

<b>SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, &amp; 30</b>				1. REQUISITION NUMBER 1000052313	PAGE 1 OF 67	
2. CONTRACT NO.	3. AWARD/EFFECTIVE DATE	4. ORDER NUMBER	5. SOLICITATION NUMBER SPE300-17-R-0010	6. SOLICITATION ISSUE DATE 2017 MAR 20		
7. FOR SOLICITATION INFORMATION CALL:			a. NAME Thien-Trang Tran PSPTPAC	b. TELEPHONE NUMBER (No Collect calls) Phone: 215-737-8314	8. OFFER DUE DATE/ LOCAL TIME 2017 APR 19 03:00 PM	
9. ISSUED BY  DLA TROOP SUPPORT DIRECTORATE OF SUBSISTENCE 700 ROBBINS AVENUE PHILADELPHIA PA 19111-5096 USA		CODE SPE300	10. THIS ACQUISITION IS <input checked="" type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> HUBZONE SMALL BUSINESS <input type="checkbox"/> SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS <input type="checkbox"/> UNRESTRICTED OR <input checked="" type="checkbox"/> SET ASIDE: 100 % FOR: <input type="checkbox"/> WOMEN-OWNED SMALL BUSINESS (WOSB) ELIGIBLE UNDER THE WOMEN-OWNED SMALL BUSINESS PROGRAM <input type="checkbox"/> EDWOSB NAICS: 311991 <input type="checkbox"/> 8 (A) SIZE STANDARD: 500			
11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED <input type="checkbox"/> SEE SCHEDULE	12. DISCOUNT TERMS		<input type="checkbox"/> 13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)	13b. RATING		
15. DELIVER TO  SEE SCHEDULE		CODE	16. ADMINISTERED BY  CODE			
17a. CONTRACTOR/OFFEROR  TELEPHONE NO.	CODE	FACILITY CODE	18a. PAYMENT WILL BE MADE BY  CODE			
<input type="checkbox"/> 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER			18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED <input type="checkbox"/> SEE ADDENDUM			
19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES		21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
	See Schedule  <i>(Use Reverse and/or Attach Additional Sheets as Necessary)</i>					
25. ACCOUNTING AND APPROPRIATION DATA				26. TOTAL AWARD AMOUNT (For Govt. Use Only)		
<input checked="" type="checkbox"/> 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4, FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA			<input checked="" type="checkbox"/> ARE			<input type="checkbox"/> ARE NOT ATTACHED
<input type="checkbox"/> 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4, FAR 52.212-5 IS ATTACHED. ADDENDA			<input type="checkbox"/> ARE			<input type="checkbox"/> ARE NOT ATTACHED
<input checked="" type="checkbox"/> 28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN <u>1</u> COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED			<input type="checkbox"/> 29. AWARD OF CONTRACT: REF. _____ OFFER DATED _____. YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:			
30a. SIGNATURE OF OFFEROR/CONTRACTOR			31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)			
30b. NAME AND TITLE OF SIGNER (Type or Print)		30c. DATE SIGNED	31b. NAME OF CONTRACTING OFFICER (Type or Print)		31c. DATE SIGNED	

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

32a. QUANTITY IN COLUMN 21 HAS BEEN

RECEIVED     INSPECTED     ACCEPTED, AND CONFORMS TO THE CONTRACT, EXCEPT AS NOTED: \_\_\_\_\_

32b. SIGNATURE OF AUTHORIZED GOVERNMENT REPRESENTATIVE

32c. DATE

32d. PRINTED NAME AND TITLE OF AUTHORIZED GOVERNMENT REPRESENTATIVE

32e. MAILING ADDRESS OF AUTHORIZED GOVERNMENT REPRESENTATIVE

32f. TELEPHONE NUMBER OF AUTHORIZED GOVERNMENT REPRESENTATIVE

32g. E-MAIL OF AUTHORIZED GOVERNMENT REPRESENTATIVE

33. SHIP NUMBER

34. VOUCHER NUMBER

35. AMOUNT VERIFIED CORRECT FOR

36. PAYMENT

37. CHECK NUMBER

PARTIAL     FINAL

COMPLETE     PARTIAL     FINAL

38. S/R ACCOUNT NO.

39. S/R VOUCHER NUMBER

40. PAID BY

41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT

42a. RECEIVED BY (*Print*)

41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER

41c. DATE

42b. RECEIVED AT (*Location*)

42c. DATE REC'D (*YY/MM/DD*)

42d. TOTAL CONTAINERS

BLOCK 8 (Continued):

OFFER DUE DATE/ LOCAL TIME: April 19, 2017 at 3:00PM EASTERN STANDARD TIME

BLOCK 9 (Continued):

IT IS A REQUIREMENT THAT ALL PROPOSALS, MODIFICATIONS, AND WITHDRAWALS BE PLAINLY MARKED ON THE OUTERMOST ENVELOPE WITH THE SOLICITATION NUMBER, CLOSING DATE AND TIME SET FOR THE RECEIPT OF PROPOSALS. FAILURE TO COMPLY WITH THIS REQUIREMENT MAY RESULT IN AN OFFEROR'S PROPOSAL NOT BEING PROCESSED PROPERLY AND ULTIMATELY REJECTED AS UNTIMELY IN ACCORDANCE WITH FEDERAL ACQUISITION REGULATIONS ("FAR") CLAUSE 52.212-1(f).

MAILED PROPOSALS\* SHALL BE SENT AND DELIVERED TO THE FOLLOWING ADDRESS:  
DEFENSE LOGISTICS AGENCY

DLA TROOP SUPPORT  
POST OFFICE BOX 56667  
PHILADELPHIA, PA 19111-6667

\* "MAILED PROPOSAL" applies in the circumstance where a proposal is sent via the United States Postal Service (USPS), including any of the individual mailing services offered by the USPS (i.e. First-Class Mail, Priority Mail, Priority Mail Express, etc.).

HANDCARRIED PROPOSALS\*, INCLUDING DELIVERY BY COMMERCIAL CARRIER, SHALL BE SENT AND DELIVERED TO THE FOLLOWING ADDRESS:

DLA TROOP SUPPORT  
BUSINESS OPPORTUNITIES OFFICE  
BLDG. 36, SECOND FLOOR  
700 ROBBINS AVENUE  
PHILADELPHIA, PA 19111-5092

\* "HANDCARRIED PROPOSAL" applies when the offeror intends to deliver its proposal in-person directly to the Business Opportunities Office ("BOO") at the address above. Further, the above address is also applicable when the offeror submits its proposal via a commercial carrier (e.g., UPS, FedEx, DHL, etc.).  
NOTE REGARDING "HANDCARRIED PROPOSALS:"

All handcarried proposals are to be delivered to the BOO between 8:00 a.m. and 2:30 p.m Eastern Time Zone., Monday through Friday, except for federal holidays as set forth in 5 United States Code Section 6103. Offerors using a commercial carrier service must ensure that the carrier "hand carries" the package to the BOO specified above for handcarried proposals prior to the instant Solicitation's closing date and time. As previously stated, the handcarried proposal's package must be plainly marked on the OUTSIDE OF THE COMMERCIAL CARRIER'S ENVELOPE with the solicitation number, closing date and time set for receipt of proposals as indicated in Block 8 of the Standard Form 1449 (Page 1 of Solicitation).

An offeror intending to deliver its proposal in-person is advised that the BOO (also referred to as the "Bid Room") is located within a secure military installation. In order to gain access to the BOO, an escort may be required. The escort will be an employee of the BOO. The following are telephone numbers for the BOO: (215) 737-8511, 9044, 0317, and 8566. Upon arriving at the security office, the offeror should call the BOO in order to obtain an escort. An offeror is advised to allow sufficient time to complete delivery of handcarried proposals. Since the length of time necessary to gain access to the BOO varies based on a number of circumstances, it is recommended that an offeror arrive at the installation at least one hour prior to the time that the solicitation closes to allow for security processing and to secure an escort. PLEASE NOTE THAT THIS ADVISORY IS A SUGGESTION AND DOES NOT GUARANTEE THAT AN OFFEROR WILL GAIN ACCESS TO THE BOO IF IT ARRIVES ONE HOUR BEFORE THE PROPOSAL IS DUE. Ultimately, it is the offeror's responsibility to ensure that its proposal is received at the correct location at the correct time. Failure to do so may result in the

CONTINUED ON NEXT PAGE

offeror's proposal being deemed untimely and not considered further for the award per FAR 52.212-1(f).  
 CONTINUATION SHEET REFERENCE NO. OF DOCUMENT BEING CONTINUED: PAGE 3 OF 67 PAGES SPE300-17-R-0010

CONTINUED ON NEXT PAGE

NOTE REGARDING FACSIMILE AND EMAIL SUBMISSION OF PROPOSALS:

Facsimile ("Fax") and e-mail are not acceptable forms of transmission for submission of initial proposals or revisions to proposals submitted in response to this Solicitation. However, if directed by the Contracting Officer at a later time, facsimile and e-mail may be used during discussions/negotiations, if discussions/negotiations are held, for proposal revision(s), including final proposal revision(s).

BLOCK 17A. (Continued):  
 OFFERORS must specify the following:  
 CAGE CODE: \_\_\_\_\_  
 FAX NUMBER \_\_\_\_\_  
 EMAIL ADDRESS \_\_\_\_\_  
 COMPANY POC: \_\_\_\_\_  
 PHONE #: \_\_\_\_\_

BLOCK 17B. (Continued):  
 Remittance will be made to the address that the Contractor (i.e. vendor) has listed in the System for Award Management ("SAM") Database. Offeror's assigned DUNS Number:

\_\_\_\_\_  
 (If you do not have a DUNS number, contact the individual identified in Block 7a of the SF 1449 or see 52.212-1, Instructions to Offerors—Commercial Items (paragraph j) for information on contacting Dun and Bradstreet.)

BLOCKS 19-24 (Continued):  
 SEE SCHEDULE OF ITEMS (ATTACHMENT 1)  
 AUTHORIZED NEGOTIATORS:

The offeror represents that the following persons are authorized to negotiate on its behalf with the Government in connection with this request for proposal. Please list names, titles, e-mail addresses, and telephone numbers for each authorized negotiator.

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**Form****TECHNICAL REQUIREMENTS**

THIS DOCUMENT INCORPORATES TECHNICAL AND/OR QUALITY REQUIREMENTS (IDENTIFIED BY AN 'R' OR AN 'I' NUMBER IN SECTION B) SET FORTH IN FULL TEXT IN THE DLA MASTER LIST OF TECHNICAL AND QUALITY REQUIREMENTS FOUND ON THE WEB AT: <http://www.dla.mil/HQ/Acquisition/Offers/eProcurement.aspx>. FOR SIMPLIFIED ACQUISITIONS, THE REVISION OF THE MASTER IN EFFECT ON THE SOLICITATION ISSUE DATE OR THE AWARD DATE CONTROLS. FOR LARGE ACQUISITIONS, THE REVISION OF THE MASTER IN EFFECT ON THE RFP ISSUE DATE APPLIES UNLESS A SOLICITATION AMENDMENT INCORPORATES A FOLLOW-ON REVISION, IN WHICH CASE THE AMENDMENT DATE CONTROLS.

**CAUTION NOTICE****THE CONTENT AND STRUCTURE OF SOLICITATION SPE300-17-R-0010 IS NEW. PLEASE READ CAREFULLY BEFORE SUBMITTING YOUR OFFER.**

This solicitation is being issued as 100% Small Business set-aside acquisition under full and open competition procedures. NAICS is 311991 and size standard is 500. It contains one 24 month and two 18 month tiers periods. The length of the contract is 60 months (5) years including all tiers.

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

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

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

**CONTRACTOR CODE OF BUSINESS ETHICS (FEB 2012)**

FAR Part 3.1002(a) requires all government contractors to conduct themselves with the highest degree of integrity and honesty. Contractors should have a written code of business ethics and conduct within thirty days of award. To promote compliance with such code of business ethics and conduct, contractors should have an employee business ethics and compliance training program that facilitates timely discovery and disclosure of improper conduct in connection with government contracts and ensures corrective measures are promptly instituted and carried out. A contractor may be suspended and/or debarred for knowing failure by a principal to timely disclose to the government, in connection with the award, performance, or closeout of a government contract performed by the contractor or a subcontract awarded there under, credible evidence of a violation of federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in title 18 of the United States Code or a violation of the False Claims Act. (31 U.S.C. 3729-3733)

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

**RAPIDGATE****CONTINUED ON NEXT PAGE**

"Many bases currently require enrollment in RapidGate and will not allow entry without RapidGate clearance. During the contract implementation period, the Contractor must contact all customer locations to determine whether enrollment in RapidGate or another security program is required for access to each location. If RapidGate or other security enrollment is required, the contractor must take all necessary steps to obtain this in time for the start of performance under this contract. Failure to have RapidGate clearance may result in a vendor being turned away from the base and being unable to complete delivery. The contractor is responsible for the additional cost for RapidGate enrollment and must ensure that a RapidGate enrolled driver is available for all deliveries. We currently estimate that RapidGate enrollment will cost about \$250 per company and \$200 per enrolled employee for 1 year of access to multiple locations, but the cost of RapidGate or other security enrollment may vary, so the contractor should contact RapidGate to determine its own costs. If more than one driver is required, RapidGate enrollment must be obtained for each driver. Note that enrollment can take several weeks, so an awardee that is not already enrolled must begin enrollment at the time of award notification at the latest. If difficulty or delay in enrollment in RapidGate is encountered during the implementation period, the contractor MUST contact RapidGate and/or the Security Officer at the applicable customer locations to resolve any issues with processing RapidGate enrollment so that the contractor will be able to deliver as required. For additional information regarding RapidGate, including enrollment instructions, please visit their website at [www.rapidgate.com](http://www.rapidgate.com).

