the Balance of Payments Program.

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

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

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Part 12 Provisions (CONTINUED)

- (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:

<u>Line Item Number</u>	<u>Country of Origin</u>
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(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":

<u>Line Item Number</u>	<u>Country of Origin (If known)</u>
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(End of provision)

252.225-7000 BUY AMERICAN STATUTE - BALANCE OF PAYMENTS PROGRAM CERTIFICATE (NOV 2014), ALT I (NOV 2014) DFARS

As prescribed in [225.1101](#)(1) and (1)(ii), use the following provision, which adds "South Caucasus/Central and South Asian (SC/CASA) state" and "South Caucasus/Central and South Asian (SC/CASA) state end product" in paragraph (a), and replaces "qualifying country end products" in paragraphs (b)(2) and (c)(2) with "qualifying country end products or SC/CASA state end products":

(a) *Definitions.* "Commercially available off-the-shelf (COTS) item," "component," "domestic end product," "foreign end product," "qualifying country," "qualifying country end product," "South Caucasus/Central and South Asian (SC/CASA) state," "South Caucasus/Central and South Asian (SC/CASA) state end product," and "United States," as used in this provision, have the meanings given in the Buy American and Balance of Payments Program --Alternate I 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 or SC/CASA state end products without regard to the restrictions of the Buy American statute or the Balance of Payments Program.

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

- (1) For all line items subject to the Buy American and Balance of Payments Program --Alternate I 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 or SC/CASA state end products:

<u>Line Item Number</u>	<u>Country of Origin</u>
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(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":

<u>Line Item Number</u>	<u>Country of Origin (If known)</u>
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(End of provision)

L06 AGENCY PROTESTS (DEC 2016)

5452.233-9001 DISPUTES - AGREEMENT TO USE ALTERNATIVE DISPUTE RESOLUTION (JUN 2020) DLAD

(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

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Part 12 Provisions (CONTINUED)

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.

52.252-1 SOLICITATION PROVISIONS INCORPORATED BY REFERENCE (FEB 1998) FAR

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at this/these address(es):

FAR: <https://www.acquisition.gov/?q=browsefar>

DFARS: <https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html>

DLAD: <http://www.dla.mil/HQ/Acquisition/Offers/DLAD.aspx>

(End of provision)

252.204-7016 COVERED DEFENSE TELECOMMUNICATIONS EQUIPMENT OR SERVICES - REPRESENTATION (DEC 2019) DFARS

(a) *Definitions.* As used in this provision, "covered defense telecommunications equipment or services" has the meaning provided in the clause [252.204-7018](#), Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services.

(b) *Procedures.* The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal awards for "covered defense telecommunications equipment or services".

(c) *Representation.* The Offeror represents that it ☐ does, ☐ does not provide covered defense telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument.

(End of provision)

52.204-24 REPRESENTATION REGARDING CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (OCT 2020) FAR

The Offeror shall not complete the representation at paragraph (d)(1) of this provision if the Offeror has represented that it "does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument" in paragraph (c)(1) in the provision at 52.204-26, Covered Telecommunications Equipment or Services --Representation, or in paragraph (v)(2)(i) of the provision at 52.212-3, Offeror Representations and Certifications-Commercial Items. The Offeror shall not complete the representation in paragraph (d)(2) of this provision if the Offeror has represented that it "does not use covered telecommunications equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services" in paragraph (c)(2) of the provision at 52.204-26, or in paragraph (v)(2)(ii) of the provision at 52.212-3.

(a) *Definitions.* As used in this provision-

Backhaul, covered telecommunications equipment or services, critical technology, interconnection arrangements, reasonable inquiry, roaming, and substantial or essential component have the meanings provided in the clause 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) *Prohibition.* (1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Nothing in the prohibition shall be construed to --

(i) Prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract or extending or renewing a contract with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract. Nothing in the prohibition shall be construed to --

(i) Prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

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(ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(c) *Procedures.* The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal awards for “covered telecommunications equipment or services.”

(d) *Representations.* The Offeror represents that --

(1) It [] will, [] will not provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract or other contractual instrument resulting from this solicitation. The Offeror shall provide the additional disclosure information required at paragraph (e)(1) of this section if the Offeror responds “will” in paragraph (d)(1) of this section; and

(2) After conducting a reasonable inquiry, for purposes of this representation, the Offeror represents that --

It [] does, [] does not use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services. The Offeror shall provide the additional disclosure information required at paragraph (e)(2) of this section if the Offeror responds “does” in paragraph (d)(2) of this section.

(e) *Disclosures.* (1) Disclosure for the representation in paragraph (d)(1) of this provision. If the Offeror has responded “will” in the representation in paragraph (d)(1) of this provision, the Offeror shall provide the following information as part of the offer:

(i) For covered equipment --

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the original equipment manufacturer (OEM) or a distributor, if known);

(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

(ii) For covered services --

(A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the Product Service Code (PSC) of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

(2) Disclosure for the representation in paragraph (d)(2) of this provision. If the Offeror has responded “does” in the representation in paragraph (d)(2) of this provision, the Offeror shall provide the following information as part of the offer:

(i) For covered equipment --

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known);

(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

(ii) For covered services --

(A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the PSC of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

(End of provision)

52.204-26 COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES-REPRESENTATION (OCT 2020) FAR

(a) *Definitions.* As used in this provision, “covered telecommunications equipment or services” has the meaning provided in the clause [52.204-25](#), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) *Procedures.* The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal awards for “covered telecommunications equipment or services.”

(c) *Representation.* The Offeror represents that it [] does, [] does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument.

(2) After conducting a reasonable inquiry for purposes of this representation, the offeror represents that it [] does, [] does not use covered

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telecommunications equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services.

(End of provision)