

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT		1. CONTRACT ID CODE		PAGE OF PAGES 1 30	
2. AMENDMENT/MODIFICATION NO. 0007		3. EFFECTIVE DATE 06/20/2013		4. REQUISITION/PURCHASE REQ. NO.	
5. PROJECT NO. (If applicable) N/A		6. ISSUED BY CODE SPM300		7. ADMINISTERED BY (If other than Item 6) CODE	
DLA TROOP SUPPORT 700 ROBBINS AVENUE PHILADELPHIA, PA 19111 LENDER WALKER FTAA/215-737-3867					
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code)				(X)	9A. AMENDMENT OF SOLICITATION NO. SPM300-13-R-0070
				✓	9B. DATED (SEE ITEM 11) April 12, 2013
					10A. MODIFICATION OF CONTRACT/ORDER NO.
					10B. DATED (SEE ITEM 13)
CODE		FACILITY CODE			

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

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

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

12. Accounting and Appropriation Data (If required)

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

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

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

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

PRIME VENDOR SUPPORT FOR ALABAMA, FLORIDA PANHANDLE AND GEORGIA SOLICITATION SPM300-13-R-0070 IS HEREBY AMENDED.

This amendment contains a revision (add/change/deletion) to the solicitation requirements.

All other conditions remain the same and unchanged.

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

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

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This amendment provides answers to questions which were submitted in regards to Solicitation SPM300-13-R-0070. The answers are provided for clarification purposes only and do not change the requirements in the solicitation.

REFERENCE: Compare NOTICE TO OFFERORS with STATEMENT OF WORK, 1. Introduction, E. Estimated Dollar Value/Guaranteed Minimum/Maximum

1. **VENDOR QUESTION:** Confirm that the government will pay the guaranteed contract minimum, even if actual orders fall short of that minimum.

DLA Troop Support Answer: The Government will satisfy the obligation under the guaranteed minimum provision of the contract even if orders fall short of that minimum.

REFERENCE: ADDENDUM TO FAR 52.212-4, Section 2. Paragraph (c), Changes

2.

- a. **VENDOR QUESTION:** Are the changes that the Contracting Officer (CO) may make unilaterally limited to “method of shipment or packing” and “place, manner, or time of delivery?”

DLA Troop Support Answer: Yes, changes under the addendum to FAR 52.212-4(c) are limited to these two categories of changes. The only other unilateral changes that the Contracting Officer may make are those authorized by the solicitation.

- b. **VENDOR QUESTION:** Does the CO agree that any changes regarding terms and conditions unrelated to “method of shipment or packing” and “place, manner, or time of delivery,” including the right to retain Earned Income, could not be made unilaterally, but would require bi-lateral approval?

DLA Troop Support Answer: Yes. See answer above.

3. **VENDOR QUESTION:** What recourse does the contractor have if it is unable to accommodate the required unilateral change in “method of shipment or packing” and “place, manner, or time of delivery?”

DLA Troop Support Answer: Please refer to paragraph (3) of Addendum to FAR 52.212-4(c) concerning equitable adjustments.

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- 4. VENDOR QUESTION:** Confirm that if the changes increase the cost of performance, the adjustment shall still be calculated under the understanding that this is a commercial item contract and that the support for the equitable adjustment need not comply with FAR Part 31 Cost Principles.

DLA Troop Support Answer: In accordance with FAR 15.403-1(b)(3), certified cost or pricing data will not be required to support any contract action under this commercial item contract, but the Contracting Officer may require data other than certified cost or pricing as defined in FAR 2.101 to support a determination of a fair and reasonable price. In accordance with FAR 15.404-1, cost analysis may be used to evaluate data other than certified cost or pricing data to determine cost reasonableness when a fair and reasonable price cannot be determined through price analysis alone for commercial or noncommercial items. Therefore, FAR Part 31 Cost Principles may be applicable in evaluating an equitable adjustment under this contract in certain circumstances.

REFERENCE: ADDENDUM TO FAR 52.212-4, Paragraph 6. Subparagraph (o), Warranty and 6. WARRANTIES

- 5. VENDOR QUESTION:** This section adds a “most favorable commercial” warranty to FAR 52.212-4(o) “Warranty.” FAR 52.212-4(o) states that “[t]he Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.” FAR 52.212-4(o) is limited to warranties regarding the quality of the product. Confirm that the reference to “most favorable commercial warranties that the contractor or its suppliers, as applicable, gives to any customer” is limited to product warranties, and does not extend to other warranties.

DLA Troop Support Answer: Confirmed.

REFERENCE: FAR 52.216-19 – ORDER LIMITATIONS (OCT 1995)

- 6. VENDOR QUESTION:** The Solicitation provides for a minimum order of \$50. This is a very low minimum order amount and, depending on the expense of the items, might be covered with an order for just one case. The commercial standard in the broadline food distribution industry for other contract customers is based on a minimum number of cases that must be ordered before a shipment must be made. For example, a typical minimum order amount is 12 to 15 cases before the PO can be processed and shipped to the customers. The higher the minimum, the less price risk the distributor has that it will not recoup its cost

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to service the government customer. If DLA were to add a meaningful minimum order requirement in its Solicitation and resulting contract, DLA may achieve cost savings, because offerors would not need to price the risk of single case orders into their distribution fees. We would ask that this minimum order be converted to a minimum order of cases, or, if DLA prefers, a minimum dollar value based on multiple cases priced at an average price per case of the market basket.

DLA Troop Support Answer: The minimum order amount will remain \$50.

REFERENCE: DLAD 52.216-9064 ECONOMIC PRICE ADJUSTMENT (EPA) – ACTUAL MATERIAL COSTS FOR SUBSISTENCE DELIVERED PRICE BUSINESS MODEL – DLA TROOP SUPPORT SUBSISTENCE PRIME VENDOR (SPV) CONTIGUOUS UNITED STATES (CONUS) (FEB 2013)

- 7. VENDOR QUESTION:** Confirm that under 52.216-9064, paragraph (a)(1) and the fact that this is a commercial item contract, a SPV Contractor has unlimited discretion to determine how much profit it should include in its Contract Unit Prices.

DLA Troop Support Answer: Distribution Prices are at the discretion of the offeror, including the profit component. We understand that earned income may also include profit.

- 8. VENDOR QUESTION:** Does the definition of “Private Label Holder” include commodity products produced by local manufacturers or growers who are not selling under either a national or distributor brand?

DLA Troop Support Answer: Yes, if the local manufacturer or grower meets one of the three definitions of “Private Label Holder” in clause 52.216-9064.

- 9. VENDOR QUESTION:** Is there any restriction on the mechanism or entity through which Private Label Holders set the price for invoices that establish delivered price? For example:

- a. May such distributors set the price of their products through intermediaries who do not directly manufacture or grow the product?

DLA Troop Support Answer: Yes, if the "intermediary" is a buying group such as UniPro operating in a commercial marketplace.

- b. May such distributors set price through the use of a distributor business unit or affiliated organization?

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DLA Troop Support Answer: Yes, if the "distributor business unit or affiliated organization" is a buying group such as UniPro operating in a commercial marketplace.

