

<b>AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT</b>				1. CONTRACT ID CODE	PAGE OF PAGES 1   11
2. AMENDMENT/MODIFICATION NO. 0007	3. EFFECTIVE DATE January 28, 2011	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable) N/A		
6. ISSUED BY DLA TROOP SUPPORT 700 ROBBINS AVENUE PHILADELPHIA, PA 19111 MICHAEL D'ELIA/FTAB/215-737-0885	CODE SPM300	7. ADMINISTERED BY (if other than Item 6)		CODE	
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code)				(X) 9A. AMENDMENT OF SOLICITATION NO. ✓ SPM300-10-R-0047	
				9B. DATED (SEE ITEM 11) 10/27/2010	
				10A. MODIFICATION OF CONTRACT/ORDER NO.	
				10B. DATED (SEE ITEM 13)	
CODE		FACILITY CODE			

**11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS**

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

(a) By completing Items 8 and 15, and returning 1 copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. Accounting and Appropriation Data (If required)

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

(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 1 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)  
SUBSISTENCE PRIME VENDOR SUPPORT FOR TEXAS AND NEW MEXICO REGIONS

SUBJECT SOLICITATION IS HEREBY AMENDED AS FOLLOWS:

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) DEBBIE HOLMAN, 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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#### Amendment 0007

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

**NOTE: The Offer Due Date, as stated in Amendment 0006, is February 3, 2011, 2:00 PM Philadelphia Time.**

### Section I

1. Solicitation Page 48, SOW I. Supplies/Services and Prices, paragraph 8 Prime Vendor Pricing – CONUS, B2 Delivered Price, the entire section is replaced with the following:
  2. Delivered price:
    - (a) “Delivered Price” is the most recent manufacturer/grower/private label holder invoice price per unit charged to the Contractor, inclusive of standard freight, for that product delivered to the initial point of entry into the Contractor’s distribution network (normally referred to as the landed or delivered price). For this contract, the Delivered Price shall be the contractor’s last Delivered Price through close of business Tuesday, 5 PM ET for submission not later than Wednesday, 2 PM ET for updating the following week’s Ordering Catalog price. The Delivered Price shall have any and all Product Allowance subtractions made prior to presenting the Delivered Price to DLA TROOP SUPPORT.
      - (i) Exception: A redistributor’s price for a specific manufacturer/grower/private label holder’s product (SKU) may be considered by the Government as long as the redistributor’s price for the quantity ordered is equal to or lower than the manufacturer’s/grower’s/private label holder’s published price inclusive of discounts/allowances. This exception must be approved by the Contracting Officer on a case by case basis. Supporting documentation may be required.
    - (b) The Delivered Price includes Standard Freight, i.e. the transportation charge for delivery from the manufacturer/grower/private label holder to the initial point of entry into the Contractor’s distribution network. In the event the Contractor picks up product FOB 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 manufacturer/grower/private label holder’s invoice price shall be an origin price as reduced by any manufacturer/grower/private label holder pick-up allowance. Also, in the event the

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Contractor picks up product FOB Origin, or arranges for third party common carrier transportation to its facility, the standard freight charge shall be based on market tariffs/conditions and shall not exceed:

- (i) the manufacturer/grower/private label holder's, or manufacturer/grower/private label holder's carrier's freight price normally payable by the Contractor for inbound shipments of such products and quantities to the Contractor's distribution point; or
  - (ii) 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.
- (c) In rare circumstances, and only with the Contracting Officer's approval, the Contractor may use drop shipments, i.e. the product is shipped directly from the manufacturer/grower/private label holder to the customer without the Contractor taking possession. In such instances, the portion of the Delivered Price that includes the Standard Freight charge shall be deducted from the Delivered Price.
- (d) 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.
2. Solicitation Page 49, SOW I. Supplies/Services and Prices, paragraph 8 Prime Vendor Pricing – CONUS, B3 Product Allowance, the first sentence ceases with “commercial customers” and the following is deleted:
- “in the same or similar buyer category as the Government under this contract”
3. Solicitation Page 98, SOW VI. Special Contract Requirements, paragraph 2A, 14a General Rebates, the following paragraph is added:
- i. This report should summarize the savings passed along to the customers in the form of deviated allowances realized as a result of utilizing General Rebates. List each customer, the amount, the manufacturer/broker name, and quantity ordered. General Rebate figures should be listed per customer, per contract and per manufacturer.
4. Solicitation Page 134, Solicitation Provisions, Instructions for Proposals, Submission Requirements, Business Proposal – Volume II, the following section is added:

III. Discounts, Rebates, Allowances or Other Similar Economic Incentives or Benefits

#### Amendment 0007

The contractor shall identify all discounts, rebates, allowances or other similar economic incentives or benefits received by the contractor. These discounts, rebates, allowances or other similar economic incentives or benefits shall be reported monthly as identified in the special contract requirements/management reports section of the statement of work.

## Section II

1. Amendment 0003, Page 2, #2, this statement is changed to the following:

For purposes of this acquisition, it is the Government's position that the definition of the terms "Supplier" and "manufacturer/grower" means "manufacturer/grower/private label holder".

## Section III

Q&A Texas and New Mexico Pre-Proposal Conference 11/05/10

Please be advised that all of the questions below were received from potential offerors before, during, and after the pre-proposal conference (both in writing and orally).

1. Q. Please confirm that offerors are able to retain earned income that the Prime Vendor obtains from the Supplier and retains for its own use as payment for value-added services for product, such as supply chain management, product development, regional and national marketing, freight management, procurement leverage, quality assurance, and performance-based product marketing, and is received and retained in the normal course of its commercial business.

**A. No, per the rebates language "All NAPA discounts, food show discounts, early payment discounts (except as identified in paragraph (b) herein), and other discounts, rebates, allowances or other similar economic incentives or benefits received by the Contractor at any time during the period of performance shall be passed to the Government via a reduced catalog price." In addition, the language states "the Government shall be entitled to a prospective delivered price reduction and a retroactive refund for the amount of the overcharges or discounts, rebates, allowances or other similar economic incentives or benefits, including interest and the contractor shall be entitled to a credit for any undercharges."**

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2. Q. Reference clause 52.216-9064. Under (b)(3), there is a reference to “similar commercial customers”. There is a certain type of “rebate” which is special or deviated pricing for a customer where the manufacturer offers a special discounted price to a specific customer. It is the manufacturer’s choice not the contractor’s choice as to whether other customers (whether “similar” or not) of the contractor get the same price. Since the contractor has no control over to whom the manufacturer agrees to offer the same pricing, the contractor cannot agree ahead of time that the Government would get the same price if it falls under the definition of “similar commercial customer” that is requested. How will this situation be handled under the contract?

**A. The phrase “similar commercial customers” has been removed from the clause; see Amendment 0005, #3. As per Section 10 under the Statement of Work (SOW), “For all items, the contractor warrants, on a continuing basis throughout the period of performance, that its delivered price under this contract is equal to or lower than its delivered price to its commercial customer accounts.”**

3. Q. Confirm that “in the event the Contractor picks up product FOB Origin, or arranges for third party common carrier transportation to its facility,” that Prime Vendor may retain freight allowances.

**A. No, see response to question 1 above.**

4. Q. P. 48 Sec. 8 B-2(b)-“...the suppliers invoice price shall be an origin price as reduced by any Supplier pick-up allowance.” Please clarify.

**A. As per the response above, freight allowance or other supplier pick-up allowance shall be passed on to the government. See response to question 1 above.**

5. Q. Reference clause 52.216-9064. Under (b)(3) definitions, it defines product allowance differently than it is defined in SOW para. 8.B.3. The clause states that “discounts, rebates, or allowances on particular items are shown on the face of a supplier invoice. Does this mean that any discounts, rebates, allowances, or other similar economic incentives or benefits (as included in other places in the SOW) are only referring to such things that are shown on the invoice? The SOW does not seem to track with this clause in several respects as terms are used differently or different terms are used for similar things.

