

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT				1. CONTRACT ID CODE	PAGE OF PAGES 1 22
2. AMENDMENT/MODIFICATION NO. 0020	3. EFFECTIVE DATE June 29, 2012	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 ONE 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.)
 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

Solicitation SPM300-10-R-0047
Subsistence CONUS Prime Vendor for Texas & New Mexico

Amendment 0020

This amendment provides answers to questions which were submitted as pre-proposal questions in reference to Amendment 0018. The answers are provided for clarification purposes only and do not change the requirements in the solicitation.

Effective Period of Contract – Indefinite Quantity Contract – Solicitation Amendment 0018, page 48

- QUESTION:** Please explain why the effective period of the contract performance, inclusive of option, is now only 2 years. Prior contracts were for an effective performance period of 5 years with options, and with non-competitive (c)(2) and (c)(1) extensions some of these contracts have lasted for up to 10 years. I believe industry expected that subsequent contracts would continue to be for 1-year with four (4) one-year options.

ANSWER: The Government has determined that contract periods between 2 – 3 years (inclusive of options) provide a balance between ensuring competition and maintaining stable customer support.

Offer Period of Acceptance – Instructions to Offerors –Addendum to FAR 52.212-1, Amendment 0018, page 117

- QUESTION:** Offer Period of Acceptance is 271 days, or 9 months. Please explain why such a long period is required to make award of a LPTA acquisition, and why a more reasonable acceptance period of either 90 or 120 days is not being used. DLA has stated it has moved from best value trade-off acquisitions to LPTA based on the shorter acquisition time required for an LPTA. Why is 9 months required? Additionally, if the 9 months is provided for, it will necessitate another non-competitive (c)(1) contract extension to the current Labatt contract SPM300-12-D-3510 scheduled to expire 11/10/11. This continued and repeated use of (c)(1) authority is inappropriate and illegal, and will result in a protest if used again for TX/NM.

ANSWER: The acceptance period does not preclude the Government from awarding sooner. Given the possibility of further protests and/or the need for extensive discussions to ensure all offerors understand the new pricing terms, a period of offer acceptance of 271 days was determined appropriate.

Guaranteed Minimum/Maximum – Statement of Work, I.1.E., Amendment 0018, page 46

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

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

4. **QUESTION:** What, if any, policy does DLA have that contract entities order from the Prime Vendor in lieu of the foodservice provider of their choice?

ANSWER: Assuming that "contract entities" means DLA Troop Support customers, beyond the contract minimum customer satisfaction with vendor performance will determine whether customers order exclusively from the prime vendor. See the Notice To Offerors on page 5 of Amendment 0018.

5. **QUESTION:** Does DLA reserve the right to award another, competing contract for food in the same area as this contract during the performance of this contract?

ANSWER: Because this contract is not a requirements contract, DLA Troop Support is not restricted from awarding another contract in the same area, however as in the past our intention is to award one PV contract per zone.

Termination for Cause - FAR 52.212-4 – Contract Terms and Conditions Commercial Items (Feb 2012), , Amendment 0018, page 14, paragraph (m)

6. **QUESTION:** Verify that under this clause, the Government agrees that its total administrative costs for the entirety of the terminated contract are \$1,350, regardless of its actual administrative costs.

ANSWER: Termination for Cause, Addendum to FAR 52.212-4, 5 (m), only relates by its terms to the administrative costs of procurement, not all administrative costs.

7. **QUESTION:** Does the \$1350 cap on administrative costs include incidental and consequential damages incurred because of the termination?

ANSWER: No, see answer to the prior question above. As the language states: *"This assessment of damages for administrative costs shall apply for any termination for cause following which the Government repurchases the terminated supplies or services together with any incidental or consequential damages incurred because of the termination."*

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Changes - Addendum to FAR 52.212-4, Section 2. paragraph (c),
Changes, Amendment 0018, page 17

8. **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?” 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?

ANSWER: The ability to make unilateral changes is clearly limited as specified.

9. **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?”

ANSWER: None. Given that the items are commercial foodservice items, this provision would most likely be used in unusual circumstances. A provision for equitable adjustment is included.

10. **QUESTION:** Why did the government find it necessary to tailor the standard commercial items changes clause, which requires agreement of both parties to the change?

ANSWER: It is necessary to provide for unforeseen circumstance in support of the military customers' critical mission.