Please note that RapidGate is currently a requirement for access to some military bases; however, these and other locations may require enrollment in other security programs at some time in the future. In this event, the contractor is responsible for obtaining all required enrollments and clearances for each of their drivers as soon as they receive notice of such a requirement."

#### CHECKLIST - DID YOU REMEMBER TO ????

- Fill in Block 17a, of 1449?
- Fill in Block 17A. Continued, on page 4?
- Cite remittance address in SAM and DUNS Number, Block 17B.
- Sign** Block 30a, name in Block 30b, and date in Block 30c.?
- Sign and return any/all amendments?
- Return one (1) **COMPLETE & SIGNED** copy of the solicitation?
- Fill out all certifications and representations in solicitation or submit a copy of ORCA Registration?
- Submit prices for **every item** listed in the Schedule of Items (Attachment 1), and save it to a CD?
- Fill out Vendor Name & CAGE Code for Excel Spreadsheet cell "D2" for Group 1 and "D2" for Group 2 in Attachment 1?
- Submit Distribution Prices for Troop Tier one Excel Spreadsheet cell "H7", Tier 2 Excel Spreadsheet cell "M7", and Tier 3 Excel Spreadsheet cell "N7" and Distribution Prices for School Tier one Excel Spreadsheet cell "H7", Tier 2 Excel Spreadsheet cell "M7", and Tier 3 Excel Spreadsheet cell "N7" in Attachment 1?
- Submit a list of distribution centers / warehouse locations that will directly support the proposed customers? Warehouses that function as backups should be designated as such?
- Checked box stating you intend or do not intend to use one or more facilities as a place of performance under 52.215-6 Place of Performance?
- Save and submit solicitation and all attachments to a CD?
- Submit proof of Perishable Agricultural Commodities Act (PACA) License
- Submit required information about financial arrangements under which you receive money from your suppliers?

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

**CONTINUED ON NEXT PAGE**

**STATEMENT OF WORK (SCOPE)****I. INTRODUCTION**

- A. DLA Troop Support intends to enter into an Indefinite Quantity Contract (IQC) contract with a commercial firm to supply a full-line of USDA No.1 or better Fresh Fruit and Vegetable (FF&V) products to DoD (Troop), Non-Department of Defense (USDA School), and Reservation customers and Shell Eggs (if required) located in North Carolina zone. The rating of USDA No. 1 or better is subject to what is actually called for in the schedule of items. The schedule of items ultimately controls the specific quality rating per item and the generic language of "U.S. Grade 1 or better" only speaks to the bare minimum requirement.
- B. This solicitation consists of one (1) zone and two (2) groups in the North Carolina area. Group 1 will consist of DoD customers to include Troop customers. Group 2 will consist of Non-DoD (USDA School), and Reservation customers. The Government intends to make one (1) award for each Group based on the technically acceptable offer with the lowest aggregate evaluated price ("lowest price technically acceptable" or "LPTA"). In its LPTA evaluation of offerors' pricing, the Government will incorporate a weighting factor to the distribution pricing component of the overall evaluated price. Please refer to page 54 (FAR 52.212-2 Evaluation - Commercial Items (Oct 2014) for additional information. In the event that one offeror is the awardee for more than one Group, the award for more than one Group may be issued under a single contract. Offerors shall submit their best proposal for each Group independently due to the Government's right to make separate awards for Groups 1 and 2. Offerors are required to offer on all items in the Schedule of Items for each Group; failure to do so may result in exclusion from award consideration.
- C. This solicitation is a Total Small Business Set-Aside. It utilizes the Lowest Price Technically Acceptable Source Selection Plan. See 52.212-2 Evaluation – Commercial Items
- D. Any award made against this solicitation will result in an Indefinite Quantity Contract (IQC) Fixed Price with Economic Price Adjustment-Actual Material Costs for Subsistence Delivered Price Business Model. An IQC will provide for an indefinite quantity, within stated limits, of specific supplies or services to be furnished during a fixed period, with deliveries to be scheduled by placing orders with the contractor (reference FAR 16.504 (a)).

**II. EFFECTIVE PERIOD OF CONTRACT**

- A. Each resultant contract is for a total of 5.0 years, (one) 24-month and (two) 18-month tier periods. Tier period one will commence on the effective date of the contract.
- B. The first tier period of the resultant contract, the second tier period under that contract and the third tier period under that contract, will not exceed 24 months each. The total length of the contract will not exceed sixty (60) months, or 5.0 years.

**III. TIERS**

- A. The 5 -year contract period is divided into one 24-month and two 18-month tier periods. Each tier affords offerors an opportunity to provide different Distribution Prices as defined in the EPA provision. Each Distribution price offered must be expressed as a dollar value (up to two decimal places) and NOT a percentage. If an offeror submits the latter, it will not be accepted. If an offeror fails to provide a Distribution Price for any of the tiers, the Contracting Officer will assume that it is the offeror's intention that no change in Distribution Price was meant after the most recent preceding tier period that included a Distribution Price. For instance, if an offeror proposes a Distribution Price for Tier 1 of \$3.00 and fails to propose anything for Tier 2 and Tier 3, the Contracting Officer will interpret that omission as meaning that the \$3.00 Distribution Price pertains to all three (3) tiers.
- B. Although different distribution prices may be offered for each tiered period, the distribution prices will be firm-fixed and, thus, not subject to change during a tiered period. Contract deliveries may fall outside of the tier effective periods (i.e. an order placed during Tier 1 may be delivered during Tier 2). Prices will be based on the time an order is placed, not when an order is delivered. For example, if an order is placed during Tier 1, but delivery is made during Tier 2, then the prices in effect for that order will be the Tier 1 prices.

**IV. ESTIMATED DOLLAR VALUE / GUARANTEED MINIMUM / MAXIMUM**

- A. The following chart includes the 24-month estimate (1<sup>st</sup> tier period), 60 months (i.e. 5.0 years) estimated dollar values, the guaranteed 10% minimum dollar values, and the 250% maximum dollar values for each group. The guaranteed minimum

**CONTINUED ON NEXT PAGE**

values and the maximum values, although based on estimates, are firm dollar amounts calculated as a percentage of the estimated dollar values. The guaranteed minimum dollar value constitutes the Government's legal ordering obligation under the contract. Also, the Government may place, and the contractor must fill, additional orders above the guaranteed minimum dollar value, not to exceed the maximum dollar value.

North Carolina Zone	24 – Month Estimate (1st Tier)	5 Year Estimate (Total Including all Tiers)	10%Min	250% Max (5 Years)
Group 1 (DOD)	\$7,500,000.00	\$18,750,000.00	\$750,000.00	\$46,875,000.00
Group 2 - Schools	\$7,500,000.00	\$18,750,000.00	\$750,000.00	\$46,875,000.00
<b>Total</b>	\$15,000,000.00	\$37,500,000.00	\$1,500,000.00	\$93,750,000.00

The term "24 Month Estimate" refers to the Government's good faith estimate of the requirement for the first tier period.

The total minimum contract dollar value is \$1,500,000.00

The maximum contract dollar value is \$93,750,000.00

## V. REQUIREMENTS

- A. Start-up-Period: The Contractor's startup period will take place prior to the first order and is included in the first 24-month tier period. The Contractor shall submit a proposed implementation schedule to the Contracting Officer within fifteen (15) days after award highlighting the steps that will be taken to implement a fully functional distribution account, including all EDI transactions for all customers covered by this solicitation. An additional thirty (30) days will be granted for actual implementation. No more than forty-five (45) days after award will be permitted for each contractor to have fully functional distribution accounts in place for all customers.

## VI. CATALOGS

Offerors will be required to maintain electronic catalogs that list all items available to the customers covered under this solicitation. Each item in the catalog shall contain the corresponding national or local stock number, Government item description, packaging characteristics, unit of issue and unit price.

### A. Catalog Maintenance

#### 1. New Items

- (a) Prior to commencement of the first order, DLA Troop Support, the customer and the vendor will collaborate to identify items not found in the Schedule of Items which are to be added to the ordering catalog. Neither the vendor nor customer is permitted to add a new item to the catalog without initiating a new item request to the Contracting Officer.
- (b) After ordering commencement, if a customer desires to order a Fresh Fruit and Vegetable (FF&V) item that is not part of the ordering catalog, the contractor will be allowed a maximum of twenty (20) days to source the item, obtain a stock number from DLA Troop Support (if required) and add the item to the ordering catalog via an 832 catalog transaction. These items should then become a permanent part of the contractor's inventory, dependent upon availability, after the Contracting Officer's determination of fair and reasonable pricing. The contractor shall utilize the Contracting Officer-provided form when requesting all item approvals (additions and/or changes). The form is mandatory and is Attachment 2.
- (c) The successful awardee shall assume the responsibility of introducing new produce items to the customers, as well as showing cost effective alternatives to their current choices.

#### 2. Catalog Pricing

- (a) Schedule of Items Pricing: Items priced in the Schedule of Items (See Attachment 1) will be included in the ordering catalog following award. Schedule of Items will be determined fair and reasonable prior to award. The final proposed price for each item in the Schedule of Items will be the catalog price during the first week of customer ordering.

CONTINUED ON NEXT PAGE

- (b) Catalog Price Changes: Once an item is listed on the ordering catalog, the contracting officer will make on-going price reasonableness determinations. In accordance with the Economic Price Adjustment – Actual Material Costs for Subsistence Delivered Price Business Model, contractors are permitted to request a weekly EPA for items found on the catalog. For each item the vendor is requesting a price change, the contracting officer will conduct a separate price reasonableness determination. The item will be removed from the catalog until a fair and reasonable price can be determined by the Contracting Officer.
- (c) Catalog Additions: Before an item is added to the catalog vendors are required to submit to the contracting officer a request of proposed catalog additions (See Attachment 2). The request shall include the stock number, Government item description, proposed unit price with a corresponding supplier invoice or quote (note: quotes permitted in very limited circumstances as approved by the Contracting Officer, e.g. Contractor never purchased item before or stale prices due to seasonality, etc.), and the previously agreed-upon distribution price. **The request is due by 9:00 AM Eastern Time (ET) (standard or daylight as applicable) on the Monday prior to inclusion of the Wednesday catalog updates.** The contracting officer will review the catalog addition request and upon determining the price fair and reasonable will contact the contractor to indicate acceptance. The contractor shall then include the item on Wednesday's catalog update. Should the proposed price fail to be determined fair and reasonable, the contracting officer will conduct negotiations with the vendor. If after negotiations the proposed pricing still cannot be determined fair and reasonable, then the item will not be added to the catalog.
- (d) Pricing Requirements: The final negotiated contract fixed unit price for each item delivered to all customers shall be in effect for a minimum of all orders issued during the first ordering week (from Sunday at 12:01 AM through the following Saturday until midnight). The prices shall remain in effect for all subsequent ordering weeks except as otherwise adjusted in accordance with the Economic Price Adjustment – Actual Material Costs for Subsistence Delivered Price Business Model.

On the first week's catalog the vendor shall submit final evaluated prices as awarded using STORES and/or FFAVORS unless lower market prices are available at time of award whereby the vendor shall adjust their catalog prices to provide all available lower prices to the government. This award is being made as Low Price Technically Acceptable, there is no upward adjustment on the final evaluated price for the first week's catalog.