**A. All discounts, rebates, allowances, or other similar economic incentives or benefits must be shown on the invoice.**

6. Q. Reference SOW para 8.B.3 Product Allowance. This paragraph refers to “commercial customers in the same or similar buyer category as the Government”. What are the factors to be considered in determining whether a buyer is in the same or similar category?

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**A. This language has been changed to delete reference to same or similar customers.**

7. Q. The second clause in the first sentence that states “to substantiate that all discounts, rebates, allowances or other similar economic incentives or benefits” ends abruptly. What is it about those discounts, rebates, allowances, or other benefits that a contractor must substantiate?

**A. The clause has been corrected.**

8. Q. Please define the term “delivered price supply chain.” The Solicitation defines “delivered price” to mean “the most recent supplier price per unit to the Contractor, inclusive of standard freight, for that product delivered to the initial point of entry into the Contractor’s distribution network (normally referred to as the landed or delivered price).” Is the “delivered price supply chain” the invoice from the most recent supplier? Does the chain extend to supplier tiers below the most recent supplier?

**A. The "delivered price supply chain" begins with the invoice from the manufacturer/grower and extends to every entity involved all the way to the initial point of entry into Contractor's distribution network.**

9. Q. P. 50 Sec. 10 A - “Early payment discounts (except as identified in paragraph (B) herein), and other discounts, rebates, allowances, or other similar economic incentives or benefits received by the Contractor at any time during the period of performance shall be passed to the Government via a reduced catalog price.” Please clarify “other similar economic incentives or benefits.” Is this understood to mean such incentives or benefits that are not related to sales to the Government?

**A. No, as per the language in the solicitation it only applies to sales under this contract. The specific language is “The contractor shall employ all prevailing commercial methods in the pursuit of discounts, rebates, allowances or other similar economic incentives or benefits, for the customers supported under this contract, throughout the period of performance.”**

10. Q. P. 50 Sec. 10 B - 5. “. . . the Early Payment discount is no more than 2 percent and the early payment is required within 10 days to obtain the discount; and 6. the contractor actually made the required payment within the time period required to receive the discount.” Although 2 percent is a norm, it does not apply in all situations. Pricing systems cannot “limit” an applied discount to an arbitrary percent. For exceptions where we think the discount is legitimately more than 2 percent, could we communicate those to the Contracting Officer for discussion?

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**A. No, per the solicitation, the criteria for a prompt payment discount is that it “is no more than 2 percent of the manufacturer/grower’s invoice and the early payment is required within 10 days to obtain the discount”**

11. Q. Reference clause 52.216-9064. Under (b)(3), it provides that the contractor is to pass on to the Government discounts, rebates or allowances that are designated by the supplier to be passed on to the Government or “to similar commercial customers”. Is the phrase “to similar commercial customers” the same as the phrase “commercial customers in the same or similar buyer category as the Government” used in SOW para. 8.B.3 and the phrase “other customers” used in SOW para. 10.A?

**A. This language has been changed to delete reference to same or similar customers.**

12. Q. Reference clause 52.216-9064. Under (b)(3) it provides that any rebates which cannot be applied as an upfront deduction are to be paid to the Treasury by check. Is this how refunds due under SOW para. 10.D are to be made?

**A. Yes**

13. Q. Reference SOW para. 10.A. This paragraph introduces a term not included under Product Allowances: “other similar economic incentives or benefits”. What are the factors to be considered in determining similarity? Are these similar incentives and benefits to be classified as Product Allowances?

**A. Other similar economic incentives and benefits includes discounts, rebates and allowances, no matter what they are named as. Product allowances should include other similar economic incentives and benefits**

14. Q. Reference SOW para. 10.A. This paragraph goes on to require in the third sentence that all of these product allowances, incentives, and benefits are to be passed on via a reduced catalog price. Does that mean that if the payment from the manufacturer is not given until after verification of sales (it is not shown on the invoice) that it is still to be shown in the catalog price?