- c. May such distributors set price through the use of a price list?

DLA Troop Support Answer: Yes.

- 10. VENDOR QUESTION:** The Solicitation, clause 52.216-9064 – ECONOMIC PRICE ADJUSTMENT (EPA) – ACTUAL MATERIAL COSTS FOR SUBSISTENCE DELIVERED PRICE BUSINESS MODEL– DLAD– DLA TROOP SUPPORT SUBSISTENCE PRIME VENDOR (SPV) CONTIGUOUS UNITED STATES (CONUS) (FEB 2013), in certain circumstances, authorizes use of an invoice or a quote from a redistributor to set delivered price. If a contractor relies on a quote or an invoice from a redistributor, what information, if any, must the offeror provide with its proposal to demonstrate that the entity meets the definition of a redistributor?

DLA Troop Support Answer: No additional information must be submitted with the initial proposal; however the Contracting Officer may request additional information as necessary.

- 11. VENDOR QUESTION:** Confirm that the offeror need not submit additional data to demonstrate that the pricing complies with the conditions imposed by 52.216-9064 for use of a redistributor?

DLA Troop Support Answer: Confirmed. No additional information must be submitted with the initial proposal; however the Contracting Officer may request additional information as necessary.

- 12. VENDOR QUESTION:** Does the requirement that “**the Delivered Price (inclusive of standard freight) of a product at a given time is identical to the Delivered Price of the same product at the same time to other commercial customers in the SPV Contractor’s electronic purchasing system**” apply to commercial customers ordering from the same distribution center/warehouse? This limitation appears implied.

DLA Troop Support Answer: That is correct. "Delivering warehouse" means the place of performance serving the contract, not the entire corporate entity or multiple warehouses under a corporate name.

- 13. VENDOR QUESTION:** Confirm that the referenced language (see bolded language above) does not require the distributor to have sales to commercial customers at a given time from the same distribution center/warehouse.

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DLA Troop Support Answer: Confirmed.

- 14. VENDOR QUESTION:** Is the distribution point the warehouse from which the Contractor will distribute the food to its government customers under any resulting contract? If no, then how does DLA define “the Contractor’s distribution point?”

DLA Troop Support Answer: Distribution point means place of performance, i.e. the specific warehouse serving the contract.

- 15. VENDOR QUESTION:** Confirm that monies that a distributor receives through freight management may be retained by the Distributor. Specifically, if a distributor uses a third party to move freight at a lower price than is available from the manufacturer/grower/private label holder, does the difference constitute “Earned Income” that the SPV Contractor may retain?

DLA Troop Support Answer: Yes, and yes. Freight management is included in section 4. (i) of the Rebates/Discounts and Price-Related Provisions.

- 16. VENDOR QUESTION:** Confirm a distributor may earn and retain monies through its own inbound freight activity, such as backhaul.

DLA Troop Support Answer: Yes, provided that the product's Delivered Price is the same for all customers.

- 17. VENDOR QUESTION:** Confirm that the “FOB Destination” is the contractor’s point of distribution.

DLA Troop Support Answer: Product will be delivered FOB Destination from the contractor’s delivering warehouse.

- 18. VENDOR QUESTION:** Confirm that deviated pricing is exempted from the requirement that the Government will get the same pricing “input in the contractor’s purchasing system as the starting basis for its pricing to customers prior to the application of any specific distribution fees, rebates, discounts, limited discounts, or other financial agreements with the Contractor’s customers.”

DLA Troop Support Answer: The definition of Delivered Price states "...prior to the application of any specific...rebates, discounts, limited discounts..." Industry feedback indicates that delivered price is applied identically to government and commercial accounts, PRIOR to the application of any deviations/limited discounts. Deviations/limited discounts are different depending on customer, so we expect to see that arrangement in an audit.

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- 19. VENDOR QUESTION:** “Distribution Price” is defined as “the only method for the SPV Contractor to bill the Government for all aspects of contract performance other than Delivered Price; including but not limited to, the performance requirements of the SOW.” Please confirm that distribution prices are at the discretion of the offeror, including the profit component.

DLA Troop Support Answer: Confirmed.

- 20. VENDOR QUESTION:** Please confirm that “Earned Income” which contains profit and meets all other requirements of “Earned Income” may be included in “Delivered Price” and retained by the contractor.

DLA Troop Support Answer: Confirmed, provided it meets the qualifications for earned income.

- 21. VENDOR QUESTION:** The Solicitation does not define “delivering warehouse.” Confirm that “delivering warehouse” means “the Contractor’s distribution point.”

DLA Troop Support Answer: Delivering warehouse means place of performance, i.e. the specific warehouse serving the contract.

- 22. VENDOR QUESTION:** Confirm that there is no presumption regarding the application of Standard Freight to drop shipments and that whether or not it applies will be considered pursuant to 52.216-9064, para (b)(3)(ii), which states that drop shipments: “may involve transportation charges using non-standard freight such as FedEx, United Parcel Service (UPS), or the United States (U.S.) Postal Service. In such instances the Contracting Officer will determine price reasonableness on the unit price inclusive of freight.”

DLA Troop Support Answer: Standard freight is the norm, however in the event of drop shipments the language referenced above will apply.

- 23. VENDOR QUESTION:** Confirm that the definition of “Government Rebates and Discounts” excludes any monies that the Contractor may retain as “Earned Income.”

DLA Troop Support Answer: Confirmed. Both earned income and Government rebates and discounts are clearly defined and distinct from each other.

- 24. VENDOR QUESTION:** What is DLA’s standard for determining statistical significance? For example, does DLA have a set percentage of products on a catalog that it will audit? If so, what is that percentage?

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DLA Troop Support Answer: The size of the sample will be determined in part by the size of the catalog as well as other circumstances under each contract.

- 25. VENDOR QUESTION:** Confirm that DLA agrees that Specific earned income terms may be redacted from any earned income agreements produced pursuant to this provision.

DLA Troop Support Answer: Specific earned income terms (such as dollar values) may be redacted from an agreement; however there must be enough remaining information to demonstrate that an earned income agreement exists. Vendor proprietary information will be maintained in accordance with applicable laws and regulations.

REFERENCE: 4. CATALOG & MARKET BASKET ITEMS: “If you wish to supply an item that differs in package or pack size, you must identify such difference and request approval to utilize such item under a different LSN.”

- 26. VENDOR QUESTION:** To clarify the text above, does this mean that before an offeror may put an alternate item (with a minor difference, Ex. pack size) on the Market Basket in its proposal it must seek approval, or does it apply after award to ongoing catalog maintenance, or both?

DLA Troop Support Answer: This paragraph applies to catalog changes after the award is made. Alternate items submitted in your price proposal will be evaluated and the contracting officer will determine if the item is an acceptable alternative. After the award is made, a new LSN will be assigned to each acceptable, alternate item of the offeror who receives the award.

REFERENCE: 8. REBATES/ DISCOUNTS AND PRICE-RELATED PROVISIONS,
Paragraph (b) Definitions, Subparagraph 1, Limited Discount

- 27. VENDOR QUESTION:** Confirm that Clause 8 (see reference above) does not seek to require that distributors pass along discounts to the Government that they may offer to customers who order on an individual basis without a contract (known in the industry as “street sales”).