### 3. Rebates/Discounts and Price-Related Provisions

- (a) The contractor shall employ 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. All NAPA discounts, food show discounts, early payment discounts (except as identified in paragraph (b) herein), and other discounts, rebates, allowances, economic incentives programs, financial arrangements, or other benefits, which ultimately reduce the Contractor's price paid for products supplied under any contract resulting from this solicitation or which are otherwise attributable to products sold under any resulting contract, that are received by the contractor shall be passed to the Government via a reduced catalog price. Any rebates, discounts, etc. that cannot be applied as an up-front price reduction must be submitted via check payable to the U.S. Treasury, with an attached itemized listing of all customer purchases by line item, including contract number, call number, purchase order number and contract line item number ("CLIN"). Instructions for identifying discounts, rebates, allowances or other economic incentives or benefits that shall be provided to the Government or retained by the contractor are set forth in the submission requirements in the Business Proposal/Pricing and in the Reports section of the Statement of Work.
- (b) The contractor may retain Early Payment discounts that meet the following conditions:
- (i) The Early Payment discount is an incentive to encourage payment earlier than the normal payment due date;
  - (ii) The Early Payment discount is consistent with commercial practice;
  - (iii) The Early Payment discount is routinely given by the manufacturer, grower/shipper, private label holder, or redistributor to their customers, other than the Contractor, at the same discount rate and under the same conditions as provided to the Contractor;

**CONTINUED ON NEXT PAGE**

- (iv) The Early Payment Discount is not established, requested, or negotiated for the purpose of avoiding giving DLA Troop Support a lower cost or application of a rebate/discount resulting in a higher invoice price;
  - (v) The Early Payment discount is no more than 2 percent of the manufacturer's, grower/shipper's, private label holder's, or redistributor's invoice and the early payment is required within 10 days to obtain the discount; and
  - (vi) The contractor actually made the required payment within the time period required to receive the discount.
- (c) Upon request the contractor shall provide to the Government any invoices, quotes, or agreements relevant to the delivered price component for existing catalog items, for any new items being added to the catalog, and for requested price changes to existing catalog items. The contractor must include detailed payment terms on each invoice or quote used to substantiate delivered price, including any applicable discounts or rebates. If there are no payment terms associated with the document, the contractor must annotate it with "No payment terms."
- (d) The government may require the contractor to submit invoices and other documentation from all subcontractor tiers and/or any supplier or person in the delivered price supply chain, to substantiate all discounts, rebates, allowances, economic incentives, or other benefits. If the Contracting Officer determines, after reviewing an invoice or other documentation, that a discount, rebate, allowance or other economic incentive or benefit should have been passed on to the Government and not retained by the Contractor the Government shall be entitled to a prospective delivered price reduction for the item(s) in question and a retroactive refund in the amount of the resultant overcharges, inclusive of interest. Similarly, if price verifications reveal any instance of overcharging for product for any reason, the Government will be reimbursed for the amount in question, inclusive of interest. If it is discovered that the Contractor undercharged for product and said undercharges were not the result of the Contractor's own fault or negligence in managing its ordering catalog(s), the Government will reimburse the Contractor accordingly. The Contracting Officer, and/or his/her authorized representative(s), shall have the right, up to twice a year or more as determined necessary by the Contracting Officer, to examine and audit a statistically significant sample of the Contractor's records relevant to its pricing under the contract, including the existence and proper accounting of rebates, discounts, etc. and permissible exceptions thereto as identified above in paragraph (b) of this section, as well as any other factors influencing Delivered Price. The Government may review/audit the 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 accurate. Should the Government identify evidence of incorrect pricing, or should other pricing issues arise, the Government reserves the right to conduct more frequent and extensive reviews/audits. During contract performance, failure on the part of the Contracting Officer to identify non-compliance with this provision or to challenge the Contractor's erroneous interpretation of said provision shall not constitute a defense or alter the Government's entitlement to any of the aforementioned rebates, discounts, etc. or any other remedies afforded by this section, the contract as a whole, or other applicable laws and regulations.

## VII. DOMESTIC NON-AVAILABILITY DETERMINATION – FRESH FRUITS AND VEGETABLES

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

CONTINUED ON NEXT PAGE

**VIII. ADDITION OF NEW CUSTOMERS****A. Adding Customers within the Contract's Geographic Distribution Region/Zone:**

1. Additional DoD and Non-DoD federal government customers that request DLA Troop Support produce support will be added on to the contract resulting from this solicitation without any new acquisition or competition process, if the customer(s) is/are within the geographic distribution region/zone covered by this contract.
2. In this case, the contractor shall include the customer(s) at the effective contract prices applicable to that distribution zone/region.
3. The decision as to whether a potentially new customer is within the contract region or zone and, thus, will be added to the contract without further competition and at the existing contract prices, shall be within the sole decision of the DLA Troop Support Contracting Officer.

**B. Adding Customers outside the Contract's Geographic Distribution Region/Zone:**

1. This provision applies to the following customers:
  - (a) A new DoD or Non-DoD federal customer that is not within the resulting contract's geographic distribution region/zone and for which the contractor will not accept the customer(s) at the effective contract price.
  - (b) An existing DoD or non-DoD federal customer that is not within the resulting contract's geographic distribution region/zone but has been previously supported on a separate contract covering a separate and distinct geographic distribution region/zone, and for which the Contractor will not accept the customer(s) at the effective contract price.
2. The customers described in paragraph B.1., above, and their produce requirements, may be added to any contract resulting from this solicitation as follows:
  - (a) In the judgment of the Contracting Officer, the customer(s) at issue is/are located in an area that is considered adjacent or proximal to the geographic distribution region/zone of the resulting contract. In a circumstance where the customer is located in an area that is adjacent or proximal to numerous different existing produce contracts, the decision of which contract is most satisfactory to the Government for purposes of adding the customer(s) will be within the sole discretion of the Contracting Officer, taking into consideration numerous factors, including but not limited to those contained in this provision. Further, to that end, it is the Contracting Officer's sole decision as to which existing contractors available in the aforementioned region/zone(s) will be solicited for the support of the customer(s).
  - (b) Complete price proposals to support the subject new customer(s), to include distribution and delivered prices, will be requested by the Contracting Officer. Prior to any customer being added to the resulting contract, the Contracting Officer shall determine all proposed prices to be fair and reasonable. To this end, negotiations may be required in which the same processes and procedures contained within the instant solicitation may be employed.

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

- A. Military, USDA School Lunch Program and other Non-DoD and DOD activities have periodic food menu boards, and other types of meetings which the vendor may be required to attend. At these meetings, the customers not only review their internal business practices, but the offeror can utilize this forum to show new products, demonstrate produce preparation, and provide nutritional information.
- B. Vendors shall provide at least one (1) full time Customer Service representative to maintain continuous contact with all of the ordering activities. The name of the representative and the phone number, mobile phone number, beeper number,

**CONTINUED ON NEXT PAGE**

email address, or any other method of communicating with the representative, shall be furnished to the customer after award.

- C. The vendor shall assume the responsibility of introducing new food items to the customers, as well as to show cost effective alternatives to their choices.
- D. Since many of our customers only have access to the Government phone network, it is strongly preferred that a toll free number be provided.

#### X. VALUE ADDED SERVICES

- A. Market Forecast: The vendor is required to provide the customer and the contracting officer with a weekly produce market forecast bulletin on Friday which outlines for the following week information regarding supply availability, product quality, associated growing areas, price trends, weather conditions, and handling tips.

#### XI. ORDERING SYSTEMS

- A. Subsistence Total Order & Receipt Electronic System (STORES): DOD customers will order using the Subsistence Total Order and Receipt Electronic System (STORES) catalog. The vendor is responsible for establishing and maintaining the STORES catalog.

1. Accessed via the Internet, STORES is the Government's translator/ordering system that is capable of accepting orders from any of the Services, i.e. Army, Air Force, Navy, or Marines, individual ordering systems and translating them into an Electronic Data Interchange (EDI) format. In addition, this information is passed to DLA Troop Support for the purposes of contractor payment and customer billing.

2. Customers will be able to order all of their requirements through STORES. The System will transmit orders to the vendor and DLA Troop Support.

3. The awardee shall be required to interface with STORES and must be able to support the following EDI transactions:

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

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

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

**CONTINUED ON NEXT PAGE**

required for all contractors. The requirement for PKI certificates is implemented in accordance with DoD security policy promoting secure electronic transactions.

(a). Obtaining a PKI certificate:

- (i) Contractors who do not work on-site at a Department of Defense facility may purchase a DoD PKI certificate from one of three External Certificate Authorities (ECAs). The ECAs are vendors who provide digital certificates to DoD's industry partners who are using their own equipment or working in non – Governmental facilities. Certificate prices range from \$99 - \$115 per certificate per year, with volume discounts at some ECAs. A list of ECAs is available at [https://www.daas.dla.mil/daashome/pki\\_contacts.asp](https://www.daas.dla.mil/daashome/pki_contacts.asp).
- (ii) Each contractor must fully comply with the DoD requirement to implement PKI in order for our information systems to remain secure and viable.

B. Fresh Fruits and Vegetable Order Receipt System (FFAVORS WEB): Non-DoD customers (USDA School customers) will utilize the Fresh Fruit and Vegetable Order Receipt System (FFAVORS) Web catalog. The successful awardee will be provided a User ID and password to Log in and receive orders through FFAVORS Web, a web-based ordering system. The vendor is responsible for establishing and maintaining the FFAVORS WEB catalog in accordance with Attachment 4.

1. Accessed via the Internet. FFAVORS WEB is the Government's ordering system for USDA Customers. It is capable of accepting orders from the schools and tribal reservations.
2. Customers will be able to order all of their requirements through FFAVORS WEB. The system will transmit orders to the vendor and DLA-Troop Support.
3. In the event the FFAVORS WEB system is not operational, the vendor must provide alternate ways for the customer to order (e.g., by fax, by phone, pick up orders.)
4. In the event the FFAVORS WEB system or the vendors interface is not operational, the vendor must provide alternate ways for the customer to order (e.g., by fax by phone, pick up orders, etc.)

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

- A. The minimum order requirement for any resultant contract is \$150.00. This requirement shall be based on the aggregate total of orders for a specific delivery date to all customers located within a particular military base or delivery location.
- B. Troop Customers shall place their orders to accommodate at a minimum a "skip day" delivery. For example, an order placed on September 1 would have a required delivery date of September 3. Orders may be placed with longer lead time not to exceed 10 days in advance of the requested delivery date; however, the minimum lead-time is "skip-day". See Attachment 3 for specific delivery information for Troop customers.
- C. School Customers shall place their orders to accommodate a 4-day lead time. For example, an order placed on Monday, September 1 would have a required delivery date of Friday, September 5. See Attachment 3 for a listing of the schools.
- D. All invoice pricing will be based upon the unit price at time of order by the customer(s). For example, for any item ordered on a Friday to be delivered the following week, pricing will be based upon the Friday price, regardless of whether the unit price for that item changed as part of the weekly catalog update.
- E. Once submitted through the applicable electronic ordering system (i.e. STORES or FFAVORS), an order may be cancelled by a customer up to 24 hours before scheduled delivery via written notification to the Contractor and the Contracting Officer. Within less than 24 hours from delivery, an order may be cancelled by mutual agreement between the customer and the Contractor. In the event of an act of God, such as extreme weather, the specific situation regarding a cancelled delivery will be dealt with in an equitable manner by the Contracting Officer, who has the ultimate authority and discretion to resolve said issues.
- F. For procedures discussing adjustments to orders, refer to Attachment 4 & 5 (STORES and FFAVORS manuals).

CONTINUED ON NEXT PAGE

**XIII. ITEM AVAILABILITY**

- A. Vendors must have access to items in sufficient quantities to fill all ordering activity requirements except for replacement items under the rejection/return procedures as stated in section XVIII . All supplies shall be furnished on a "fill or kill" basis. Partial shipments are acceptable if the customer is notified in advance and agrees to the partial shipments; however, the unfilled quantity is to be reported as not-in-stock (NIS). Offerors are required to have procedures for handling NIS situations. The contractor is required to stipulate timeframes in which the NIS item will be identified to the customer prior to delivery, in order that a substitute item may be requisitioned via a new order. Only substitutes of comparable description, quality, and price may be offered to the customer.
- B. Vendors shall notify the customer within 24 hours of order placement of the non-availability of any item. Vendors shall offer the customer a substitute of equal or higher quality and at an equal or lower cost, or advise them of the not-in-stock position of the item. Substituted product shall not be delivered without prior consent by the customer. Substituted items must be noted as such on the invoice. Substituted items need to be on the catalog in order for payment of that substitute item.

**XIV. PACKAGING, REPACKAGING, PACKING, LABELING AND MARKINGS**

- A. All labeling, packaging and packing shall be in accordance with good commercial practice. Shipping containers shall be in compliance with the National Motor Freight Classification and Uniform Freight Classification Code.
- B. To ensure that the carrier and the receiving activity properly handle and store items, standard commercial precautionary markings such as "KEEP REFRIGERATED" shall be used on all cases when appropriate.
- C. Protection during inclement weather is required. All products that are susceptible and sensitive to temperature must be protected by any means to prevent damage.
- D. For some items, DLA customers, particularly School and Tribal Reservations, may require smaller pack sizes than are commonly available in the commercial marketplace. Such items are included in the instant Schedule of Items and may be added at a later date during contract performance. It is incumbent on the Contractor to determine how it will supply these items in accordance with the required pack sizes. In so doing, the Contractor may decide to split cases and repackage product at its own facility. If this course of action is selected by the Contractor, it is important to note that any projected costs associated with repackaging and splitting of cases must be included in the Contractor's Distribution Price. Under no circumstances will a Contractor be permitted to include such costs in its Delivered Price component.

