

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT				1. CONTRACT ID CODE	PAGE OF PAGES 1 7
2. AMENDMENT/MODIFICATION NO. 0022		3. EFFECTIVE DATE Jul 17, 2012	4. REQUISITION/PURCHASE REQ. NO.		5. PROJECT NO. (If applicable)
6. ISSUED BY DLA TROOP SUPPORT 700 ROBBINS AVENUE PHILADELPHIA, PA 19111 Michael D'Elia/FTAB/215-737-0885		CODE	7. ADMINISTERED BY (If other than Item 6) Same as Block 6		CODE
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code)			<input checked="" type="checkbox"/>	9A. AMENDMENT OF SOLICITATION NO. SPM300-10-R-0047	
			<input checked="" type="checkbox"/>	9B. DATED (SEE ITEM 11) Oct 27, 2010	
			<input type="checkbox"/>	10A. MODIFICATION OF CONTRACT/ORDER NO.	
			<input type="checkbox"/>	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.

Offers 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 your 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 ONLY APPLIES TO MODIFICATION OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

CHECK ONE	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) NO. IN ITEM 10A.	THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER
<input type="checkbox"/>		
<input type="checkbox"/>	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).	
<input type="checkbox"/>	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:	
<input type="checkbox"/>	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:

To complete clause 52.216-9064 buyer fill ins and to update small business size standard (see following pages).

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

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

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1. Solicitation (Standard Form 1449) Page 1, Block 10, Size Standard is changed FROM:

500

TO:

100

2. Amendment 0021 Page 35, Contract Clauses, the entire clause is deleted and replace with:

52.216-9064 – ECONOMIC PRICE ADJUSTMENT (EPA) – ACTUAL MATERIAL COSTS FOR SUBSISTENCE DELIVERED PRICE BUSINESS MODEL (DATE TO BE DETERMINED) – DLAD

(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 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.
- (2) “Redistributor” means an entity independent of the contractor from which the contractor purchases product for purposes of consolidating quantities and 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 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. In the event the SPV Contractor picks up product FOB Origin from a manufacturer/grower/ private label holder, or arranges for delivery transportation from a third

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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:

(i) 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

(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.

(4) 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, UPS, US Postal Service, etc. In such instances the Contracting Officer will determine price reasonableness on the Unit Price inclusive of freight.

(5) For drop shipments as described in (4) above, a nominal Distribution Price to cover administrative costs will be applied to the Unit Price in lieu of the normal Distribution Price since the SPV Contractor is not handling the product. Likewise, occasionally the Government may elect to pick up product FOB Origin from a manufacturer/ grower/private label holder. In such instances a nominal Distribution Price will also be applied to the Unit Price in the same manner. The nominal Distribution Price will be 25% of the normal Distribution Price for the specific item(s).

(6) "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.

(7) Delivered Price

- a) "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 FOB Destination delivered using Standard Freight. 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

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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.

(i) 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.

(ii) Exception: 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.

(iii) Exception: Standard Freight may not apply to drop shipments and FOB Origin pickups.

- b) 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.

(8) "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 SOW for the applicable SPV solicitation and resulting contract. As detailed above in (5), Delivered Price is distinct from and not to be included in the Distribution Price.

(9) "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, qualifying early payment discounts, and any other rebates, discounts, or similar arrangements designated by the manufacturer/grower/private label holder 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 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 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.

(10) "Ordering Catalog" means the electronic listing of items and their corresponding Contract Unit Prices available for ordering under this contract.

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

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(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 1:30 PM Eastern Time on Wednesday, 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 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 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

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Contractor by close of business Eastern Time each Friday that a price or a price change request is being questioned or has been found to be erroneous, the price change(s) will post to the ordering catalog effective the beginning of the following Ordering 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 Friday. If the Contracting Officer cannot determine a price fair and reasonable, and the Contracting Officer and the Contractor cannot negotiate a fair and reasonable price, the Contracting Officer may reject any price change and direct in writing that the item in question be 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 will be considered a negative instance 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, the Prime Vendor shall immediately notify the Contracting Officer in writing and promptly thereafter correct its Ordering Catalog and submit a refund 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.

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(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 30 percent (%) for all items except Fresh Fruits and Vegetables (FF&V) and 90 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 during all reasonable times until the end of 3 years after the date of final payment under this contract or the time periods specified in Subpart 4.7 of the Federal Acquisition Regulation (FAR), whichever is earlier.

(g) FINAL INVOICE. The Contractor shall include a statement on the final invoice that the amounts invoiced hereunder have applied all decreases required 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.