Most Favored Customer Warranty - Addendum to FAR 52.212-4,
Paragraph 6. Subparagraph (o), Warranty, Amendment 0018, page 19

11. **QUESTION:** The warranty clause applies to “any customer” and is not limited to customers who order the same or similar goods for similar quantities under comparable or similar terms and conditions. DLA should change this most favored warranty to limit it.

ANSWER: The language contained in Addendum to FAR 52.212-4, 6 (o) will remain unchanged.

12. **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.

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ANSWER: This is limited to product warranties.

13. QUESTION: The Solicitation modifies FAR 52.212-4(o) "Warranty," in two places: (1) ADDENDUM TO FAR 52.212-4, 5. Paragraph 6. Paragraph (o), Warranty, p. 19; and (2) in Section 6 at p. 75. Recommend that DLA delete one of these clauses so that one of the clauses is not rendered superfluous.

ANSWER: The language in the solicitation cited above will remain unchanged.

Rebates/Discounts and Price Related Provisions – Amendment 0018, page 56, 8.(b). 2.

14. QUESTION: Reference [*"Purported Exception" means an Exception, as defined in (a) above, purported by the contractor to meet the definition of earned income, qualifying early payment discounts, or other Exceptions to this provision stated in the contract, but that do not meet the applicable definition or the conditions for use stated in the contract.*] Use of the word "purported" implies that the determination of an exception (defined in 8.(a), as meeting *"the applicable definition or the conditions for use stated in the contract"* lies solely with the Government. Since the applicable definition at 8.(b) 4. "Earned Income" depends on the offeror properly including such income in a list of earned income categories, as required in the Submission Requirements section of the Statement of Work at p. 128, III. EARNED INCOME, then any such income meets the "applicable definition" terms and cannot, by definition, be "purported." Please elaborate on the practical implications of the word "purported."

ANSWER: The above interpretation, that any income listed in the earned income categories meets the definition of earned income, is incorrect. In order to qualify as earned income or any other exception, the money, benefits, etc. must meet the definitions as stated in the Rebates/Discounts section and EPA clause. If it doesn't meet the definitions, it is "purported" and therefore does not qualify as an exception that may be retained by the contractor under the contract.

Economic Price Adjustment - 52.216-9064 –Amendment 0018, page 36

15. QUESTION: Even with the economic price adjustment in 52.216-9064, the Solicitation still places significant price risk on the Contractor, including the price risk for fuel increases and an upward ceiling on an economic price adjustment. Confirm that under 52.216-906, paragraph (a)(1) and this commercial item contract, a SPV Contractor has unlimited discretion to determine how much profit it should include in its Contract Unit Prices.

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

16. QUESTION: Our understanding is that the [section] “published price”-- [*“A Redistributor’s price for a specific manufacturer/grower/private label holder’s product (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 published price inclusive of Government Rebates and Discounts (as defined below). Supporting documentation may be required.”*]

– refers to the price charged FOB SPV Contractor for the same quantities if ordered directly from the manufacturer/grower/private label holder. Please confirm.

ANSWER: Yes.

Private Label Holder - Economic Price Adjustment - 52.216-9064 – Amendment 0018, page 36, and Rebates/Discounts and Price Related Provisions, page 56

17. QUESTION: Reference: [*“Limited Discount’ (commonly referred to as a “deviation” in industry parlance) means a discount that is identified by the manufacturer, grower, or private label holder as being limited to a specific customer”*]. Does the term “private label holder” (here) have the same meaning as in 52.216-9064 – ECONOMIC PRICE ADJUSTMENT (EPA) – ACTUAL MATERIAL COSTS FOR SUBSISTENCE DELIVERED PRICE BUSINESS MODEL (DATE TO BE DETERMINED) – DLAD, para (b)(1), p. 36 of 156?

ANSWER: Yes.

18. QUESTION: As written, only manufacturers, growers, or private label holders may offer a “limited discount.” This phrase should be expanded to allow the distributor or its intermediaries (regardless of whether they qualify as a manufacturer, grower, or private label holder) to offer limited deals to a category of customer(s) that does not include the Government.

ANSWER: We are not changing the limited discount language.

19. QUESTION: Does the definition of “Private Label Holder” include distributors who have an intellectual property interest in the label under which product is being grown or produced, but who do not have an ownership interest in the manufacturer or grower?

ANSWER: Yes, provided they are operating in a commercial marketplace.

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20. QUESTION: If the term “Private Label Holder” does include distributors who have ownership interests in the label, but not in the manufacturer or grower, does DLA agree that such distributors may set the delivered price of their Private Label products?