**XV. DELIVERY INSTRUCTIONS**

- A. Vendors shall ensure all products are delivered in sanitary trucks that are of a commercially acceptable standard. All delivery trucks must be equipped with a lift gate to expedite the offloading of products. Trucks shall maintain proper temperatures, as determined through standard commercial practices. Deliveries shall be F.O.B. destination to all ordering activities and delivery points. All items will be delivered to customer locations, free of damage, with all packaging and packing intact. The contractor shall remove all excess pallets used for delivery from the delivery point. A listing of all the delivery points per zone can be found at Attachment 3.
- B. Customers' delivery schedules (days and times), routes, and stop-off sequence will be coordinated and verified with the customers on a post award basis by the awardee(s). In general, Troop customers receives three (3) deliveries per week and school customers receives one (1) delivery per week.
- C. Products for individual customers / dining facilities/schools must be segregated. Many of the military bases have more than one delivery point. All products shall be segregated by drop-off point and loaded into the delivery vehicle in reverse drop sequence. The intent is to provide expeditious off-loading and delivery to the customer.
- D. The contractor shall also ensure that the personnel loading and delivering the product provide professional, prompt, and efficient service to the customer. Failure to adhere to these standards will be reported to the Customer Representative and the Contracting Officer by the affected customer(s) whereby appropriate corrective action will be coordinated with the Contractor.

**XVI. INSPECTION AND ACCEPTANCE**

- A. Inspection and Acceptance of products will be performed at destination. The inspection is normally limited to identity, count and condition; however, this may be expanded if deemed necessary by either the military Veterinary Inspector, Dining

**CONTINUED ON NEXT PAGE**

Facility Manager, Food Service Advisor/Officer, or the Contracting Officer. Delivery vehicles may be required to stop at a central location for inspection before proceeding to the assigned delivery point(s). In addition, the delivery vehicles will be inspected for cleanliness and condition. Supplies transported in vehicles that are not sanitary, or which are not equipped to maintain prescribed temperatures, may be rejected without further inspection. Failure to identify latent defects or similar issues at time of acceptance will not absolve the Contractor of its liability or preclude the customer from obtaining appropriate remedy upon the timely discover of said defects or issues after-the-fact. In this circumstance, the customer shall notify the Customer Representative who will coordinate with the Contracting Officer in seeking an appropriate resolution.

- B. The authorized Government receiving official at each delivery point is responsible for inspecting and accepting products as they are delivered. The delivery ticket shall not be signed prior to the inspection of each product. All overages/shortages/returns are to be noted on the delivery ticket by the receiving official and truck driver. The authorized Government receiving official's signature and printed name on the delivery ticket is required for acceptance of the product. All signatures and printed names MUST be legible. Failure to adhere to this requirement may result in disputes going against that party as its failure can severely limit the Contracting Officer's judgment.
- C. Delivery Ticket and related information. No electronic invoice may be submitted for payment until acceptance is verified.
1. Troops: The Contractor shall provide three copies of the delivery ticket with the shipment. The first copy is provided to the receiving official (i.e. the customer) who will use the delivery ticket as the new receipt document. The second copy will be retained by the Contractor (or its agent) for invoicing and the final copy will be forwarded to the Fleet Logistics Center "FLC" or Fleet Industrial Supply Center "FISC" located at the respective military base/installation.
  2. Schools/Tribal Reservations: The Contractor shall provide two copies of the delivery ticket with the shipment. The first copy is provided to the receiving official (i.e. the customer) who will use the delivery ticket as the new receipt document. The second copy will be retained by the Contractor (or its agent) for invoicing.

#### **XVII. AUTHORIZED RETURNS**

A. The contractor/vendor shall accept returns under the following conditions:

1. Products shipped in error.
2. Products damaged in shipment.
3. Products with concealed or latent damage.
4. Products that are recalled.
5. Products that do not meet shelf life requirements.
6. Products that do not meet the minimum quality requirements as defined for the items listed in the schedule.
7. Products delivered in unsanitary delivery vehicles.
8. Products delivered that fail to meet the minimum/maximum specified temperature.
9. Quantity excess as a result of order input error and/or purchase ratio factor error.
10. Products that are not from a sanitarily approved source.
11. Products that do not comply with DFARS 252.225-7012 Preference for Certain Domestic Commodities (Berry Amendment), if no waiver to this clause has been granted.
12. Any other condition not specified above that is deemed by the customer to be valid reasons for return.

#### **XVIII. REJECTION/RETURN PROCEDURES**

**CONTINUED ON NEXT PAGE**

- A. **In the event an item is returned, the delivery ticket/invoice shall be annotated as to the item (s) rejected. These items shall then be deducted from the delivery ticket/invoice. The invoice total must be adjusted to reflect the correct dollar value of the shipment.** Replacements will be authorized based on the customer's needs. On an as-needed basis, same day re-delivery of items that were previously rejected shall be made, so that the customer's food service requirements do not go unfulfilled for that day. The re-delivered items will be delivered under a separate invoice utilizing the same call number, CLIN number, and purchase order number for the discrepant line. These re-deliveries will not constitute an emergency order requirement.
- B. In the event a product is rejected after initial delivery is made, the vendor will pick up the rejected product. Credit due to the ordering activity as a result of the rejected product being returned, will be handled through a receipts adjustment process in STORES. If the vendor has already been paid for the product, a claim will be issued through DLA Troop Support's financial system. In all cases, one (1) copy of the credit memo is to be given to the customer and (1) copy of the credit memo is to be sent to the DLA Troop Support Contracting Officer.
- C. If a customer requires a one-to-one replacement, no additional paper work is necessary; the vendor delivery ticket/invoice will show that product is a replacement for a rejected item. The invoice shall reference the call number, CLIN number, and Purchase Order Number of the originally ordered product.
- D. **It is a requirement of this solicitation that product shall be inspected upon receipt as promptly as practicable. However, failure to promptly inspect or accept supplies shall not relieve the contractor from responsibility, nor impose liability on any of the customers, for nonconforming supplies. See clause 52.212-4, paragraph (o) and addendum to clause 52.212-4, paragraph 1.**

**XIX. INVOICING**

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

CONTINUED ON NEXT PAGE

J. Unit prices and extended prices must be formatted not more than two (2) places to the right of the decimal point. Standard rounding methods must be applied. For example, a price of \$2.215 or higher must be rounded up to \$2.22 and a price of \$2.214 or lower must be rounded down to \$2.21.

K. Although invoices must be submitted electronically via an 810 Electronic Invoice; the following address must appear in the "Bill To" or "Payment Will Be Made By" block of the Contractor's invoice.

DFAS – Columbus Center (SL4701)  
Attn: DFAS-BVDP  
P. O. Box 369031  
Columbus, OH 43236-9031

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

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

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

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

1. **Vendor Reconciliation Tool ("STORES")** - In an effort to improve the payment process, Contractors are required to view what the customer has or has not receipted via the DLA Troop Support STORES website: [https://www.stores.dla.mil/stores\\_web/Admin\\_Logon.aspx](https://www.stores.dla.mil/stores_web/Admin_Logon.aspx). The Contractor will have access to "un-reconciled" information, i.e., the invoice does not match the receipt because of the quantity and/or price discrepancy or because the customer has not posted a receipt. Both invoice information and receipt information will be available for review on the website by the Contractor. While the Contractor will not have the capability to update customer receipt information, update capability will be available for un-reconciled invoice information for 120 days. It is the Contractor's responsibility to ensure accurate invoices.

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

## XX. PRICE AUDITS

A. Price Verification Audits. Contractors are advised that the Government may conduct price verification analysis in the following manner:

1. At the Contracting Officer's discretion, an internal Price Verification Team, in conjunction with the Contracting Officer, may require the contractor to provide copies of specific invoices from any and all suppliers in the supply chain, up to and including, but not limited to, the manufacturer, grower/shipper, private label holder, redistributor, etc., covering up to 100 items that were included on the contractor's catalog at any time during contract performance.
2. The Price Verification Team will request the above documentation in writing and the contractor will have thirty (30) days after the request to furnish the documentation.

CONTINUED ON NEXT PAGE

3. A report of overcharges and undercharges (if applicable) will be forwarded to the contractor, and the contractor may be required to pay the Government for the net amount owed for overcharges. The Government reserves all rights and remedies provided by law or under the contract in addition to recovering any overcharges. Undercharges will be evaluated by the Contracting Officer on a case-by-case basis consistent with other terms and conditions of the instant Solicitation.
4. The Government may elect to expand the scope of the price verification analysis, and the frequency of future price audits, if overcharges are discovered. The Government may also elect to reduce the scope and frequency of future price verification audits if no overcharges are discovered.

- B. The Government reserves the right to conduct additional price audits to verify price accuracy and recoup overcharges. In such instances, contractors will be required to submit invoices and any other supporting price documentation.
- C. The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention.

**XXI. FILL RATE**

- A. Order fill rates shall be calculated on an on-time, per order basis and tracked for monthly submission to the Contracting Officer/Account Manager. The fill rate shall be calculated as follows and shall not include substitutions, mis-picks, damaged cases or rejected product (**No other method of calculating fill rate will be accepted**):

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

B. Definitions:

1. Cases Accepted: Product that the customer has received and receipted not including damaged cases or rejected produce, mis-picks, and product substitutions.
2. Cases Ordered: Product requested by a customer

- C. Vendors are required to maintain at a minimum a **98.0%** fill-rate without substitutions.

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

1. Fill Rate with and without Substitution
2. List of all items that were Not in Stock, Returned, Damaged, Mis-picks and Substitutions.

**XXII. HOLIDAYS**

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

New Year's Day	Labor Day
Martin Luther King's Birthday	Columbus Day
President's Day	Veteran's Day
Memorial Day	Thanksgiving Day
Independence Day	Christmas Day

Note: Saturday holidays are celebrated on the preceding Friday; Sunday holidays are celebrated on the following Monday.

**XXIII. EMERGENCY ORDERS**

- A. Troop requirements can accelerate and surge during wartime, civil emergencies, natural disasters, adverse weather or other conditions. Therefore, last minute ordering may take place as necessary to fulfill customers' requirements.

**CONTINUED ON NEXT PAGE**

- B. For Troop customers only, the contractor will provide up to one emergency order per month per customer at no additional cost to the Government. Unless specified by the customer, all emergency order(s) for supplies must be same day service. Expedient fulfillment of the emergency requirement is imperative. The vendor is responsible for providing the ordering facilities with the name of the contractor representative responsible for notification of receipt and handling of such emergency service and his/her phone number and/or cell phone number.

#### XXIV. FOOD DEFENSE

- A. DLA Troop Support Subsistence Directorate provides world-wide subsistence logistics support during peace time as well as during regional conflicts, contingency operations, national emergencies, and natural disasters. At any time, the United States Government, its personnel, resources and interests may be the target of enemy aggression to include espionage, sabotage, or terrorism. This increased risk requires DLA Troop Support to take steps to ensure measures are taken to prevent the deliberate tampering and contamination of subsistence items. The contractor must ensure that products and/or packaging have not been tampered with or contaminated throughout the growing, storage, and delivery process. The contractor must immediately inform DLA Troop Support Subsistence of any attempt or suspected attempt by any party or parties, known or unknown, to tamper with or contaminate subsistence supplies.
- B. As the holder of a contract with the Department of Defense, the contractor should be aware of the vital role they play in supporting our customers. It is incumbent upon the contractor to take all necessary actions to secure product delivered to all military customers, as well as any applicable commercial destinations. We strongly recommend all firms to review their force protection/food defense plans relating to plant security and security of product in light of the heightened threat of terrorism and secure product from intentional adulteration/contamination.
- C. The contractor will insure that all products and/or packaging have not been tampered or contaminated throughout the manufacturing, storage and delivery process. The contractor shall immediately notify the DLA Troop Support Subsistence Contracting Officer of any attempt or suspected attempt by any party or parties, known or unknown, to tamper with or contaminate subsistence supplies.
- D. Accordingly, the contractor shall submit a Food Defense Plan (NOTE: to download a copy of the DLA Troop Support Food Defense Checklist go to [http://www.DLA Troop Support.dla.mil/subs/fs\\_check.pdf](http://www.DLA Troop Support.dla.mil/subs/fs_check.pdf) or contact the applicable Contracting Officer or the DLA Troop Support Quality Audits & Food Defense Branch) prior to the start of product delivery under any resultant contract to describe what steps their firm has taken and will take to prevent product tampering and contamination. The contractor will also describe what steps have been or will be taken that relate to overall plant security and food safety. The contractor must describe in detail the types of measures in place or scheduled to be put in place for the performance period of this contract. The DLA Troop Support Produce Quality Audit Team will review Food Defense during Produce Quality Audits/QSMVs as part of the USDA-AMS Good Agricultural Practices (GAP) & Good Handling Practices (GHP) Audits, to verify the implementation, compliance and effectiveness of the firm's Food Defense Plan/Program. Firms/contractors should include specific security measures relating to but not limited to the following areas:
1. Employee Identification
  2. Background checks where applicable
  3. Control of access to plant facility, gates and doors at the facility
  4. Internal Security
  5. Training and security awareness
  6. Product Integrity
  7. Transportation Security

#### XXV. PRODUCT QUALITY

- A. Shelf-life: All products delivered shall be as fresh as possible and within the Growers/Packers' original shelf life (i.e., Best if Used- by-Date, Expiration Date, or other markings). Applicable products shall be identified with readable open code such as "Best-Used-by- Date", "Sell-by-Date", date of production, or similar marking indicating the end of the guaranteed freshness date.
1. For Annual Pack Processed Fruits and Vegetable Items (Not Applicable to fresh fruits and vegetables): Products will be from the latest seasonal pack available, unless approved in advance by the Contracting Officer. Annual Pack items shall not be older than one year from Date of Pack/Production Date upon receipt at the contractor's

CONTINUED ON NEXT PAGE

facility. Products must have at least 30 days shelf life remaining when delivered to the customer, unless otherwise approved by the Contracting Officer.