**A. No, it should be provided as a payment after the fact made out to the U.S. Treasury. The language states: “the Government shall be entitled to a prospective delivered price reduction and a retroactive refund for the difference between the delivered price charged to the Government and the delivered price charged to the contractor’s commercial customers, including interest.”**

15. Q. Reference SOW para. 10.A. Paragraph 10.A in the second sentence requires the Prime Vendor to warrant that its delivered price is “equal to or lower than its delivered price to its

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other customers.” Is the reference to “other customers” a reference to customers in the “same or similar buyer category as the Government”?

**A. No, the reference to “same or similar customers” is deleted.**

16. Q. Reference SOW para. 10.A. The last sentence states that there are “Instructions for identifying discounts, rebates, allowances, or other similar 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.”

- a. Where specifically are those instructions located?
- b. Does this language mean that the contractor can choose which of these items it will retain for itself and which it will pass on to the Government?
- c. Is it your intent that all monies flowing to the contractor from the manufacturer or some interim broker or distributor must be accounted for as either being given to the Government or being retained by the contractor? In other words are you asking for full disclosure of all income by the contractors that does not come from its customers?
- d. What if the types of income received change after the proposal is submitted or after award of a contract? Is the contractor limited to only the sources of income identified to go to the Government or to the contractor in its proposal?

**A. a. These instructions have been added as part of this amendment Page 3, #3 and #4.**

**b. No, all of these items must be passed on except prompt payment discounts that are in accordance with the solicitation language, i.e., 2%, net 10 days.**

**c. Yes. If the income relates to the product price, it must be accounted for.**

**d. Any changes from the original proposal submission should be documented in the monthly report. See Solicitation Page 98 and Page 3, #3 of this amendment.**

17. Q. Reference SOW para. 10.D. This paragraph in the first sentence requires the contractor to furnish backup to show that the “delivered prices under this contract are equal to or lower than delivered prices that are given to any other customer.” Does the phrase “any other customer” mean the same as the phrase “commercial customers in the same or similar buyer category as the Government” in para. 8.B.3 and the phrase “other customers” in para. 10.A? The use of these different, but similar, terms makes it ambiguous as to what is meant by them.

**A. This language has been changed to delete reference to same or similar customers.**

18. Q. Reference Special Contract Requirements VI, para 2.A.14.a. This paragraph is broader than paragraph 10.D which limits rebates etc to that given to either “any other customer” or “to a similar customer”, and this paragraph has no such limit. Are you asking the contractor to account for all “discounts, rebates, allowances or other similar economic incentives” from any source under any conditions that the contractor receives during the period of the contract?



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**A. The reference to same or similar customer is deleted. If it relates to sales to the government under this contract, then yes all discounts, rebates, allowances or other similar economic incentives must be passed to the government and reported.**

19. Q. P.50, 10. Rebates: para A states: For all items, the contractor warrants, on a continuing basis throughout the period of performance, that its delivered price under this contract is equal to or lower than its delivered price to its other customers.

Para. D states: The government may require the contractor to ...substantiate that delivered prices under this contract are equal to or lower than delivered prices that are given to any other customer.

Does this prohibit a manufacturer from offering a greater discount to a customer who purchases volumes much greater than the Govt?

**A. As per Section 10 under the Statement of Work (SOW), "For all items, the contractor warrants, on a continuing basis throughout the period of performance, that its delivered price under this contract is equal to or lower than its delivered price to its commercial customer accounts."**

20. Q. In past, DLA - TROOP SUPPORT has required prime vendors to report the rebates that are required to be passed on to the government. Please confirm that this is the government's intent and that it does not intend to require reports of rebates that are not required to be passed on to the government.