DLA Troop Support Answer: Confirmed, when such discounts are limited to the street sale customer(s).

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28. VENDOR QUESTION: Confirm that a “Limited Discount,” (known as deviated pricing), may include a price for a class of customers and is not limited to a specific customer. For example, manufacturers may offer limited discounts only for school bids.

DLA Troop Support Answer: Confirmed. In the example cited, the discount is limited to schools so the effect is the same.

REFERENCE: 8. REBATES/ DISCOUNTS AND PRICE-RELATED PROVISIONS,
Paragraph (b), 3(vi), Qualifying Early Payment Discounts

29. VENDOR QUESTION: How is the contractor expected to know or demonstrate what is routinely given “by the manufacturer/growers/private label holders to customers other than the SPV Contractor at the same discount rate and under the same conditions as provided to the SPV Contractor?” Our vendors may not share such competitive information with us.

DLA Troop Support Answer: This provision is to guard against fraudulent or collaborative early payment discount arrangements.

30. VENDOR QUESTION: When does the time period required to receive the discount run? Does it run from receipt of goods, receipt of a valid invoice, or the date of acceptance of goods?

DLA Troop Support Answer: The discount will be based on the early payment terms you have with the particular manufacturer/grower/private label holder/redistributor and shall be consistent with commercial practice.

31. VENDOR QUESTION: The above requirement is silent on whether this condition will continue to apply in certain situations. Will contractors be allowed to retain the benefit of early payment discounts that were not paid within ten days (or the time stated, if less) where failure to pay in this time was based on any of the following circumstances:

- a. The prime contractor failed to pay in the time period required to receive the discount for a reason that was not caused by its fault or negligence. For example, the vendor delivered late or non-conforming goods or breached the contract, which delayed acceptance and/or authorization for payment.

DLA Troop Support Answer: No.

- b. The failure to pay in the time required was for a reason that was acceptable within the prime contractor’s agreement with its vendor.

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DLA Troop Support Answer: No.

- c. The failure to pay was caused by clerical or ministerial oversight or mistake.

DLA Troop Support Answer: No.

32. VENDOR QUESTION: Vendors typically pay early payment discounts even where payment is not made within the required time. Given the highly complex payment systems and the significant transactional volume, occasional delays in payments may occur. Contractors systems for paying their vendors are not typically linked to their purchase systems in a way which would allow the contractor to change the price of its product because of the timing of the payment it made to its vendor. Will DLA allow the awardee to negotiate a formula or mechanism for periodic reconciliation and credit after the fact that would substitute for an up-front price reduction in product price?

DLA Troop Support Answer: No. If the Prime Vendor/Contractor receives an Early Payment Discount without meeting the conditions of the Statement of Work, Section 8, paragraph (b)3, an up-front price reduction shall be applied to the price of any applicable items. If these discounts cannot be applied as an up-front price reduction, the contractor must provide DLA with a check payable to the US Treasury, with an attached itemized listing of all customer purchases by line item to include contract number, call number, purchase order number and CLIN number in accordance with Statement of Work, Section 8, paragraph (a).

REFERENCE: 8. REBATES/ DISCOUNTS AND PRICE-RELATED PROVISIONS, para. 4(iv) Types of Earned Income

33. VENDOR QUESTION: Confirm that this clause (see reference above) does not require that the monies received reflect the actual cost of providing the value-added service.

DLA Troop Support Answer: Confirmed, provided that the income is consistent with that received by the contractor for its commercial customers.

34. VENDOR QUESTION: Confirm that an allowance tied purely to the SPV Contractor's sale of product is a sufficient "service" to fall within a value added service under (4)(i).

DLA Troop Support Answer: Confirmed.

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35. VENDOR QUESTION: Confirm that this clause allows for retention of purchase based allowances, in which the distributor only needs to purchase the goods to earn the allowance and no sales are required.

DLA Troop Support Answer: Yes.

36. VENDOR QUESTION: The Solicitation appears to contain an internal ambiguity as to whether earned income categories must be disclosed in the offerors' proposals. The solicitation states that "*During the implementation period of the contract*, the Contractor will submit a list of categories of Earned Income received." (Emphasis added). This language suggests that the earned income categories are disclosed after contract award. However, the directions for completion of the Price Proposal at Section III, appears to require that categories of earned income be disclosed with the proposal. Section III states "The Contractor shall identify all categories of earned income (as defined elsewhere in the solicitation/contract) received." Must types of earned income be disclosed with the proposal, or is this something that the awardee will do after contract award?

DLA Troop Support Answer: Earned income categories must be submitted as part of the proposal and must be updated as warranted as part of monthly reports after award. The first sentence referenced above has been deleted.

37. VENDOR QUESTION: If offerors are required to reveal earned income categories with their proposal, how will such information be used, if at all, in evaluation of proposals?

DLA Troop Support Answer: The information will be used to confirm compliance with the requirement to identify earned income categories and to set a basis for the retention of earned income during the contract.

REFERENCE: 9. CONTRACTOR PRICING - CONUS, paragraph B, subparagraph 2, Delivered Price, (a): "The SPV Contractor warrants that the Delivered Price to its delivering warehouse of a product sold at any given time by the SPV Contractor to DLA Troop Support customers is identical to the Delivered Price of such product sold at the same time to its other customers."

38. VENDOR QUESTION: Confirm that the warranty applies only to the Delivered Price of such product sold from the same delivering warehouse at the same time to its other customers.

DLA Troop Support Answer: Confirmed.

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- 39. VENDOR QUESTION:** Confirm that the warranty applies only to customers whose pricing changes weekly at the same time as DLA's pricing. For example, confirm that the warranty would not be triggered if a customer whose pricing changes monthly received the benefit of a lower price.

DLA Troop Support Answer: If the prime vendors' purchasing system can only accommodate one Delivered Price at a time (as stated during our meetings with industry), this should not occur. The contractor is required to give DLA Troop Support customers the same delivered price given to other customers ordering at the same time.

- 40. VENDOR QUESTION:** Confirm that if, as it appears, deviated pricing is excepted from the definition of Delivered Price, it is also excepted from the warranty.

DLA Troop Support Answer: Confirmed, you do not need to give us the same deviated pricing/limited discounts given to other customers. Deviated pricing/limited discounts are separate from Delivered Price. The language cited from the solicitation deals with Delivered Price only.

REFERENCE: 3. EMERGENCY/ SAME DAY ORDERS

- 41. VENDOR QUESTION:** Confirm that the minimum order limitation at FAR 52.216-19 – ORDER LIMITATIONS (OCT 1995) apply to emergency orders.

DLA Troop Support Answer: Confirmed.

- 42. VENDOR QUESTION:** What circumstances constitute an emergency that will authorize the customer to place emergency orders?

DLA Troop Support Answer: An emergency order may be any unforeseen requirement that needs to be delivered prior to the next scheduled delivery. Examples include an unforeseen or surprise exercise not previously announced to the activity due to national or mission security reasons or a visiting ship that requires an emergency top-off order with only a few days' notice.