ANSWER: Yes, provided they are operating in a commercial marketplace, and provided the Delivered Price is the same price that is input in the contractor’s purchasing system as the starting basis for its other customers as required by the definition of “Delivered Price” at paragraph 5(a) of DLAD 52.216-9064.

21. QUESTION: If distributors who have ownership in their Private Label products may set the price of that product, is there any restriction on the mechanism or entity through which they set it? For example: May such distributors set the price of their products through intermediaries who do not directly manufacture or grow the product?

ANSWER: Yes, if the "intermediary" is a buying group (such as UniPro or Frosty Acres) operating in a commercial marketplace.

22. QUESTION: May such distributors set price through the use of a distributor business unit or affiliated organization?

ANSWER: Yes, if the "distributor business unit or affiliated organization" is a buying group (such as UniPro or Frosty Acres) operating in a commercial marketplace.

23. QUESTION: May such distributors set price through the use of a price list?

ANSWER: Yes.

24. QUESTION: Confirm that affiliates of the distributor may set delivered price if any affiliate of the distributor owns the intellectual property.

ANSWER: See responses to prior 3 questions above. Prices are set in a commercial marketplace. Therefore our focus is on ensuring that the Delivered Price is applied to all of a prime vendor’s customers, including DLA customers, so that we can be assured of receiving the commercial price.

25. QUESTION: If DLA intends to restrict the term to only those distributors who have an ownership interest in the manufacturer or grower, what is the purpose behind excluding contractors who have an ownership interest in the label from acting as virtual manufacturers or growers of their own brand?

ANSWER: There is no such intent. The intent is to ensure valid documentation of the Delivered Price.

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26. QUESTION: Will a distributor's purchase of product through a buying cooperative of which it has an ownership interest meet the definition of "a manufacturer or grower with whom the contractor holds an ownership and/or financial interest." Is this true even if the cooperative outsources the manufacture or production to another manufacturer or grower?

ANSWER: Yes.

27. QUESTION: How does distributor ownership in the manufacturer or grower protect the government?

ANSWER: No such claim is made.

Freight Management - Economic Price Adjustment - 52.216-9064 –
Amendment 0018, page 36

28. QUESTION: May monies that a distributor receives through freight management 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?

ANSWER: Yes, and yes. Freight management is specified on page 57 of Amendment 0018 in section 4. (i) of the Rebates/Discounts and Price-Related Provisions.

29. QUESTION: May a distributor earn and retain monies through its own inbound freight activity, such as backhaul?

ANSWER: Yes, provided that the product's Delivered Price is the same for all customers.

Drop Shipments - Economic Price Adjustment - 52.216-9064 –
Amendment 0018, page 36, (b)(3)

30. QUESTION: Drop ships where the Contractor does not take possession still incur shipping charges (i.e. 'freight') to move the product from the manufacturer/grower to the customer. Such charges are often included in the quoted delivered price but on occasion the product price is quoted FOB origin. When quoted FOB origin, the freight to deliver it to the drop ship point (typically FOB customer) is either billed to the Contractor or the customer. For military customer drop ships, manufacturers will bill us for freight (if arranged by them) rather than attempt to collect shipping charges from the government. Drop ship freight cost is not "Standard." Generally it is higher since drop ship product typically ships by more costly Less Than Load methods – FedEx, UPS, etc. Is the

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language meant to require Contractors to absorb the cost of such non-standard freight? Can this non-standard freight be included in the Unit Price? Please clarify.

ANSWER: This portion will be revised to clarify transportation charges, and the revision will be included in a separate amendment.

31. QUESTION: Clarify that the delivered price of a drop shipment may include a transportation charge.

ANSWER: See reply to previous question above.

32. QUESTION: If DLA will not allow the delivered price of a drop shipment to include a transportation charge, what is the rationale for such treatment?

ANSWER: See reply to initial drop shipment question above.

33. QUESTION: What issue is the Government seeking to address with the restriction on freight resulting from drop shipments, since such shipments are rare?

ANSWER: See reply to initial drop shipment question above.

Delivered Price – Various references in Amendment 0018

34. QUESTION: Can you please provide the definition of a Manufacturer? Grower? Private label Holder? These terms seems to be used quite frequently when many of the individual companies labeled a “manufacturer/grower” are not manufacturing or growing anything but simply repackaging product.

QUESTION: What is the definition of “manufacturer?” This term is central to understanding the requirements for pricing.

ANSWER: Manufacturer: a company that makes a product. Grower: a company that grows a particular type of crop or crops. Private Label Holder is defined in the Economic Price Adjustment clause (52.216-9064) on page 36 of Amendment 0018.