2. For Fresh-Cut Fresh Fruits and Vegetables/Ready-to-Eat Salads/Cole Slaw/etc.: Individual bags/containers must be marked with a 14-day shelf life from the date of production. All products must be received by the customer with at least 50% of recommended shelf life remaining. If the manufacturer recommended shelf life is less than 14-days, the Contracting Officer must be notified in advance and approve shelf life. Any deviation from these requirements must be approved prior to customer delivery, in writing, by the Contracting Officer.

- B. Shell Eggs: Shell eggs must comply with the Federal Food, Drug, and Cosmetic Act (FFDCA) 21 CFR Part 100 – 169. Facility and product shall also comply with other applicable State, Federal regulations applicable to product or facility (21 CFR 115.50 (b) (2)], 7 CFR, Part 56 US Standards, Grades, and Weight Classes for Shell Eggs (AMS 56), GMPs, etc.).

Shell eggs must originate from a sanitarily approved source as indicated in the contract. Joint Government (DLA Troop Support /USDA-AMS) Sanitation and Food Defense Audits will be performed during DLA Produce Quality Audits/QSMVs or other visits by DLA Troop Support Quality Auditors and USDA-AMS Auditors as deemed appropriate.

1. Temperature Requirements: All refrigerated storage areas and transport ambient temperatures for shell eggs cannot exceed 45 degrees Fahrenheit.
  2. Markings/Labeling Requirements: For cartons (6-Eggs, 12-Eggs, 18-Eggs, etc.) and loose pack (a flat which contains 30-Eggs per flat), both of which are packed into a 15 or 30-dozen case, should have the USDA Grademark (shield) on the cartons. Shell egg cases/shipping containers must be stamped with the USDA Grade AA or A stamp (depending on the declared quality). A copy of the Grading Certificate (Form, PY-210S) shall be provided with the shipment of shell eggs upon customer request, during DLA Troop Support Quality Audits, or as requested by the Contracting Officer. Shipping containers/cases shall be marked/labeled with Plant Name, Address, Date of Pack, expiration (expiration not to exceed 30 days from day eggs were packed in cartons), Size Identification, quantity, Grade, etc.
  3. Shelf Life: Shell eggs shall have a minimum of 14 days shelf life remaining when delivered to DLA customers, unless otherwise authorized by Contracting Officer and the customer.
- C. Commercial standards shall be used to maintain temperatures appropriate for individual produce items during storage and delivery to DLA Troop Support customers.

1. Level of Product Quality:

- (a) When designating an item as a match for the DOD item in the schedule of items listed in the solicitation, the item must be:

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

- (ii) Equivalent in respect to grade or fabrication.

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

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

## XXVI. QUALITY PROGRAM

- A. A manufacturer, grower/shipper, private label holder, redistributor selection or certification program shall be used to ensure standardized product quality for each item supplied and/or listed in the stock catalogs, regardless of grower/supplier. The product quality shall be equal to that described in the pertinent item specification and/or specified US Grade Standard.

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

1. Standardized product quality.

**CONTINUED ON NEXT PAGE**

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

**XXVII. WAREHOUSING AND SANITATION PROGRAM/STORED PRODUCT PEST MANAGEMENT**

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

**XXVIII. PRODUCT SANITARILY APPROVED SOURCE REQUIREMENTS**

- A. Applicable food products (food products include bulk fresh fruits and vegetables), including pre-cut and packaged fruits, vegetables and salads, mushrooms, sprouts, etc., delivered to customers listed in this solicitation, as well as any customer added at a later date, shall originate either from an establishment (this includes suppliers/subcontractors or direct farm deliveries) listed in the "Directory of Sanitarily Approved Establishments for Armed Forces Procurements" or one which has been inspected under the guidance of the United States Department of Agriculture (USDA). The USDA Guidance for fresh fruits and vegetables is the USDA-AMS Good Agricultural Practices (GAP) Verification Directory or the USDA-AMS Good Handling Practices (GHP) Verification Directory for fresh fruits and vegetables, as applicable. Bulk Fresh fruits and vegetables suppliers must be inspected and listed under the USDA-AMS GAP and/or the GHP Directory. For detailed information see "Sanitary Conditions" procurement note in this solicitation. It may also be found at <http://phc.amedd.army.mil/>, under "Veterinary Applications, DoD Approved Food Services" link.

**XXIX. RECALL PROCEDURES REQUIREMENTS**

- A. In the event that a product recall is initiated by the USDA, vendor, supplier or manufacturer, the vendor should follow the procedures as outlined below:
  1. Immediately notify the following personnel:
    - (a) Customers that have received the recalled product.

**CONTINUED ON NEXT PAGE**

- (b) DLA Troop Support Contracting Officer.
- (c) DLA Troop Support Account Manager.
- (d) DLA Troop Support Customer Safety Officer at (215) 737- 2922.

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

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

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

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

**XXX. PERISHABLE AGRICULTURAL COMMODITIES ACT (PACA) LICENSE AND USDA GOOD AGRICULTURAL PRACTICES (GAP) & GOOD HANDLING PRACTICES (GHP) AUDIT VERIFICATION**

- A. All offerors must possess and submit proof of a valid, current PACA license at the time they submit their initial proposals. The submitted PACA license must be effective for at least thirty (30) Days after the solicitation closing date. Failure to submit proof of a PACA license, which satisfies the above requirements, may result in a proposal being deemed technically unacceptable and removed from further award consideration. Additionally, the contract awardee(s) must maintain a valid PACA license throughout the life of the contract. Failure to do so may result in termination of the contract.
- B. All offerors shall submit a GAP/GHP audit report for each place of performance identified in the offeror's proposal. The audit report(s) must demonstrate that a passing score(s) was/were received and the report(s) must be dated no more than six (6) months prior to the solicitation closing date. Failure to submit proof of a GAP/GHP audit report(s), which satisfies the above requirements, may result in a proposal being deemed technically unacceptable and removed from further award consideration. Additionally, the contract awardee(s) must maintain a valid GAP/GHP certification throughout the life of the contract. Failure to do so may result in termination of the contract. See [www.ams.usda.gov/services/auditing/gap-ghp/audit](http://www.ams.usda.gov/services/auditing/gap-ghp/audit) for details concerning program and certification.

**XXXI. NON-COMPETE PROVISION**

- A. The offeror warrants that upon receiving the award, it will not actively promote, engage, or market any of the customers on this acquisition away from the resultant DLA Troop Support contract and onto a fresh fruits and vegetable subsistence contract or account of any other Government agency or commercial entity. This prohibition is in effect during the life of the resultant contract, and restricts competition in the specific area or zone that is the subject of this acquisition. A violation of this term may result in the Contracting Officer terminating the contract, documenting this action as part of the awardee's past performance data, and taking other appropriate recourse as permitted by contract or applicable regulations and law.

**XXXII. SEASONAL ACQUISITION**

- A. When seasonally available, USDA #1 or better quality and competitive price, the government's preference is for locally grown produce. The successful contractor shall utilize local produce to the maximum extent feasible. The vendor shall record and update local items on their catalog on a weekly basis. The vendor is responsible for defining local produce in their geographical area.

**CONTINUED ON NEXT PAGE**

**XXXIII. MANAGEMENT REPORTS**

A. The contractor shall electronically transmit the following reports to the DLA Troop Support Contracting Officer and Account Manager on a monthly basis. All reports shall be cumulative for a one (1) month period and submitted no later than the seventh day of the following month (e.g., reporting period of January 1 through January 31, the reports must be received by February 7).

1. Product Line Listing (Manufacturer, Grower/Shipper, Private Label Holder and Redistributor, collectively referred to as "Supplier"): This report shall list all items purchased along with quantity and dollar value. It shall be sorted by Supplier and annotate whether the supplier is a large business or small business and whether the supplier is local or non-local.
2. Fill Rate Report: The fill-rate is calculated by dividing the number of cases accepted by the customer by the number of cases ordered. No other method of calculating fill rates should be included. Mis-picks and damaged or rejected cases should not be included in this calculation. This report should reflect the fill-rates with and without substitutions. The report should specify fill rates per customer and an overall average fill-rate for all customers under the contract for the month being reported.
3. Rebates, Discounts, Allowances and Other Economic Incentives (collectively referred to as "Incentives"):
  - (a) All incentives for the prior month (i.e. the month being reported) that have been passed along to the customer or that are due to the customers shall be summarized by listing each customer and the incentive amount. Also include the supplier (see definition in A.1. of this section) offering the incentive and the product usage. The total should be per customer and per order.
  - (b) Also, the contractor must report on any and all financial arrangements under which the contractor: (i) receives money from any of the contractor's suppliers, and (ii) asserts that such money is not an incentive that is owed to the Government under the terms of this solicitation and the resulting contract. The contractor must report the name of each supplier that provided money to the contractor during the month, a brief description of each financial arrangement, and the respective dollar amount received for each financial arrangement. If a new financial arrangement, which was not previously provided in the contractor's proposal under this solicitation, is reported, then the monthly report must also explain why the contractor believes that the new financial arrangement should not be considered an incentive that would be owed to the Government under the terms of the resultant contract. This explanation is not required in the monthly report if it was previously provided with the contractor's proposal under this solicitation.
  - (c) The above reports shall be prepared in documents that include the Contractor's own letterhead. Said reports shall be signed by the appropriate official within the Contractor's organization holding the requisite authority to bind the Contractor and act on its behalf for purposes of this reporting. By signing such reports, the contractor certifies that it understands the reporting requirements, that it understands the relevant contractual terms and conditions, and that the information provided is true and accurate.
4. DNAD: On a monthly basis, the contractor shall create and electronically transmit an excel spreadsheet to the contracting office with the stock number, item description, case count, pounds, and dollar value of non-domestic orders filled during the month. All subsequent reports shall be cumulative for one (1) month period and submitted no later than the seventh day of the following month (e.g. reporting period of June 1 through June 30, the report must be received by July 7). The Contractor shall code the EDI 832 Ref 03 (Foreign Source Indicator) with "Y" for each item that is foreign product and "N" for each item that is not foreign product.
5. Customer Service Report: The Contractor shall develop and provide a report summarizing all discrepancies, complaints and all positive feedback from ordering activities and the respective resolutions by providing details of each customer service incident, including any customer service visits.
6. Descending Dollar Value Report: Sorted by line item; each line is to contain, at a minimum: DLA Troop Support stock number, Item Description, pack or size, brand description, quantity, and total dollar value of units shipped. Dollar amounts will be totaled. This report shall be submitted by individual customer accounts and also by the total customer base in each zone.

**XXXIV. CONTRACT ADMINISTRATION INFORMATION****CONTINUED ON NEXT PAGE**

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

1. In the event the vendor effects any change at the direction of any person other than the DLA Troop Support Contracting Officer, the change will be considered to have been made without authority and any additional costs incurred by the Agency due to an unauthorized change will be reimbursed by the Vendor. The Contracting Officer must authorize any modification or costs associated with a change.

2. Requests for information on matters related to this contract, such as an explanation of terms or contract interpretation, shall be submitted to the DLA Troop Support Contracting Officer.

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

1. Payment of delivery orders will be made in accordance with the terms and conditions of Paragraph (i) of Clause 52.212-4 "Contract Terms and Conditions - Commercial Items" that is incorporated by reference into this solicitation.

2. Payment will be made in ten (10) days after the receipt of a proper invoice, however, is still subject to the terms and conditions of the Prompt Payment Act (31 U.S.C. 3903). All 810 electronic invoices must be submitted with accurate, sufficient, clean data before any payment can be made.

3. The Contractor is responsible to use MyInvoice for detailed summary of payments (line by line analysis) which can be found at: <https://wawf.eb.mil/>.

4. The Government intends to make payments under the resultant contract by electronic funds transfer (EFT) based on the information contained in the System for Award Management Registration (SAM). Reference Clause 52.232-33, "Payment by Electronic Funds Transfer- System for Award Management" is incorporated by reference. However, the election as to whether to make payment by check or electronic funds transfer is at the option of the Government.

C. Administration:

1. The Contracting Officer from the DLA Troop Support Supplier Operations - Produce and Market Fresh Division will perform administration of the contract.

2. A designated representative at the ordering activity will perform administration of the individual delivery order. This includes approving product substitutions and delivery changes.