- 43. VENDOR QUESTION:** If a customer forgot to order something on their normally scheduled delivery, would that constitute an emergency?

DLA Troop Support Answer: Possibly, depending on the nature and circumstances of the meals that are required to be prepared prior to the next delivery.

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44. VENDOR QUESTION: Who determines whether an emergency exists?

DLA Troop Support Answer: This will usually be determined by the Ordering Officer, Food Service Officer, DFAC manager, or whoever is in the position with authority to order for the activity.

45. VENDOR QUESTION: Are there any limits on an ordering official's discretion to declare an emergency other than the minimum order limitation at FAR 52.216-19 – ORDER LIMITATIONS (OCT 1995) and the limitation that the contractor is not responsible for more than two emergency orders per customer, per month, without additional charge (Reference subpara. D)?

DLA Troop Support Answer: No.

REFERENCE: 4. SPECIAL ORDER ITEMS and DELIVERY TERMS

46. VENDOR QUESTION: Confirm that if a customer did not provide the requisite lead time for a Special Order and orders anyway, that such orders will not impact the contractor's fill rate.

DLA Troop Support Answer: Yes, however it is incumbent on the prime vendor to make note of this using the applicable fill rate exception provided in the solicitation (#V06 "CUSTOMER DID NOT PROVIDE SUFFICIENT ORDERING LEAD TIME I.E., SPECIAL ORDER").

47. VENDOR QUESTION: Is there anything that DLA could do to ensure that customers have visibility into the lead time on their Order system? Many customers cite that they cannot see the Special Order or Order Lead Time fields on their Order System.

DLA Troop Support Answer: The customers will be instructed on the procedures to identify their prime vendor's lead time and special order information as submitted via the 832 EDI process. The awardee should use the special order codes identified in the STORES Implementation Guide (pages 6 and 7) and lead time codes identified in the STORES Implementation Guide (pages 16 and 17).

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REFERENCE: 4. FOOD SHOWS

48. VENDOR QUESTION: Confirm that the customer's ability to participate without attending the Food Show is limited to Food Shows sponsored by the warehouse of the SPV Contractor that services the customer.

DLA Troop Support Answer: Confirmed.

49. VENDOR QUESTION: It is general industry practice that the goal of Food Shows is to get customers to try new items in their establishments, or commit in writing to purchasing an increased amount of products for which they get a discounted price or "food show allowance". To be eligible for that food show allowance, customers must be in attendance at the food show and "book" the quantity of product they are committing to purchase while in attendance at the food show. For DLA to require participation in food show discounts or food show allowances without attendance at the food show is to require preferential treatment and essentially demand getting something for nothing. To align DLA's treatment with those of all other foodservice customers, we request that the identified text ("Participation may or may not involve customers or DLA personnel attending the Food Show") be removed from the solicitation.

DLA Troop Support Answer: No, this text will not be removed. DLA customers must place orders through STORES and cannot obligate orders during a Food Show. All DLA customers , attending or not attending, should receive all food show discounts or allowances which are applicable to orders placed, and the Prime Vendor is required to pass all such applicable discounts or allowances (Government Rebates and Discounts) to the Government.

REFERENCE: PRICE PROPOSAL SHEET

50. VENDOR QUESTION: Please confirm that per the language that DLA intends every offeror to offer a price on the exact SKU cited in the NAPA stock number for items that have a brand name specified in the Market Basket.

There is ambiguity of DLA's intent because Line Items with a brand name specified in the Market Basket allow a "Y" to be placed in Column I (Alt Item Y/N) of the Price Proposal spreadsheet.

DLA Troop Support Answer: Confirmed, but per submission requirements , if the offered item does not meet item name and description, it must be listed as an alternate item. There

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may be instances where the required SKU# has an undiscovered discrepancy. An offeror who realizes this should contact the Contracting Officer.

51. VENDOR QUESTION: Please confirm that alternate items may *not* be offered for Line Items that have a brand specified.

DLA Troop Support Answer: See answer above.

REFERENCE: SUPPORTING PRODUCT INFORMATION, A. Invoices/Quotes.

52. VENDOR QUESTION: Regarding the following language: “However if a quoted price on a current contract item is lower, the Contractor shall apply that quote to the current contract catalog and reduce the Unit Price of the item on the following weekly EDI price update.” Confirm that the “following weekly EDI price update” is the update following the submission of the offeror’s proposal.”

DLA Troop Support Answer: Confirmed

53. VENDOR QUESTION: When offering a price based on a quote, are the offerors only obligated to offer the product for the price quoted for the period of the quote?

DLA Troop Support Answer: If awarded the contract, the quoted price must be held through the initial catalog and the product must be available to our customers. If the quote is for a period beyond the first catalog adjustment, it must be held for that period as well.

54. VENDOR QUESTION: Is there any minimum number of weeks that a quote must last to be considered valid?

DLA Troop Support Answer: To be considered a valid quote, the price should be in effect through final proposal revisions. If awarded the contract, the quoted price (or lower price if available) must be held through the initial catalog and the product must be available to our customers.

55. VENDOR QUESTION: When bidding an item on the Market Basket, if an invoice price into the distributor’s computer system (another location) is lower than the price on the incumbent’s catalog (due to freight cost), must the incumbent put the lower invoice price on their current catalog? Will DLA expect the lower invoice price on an on-going basis?

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DLA Troop Support Answer: All prices offered should reflect pricing into the offering (delivering) house. An offered item may represent an interdivisional transfer between the SPV Contractor's warehouses, provided the delivered price (inclusive of standard freight) into the offering house is identical to the delivered price of the same product at the same time to other commercial customers out of the offering house.

- 56. VENDOR QUESTION:** In the current version of the Solicitation, DLA has worked to make the product descriptions more generic. Accordingly, an incumbent contractor may be providing a higher priced item on its incumbent contract than it need provide under the current competition. In such a situation, if the incumbent bids a different product that meets the specification requirements than it is currently providing, would DLA still require the incumbent to apply that quote to the current catalog? If the answer is that the incumbent would still have to reflect the lower price on its current contract catalog, does DLA understand that such an answer disadvantages incumbents?

DLA Troop Support Answer: Any product offered should meet the product description. If an offeror has a different item that will meet the minimum quality standard, it can be offered using an invoice or a quote. An incumbent vendor may take the same action on their current contract. An offeror may not benefit by using a lower priced quote to compete for the new award while withholding that benefit from the government under its current contract.

- 57. VENDOR QUESTION:** The list of information that must be included in a quote or an invoice does not include standard freight to the distribution point. Will price evaluation exclude standard freight?

DLA Troop Support Answer: Freight is included in delivered pricing and is part of the evaluation as aggregate delivered pricing.

- 58. VENDOR QUESTION:** Confirm that for purposes of price evaluation, a quote or invoice may be from any entry into the offeror's distribution system and need not be into the warehouse from which the offeror will deliver to its customers under any resulting contract.