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

ANSWER: No, but the solicitation {page 50, section 8. B. 2. (a)(i)} includes a specific provision for redistributors.

36. QUESTION: What does the term “most recent” [in section Contractor Pricing – CONUS on page 59 of Amendment 0018 – “*Delivered Price*” means the most recent manufacturer, grower or private

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label holder commercial price per unit to the Contractor...”] modify? Does it refer to how the invoice is selected? For example, does it require distributors to use a “last invoice price” inventory system? If it does not refer to “last invoice price,” what does it mean?

ANSWER: It means last invoice price.

37. QUESTION: Confirm that deviated pricing is excepted 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.*”

ANSWER: Confirmed. The definition of Delivered Price cited above states “*...prior to the application of any specific...rebates, discounts, limited discounts...*”

38. QUESTION: If deviated pricing is excepted, does that exception apply regardless of how the distributor mechanically records that deviation in its system? For example, is deviated pricing excepted even where the SPV Contractor’s purchasing system records that deviated price as a direct input for the customer who is entitled to that pricing, instead of applying the deviated price in a subsequent step?

ANSWER: 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.

39. QUESTION: Confirm that because “Delivered Price,” by definition, applies to the standard purchasing system input, that deviated pricing is excepted from the requirement that DLA customers receive pricing “*identical to the Delivered Price of such product sold at the same time to its other customer*” [contained in Contractor Pricing - CONUS, Para. B, subpara. 2, Amendment 0018, p. 59]?

ANSWER: Confirmed, since Delivered Price and “deviations”/limited discounts are separate.

40. QUESTION: Confirm that the warranty [contained in Contractor Pricing - CONUS, Para. B, subpara. 2, (b) Amendment 0018, p. 59] applies only to the Delivered Price of such product sold from the same delivering warehouse at the same time to its other customers.

ANSWER: Confirmed.

41. QUESTION: Confirm that the warranty [cited above] 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.

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

42. QUESTION: Confirm that because deviated pricing is excepted from the definition of Delivered Price, it is also excepted from the warranty.

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 page 59 of Amendment 0018 deals with Delivered Price only.

43. QUESTION: In the solicitation you state that *"The Government may review/audit the SPV Contractor's electronic purchasing system to confirm that the Delivered Price of a product sold at a given time to a DLA Troop Support customer is identical to the Delivered Price used by the SPV Contractor to determine the price of such product sold at the same time to its other customers."* [Contractor Pricing - CONUS, Para. B, subpara. 2, (a), Amendment 0018, p. 59] Would this not be considered the same "best commercial customer" language in previous solicitations where you required the Contractor to provide the best price offered to any commercial customer to the government?

ANSWER: No, the definition of "Delivered Price" in the EPA clause on page 36 of Amendment 0018 states that it is the price 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. Therefore, it is acceptable for different customers to receive different rebates, discounts, limited discounts, etc.

44. QUESTION: With regard to your pricing model you have an exception for the delivered price which states: *"A Redistributor's price for a specific manufacturer/grower/private label holder's product (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 published price inclusive of Government Rebates and Discounts. Supporting documentation may be required."* [Contractor Pricing - CONUS, Para. B, subpara. 2, (a)(ii), Amendment 0018, p. 59] How would this apply, as redistributors will mark up the product to include their profit for consolidation, storage, overhead, etc? This is not a free service.

ANSWER: This exception allows for the use of Redistributors as defined in the solicitation. Where it makes economic sense to use a Redistributor, the contractor may do so to obtain a favorable delivered price.

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45. QUESTION: Does the requirement that the “Delivered Price” is identical to the “*Delivered Price of the same product at the same time to other commercial customers*” apply to commercial customers ordering from the same distribution center/warehouse? This limitation appears implied. If the Government agrees that the restriction is so limited, we suggest an express limitation, such as the following: “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 ordering from the same distribution center.”

ANSWER: That is correct. The definition of Delivered Price contained in the Economic Price Adjustment clause (52.216-9064), section B. 5.a) on page 37 of Amendment 0018 refers to the "delivering warehouse" which means the place of performance serving the contract, not the entire corporate entity or multiple warehouses under a corporate name.

46. QUESTION: Confirm that the referenced language does not require the distributor to have sales to commercial customers at a given time from the same distribution center/warehouse.

ANSWER: Confirmed.

47. QUESTION: The Solicitation does not define “delivering warehouse.” Confirm that “delivering warehouse” means “point of distribution.” Consider changing the language to state “The SPV Contractor warrants that the Delivered Price to its point of distribution 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.