3. The DLA Troop Support Contracting Officer must approve any changes to the resultant contract.

## XXXV. PROPOSAL SUBMISSION INFORMATION

A. Pricing

1. The pricing for the zone will be evaluated through the Schedule of Items Approach. The Schedule of Items Approach is a grouping of items along with the estimated quantities. The items found in the Schedule of Items represent 100% of the estimated dollar value for 24 months for that particular group. Offerors are required to submit their unit price for each item, broken down into the corresponding Delivered Price and Distribution Price components.

a. Pricing will be based on the following formula:

$$\text{Contract Unit Price} = \text{Delivered Price} + \text{Distribution Price}$$

b. In accordance with DLAD Clause 52.215-9023, Reverse Auction may be used for Distribution Prices only.

2. Definitions:

a. "Contract Unit Price" See Economic Price Adjustment Clause (EPA).

**CONTINUED ON NEXT PAGE**

- b. "Delivered Price" See Economic Price Adjustment Clause (EPA).
  - c. "Distribution Price" See Economic Price Adjustment Clause (EPA).
3. Formatting of Prices: Prices shall be formatted to no more than two places to the right of the decimal point, for example, \$2.50. In the event that the offeror submits a price that exceeds this limitation, the price will be rounded up or down using standard rounding methods. For example, a price of \$2.215 or higher will be rounded up to \$2.22 and a price of \$2.214 or lower will be rounded down to \$2.21.
4. Distribution Prices - Multiple Groups and Tiers:
- a. Multiple Groups. If multiple Groups are covered under this Solicitation, the offeror is permitted to submit a separate Distribution Price for each Group. In this instance, "Group" refers to a distinct and separate set of customers that require produce support (e.g. Troops vs. Schools). In the event that an offeror includes a Distribution Price for only one Group but through its proposal submission clearly indicates that it had intended to submit a proposal for multiple Groups covered by the Solicitation (e.g. submits pricing for all items contained in the Schedule of Items for all Groups), the Contracting Officer will interpret the offeror's omission of a separate Distribution Price for the other Group as its willingness to retain the same Distribution Price as the Group it was provided for and apply it to all Groups. Per this provision, this interpretation by the Contracting Officer is reasonable and acceptable by the offeror.
  - b. Tiers. Only one Distribution Price shall be offered for all items in each Tier. Offerors may propose a different Distribution Price per Tier. As described above in paragraph A.4.a., if an offeror fails to propose a Distribution Price for all of the Tiers, the Contracting Officer will utilize the last proposed Tier and apply it onward for each subsequent Tier. For instance, an offeror proposes a Distribution Price of \$3.00 for Tier 1, and fails to provide any Distribution Price for Tier 2. The Contracting Officer will apply the \$3.00 Distribution Price from Tier 1 to Tier 2. This application is reasonable and acceptable by the offeror per the terms of this section.

**B. Schedule of Items: Pricing**

1. The Schedule of Items in Attachment 1 represents 100% of the estimated dollar value of this procurement. Offerors must submit pricing information. The unit prices of all items found in the Schedule of Items will be comparatively assessed to identify any unusually high or low priced items. This assessment may include, but is not limited to, comparison amongst offerors' prices as well as comparison against USDA market report prices and internal Government databases that are applicable.
2. Estimated quantities for 24-month period (3 separate Tiers, one 24 month period followed by two 18 month tier periods) are indicated next to each item and are for information and evaluation purposes only. The Offeror's proposed Contract Unit Prices found in the Schedule of Items will be multiplied by the estimated quantities by Tier in order to calculate the Offeror's overall aggregate total price, which will be compared against the other offerors in order to identify the lowest overall price proposal.
3. Offerors are to submit proposed prices in accordance with the definitions of the separate price components identified under paragraph A., above, of this section. The Delivered Prices proposed must reflect those prices that were paid by the offeror for the various items during the time period from Sunday, March 12, through Saturday, April 1, 2017. Upon request from the Contracting Officer, an offeror may be required to substantiate the aforementioned proposed Delivered Prices with a product invoice (quotes may be accepted in very limited circumstances per Contracting Officer discretion) and accompanying freight invoice. The offeror's proposed contract unit price must be in a format that shows the delivered price and the distribution price as separate entries, then totaled. For example, if the delivered price is \$2.00 and the distribution price is \$3.00, pricing should be formulated as follows:

$$\text{\$ 2.00} + \text{\$ 3.00} = \text{\$ 5.00}$$

(Prices used for illustrative purposes only)

- a. Do Not Submit only the Unit Price; the two (2) elements must be shown separately.
- b. Delivered and Distribution Prices for all items are to be submitted according to the Government's Unit of Issue. THERE ARE NO EXCEPTIONS to this requirement. Failure to do so may result in an offeror's proposal being deemed technically unacceptable and therefore eliminated from further consideration for

**CONTINUED ON NEXT PAGE**

award. All items listed in the solicitation will ultimately become part of the vendor's catalog. The most recent prices submitted prior to award will be incorporated into the vendor's catalog.

#### C. Distribution Prices

1. The offeror shall provide distribution prices for each group and for each tier, as discussed under paragraph A.4., above, of this section, in the Schedule of Items. Each distribution price shall be provided on a per-case basis. Each group may have a different distribution price. Also, each tier may have a different distribution price, but each tier's distribution price shall apply to all items during the entire tier period.
2. Unlike Delivered Prices (as discussed further below), Distribution Prices shall remain constant for the entirety of each individual contract Tier. As such, the Distribution Price for Tier 1 does not have to be equal to the Distribution Prices for Tiers 2 and 3. These prices can differ or remain the same as the Tier 1 price; but ultimately will remain constant for the duration of each tier period.

#### D. Delivered Prices

1. The offeror is required to submit pricing on all items within the schedule of items. For evaluation purposes, an offeror's proposed prices on the schedule of items shall reflect the offeror's delivered prices that were effective from Sunday, March 12, through Saturday, April 1, 2017.
2. As part of the evaluation process, the Government reserves the right to require an offeror to substantiate some or all of its proposed Delivered Prices with an invoice from the manufacturer, grower/shipper, private label holder, or redistributor (collectively referred to as "Supplier") along with the corresponding freight invoice. The freight charge must be indicated on the invoice with bulk freight charges broken down by the case. If requested, the line item number must be clearly marked on each invoice (both product and freight) to identify the invoice's corresponding item. The preferred documentation is the manufacturer, grower/shipper, or private label holder invoice. If a particular line item was not stocked during that time period, a written quote from a manufacturer or grower/shipper may be accepted. However, please note that anything other than an invoice, such as quotes, are the exception to the rule and may not be satisfactory to the Contracting Officer in substantiating an offeror's Delivered Price. If unsatisfactory to the Contracting Officer, said price will be unacceptable and treated as though the offeror did not submit a price at all. This situation may result in the offeror's proposal being deemed technically unacceptable and removed from further consideration for award. If an offeror does not have an invoice, then the offeror needs to explain why an invoice is not available (e.g. item not in season, do not carry, etc.). As stated, the Government has a strong preference for invoices over market quotes or other documentation. All invoices, quotes, or other documentation must be from sources that the offeror currently uses or plans to use to support the resultant contract. All invoices (and other documentation as permitted) must contain realistic quantities for which the price paid was based upon. For example, an invoice for a quantity of 1 will not be accepted when the Government routinely purchases quantities well in excess of that quantity. Conversely, an invoice (and other documentation as permitted) based upon an unrealistically large quantity will not be accepted. Quotes shall not be used for the purpose of submitting a price lower than an existing invoice price within the offeror's possession for the particular time period required by the Solicitation. This type of gamesmanship (i.e. lowballing) threatens the integrity of the procurement process and runs afoul of the clear intention of this Solicitation. As such, it will not be tolerated. By submitting a quote, the offeror is certifying that it did not purchase, nor have in stock, the item for the time period being evaluated. Information that is later obtained by the Contracting Officer that casts doubt on the veracity of this certification will be handled as appropriate per the terms of this Solicitation, applicable regulations, laws, or otherwise. The Contracting Officer has the sole authority and ultimate discretion in addressing the above-identified situations and scenarios and ultimately deciding on what information is acceptable and substantiates an offeror's proposed Delivered Prices. Any quote must be presented in the following manner:
  - a. Detailed on a manufacturer or grower/shipper letterhead;
  - b. Date the price quote was supplied;
  - c. Time period price quote is effective; to include expiration date;
  - d. Quantity covered by price quote;
  - e. Manufacturer or grower/shipper part number; and
  - f. Manufacturer's or grower/shipper's point of contact: including name, title, address, and phone numbers.

**CONTINUED ON NEXT PAGE**

3. Prices must not extend more than two [2] places to the right of the decimal point. Standard rounding methods must be observed. For example, a delivered price of \$2.215 or higher must be rounded up to \$2.22 and a price of \$2.214 or lower must be rounded down to \$2.21.
4. If an offeror carries a variety of brands for the same item, the price submitted shall be for the lowest priced, technically acceptable item that meets the Government's minimum requirements.
5. All items procured under the resultant contract are subject to all contractual clauses and regulations, including, but not limited to, DFARS 252.225-7012, Preference for Certain Domestic Commodities, and the requirement that items be procured from a sanitarily approved source. All invoices and quotes must contain sufficient information to clearly reflect compliance with solicitation/contract terms and conditions.
6. Offerors are required to submit this portion on a spreadsheet containing the following information (Attachment 1):
  - (a) Stock Number.
  - (b) Item Description: Government Item Description.
  - (c) Estimated Quantity: Quantity provided.
  - (d) Unit of Issue: Self-explanatory. Note: Unit of Issue must be same as Government's listed in the Market Basket of Items.
  - (e) Delivered Price (DEP): The price you actually paid for the item, as substantiated by a manufacturer's, grower/shipper's, or private label holder's invoice. As discussed above, a quote may be accepted, in limited circumstances, to substantiate this price. Similarly, as discussed below (see EPA section), a redistributor's invoice may be accepted, in limited circumstances, to substantiate this price.
  - (f) Distribution Price (DIP): Your distribution price.
  - (g) Contract Unit Price: Delivered Price + Distribution Price.
  - (h) Total: Estimated Quantity multiplied by Unit Price.
  - (i) Gov't Average Case Weight: Provided.

#### E. Instructions for Proposal Spreadsheet– Attachment 1

1. Please fill in the white boxes only. For Group 1, DoD to include Troop customers, fill in Delivered Price Including Freight cells G7 to G70 and Tier One Distribution Price cell H7, Tier 2 Distribution Price cell M7 and Tier 3 Distribution Price cell N7. The offeror must submit Tier one, Tier two and Tier three distribution prices, which are automatically calculated by filling in cells **H7 for Tier 1, M7 for Tier 2 and N7 for Tier 3 Distribution Prices in Attachment 1**. For Group 2, Non-DoD to include USDA school customers, fill in Delivered Price Including Freight cells G7 to G67 and Tier One Distribution Price cell H7, Tier 2 distribution price in cell M7 and Tier 3 distribution price in cell N7. This will calculate your total evaluated price for each tier. All components of the tier unit price must be rounded to two (2) places to the right of the decimal point. If an offeror does not submit Tier 1, Tier 2 and Tier 3 prices, the offeror's proposal may be rejected. **Tier price increases or decreases are to be expressed in dollars and cents only.** The firm may also elect to offer no change in the distribution prices over the life of the contract. If you are not changing Tier period distribution pricing, all offerors must fill in cell **H7 for Tier 1, M7 for Tier 2 and cell N7 for Tier 3 with the same distribution pricing**. As a reminder, all offerors must submit **ONE DISTRIBUTION PRICE** which will apply to every item in a group in the schedule of items. Multiple distribution prices within tier one, tier two or three will not be accepted.
2. When preparing the spreadsheet, totals must appear in the rows titled "TIER 1 EVALUATION", "TIER 2 EVALUATION", "TIER 3 EVALUATION" and "TOTAL EVALUATION INCLUDING ALL TIERS (UNWEIGHTED)" and "TOTAL EVALUATION INCLUDING ALL TIERS (WEIGHTED)". Each firm must submit a hard copy of their spreadsheet (s), for the Tier 1, Tier 2 and Tier 3 periods, as well as a copy of the spreadsheet(s) on a CD/DVD. The offerors' entire proposal, including a copy of the solicitation and all other documents should also be on a CD/DVD.