DLA Troop Support Answer: All prices offered should reflect pricing into the offering (delivering) house. An offered item may represent an interdivisional transfer between the SPV Contractor's warehouses, provided the delivered price (inclusive of standard freight) into the offering house is identical to the delivered price of the same product at the same time to other commercial customers out of the offering house.

Amendment 0007

- 59. VENDOR QUESTION:** Confirm that for purposes of evaluating price under the Solicitation, an invoice or a quote which is based on entry into the offeror's system need not include transportation to the warehouse that will deliver the products to government customers (delivering warehouse or distribution point).

DLA Troop Support Answer: All prices offered should reflect pricing into the offering (delivering) house. An offered item may represent an interdivisional transfer between the SPV Contractor's warehouses, provided the delivered price (inclusive of standard freight) into the offering house is identical to the delivered price of the same product at the same time to other commercial customers out of the offering house.

- 60. VENDOR QUESTION:** Confirm that there is no requirement after award to price product based on quotes during contract performance.

DLA Troop Support Answer: Confirmed. Either a quote or an invoice may be provided for any new items being added to the catalog and for requested price changes to existing catalog items.

- 61. VENDOR QUESTION:** Confirm that there is no minimum time for the duration of a quote period.

DLA Troop Support Answer: To be considered a valid quote, the price should be in effect through final proposal revisions. If awarded the contract, the quoted price (or lower price if available) must be held through the initial catalog and the product must be available to our customers.

- 62. VENDOR QUESTION:** Confirm that in the sentence "If the quote is for the entire estimated quantity and the offeror certifies the price will remain fixed for the quote's specified period, the line item price shall not be increased under the Economic Price adjustment clause during such period of the contract", reference to "such period" refers to the period specified in the quote and not to the period of the contract or option periods.

DLA Troop Support Answer: Confirmed.

REFERENCE: PRICE PROPOSAL

- 63. VENDOR QUESTION:** In past solicitations, when a Line Item had a required brand listed in the Market Basket (i.e. a NAPA item), offerors were required, per the solicitation

Amendment 0007

language, to submit a bid on the exact SKU listed for the NAPA stock number, and offerors were not required to submit a product specification for the NAPA items as proof that the item met the stock number requirements. The reprieve on not having to provide a product specification for NAPA items has been removed in the latest version of the solicitations. Is there a reason why offerors must now provide a product specification for an item that DLA knows meets the stock number description?

DLA Troop Support Answer: In order to assure the offered item is the appropriate item being solicited, the offeror shall provide a technical description (specification) for ALL items in the Market Basket to reflect items to be delivered.

64. VENDOR QUESTION: Will DLA consider allowing and applying presently the previous solicitation language that does not require the submission of a product specification as backup documentation for the NAPA Line Items on the Market Baskets?

DLA Troop Support Answer: No, the requirement remains in effect.

REFERENCE: PRIVATE LABEL

65. VENDOR QUESTION: Can an offeror provide DLA a discount off the stated invoice price of their Private Label products that meet with the market basket specs for purposes of responding to the DLA Solicitations – that is provide DLA a price that is LOWER than what is reflected on the Contract Manufacturer’s Invoices?

DLA Troop Support Answer: For purposes of your proposal and pricing during award, your delivered price is defined as the starting basis of your price in your electronic system prior to deviations as it is given to all your customers. If the deviation would qualify as a Government Rebate or Discount, offerors are instructed not to subtract this from their delivered price in their proposal.

66. VENDOR QUESTION: In Contractor’s efforts to provide DLA the lowest possible price that Contractor can obtain, can Contractor provide DLA a quote that includes a discount that is funded through the Earned Income of the Contractor for its own Contractor’s Private Label products that meet with the market basket specs for purposes of responding to the DLA Solicitations?

DLA Troop Support Answer: Same answer as above.

ADDITIONAL CHANGES TO SOLICITATION

1. Page 26

Delete:

DFARS Clause 252.212-7001

*252.212-7001 – CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS APPLICABLE TO DEFENSE ACQUISITIONS OF COMMERCIAL ITEMS
(MAR 2013) – DFARS*

Replace with:

DFARS Clause 252.212-7001

*252.212-7001 – CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS APPLICABLE TO DEFENSE ACQUISITIONS OF COMMERCIAL ITEMS
(MAY 2013) – DFARS*

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

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

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

(1) X [252.203-7000](#), Requirements Relating to Compensation of Former DoD Officials (SEP 2011) (Section 847 of Pub. L. 110-181).

(2) X [252.203-7003](#), Agency Office of the Inspector General (DEC 2012)(section 6101 of Pub. L. 110-252, 41 U.S.C. 3509).

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

(4) X [252.219-7003](#), Small Business Subcontracting Plan (DoD Contracts) (AUG 2012) (15 U.S.C. 637).

(5) [252.219-7004](#), Small Business Subcontracting Plan (Test Program) (JAN 2011) (15 U.S.C. 637 note).

(6)(i) X [252.225-7001](#), Buy American and Balance of Payments Program (DEC 2012) (41 U.S.C. chapter 83, E.O. 10582).

(ii) Alternate I (OCT 2011) of [252.225-7001](#).

- (7) ____ [252.225-7008](#),
Restriction on Acquisition of Specialty Metals (MAR 2013) (10 U.S.C. 2533b).
- (8) ____ [252.225-7009](#),
Restriction on Acquisition of Certain Articles Containing Specialty Metals (MAR 2013) (10 U.S.C. 2533b).
- (9) _X_ [252.225-7012](#),
Preference for Certain Domestic Commodities (FEB 2013) (10 U.S.C. 2533a).
- (10) ____ [252.225-7015](#), Restriction on Acquisition of Hand or Measuring Tools (JUN 2005) (10 U.S.C. 2533a).
- (11) ____ [252.225-7016](#), Restriction on Acquisition of Ball and Roller Bearings (JUN 2011) (Section 8065 of Pub. L. 107-117 and the same restriction in subsequent DoD appropriations acts).
- (12) ____ [252.225-7017](#), Photovoltaic Devices (DEC 2012) (Section 846 of Pub. L. 111-383).
- (13)(i) _X_ [252.225-7021](#), Trade Agreements (DEC 2012) (19 U.S.C. 2501-2518 and 19 U.S.C. 3301 note).
- (ii) __X__ Alternate I (OCT 2011) of [252.225-7021](#).
- (iii) ____ Alternate II (OCT 2011) of [252.225-7021](#).
- (14) ____ [252.225-7027](#), Restriction on Contingent Fees for Foreign Military Sales (APR 2003) (22 U.S.C. 2779).
- (15) ____ [252.225-7028](#), Exclusionary Policies and Practices of Foreign Governments (APR 2003) (22 U.S.C. 2755).
- (16)(i) ____ [252.225-7036](#), Buy American—Free Trade Agreements—Balance of Payments Program (DEC 2012) (41 U.S.C. chapter 83 and 19 U.S.C. 3301 note).
- (ii) ____ Alternate I (JUN 2012) of [252.225-7036](#).
- (iii) ____ Alternate II (NOV 2012) of [252.225-7036](#).
- (iv) ____ Alternate III (JUN 2012) of [252.225-7036](#).
- (v) ____ Alternate IV (NOV 2012) of [252.225-7036](#).