ANSWER: Delivering warehouse means place of performance, i.e. the specific warehouse from which product is delivered to the customer.

**FOB Destination – Economic Price Adjustment - 52.216-9064 –
Amendment 0018, page 37, (b)(5)(a).**

48. QUESTION: Confirm that the “FOB Destination” is the point of distribution/place of performance. If this is correct, we request that DLA consider clarifying the destination with language similar to the following: “The Delivered Price shall be based on FOB Destination at Place of Performance, delivered using Standard Freight.”

ANSWER: Confirmed. Suggested language is not necessary.

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Earned Income - Rebates/Discounts and Price Related Provisions –
Amendment 0018, page 56, 8.(b).4.

49. QUESTION: May earned income received from intermediaries who do not manufacture or grow product be retained?

ANSWER: Earned income may be retained as specified in the definition of that term in the Rebates, Discounts and Price Related Provision section on page 57 of Amendment 0018, part 8./b./4. Specifically, documentation of delivered price must be from a manufacturer, grower, or private label holder.

50. QUESTION: In the question above, could the distributor retain the earned income if the intermediary served as a pass-through for the earned income paid by the manufacturer or grower? For example, could a redistributor pass through earned income from the manufacturer or grower that the contractor may retain?

ANSWER: See reply to prior question above. If monies that do not meet the definition of earned income cannot be retained from a manufacturer, grower or private label holder then it cannot be retained if passed from the manufacturer, grower or private label holder to an intermediary who then passes it to the distributor.

51. QUESTION: “Distribution Price” is defined [*in the EPA clause, page 37 of Amendment 0018 and Statement of Work, page 60*] 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 Earned Income received for services necessary to meet the performance requirements of the SOW may be included in “Delivered Price” and retained by the contractor.

ANSWER: Confirmed, provided it meets the qualifications for earned income.

52. 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.

ANSWER: Confirmed.

53. QUESTION: Consider deleting the requirement that “*Delivered Price shall exclude all costs that are to be covered in Distribution Price.*” Distribution Price is not limited to any particular costs and the various definitions become circular.

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ANSWER: No. Delivered price is the price paid to the manufacturer/grower/ private label holder (and which may include earned income) while the distribution price includes all other costs, including the distributor's mark-up or profit.

54. QUESTION: Confirm that the definition of "Government Rebates and Discounts" excludes any monies that the Contractor may retain as "Earned Income."

ANSWER: Confirmed. Both earned income and Government rebates and discounts are clearly defined and distinct from each other.

55. QUESTION: What does the term "value-added services" mean?

ANSWER: A service or services that add value, as opposed to a fraudulent arrangement that inflates cost with no added value.

56. QUESTION: Confirm that this clause does not require that the monies received reflect the actual cost of providing the service, provided that the income is consistent with that received by the contractor for its commercial customers who purchase off of invoice pricing (i.e., who do not receive deviated deals).

ANSWER: Confirmed.

57. QUESTION: If DLA believes that the service offered did not confer "value," may it seek to require the contractor to credit the monies received back to the Government?

ANSWER: Yes, since such an arrangement to receive monies while providing no service or a service that adds no value could constitute a fraudulent arrangement.

58. QUESTION: Under the Solicitation, VI. SPECIAL CONTRACT REQUIREMENTS, Section 2 Management Reports, DLA provides as examples of Earned Income categories, "*marketing allowances and sales volume incentives*." Solicitation at p. 110, paragraph 15. Confirm that an allowance tied purely to the SPV Contractor's sale of product is a sufficient "service" to fall within an Earned Income Category that may be retained.

ANSWER: Confirmed.

59. QUESTION: Does this clause allow 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?

ANSWER: Yes.

60. QUESTION: Submit Earned Income Agreements? Please expand on what is required as this is considered proprietary.

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ANSWER: We seek to verify the existence of such agreements with manufacturers, not the specific dollars involved which may be redacted.

61. QUESTION: In the solicitation you state that the contractor may be required to “submit pricing agreements and other documentation to substantiate all Government Rebates and Discounts and Exceptions, including the existence of Earned Income Agreements, on the DLA-TS contracts.” Please be more specific as many agreements between the Contractor and manufacturers are proprietary in nature and thus will not be provided to the government.

ANSWER: See answer to prior question above.