**A. As noted above and in the solicitation, "All NAPA discounts, food show discounts, early payment discounts (except as identified in paragraph (b) herein), and other discounts, rebates, allowances or other similar economic incentives or benefits received by the Contractor at any time during the period of performance shall be passed to the Government via a reduced catalog price." In addition, the solicitation states: "For all items, the contractor warrants, on a continuing basis throughout the period of performance, that its delivered price under this contract is equal to or lower than its delivered price to its commercial customer accounts." If the contractor elects to take the Early Payment discount in accordance with the contract, it must be reported on the invoice and in the monthly reports.**

21. Q. Reference Special Contract Requirements VI, para 2.A.14.a. Is there any revenue from any source other than customers at either the item or vendor level that does not have to be reported by the contractor as either being passed on to the Government customers or being retained by the contractor?

**A. No.**

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22. Q. Reference Special Contract Requirements VI, para 2.A.14.a. This paragraph appears to include in the category of revenue received that is being passed on to the Government customers only that revenue, which is an “up front price reduction.” Is that the intent of this reporting requirement? Such limitation would exclude deviated pricing by manufacturers, among other things.

**A. No, see response to question 1 for retroactive refund.**

23. Q. Reference VI Special Contract Requirements para. 2.B.14.a. Please provide the format for the report. Is the report to be item by item or at the contractor level?

**A. See Page 3, #3 of this amendment.**

24. Q. The invoice requested is the “MANUFACTURER’S/GROWER’S invoice.” However, the definition of “delivered price” in 52.216-9064 at p. 32 states that delivered price will be based on “the most recent supplier price.” Please confirm that DLA - TROOP SUPPORT will accept an invoice from the most recent supplier and will not require a “MANUFACTURER’S/GROWER’S invoice.”

**A. DLA Troop Support will require a manufacturer’s/grower’s invoice. The “most recent supplier price” refers to the manufacturer/grower price.**

25. Q. Confirm that a manufacturer, vendor, packer, broker, redistributor, consolidator, transaction service provider, and Prime Vendor business unit or affiliate may all constitute a “supplier” as that term is used in the definition of delivered price.

**A. No, all references to supplier shall be considered “manufacturer/grower/private label holder”.**

26. Q. P. 48 Sec. 8 B-2(a) ““Delivered Price” is the most recent supplier price per unit charged to the Contractor, inclusive of standard freight, for that product delivered to in the initial point of entry in the Contractor’s distribution network (Normally referred to as the landed or delivered price).” Can you clarify the phrase “the initial point of entry in the Contractor’s distribution network?”

**A. The “initial point of entry in the Contractor’s distribution network” is the first stop where the manufacturer/grower/private label holder delivers the product. Anyone the Contractor uses after the manufacturer/grower/private label holder is considered to be part of their distribution network, not just those that the Contractor owns or operates. See Page 2, #1 of this amendment.**

27. Q. Does the definition of “standard freight” include the legs of freight associated with forward distribution, such as from the manufacturer to a redistributor and from the redistributor to the

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Contractor? Supply-chains are becoming increasingly more reliant on dedicated regional distribution centers to drive out costs and improve service levels.

**A. "Standard freight" would include freight associated with distribution from the manufacturer/grower/private label holder to the redistributor however it would not include freight from the redistributor to the Contractor.**

28. Q. Reference SOW para. 8.B.2(b). If contractor hauls product within its distributor network, is it authorized to apply a standard freight rate for this effort to add to the cost of the freight to its initial point of entry into contractor's distribution system?

**A. No, since the product is already within the Contractor's distribution network this means that it has been delivered "to the initial point of entry into the Contractor's distribution network", therefore this leg of freight would have to be included in the distribution price.**

29. Q. Reference SOW para. 8.B.2(b). If the contractor can show to the Government that its actual internal shipping cost plus the point of entry price is cheaper than the LTL rate to the final destination point, can the contractor include this actual internal cost to the delivered price?

**A. See Page 2, #1 of this amendment, the delivered price is the manufacturer/grower/private label holder price plus the first leg of freight.**