(vi) ___ Alternate V (NOV 2012) of [252.225-7036](#).

(17) ___ [252.225-7038](#), Restriction on Acquisition of Air Circuit Breakers (JUN 2005) (10 U.S.C. 2534(a)(3)).

(18) ___ [252.225-7039](#), Contractors Performing Private Security Functions (JUN 2012) (Section 862 of Pub. L. 110-181, as amended by section 853 of Pub. L. 110-417 and sections 831 and 832 of Pub. L. 111-383).

(19) X [252.226-7001](#), Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns (SEP 2004) (Section 8021 of Pub. L. 107-248 and similar sections in subsequent DoD appropriations acts).

(20) ___ [252.227-7013](#), Rights in Technical Data—Noncommercial Items (MAY 2013), if applicable (see [227.7103-6\(a\)](#)).

(21) ___ [252.227-7015](#), Technical Data—Commercial Items (MAY 2013)
(10 U.S.C. 2320).

(22) ___ [252.227-7037](#), Validation of Restrictive Markings on Technical Data (JUN 2012), if applicable (see [227.7102-4\(c\)](#)).

(23) X [252.232-7003](#), Electronic Submission of Payment Requests and Receiving Reports (MAR 2008) (10 U.S.C. 2227).

(24) ___ [252.237-7010](#), Prohibition on Interrogation of Detainees by Contractor Personnel (NOV 2010) (Section 1038 of Pub. L. 111-84)

(25) ___ [252.237-7019](#), Training for Contractor Personnel Interacting with Detainees (SEP 2006) (Section 1092 of Pub. L. 108-375).

(26) X [252.243-7002](#), Requests for Equitable Adjustment (DEC 2012) (10 U.S.C. 2410).

(27) ___ [252.246-7004](#), Safety of Facilities, Infrastructure, and Equipment For Military Operations (OCT 2010) (Section 807 of Pub. L. 111-84).

(28) ___ [252.247-7003](#), Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer (SEP 2010) (Section 884 of Pub. L. 110-417).

(29)(i) X [252.247-7023](#), Transportation of Supplies by Sea (MAY 2002) (10 U.S.C. 2631).

(ii) ____ Alternate I (MAR 2000) of [252.247-7023](#).

(iii) ____ Alternate II (MAR 2000) of [252.247-7023](#).

(iv) ____ Alternate III (MAY 2002) of [252.247-7023](#).

(30) X [252.247-7024](#), Notification of Transportation of Supplies by Sea (MAR 2000) (10 U.S.C. 2631).

(31) ____ [252.247-7027](#), Riding Gang Member Requirements (OCT 2011) (Section 3504 of Pub. L. 110-417).

(c) In addition to the clauses listed in paragraph (e) of the Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items clause of this contract (FAR 52.212-5), the Contractor shall include the terms of the following clauses, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under this contract:

(1) [252.225-7039](#), Contractors Performing Private Security Functions

(JUN 2012) (Section 862 of Pub. L. 110-181, as amended by section 853 of Pub. L. 110-417 and sections 831 and 832 of Pub. L. 111-383).

(2) [252.227-7013](#), Rights in Technical Data—Noncommercial Items (MAY 2013), if applicable (see [227.7103-6\(a\)](#)).

(3) [252.227-7015](#), Technical Data—Commercial Items (MAY 2013), if applicable (see [227.7102-4\(a\)](#)).

(4) [252.227-7037](#), Validation of Restrictive Markings on Technical Data (JUN 2012), if applicable (see [227.7102-4\(c\)](#)).

(5) [252.237-7010](#), Prohibition on Interrogation of Detainees by Contractor Personnel (NOV 2010) (Section 1038 of Pub. L. 111-84).

(6) [252.237-7019](#), Training for Contractor Personnel Interacting with Detainees (SEP 2006) (Section 1092 of Pub. L. 108-375).

(7) [252.247-7003](#), Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer (SEP 2010) (Section 884 of Pub. L. 110-417).

(8) [252.247-7023](#), Transportation of Supplies by Sea (MAY 2002) (10 U.S.C. 2631).

(9) [252.247-7024](#), Notification of Transportation of Supplies by Sea (MAR 2000) (10 U.S.C. 2631).

2. Page 29

Delete: DLAD Clause 52.201-9001 *CONTRACTING OFFICER'S ORDERING REPRESENTATIVES UNDER THE CONTRACT*
(JAN 2013)

Replace with: DLAD Clause 52.201-9001 *CONTRACTING OFFICER'S ORDERING REPRESENTATIVES UNDER THE CONTRACT*
(April 2013)

52.201-9001 *CONTRACTING OFFICER'S ORDERING REPRESENTATIVES UNDER THE CONTRACT* (April 2013)

(a) Contracting officer's ordering representatives specifically designated for this contract are authorized to place delivery or task orders that are expressly within the terms and conditions of this contract (which for purposes of this clause includes ordering vehicles such as blanket purchase agreements and indefinite delivery purchase orders).

(b) Orders for supplies or services outside the express scope of the contract may only be ordered by the contracting officer's ordering representative if accompanied by a written determination by the DLA contracting officer that the supplies or services are within the scope of the contract. Further limitations on the authority of the contracting officer's ordering representative may be stated elsewhere in the contract or in the letter of designation.

(c) [] The following Government employees are designated contracting officer's ordering representatives under this contract:

Designated Contracting Officer's Ordering Representatives, for Contract (Number)

Name	Title	Contact Information

3. Page 32, Clause DLAD 52.216-9064

Delete:
52.216-9064 *ECONOMIC PRICE ADJUSTMENT (EPA) – ACTUAL MATERIAL COSTS FOR SUBSISTENCE DELIVERED PRICE BUSINESS MODEL – DLA TROOP SUPPORT SUBSISTENCE PRIME VENDOR (SPV) CONTIGUOUS UNITED STATES (CONUS)* (FEB 2013)

Replace with:
ECONOMIC PRICE ADJUSTMENT (EPA) – ACTUAL MATERIAL COSTS FOR
SUBSISTENCE DELIVERED PRICE BUSINESS MODEL – DLA TROOP SUPPORT
SUBSISTENCE PRIME VENDOR (SPV) CONTIGUOUS UNITED STATES (CONUS)
(FEB 2013)

(a) Warranties. For the portion of the schedule that is covered by this EPA clause, the Contractor warrants that—

(1) Contract unit prices covered by this contract do not include allowances for any portion of the contingency covered by this clause; and

(2) Price adjustments invoiced under this contract shall be computed in accordance with the provisions of this clause.

(b) Definitions. As used throughout this clause, the term:

(1) “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; or

(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.

(2) “Redistributor” means an entity independent of the contractor from which the contractor purchases product for purposes of consolidating quantities and/or obtaining a competitive delivered price.

(3) “Standard Freight” means the published list price or prevailing market rate for transportation of subsistence and food service operating supplies, i.e. the transportation charge for delivery from the manufacturer/grower/private label holder or redistributor to the SPV Contractor. This may include inter-division transfers between the SPV Contractor’s warehouses provided the delivered price (inclusive of standard freight) of a product at a given time is identical to the delivered price of the same product at the same time to other commercial customers in the SPV Contractor’s electronic purchasing system.