62. QUESTION: You require the contractor to submit “...a list of categories of Earned Income received. Examples of categories are marketing allowances and sales volume incentives. Any changes, additions or deletions to those categories that occur during the contract performance will be immediately reported by the Contractor as part of its next scheduled monthly management reports.” Can you please clarify what exactly you are looking for? Would this be specific to each manufacturer the Contractor purchases from? Product specific? Please provide more information.

ANSWER: If the same categories apply to multiple manufacturers, submit those categories. If the categories are different among manufacturers, specify the categories per manufacturer. If a specific manufacturer has different categories for different items, then the categories would need to be product specific.

Price Audits and Disclosures - Economic Price Adjustment - 52.216-9064, Amendment 0018, page 40, and Rebates, Discounts and Price Related Provisions, page 58.

63. QUESTION: Reference [“(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 during all reasonable times until the end of 3 years after the date of final payment under this contract or the time periods specified in Subpart 4.7 of the Federal Acquisition Regulation (FAR), whichever is earlier.”] In the REBATES/DISCOUNTS AND PRICE-RELATED PROVISIONS clause at p. 56, para. (c), DLA provides for a more limited ability to examine the contractor’s books and records. DLAD 52.216-9064, para (f) gives the CO the right to any data the CO deems necessary, which is excessive, inconsistent with commercial industry practice, and inconsistent with the restraint shown elsewhere in the Solicitation. Consider deleting DLAD 52.216-9064, para (f) as duplicative and contradictory to the REBATES/DISCOUNTS AND PRICE-RELATED PROVISIONS clause at p. 56, para. (c).

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ANSWER: No. The purpose of this section is to verify adherence to the pricing provisions. Paragraph (c) of Rebates/Discounts and Price-Related Provisions does not restrict or limit paragraph (f), so there is no conflict between these sections.

64. QUESTION: Reference: [*“(d) Contractor pricing disclosures shall be treated as proprietary and will not be released outside the Government unless otherwise required by law or as agreed to by the contractor.”*] How is the contractor to protect confidentiality obligations to its commercial customers and meet the commitment to the Government to provide sales data upon request? Does the treatment of “Contractor Pricing Disclosures” as “Proprietary,” on page 58, paragraph (d), also apply to the contractor’s sales data?

ANSWER: Specific earned income terms may be redacted, but the existence of the agreement itself must be disclosed. Contractor pricing disclosures includes sales data in accordance with para (e) of the clause.

Catalog & Market Basket Items - Amendment 0018, pages 48 - 49, 4.

65. QUESTION: Reference 4.D.[*“All item descriptions/specifications are included in the contract Market Basket and total catalog. **The item description, and unit package size and units-per-purchase-pack are specific and standardized for each Local Stock Number (LSN), and SHALL NOT be modified in any way.** 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.”*] From whom should the Contractor request approval for a different pack size?

ANSWER: The Contracting Officer, as part of your offer.

66. QUESTION: What is the deadline for such requests to be able to get an answer back with sufficient time to gather the necessary documentation prior to the RFP due date?

ANSWER: This information will be submitted as part of your offer, and must clearly identify any such differences. Given that the market basket items are commercial in nature and readily available, such requests should be minimized. Any such requests will be addressed in negotiations.

67. QUESTION: Offerors are not permitted to solicit quotes for items that they have in stock or to substitute similar items that meet the description of a specific line item for the purpose of obtaining a lower Delivered Price. How does DLA plan to ensure that the above requirement is being adhered to by all offerors that do not have the Market Basket items on a current SPV contract catalog?

ANSWER: A subsequent amendment will include a provision requiring offerors to certify that for each quote submitted, the item is not included in current inventory.

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68. QUESTION: Reference 4.A. [*“ For each line item in the market basket, if you have the product in inventory you are required to provide two copies of the manufacturer’s/grower’s/private label holder’s or Redistributor’s invoice for the last product received AND two copies of a screen shot of the Delivered Price in your electronic purchasing system.”*] Because the government is able to verify that the incumbent offeror has the Market Basket items on their active catalog so therefore they do have the Market Basket items in stock, but you are not able to verify the same for a non-SPV contract holder or a SPV Contractor that does not have the items on their current active catalog, this requirement puts the incumbent at a distinct disadvantage because they are not able to get a low price quote (that only has to be held at the low price for one week). How will you make this comparison more equitable across all offerors?

ANSWER: See above. Supporting documentation may also be required. For example, if a distributor offers a quote for a popular commercial item (Kellogg's Raisin Bran, for example), we may require an invoice to show an alternate item is being stocked in place of the solicited item.