CONTINUED ON NEXT PAGE

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

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

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

### **SANITARY CONDITIONS**

#### **(a) Food establishments.**

(1) All establishments and distributors furnishing subsistence items under DLA Troop Support contracts are subject to sanitation approval and surveillance as deemed appropriate by the Military Medical Service or by other Federal agencies recognized by the Military Medical Service. The Government does not intend to make any award for, nor accept, any subsistence products manufactured, processed, or stored in a facility which fails to maintain acceptable levels of food safety and food defense, is operating under such unsanitary conditions as may lead to product contamination or adulteration constituting a health hazard, or which has not been listed in an appropriate Government directory as a sanitarily approved establishment when required. Accordingly, the supplier agrees that, except as indicated in paragraphs (2) and (3) below, products furnished as a result of this contract will originate only in establishments listed in the U.S. Army Public Health Command (USAPHC ) Circular 40-1, Worldwide Directory of Sanitarily Approved Food Establishments for Armed Forces Procurement, (Worldwide Directory) (available at:

<http://phc.amedd.army.mil/topics/foodwater/ca/Pages/DoDAApprovedFoodSources.aspx> ). Compliance with the current edition of DoD Military Standard 3006A, Sanitation Requirements for Food Establishments, is mandatory for listing of establishments in the Worldwide Directory. Suppliers also agree to inform the Contracting Officer immediately upon notification that a facility is no longer sanitarily approved and/or removed from the Worldwide Directory and/or other Federal agency's listing, as indicated in paragraph (2) below. Suppliers also agree to inform the Contracting Officer when sanitary approval is regained and listing is reinstated.

(2) Establishments furnishing the products listed below and appearing in the publications indicated need not be listed in the worldwide directory. Additional guidance on specific listing requirements for products/plants included in or exempt from listing is provided in Appendix A of the worldwide directory.

(i) Meat and meat products and poultry and poultry products may be supplied from establishments which are currently listed in the "Meat, Poultry and Egg Inspection Directory,] published by the United States Department of Agriculture, Food Safety and Inspection Service (USDA, FSIS), at <http://www/fsis/usda.gov/wps/portal/fsis/topics/inspection/mpi-directory> . The item, to be acceptable, shall, on delivery, bear on the product, its wrappers or shipping container, as applicable, the USDA shield and applicable establishment number. USDA listed establishments processing products not subject to the Federal Meat and Poultry Products Inspection Acts must be listed in the Worldwide Directory for those items.

(ii) Intrastate commerce of meat and meat products and poultry and poultry products for direct delivery to military installations within the same state (intrastate) may be supplied when the items are processed in establishments under state inspection programs certified by the USDA as being "at least equal to" the Federal Meat and Poultry Products Inspection Acts. The item, to be acceptable, shall, on delivery, bear on the product, its wrappers or shipping container, as applicable, the official inspection legend or label of the inspection agency and applicable establishment number.

(iii) Shell eggs may be supplied from establishments listed in the "List of Plants Operating under USDA Poultry and Egg Grading Programs" published by the USDA, Agriculture Marketing Service (AMS) at <http://www.ams.usda.gov/poultry/grading.htm>.

(iv) Egg products (liquid, dehydrated, frozen) may be supplied from establishments listed in the "Meat, Poultry and Egg Product Inspection Directory" published by the USDA FSIS at [http://apps.ams.usda.gov/plantbook/Query\\_Pages/PlantBook\\_Query.asp](http://apps.ams.usda.gov/plantbook/Query_Pages/PlantBook_Query.asp) . All products, to be acceptable, shall, on delivery, bear on the product, its wrappers or shipping container, as applicable, the official inspection legend or label of the inspection agency and applicable establishment number.

(v) Fish, fishery products, seafood, and seafood products may be supplied from establishments listed under "U.S. Establishments Approved For Sanitation And For Producing USDC Inspected Fishery Products" in the "USDC Participants List for Firms, Facilities, and Products", published electronically by the U.S. Department of Commerce, National Oceanic and Atmospheric Administration Fisheries (USDC, NOAA) (available at: [seafood.nmfs.noaa.gov](http://seafood.nmfs.noaa.gov)). All products, to be acceptable, shall, on delivery, bear on the product, its wrappers or shipping container, as applicable, the full name and address of the producing facility.

(vi) Pasteurized milk and milk products may be supplied from plants having a pasteurization plant compliance rating of 90 percent or higher, as certified by a state milk sanitation officer and listed in "Sanitation Compliance and Enforcement Ratings of Interstate Milk Shippers" (IMS), published by the U.S. Department of Health and Human Services, Food and Drug Administration (USDHHS, FDA) at <http://www.fda.gov/Food/GuidanceRegulation/FederalStateFoodPrograms/ucm2007965.htm>. These plants may serve as sources of pasteurized milk and milk products as defined in Section I of the "Grade 'A' Pasteurized Milk Ordinance" (PMO) published by the USDHHS, FDA at <http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/Milk/default.htm>.

**CONTINUED ON NEXT PAGE**

(vii) Manufactured or processed dairy products only from plants listed in Section I of the "Dairy Plants Surveyed and Approved for USDA Grading Service", published electronically by Dairy Grading Branch, AMS, USDA (available at: <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRD3651022> ) may serve as sources of manufactured or processed dairy products as listed by the specific USDA product/operation code. Plants producing products not specifically listed by USDA product/operation code must be Worldwide Directory listed (e.g., plant is coded to produce cubed cheddar but not shredded cheddar; or, plant is coded for cubed cheddar but not cubed mozzarella). Plants listed in Section II and denoted as "P" codes (packaging and processing) must be Worldwide Directory listed.

(viii) Oysters, clams and mussels from plants listed in the "Interstate Certified Shellfish Shippers Lists" (ICSSL), published by the USDHHS, FDA at <http://www.fda.gov/food/guidanceregulation/federalstatefoodprograms/ucm2006753.htm>.

(3) Establishments exempt from Worldwide Directory listing. Refer to AR 40-657/NAVSUPINST 4355.4H/MCO P1010.31H, Veterinary/Medical Food Safety, Quality Assurance, and Laboratory Service, for a list of establishment types that may be exempt from Worldwide Directory listing. (AR 40-657 is available from National Technical Information Service, 5301 Shawnee Road, Alexandria, VA 22312 ; 1-888-584-8332 ; or download from web site: [http://www.apd.army.mil/pdf/files/r40\\_657.pdf](http://www.apd.army.mil/pdf/files/r40_657.pdf) ) For the most current listing of exempt plants/products, see the Worldwide Directory (available at: <http://phc.amedd.army.mil/topics/foodwater/ca/Pages/DoDApprovedFoodSources.aspx>).

(4) Subsistence items other than those exempt from listing in the Worldwide Directory, bearing labels reading "Distributed By", "Manufactured For", etc., are not acceptable unless the source of manufacturing/processing is indicated on the label or on accompanying shipment documentation.

(5) When the Military Medical Service or other Federal agency acceptable to the Military Medical Service determines the levels of food safety and food defense of the establishment or its products have or may lead to product contamination or adulteration, the Contracting Officer will suspend the work until such conditions are remedied to the satisfaction of the appropriate inspection agency. Suspension of the work shall not extend the life of the contract, nor shall it be considered sufficient cause for the Contractor to request an extension of any delivery date. In the event the Contractor fails to correct such objectionable conditions within the time specified by the Contracting Officer, the Government shall have the right to terminate the contract in accordance with the "Default" clause of the contract.

(b) Delivery conveyances.

The supplies delivered under this contract shall be transported in delivery conveyances maintained to prevent tampering with and /or adulteration or contamination of the supplies, and if applicable, equipped to maintain a prescribed temperature. The delivery conveyances shall be subject to inspection by the government at all reasonable times and places. When the sanitary conditions of the delivery conveyance have led, or may lead to product contamination, adulteration, constitute a health hazard, or the delivery conveyance is not equipped to maintain prescribed temperatures, or the transport results in product 'unfit for intended purpose', supplies tendered for acceptance may be rejected without further inspection.

(End of Clause)

## Part 12 Clauses

### 52.212-04 CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS (MAY 2015) FAR

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

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

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

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

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

(d) Disputes. This contract is subject to the Contract Disputes Act of 1978, as amended ([41 U.S.C. 601-613](#)). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR [52.233-1](#), Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

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

(f) Excusable delays. The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably

CONTINUED ON NEXT PAGE

possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) Invoice.

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

(i) Name and address of the Contractor;

(ii) Invoice date and number;

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Payment.—

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

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

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

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

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

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

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

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

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

(D) Contractor point of contact.

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

(6) Interest.

(i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 611 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in (i)(6)(v) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

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

(iii) Final decisions. The Contracting Officer will issue a final decision as required by [33.211](#) if—

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

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

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

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

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

**CONTINUED ON NEXT PAGE**

- (A) The date fixed under this contract.
- (B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.
- (vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—
- (A) The date on which the designated office receives payment from the Contractor;
- (B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or
- (C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.
- (vii) The interest charge made under this clause may be reduced under the procedures prescribed in [32.608-2](#) of the Federal Acquisition Regulation in effect on the date of this contract.
- (j) Risk of loss. Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:
- (1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or
- (2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.
- (k) Taxes. The contract price includes all applicable Federal, State, and local taxes and duties.
- (l) Termination for the Government's convenience. The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.
- (m) Termination for cause. The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.
- (n) Title. Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.
- (o) Warranty. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.
- (p) Limitation of liability. Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.
- (q) Other compliances. The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.
- (r) Compliance with laws unique to Government contracts. The Contractor agrees to comply with [31 U.S.C. 1352](#) relating to limitations on the use of appropriated funds to influence certain Federal contracts; [18 U.S.C. 431](#) relating to officials not to benefit; [40 U.S.C. 3701](#), et seq., Contract Work Hours and Safety Standards Act; [41 U.S.C. 51-58](#), Anti-Kickback Act of 1986; [41 U.S.C. 265](#) and [10 U.S.C. 2409](#) relating to whistleblower protections; [49 U.S.C. 40118](#), Fly American; and [41 U.S.C. 423](#) relating to procurement integrity.
- (s) Order of precedence. Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:
- (1) The schedule of supplies/services.
- (2) The Assignments, Disputes, Payments, Invoice, Other Compliances, and Compliance with Laws Unique to Government Contracts paragraphs of this clause.
- (3) The clause at [52.212-5](#).
- (4) Addenda to this solicitation or contract, including any license agreements for computer software.
- (5) Solicitation provisions if this is a solicitation.
- (6) Other paragraphs of this clause.
- (7) The [Standard Form 1449](#).
- (8) Other documents, exhibits, and attachments.
- (9) The specification.
- (t) Central Contractor Registration (CCR).
- (1) Unless exempted by an addendum to this contract, the Contractor is responsible during performance and through final payment of any contract for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.
- (2)(i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in FAR [Subpart 42.12](#), the Contractor shall provide the responsible Contracting Officer a

CONTINUED ON NEXT PAGE

minimum of one business day's written notification of its intention to (A) change the name in the CCR database; (B) comply with the requirements of [Subpart 42.12](#); and (C) agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (t)(2)(i) of this clause, or fails to perform the agreement at paragraph (t)(2)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

(3) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see [Subpart 32.8](#), Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.

(4) Offerors and Contractors may obtain information on registration and annual confirmation requirements via CCR accessed through <https://www.acquisition.gov> or by calling 1-888-227-2423 or 269-961-5757.

#### **ADDENDUM 52.212-04**

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

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

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

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

(c) Changes.

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

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

(i) Method of shipment or packing;

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

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

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

Failure to agree to any adjustment shall be a dispute under the Disputes Clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract.

#### **3. Paragraph (m), Termination for Cause.**

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

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

#### **4. Paragraph (r) Compliance with laws unique to Government contracts. Is revised to include the following:**

(r) The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 3701, *et seq.*, Contract Work Hours and Safety Standards

**CONTINUED ON NEXT PAGE**

Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; Section 1553 of the American Recovery and Reinvestment Act of 2009 relating to whistleblower protections for contracts funded under that Act; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

**5. Paragraph (t), System for Award Management.**

Add the following paragraph:

(a) Definitions.

“System for Award Management (SAM) database” means the primary Government repository for prospective Federal awardee and Federal awardee information and the centralized Government system for certain contracting, grants, and other assistance-related processes.

“Commercial and Government Entity (CAGE) Code” means—

(1) An identifier assigned to entities located in the United States or its outlying areas by the Defense Logistics Agency (DLA) Commercial and Government Entity (CAGE) Branch to identify a commercial or Government entity; or

(2) An identifier assigned by a member of the North Atlantic Treaty Organization or by the NATO Support and Procurement Agency (NSPA) to entities located outside the United States and its outlying areas that the DLA Commercial and Government Entity (CAGE) Branch records and maintains in the CAGE master file. This type of code is known as a NATO CAGE (NCAGE) code.

“Unique Entity Identifier” means a number or other identifier used to identify a specific commercial, nonprofit, or Government entity. See [www.sam.gov](http://www.sam.gov) for the designated entity for establishing unique entity identifiers.

“Registered in the System for Award Management database” means that—

(1) The Offeror has entered all mandatory information, including the unique entity identifier and the EFT indicator, if applicable, the Contractor and Government Entity (CAGE) code, as well as date required by the Federal Funding Accountability and Transparency Act of 2006, into the SAM database;

(2) The Offeror has completed the Core Data, Assertions, and Representations and Certifications, and Points of Contact sections of the registration in the SAM database;

(3) The Government has validated all mandatory data fields to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service. The Offeror will be required to provide consent for TIN validation to the Government as part of the SAM registration process.

(4) The Government has marked the record “Active”.