(i) In the event the SPV Contractor picks up product free on board (f.o.b.) origin from a manufacturer/grower/ private label holder, or arranges for delivery transportation from a third party source other than the manufacturer/grower/private label holder, the standard freight charge shall be based on market tariffs/conditions and shall not exceed the lesser of:

(A) the manufacturer/grower/private label holder’s or manufacturer/grower/private label holder’s carrier’s freight price normally payable by the SPV Contractor for inbound shipments of such products and quantities to the Contractor’s distribution point; or

(B) an average price based on market conditions for freight in the same market for the same type of freight service for like products, shipping methods and quantities.

(ii) In rare circumstances, and only with the Contracting Officer’s written approval, the SPV Contractor may use drop shipments, i.e. the product is shipped directly from the manufacturer/grower / private label holder to the customer without the SPV Contractor taking possession. This may involve transportation charges using non-standard freight such as FedEx, United Parcel Service (UPS), or the United States (U.S.) Postal Service. In such instances the Contracting Officer will determine price reasonableness on the unit price inclusive of freight.

(4) “Contract unit price” means the total price per unit charged to DLA Troop Support for a product delivered to DLA Troop Support’s customers. The Contract unit price consists of three components: delivered price plus distribution price less Government rebates and discounts. The unit price sum of the three component prices shall be rounded up or down as applicable, to the nearest cent to determine the final Contract unit price.

(5) Delivered price

(i) Delivered price” means the most recent manufacturer, grower, or private label holder commercial price per unit to the Contractor, inclusive of all standard freight, that is input in the contractor’s purchasing system as the starting basis for its pricing to customers prior to the application of any specific distribution fees, rebates, discounts, limited discounts, or other financial agreements with the Contractor’s customers. The delivered price shall be based on f.o.b. destination delivered using standard freight. The delivered price shall exclude all costs that are to be covered in the distribution price. The SPV Contractor warrants that the delivered price to its delivering warehouse of a product sold at any given time by the SPV Contractor to DLA Troop Support customers is identical to the delivered price of such product sold at the same time to its other customers.

(A) Exception: For mandatory source items, the delivered price shall be limited to the nonprofit agency’s price for product as set in accordance with applicable law, plus standard freight.

(B) Exception: A redistributor’s price for a specific manufacturer/grower/private label holder’s product (or stock keeping unit (SKU)) may be used as long as the redistributor’s price for the quantity ordered is equal to or lower than the manufacturer’s/ grower’s/ private label holder’s current price inclusive of Government rebates and discounts (as defined below). Supporting documentation (published price list, manufacturer letter/email, or similar proof of price comparison) may be required. The determination that the supporting documentation is sufficient to establish the manufacturer’s/ grower’s/ private label holder’s current price rests solely with the Contracting Officer.

(C) Exception: Standard freight may not apply to drop shipments and f.o.b. origin pickups.

(ii) The Contractor shall utilize best commercial practices in purchasing its food items under this contract, to include seeking and using competition to the maximum extent practicable for all purchases and purchasing in the most economical order quantities and terms and conditions.

(6) “Distribution Price(s)” means the firm fixed price portion of the Contract Unit price, offered as a dollar amount per unit of issue, rounded up or down to the nearest cent. The distribution price is the only method for the Contractor to bill the Government for all aspects of contract performance other than delivered price; including but not limited to, the performance requirements of the statement of work (SOW) for the applicable SPV solicitation and resulting contract. As detailed above in paragraph (5), delivered price is distinct from and not to be included in the distribution price. For both drop shipments and Government pick-ups, the Contracting Officer may negotiate a reduced distribution price with the Contractor since the Contractor is not handling the product.

(7) “Government rebates and discounts” means all rebates, discounts, and limited discounts designated for the Government, including National Allowance Pricing Agreements (NAPA)

discounts, food show discounts, early payment discounts (other than qualifying early payment discounts as defined in the Rebates, Discounts and Price Related Provisions section of the solicitation), and any other rebates, discounts, or similar arrangements designated by the manufacturer/grower/ private label holder or redistributor to be passed to the Government or passed to all customers without specific designation. In accordance with other provisions of the contract (and subject to any applicable exceptions in those provisions), all Government rebates and discounts shall be passed to the Government via a reduced catalog price (i.e. "off invoice"). Any Government rebates and discounts that must be passed to the Government and which 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 to include contract number, call number, purchase order number and contract line item number (CLIN).

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

(9) "Ordering Week" means from Sunday at 12:01 AM through the following Saturday until midnight (Eastern Time ET, standard or daylight as applicable).

(c) Price adjustments.

(1) General.

(i) All Contract unit prices shall be fixed and remain unchanged until changed pursuant to this clause or other applicable provision of the contract. Only the delivered price component of the Contract unit price is subject to adjustment under this clause. After the first ordering week, if the Contractor's delivered price changes for any or all Contract unit prices, the Contract unit price shall be changed in the next week's ordering catalog upon the Contractor's request, submitted in accordance with paragraph (iii) below, by the same dollar amount of the change in the delivered price, subject to the limitations in paragraph (d). The price change shall be effective at the beginning of the next ordering week. All ordering catalog unit prices computed in accordance with this clause and in effect when an order is placed shall remain in effect for that order through delivery. DLA Troop Support will be charged the Contract unit price in effect at the time of each order regardless of any changes in the unit price occurring in any subsequent ordering week.

(ii) Catalog delivered prices must be reflective of the prime vendor's last receipt price (the price of the stock most recently received into SPV contractor's inventory).

(iii) Updates to the delivered price: All notices and requests for new item delivered prices and price changes shall be submitted weekly, no later than [buyer fill in time] Eastern Time on [buyer fill in day], to be effective in the following ordering week's ordering catalog prices. The delivered price shall have any and all Government rebates and discounts subtractions made prior to presenting the delivered price to DLA Troop Support. The Contractor shall notify the Contracting Officer of its notice/request in the form of an electronic data interchange (EDI) 832 transaction set. The change notice shall include the Contractor's adjustment in the delivered price component of the applicable Contract unit price. Upon the Contracting Officer's acceptance of such EDI 832 price changes in accordance with paragraph (v) below, the price change transaction sets will post in the next week's ordering catalog and each Contract unit price shall

be changed by the same dollar amount of the change in the delivered price in the next week's ordering catalog.

(iv) All price changes, and catalog contract prices, are subject to review by the Government. The Contracting Officer may at any time require the submission of supporting data to substantiate any requested price change or the requested continuation of the pre-existing price for any item, including prices applicable to prior ordering weeks. Upon notice from the Contracting Officer that supporting data is required, the Contractor shall promptly furnish to the Government all supporting data, including but not limited to, invoices, quotes, price lists, manufacturer/grower/private label holder documentation regarding Government rebates and discounts, and any other substantiating information requested by the Contracting Officer.