69. QUESTION: If the incumbent offeror must use an invoice in lieu of a quote, will DLA consider an invoice a more valid piece of documentation and therefore have it carry more weight than a quote?

ANSWER: We consider an invoice stronger documentation than a quote but no additional weight will be given. However all delivered prices will be analyzed and prices (including quotes) that appear too low will be targeted for negotiation.

70. QUESTION: How will DLA take into consideration the use of small socio-economic suppliers' items higher cost versus a large business national branded item's price that generally has a lower price/quote?

ANSWER: This will not be given special consideration; offered prices will be analyzed in accordance with the solicitation and standard Federal Acquisition Regulation price analysis guidance. The use of small socio-economic suppliers will be evaluated in accordance with any applicable non-price evaluation factors or sub-factors.

**Limited Discount - Rebates/Discounts and Price Related Provisions –
Amendment 0018, page 56, 8.(b)1.**

71. QUESTION: Confirm that [the solicitation] 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”).

ANSWER: Confirmed, since presumably such discounts are limited to the street customer(s).

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72. QUESTION: Clarify 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.

ANSWER: Confirmed. In the example cited, the discount is limited to schools so the effect is the same.

Qualifying Early Payment Discounts - Rebates/Discounts and Price
Related Provisions –Amendment 0018, page 56, 8.(b)3(v).

73. QUESTION: Reference [*“...the Early Payment Discount is no more than 2 percent of the manufacturer/ grower/private label holder’s invoice and the early payment is required within 10 days to obtain the discount (except that in the event that specific terms greater than 2 percent/10 days are offered, the SPV Contractor must obtain prior written approval to retain this discount from the Contracting Officer on a case by case basis)”*]. Although a 2 Percent, Net 10 early pay discount is common, there are other cash discount terms that are legitimate. In many cases, a distributor gets more than ten days because standard early pay discount assumes payment by check sent through the mail; the last day of the discount period is when the payment by check is postmarked and the standard mail period is 3 days. Where a distributor is paying by ACH which is credited to the supplier’s account the day after initiating the ACH payment to the supplier, the last day of the discount period can be up to 13 days since the payment will be deposited in the same actual time that a check posted 10 days out will be. Many suppliers have negotiated these enhanced payment terms with many suppliers as long as they pay by ACH. Would a distributor be required to obtain written approval under this scenario?

ANSWER: Yes. The Contractor must obtain prior written approval from the Contracting Officer to retain any early pay discounts other than 2%/10.

74. QUESTION: In addition, where distributors have negotiated slightly better terms based on circumstances or a performance commitment to the supplier, because the discount is a cost-of-capital function, can they reasonably assume the right to retain such discount?

ANSWER: No, the contractor must obtain prior written approval from the Contracting Officer to retain any early pay discounts other than 2%/10.

75. QUESTION: Because distributors are dealing with several hundred suppliers, are they expected to submit a written request for approval? What if such approval is not granted? Are distributors expected to isolate the terms for the government customer and modify those terms to result in a different delivered price? Are they expected to utilize a vendor that offers strict 2%, 10 day terms?

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ANSWER: Requests may be emailed and will be answered expeditiously. If approval is not granted in a particular instance, the KO will decide the specific course of action.

76. 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.

ANSWER: This is to guard against fraudulent or collaborative early payment discount arrangements.

77. QUESTION: If the contractor generally makes the required payment in the time required to receive the discount, but experiences an occasional delay in payment, what adjustments, if any, will DLA require the contractor to make in the price of the product for each delay?

ANSWER: In the example given, the early payment discount does not meet the stated conditions and therefore the price should be adjusted to pass on the non-qualifying early payment discount to the Government.

78. QUESTION: A significant portion of Early Payment discounts fall outside of the stated limits [of 2 percent / 10 days]. Negotiations with vendors are ongoing throughout the life of the contract and are typically negotiated without regard to federal government contracts. Instead of requiring such terms to be a point of specific negotiation, which increases the administration cost to the government and compliance risk for the contractor, consider increasing the limit so that the standard falls within standard industry practice. For example, we believe that the vast majority of such discounts fall within 3 percent and 45 days.

ANSWER: Our research indicates that 2 percent and 10 days is standard. While individual terms may differ, we retain the requirement for Contracting Officer approval of alternative terms as stated in the Rebates, Discounts and Price Related Provisions (8/(b)./3.) on page 57 of Amendment 0018.

79. 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. Such a requirement is unduly burdensome. Will DLA delete the requirement that payment actually occurred?

ANSWER: No.

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Warranties – Inspection and Acceptance, Para 6, Amendment 0018, page 75.