(v) Price change requests that the Contracting Officer questions or finds to be inconsistent with the requirements of this clause shall not be posted until the Contracting Officer specifically authorizes the posting. If the Contracting Officer does not notify the Contractor by close of business Eastern Time each [buyer fill in day] that a price or a price change request is being questioned or has been found to be erroneous, the price change(s) will post to the ordering catalog effective the beginning of the following ordering week. The posting of updated prices in the ordering catalog, calculated in accordance with this clause, constitutes a modification to this contract. No further contract modification is required to effect this change. Any changes that post to the ordering catalog do not constitute a waiver of any of the rights delineated elsewhere in the contract.

(vi) Should the Contracting Officer determine that, or question whether a price change request contained an erroneous unit price or price change, or cannot otherwise determine the changed price(s) to be fair and reasonable, such as when the changed price(s) is(are) higher than lower delivered prices for items of comparable quality which are reasonably available to the Government or Contractor from other sources, the Contracting Officer will so advise the Contractor, prior to close of business Eastern Time on [buyer fill in day]. If the Contracting Officer cannot determine a price fair and reasonable, and the Contracting Officer and the Contractor cannot negotiate a fair and reasonable price, the Contracting Officer may reject any price change and direct in writing that the item in question be removed from the Contractor's ordering catalog, without Government liability. The Contracting Officer may subsequently remove any such item from the ordering catalog if the Contractor fails to remove it. The Government has the right to procure such removed items from any alternate source of supply, and the failure of the Contractor to supply such item may be considered negatively in any evaluation of performance.

(vii) In the event of a price change not posting or an ordering catalog contract unit price not computed in accordance with this clause, resulting in an incorrectly increased or decreased Contract unit price, upon discovery of such event the Contractor shall promptly notify the Contracting Officer in writing and promptly thereafter correct its ordering catalog and submit a refund including interest for any amounts paid to the Contractor resulting from the erroneous price. In the event of an erroneous price decrease in the ordering catalog, if the contractor can demonstrate to the satisfaction of the Contracting Officer that the error did not result from the

fault or negligence of the Contractor, the Contractor may submit a request for equitable adjustment for consideration by the Contracting Officer.

(2) Limitations. All adjustments under this clause shall be limited to the effect on contract unit prices of actual increases or decreases in the delivered prices for material. There shall be no upward adjustment for—

(i) Supplies for which the delivered price is not affected by such changes;

(ii) Changes in the quantities of materials; and

(iii) Increases in unit prices that the Contracting Officer determines are computed incorrectly (i.e. not adhering to the Contract unit price definition in this clause) and/or increases in unit prices that the Contracting Officer determines are not fair and reasonable.

(3) If the Contracting Officer rejects a proposed adjustment for an item because the adjusted unit price cannot be determined fair and reasonable, the Contractor shall have no obligation to fill future orders for such item as of the effective date of the proposed adjustment unless such item is subsequently added to the contract at a Unit Price that is determined fair and reasonable.

Alternately, the item may be retained on the catalog at the prior (unadjusted) price for as long as both parties agree to do so.

(d) Upward ceiling on economic price adjustment. The aggregate of contract delivered price increases for each item under this clause during the contract period inclusive of any option period(s) shall not exceed [buyer fill in percentage] percent (%) for all items except fresh fruits and vegetables (FF&V) and [buyer fill in percentage] percent (%) for fresh fruits and vegetables (FF&V) of the initial contract delivered price, except as provided below:

(1) If at any time the Contractor has reason to believe that within the near future a price adjustment under the provisions of this clause will be required that will exceed the current contract ceiling price for any item, the Contractor shall promptly notify the Contracting Officer in writing of the expected increase. In the event the latest actual market price for an item would result in a contract unit price that will exceed the allowable ceiling price under the contract, then the Contractor shall immediately notify the Contracting Officer in writing or via its EDI 832 price change request and separate email no later than the time specified in paragraph (c)(1)(iii) above. With either such notification the Contractor shall include a revised ceiling the Contractor believes is sufficient to permit completion of remaining contract performance, along with appropriate explanation and documentation as required by the Contracting Officer.

(2) If an actual increase in the delivered price would raise a contract unit price for an item above the current ceiling, the Contractor shall have no obligation under this contract to fill future orders for such items, as of the effective date of the increase, unless the Contracting Officer issues a contract modification to raise the ceiling. If the contract ceiling will not be raised, the Contracting Officer shall so promptly notify the Contractor in writing. After evaluation of a requested actual price increase, if the Contracting Officer authorizes the change in the Contract unit price, the Contractor shall submit an EDI 832 price change. The price change shall be posted for the following week's ordering catalog.

(e) Downward limitation on economic price adjustments. There is no downward limitation on the aggregated percentage of decreases that may be made under this clause.

(f) Examination of records. The Contracting Officer or designated representative shall have the right to examine the Contractor's books, records, documents and other data, to include commercial sales data, that the Contracting Officer deems necessary to verify Contractor adherence to the provisions of this clause. Such examination may occur 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. These will normally involve Government selection of a statistically significant sample size of invoices/records to examine based on the number of line items on the specific contract catalog. If an examination of records reveals irregularities, further examinations and/or a larger sample size may be required. In addition to normal examination, the Government may conduct additional examinations at the Contracting Officer's discretion.

(g) Final invoice. The Contractor shall include a statement on the final invoice that the amounts invoiced hereunder have applied all decreases required or authorized by this clause.

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

4. Page 127

Delete:

FACTOR I. EXPERIENCE

Full-Line Distributor of Foods and Operating Supplies for Institutional Feeding

The Government will evaluate the offeror's record of Experience and determine if it demonstrates a level of experience that provides reasonable assurance of successful performance on any contract awarded under this solicitation. In evaluating experience, the Government will consider the current business volume (sales, customers, stops) and line items/SKUs inventoried. The estimated size/scope of this DLA Troop Support contract is defined as follows:

Replace with:

FACTOR I. EXPERIENCE

Full-Line Distributor of Foods and Operating Supplies for Institutional Feeding

The Government will evaluate the offeror's record of Experience and determine if it demonstrates experience that provides reasonable assurance of successful performance on any contract awarded under this solicitation. In evaluating experience, the Government will consider the current business volume (sales, customers, stops) and line items/SKUs inventoried. The estimated size/scope of this DLA Troop Support contract is defined as follows:

5. Page 129

Delete:

Past Performance Evaluation Key:

The offeror's customer surveys combined overall average score, for all provided contracts, including Government in-house records (if applicable), indicates performance equal to satisfactory (greater than or equal to 3.0 on the DLA Troop Support Ops Survey) and there are no issues of significance regarding contract compliance with contractual terms (e.g. non-ABILITYONE competing items and Berry Amendment non-compliance) or commercial account terms.

Replace with:

Past Performance Evaluation Key:

The offeror's customer surveys combined overall average score, for all provided contracts, including Government in-house records (if applicable), indicates performance equal to satisfactory (greater than or equal to 3 on the DLA Troop Support Ops Survey) and there are no issues of significance regarding contract compliance with contractual terms (e.g. non-ABILITYONE competing items and Berry Amendment non-compliance) or commercial account terms.