80. 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 product warranties. 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.

ANSWER: Confirmed.

81. QUESTION: The prime vendor cannot control the warranties that its suppliers may offer to their other customers. Recommend that DLA delete the phrase “or its suppliers.” [“*The supplies furnished under the resultant contract(s) shall be covered by the most favorable commercial warranties that the contractor or its suppliers, as applicable, gives to any customer.*”]

ANSWER: The phrase “...or its suppliers” will be deleted in a subsequent amendment.

82. QUESTION: The warranty clause applies to “any customer” and is not limited to customers who order the same or similar goods for similar quantities under comparable or similar terms and conditions. DLA should change this most favored warranty to limit it.

ANSWER: No; we want the most favorable warranty commercially available.

83. QUESTION: The Solicitation modifies FAR 52.212-4(o) “Warranty,” in two places: (1) ADDENDUM TO FAR 52.212-4, 5. Paragraph 6. Paragraph (o), Warranty, p. 19; and (2) in Section 6 at p. 75. Recommend that DLA delete one of these clauses so that one of the clauses is not rendered superfluous.

ANSWER: This will not be changed.

Shelf Life Requirements – Amendment 0018, pages 72 & 73.

84. QUESTION: Reference language [“*For annual pack items, products shall be from the latest seasonal pack available...*”] Because manufacturers rotate their inventory on a FIFO basis, seasonal supplies sometimes overlap (Fall 2011 stock carried into 2012/2013, for example). It would be an unnecessary and non-commercial practice for manufacturers and distributors to set up separate SKU’s by pack year. To do so would require a costly, ineffective duplication of slots throughout the

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supply chain for all seasonally packed items. Is it acceptable to use the immediate prior year's pack during brief "carry-over" periods?

ANSWER: Yes, a brief carry-over period is acceptable in accordance with commercial practice.

85. QUESTION: On Page 72, III. INSPECTION AND ACCEPTANCE 1. CONTRACTOR'S QUALITY ASSURANCE PROGRAM, B. 2 – it reads – “ *The contractor shall maintain a quality program for the product acquisition, warehousing and distribution to assure the following: 2. The usage of First-In, First-Out (FIFO) principles and/or First-Expired, First-Out (FEFO).* ” Since both FIFO and FEFO are acceptable as outlined above, is it acceptable to utilize FEFO for highly perishable / chilled storage items only?

ANSWER: The Contractor must use date of pack/expiration date to manage shelf life for perishable items; therefore FEFO shall be utilized for all perishable items.

Reverse Auction - 52.215-9023 – Reverse Auction (Nov 2011) – DLAD, Amendment 0018, page 117

86. QUESTION: The Solicitation states that it is for one award. The Solicitation requires that offerors propose prices for a market basket for a variety of items. How would a reverse auction work for such a market basket concept?

ANSWER: Reverse auction will be performed on the Distribution Categories.

87. QUESTION: Will the reverse auction be based on the total distribution price? If so, how is this consistent with the statement that “aggregate prices will be used as the evaluation factor for the Price Proposals?” Solicitation at p. 133.

ANSWER: Yes, reverse auction will be performed on the Distribution Categories. Only the Distribution Price will be visible during the reverse auction. Final Distribution Category prices will constitute final proposal revisions, and the resulting distribution prices will be applied to the market basket items.

88. QUESTION: Will the reverse auction be based on the total aggregate price?

ANSWER: See reply to the previous question immediately above.

89. QUESTION: Prices may change the week after an award. If DLA uses a reverse auction, how will it assure itself that a contractor does not “buy in” during the auction and then increase the prices one week after award?

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ANSWER: Reverse auction will be done on the Distribution Categories. Only Delivered Prices can change after award.

90. QUESTION: We recommend that DLA consider eliminating this clause, since while it may produce a low price for the first week of the contract, such a technique is not well suited to determining the best value over the life of the contract where the price changes weekly.

ANSWER: See reply to prior question above.

Weighting Factor – Business Evaluation (contained in original Solicitation, deleted in Amendment 0018)

91. QUESTION: Please explain why DLA has opted to delete the evaluation weighting of the Aggregate Distribution Price (previously by a factor of 14) and provide no additional weighting to the Distribution Price, thereby making delivered prices a larger component factor of the price evaluation.

ANSWER: At this time, DLA Troop Support has determined that a weighting factor is not necessary. Also, removing the weighting factor does not make delivered prices a larger component of the evaluation; it merely reflects their actual value in the actual price.