The following additional clauses are incorporated by REFERENCE:

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

1.  FAR 52.203-3, Gratuities (APR 1984)
2.  DFARS 252.203-7000, Requirements Relating to Compensation of Former DoD Officials (SEP 2011)
3.  DFARS 252.203-7003, Agency Office of the Inspector General (DEC 2012)
4.  DFARS 252.203-7005, Representation Relating to Compensation of Former DoD Officials (NOV 2011)
5.  DFARS 252.204-7011, Alternative Line Item Structure (SEP 2011)
6.  DFARS 252.204-7012, Safeguarding Covered Defense Information and Cyber Incident Reporting (OCT 2016)
7.  DFARS 252.204-7013, Limitations on the Use or Disclosure of Information by Litigation Support Offerors (MAY 2016)
8.  DFARS 252.204-7014, Limitations on the Use or Disclosure of Information by Litigation Support Contractors (MAY 2016)
9.  DFARS 252.204-7015, Notice of Authorized Disclosure of Information for Litigation Support (MAY 2016)
10.  DFARS 252.205-7000, Provision of Information to Cooperative Agreement Holders (DEC 1991)
11.  DFARS 252.211-7003, Item Unique Identification and Valuation (MAR 2016)
12.  DFARS 252.211-7006, Passive Radio Frequency Identification (SEP 2011)
13.  DFARS 252.211-7007, Reporting of Government-Furnished Property (AUG 2012)
14.  DFARS 252.212-7002, Pilot Program for Acquisition of Military-Purpose Nondevelopmental Items (JUN 2016)
15.  DFARS 252.215-7003, Requirements for Submission of Data Other Than Certified Cost or Pricing Data—Canadian Commercial Corporation (JUL 2012)
16.  DFARS 252.215-7004, Requirement for Submission of Data other Than Certified Cost or Pricing Data—Modifications—Canadian Commercial Corporation (OCT 2013)
17.  DFARS 252.215-7007, Notice of Intent to Resolicit (JUN 2012)
18.  DFARS 252.215-7008, Only One Offer (OCT 2013)
19.  FAR 52.219-9 Small Business Subcontracting Plan (DEVIATION 2016-O0009) (AUG 2016)
  - a.  Alternate I (AUG 2016) of 52.219-9 (DEVIATION 2016-O0009)
  - b.  Alternate II (AUG 2016) of 52.219-9 (DEVIATION 2016-O0009)

**CONTINUED ON NEXT PAGE**

- c. \_\_\_\_ Alternate III (AUG 2016) of 52.219-9 (DEVIATION 2016-O0009)
20. \_\_\_\_ DFARS 252.219-7003, Small Business Subcontracting Plan (DoD Contracts) – Basic (Deviation 2016-O0009) (AUG 2016)
- a. \_\_\_\_ Alternate I (AUG 2016) of 252.219-7003 (DEVIATION 2016-O0009)
21. \_\_\_\_ DFARS 252.219-7004, Small Business Subcontracting Plan (Test Program) (OCT 2014)
22. \_\_\_\_ DFARS 252.223-7008, Prohibition of Hexavalent Chromium (JUN 2013)
23. \_\_\_\_ DFARS 252.225-7000, Buy American—Balance of Payments Program Certificate (NOV 2014)
- a. \_\_\_\_ Alternate I (NOV 2014) of 52.225-7000
24.  DFARS 252.225-7001, Buy American and Balance of Payments Program - Basic (AUG 2016)
- a. \_\_\_\_ Alternate I (NOV 2014) of 252.225-7001
25. \_\_\_\_ DFARS 252.225-7008, Restriction on Acquisition of Specialty Metals (MAR 2013)
26. \_\_\_\_ DFARS 252.225-7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals (OCT 2014)
27. \_\_\_\_ DFARS 252.225-7010, Commercial Derivative Military Article—Specialty Metals Compliance Certificate (JUL 2009)
28.  DFARS 252.225-7012, Preference for Certain Domestic Commodities (AUG 2016)
29. \_\_\_\_ DFARS 252.225-7015, Restriction on Acquisition of Hand or Measuring Tools (JUN 2005)
30. \_\_\_\_ DFARS 252.225-7016, Restriction on Acquisition of Ball and Roller Bearings (JUN 2011)
31. \_\_\_\_ DFARS 252.225-7017, Photovoltaic Devices (SEP 2016)
32. \_\_\_\_ DFARS 252.225-7018, Photovoltaic Devices—Certificate (OCT 2015)
33. \_\_\_\_ DFARS 252.225-7020, Trade Agreements Certificate (NOV 2014)
- a. \_\_\_\_ Alternate I (NOV 2014) of 252.225-7020
34. \_\_\_\_ DFARS 252.225-7021, Trade Agreements (SEP 2016)
- a. \_\_\_\_ Alternate II (SEP 2016) of 252.225-7021
35. \_\_\_\_ DFARS 252.225-7023, Preference for Products or Services from Afghanistan (SEP 2013)
36. \_\_\_\_ DFARS 252.225-7024, Requirement for Products or Services from Afghanistan (SEP 2013)
37. \_\_\_\_ DFARS 252.225-7026, Acquisition Restricted to Products or Services from Afghanistan (SEP 2013)
38. \_\_\_\_ DFARS 252.225-7027, Restriction on Contingent Fees for Foreign Military Sales (APR 2003)
39. \_\_\_\_ DFARS 252.225-7028, Exclusionary Policies and Practices of Foreign Governments (APR 2003)
40. \_\_\_\_ DFARS 252.225-7029, Acquisition of Uniform Components for Afghan Military or Afghan National Police (SEP 2013)
41. \_\_\_\_ DFARS 252.225-7031, Secondary Arab Boycott of Israel (JUN 2005)
42. \_\_\_\_ DFARS 252.225-7035, Buy American—Free Trade Agreements—Balance of Payments Program Certificate (NOV 2014)
- a. \_\_\_\_ Alternate I (NOV 2014) of 252.225-7035
- b. \_\_\_\_ Alternate II (NOV 2014) of 252.225-7035
- c. \_\_\_\_ Alternate III (NOV 2014) of 252.225-7035
- d. \_\_\_\_ Alternate IV (NOV 2014) of 252.225-7035
- e. \_\_\_\_ Alternate V (NOV 2014) of 252.225-7035
43. \_\_\_\_ DFARS 252.225-7036, Buy American --Free Trade Agreements--Balance of Payment Program - Basic (AUG 2016)
- a. \_\_\_\_ Alternate I (AUG 2016) of 252.225-7036
- b. \_\_\_\_ Alternate II (AUG 2016) of 252.225-7036
- c. \_\_\_\_ Alternate III (AUG 2016) of 252.225-7036
- d. \_\_\_\_ Alternate IV (AUG 2016) of 252.225-7036
- e. \_\_\_\_ Alternate V (AUG 2016) of 252.225-7036
44. \_\_\_\_ DFARS 252.225-7040, Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States (AUG 2015)
45. \_\_\_\_ DFARS 252.225-7043, Antiterrorism/Force Protection Policy for Defense Contractors Outside the United States (JUN 2015)
46.  DFARS 252.226-7001, Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns (SEP 2004)
47. \_\_\_\_ DFARS 252.227-7013, Rights in Technical Data – Noncommercial Items (FEB 2014)
48. \_\_\_\_ DFARS 252.227-7015, Technical Data -- Commercial Items (FEB 2014)
49. \_\_\_\_ DFARS 252.227-7037, Validation of Restrictive Markings on Technical Data (SEP 2016),
50. \_\_\_\_ DFARS 252.232-7003, Electronic Submission of Payment Requests and Receiving Reports (JUN 2012)
51. \_\_\_\_ DFARS 252.232-7009, Mandatory Payment by Governmentwide Commercial Purchase Card (DEC 2006)
52. \_\_\_\_ DFARS 252.232-7010, Levies on Contract Payments (DEC 2006)
53. \_\_\_\_ DFARS 252.232-7011, Payments in Support of Emergencies and Contingency Operations (MAY 2013)
54. \_\_\_\_ DFARS 252.237-7010, Prohibition on Interrogation of Detainees by Contractor Personnel (JUN 2013)
55. \_\_\_\_ DFARS 252.237-7019, Training for Contractor Personnel Interacting with Detainees (JUN 2013)
56. \_\_\_\_ DFARS 252.239-7017, Notice of Supply Chain Risk (NOV 2013)
57. \_\_\_\_ DFARS 252.239-7018, Supply Chain Risk (OCT 2015)
58.  DFARS 252.243-7002, Requests for Equitable Adjustment (DEC 2012)
59. \_\_\_\_ DFARS 252.244-7000, Subcontracts for Commercial Items (JUN 2013)
60. \_\_\_\_ DFARS 252.246-7003, Notification of Potential Safety Issues (JUN 2013)
61. \_\_\_\_ DFARS 252.246-7004, Safety of Facilities, Infrastructure, and Equipment for Military Operations (OCT 2010)
62. \_\_\_\_ DFARS 252.247-7003, Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer (JUN 2013)
63. \_\_\_\_ DFARS 252.247-7022, Representation of Extent of Transportation by Sea (AUG 1992)

CONTINUED ON NEXT PAGE

64.  DFARS 252.247-7023, Transportation of Supplies by Sea (APR 2014).  
 a.  Alternate I (APR 2014) of 252.247-7023.  
 b.  Alternate II (APR 2014) of 252.247-7023  
 65.  DFARS 252.247-7024, Notification of Transportation of Supplies by Sea (MAR 2000)  
 66.  DFARS 252.247-7025, Reflagging or Repair Work (JUN 2005)  
 67.  DFARS 252.247-7026, Evaluation Preference for Use of Domestic Shipyards – Applicable to Acquisition of Carriage by Vessel for DoD Cargo in the Coastwise or Noncontiguous Trade (NOV 2008)  
 68.  DFARS 252.247-7027, Riding Gang Member Requirements (OCT 2011)  
 69.  DFARS 252.247-7028, Application for U.S Government Shipping Documentation/Instructions (JUN 2012)

**52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (Jan 2017)**

a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

- (1) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).
- (2) 52.209-10, Prohibition on Contracting with Inverted Domestic Corporations (Nov 2015)
- (3) 52.233-3, Protest After Award (AUG 1996) (31 U.S.C. 3553).
- (4) 52.233-4, Applicable Law for Breach of Contract Claim (OCT 2004) (Public Laws 108-77, 108-78 (19 U.S.C. 3805 note)).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the contracting officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

*[Contracting Officer check as appropriate.]*

- (1) 52.203-6, Restrictions on Subcontractor Sales to the Government (Sept 2006), with Alternate I (Oct 1995) (41 U.S.C. 4704 and 10 U.S.C. 2402).
- (2) 52.203-13, Contractor Code of Business Ethics and Conduct (Oct 2015) (41 U.S.C. 3509).
- (3) 52.203-15, Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub L. 111-5) (Applies to contracts funded by the American Recovery and Reinvestment Act of 2009).
- (4) 52.204-10, Reporting Executive compensation and First-Tier Subcontract Awards (Oct 2016) (Pub. L. 109-282) (31 U.S.C. 6101 note).
- (5) [Reserved]
- (6) 52.204-14, Service Contract Reporting Requirements (Oct 2016) (Pub. L. 111-117, section 743 of Div. C).
- (7) 52.204-15, Service Contract Reporting Requirements for Indefinite-Delivery Contracts (Oct 2016) (Pub. L. 111-117, section 743 of Div. C).
- (8) 52.209-6, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (Oct 2015) (31 U.S.C. 6101 note).
- (9) 52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters (Jul 2013) (41 U.S.C. 2313).

**CONTINUED ON NEXT PAGE**

\_\_\_ (10) [Reserved]

\_\_\_ (11) (i) 52.219-3, Notice of HUBZone Set-Aside or Sole-Source Award (Nov 2011) (15 U.S.C. 657a).

\_\_\_ (ii) Alternate I (Nov 2011) of 52.219-3.

\_\_\_ (12) (i) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Oct 2014) (if the offeror elects to waive the preference, it shall so indicate in its offer)(15 U.S.C. 657a).

\_\_\_ (ii) Alternate I (Jan 2011) of 52.219-4.

\_\_\_ (13) [Reserved]

X (14) (i) 52.219-6, Notice of Total Small Business Aside (Nov 2011) (15 U.S.C. 644).

X (ii) Alternate I (Nov 2011).

\_\_\_ (iii) Alternate II (Nov 2011).

\_\_\_ (15) (i) 52.219-7, Notice of Partial Small Business Set-Aside (June 2003) (15 U.S.C. 644).

\_\_\_ (ii) Alternate I (Oct 1995) of 52.219-7.

\_\_\_ (iii) Alternate II (Mar 2004) of 52.219-7.

X (16) 52.219-8, Utilization of Small Business Concerns (Nov 2016) (15 U.S.C. 637(d)(2) and (3)).

\_\_\_ (17) (i) 52.219-9, Small Business Subcontracting Plan (Jan 2017) (15 U.S.C. 637 (d)(4)).

\_\_\_ (ii) Alternate I (Nov 2016) of 52.219-9.

\_\_\_ (iii) Alternate II (Nov 2016) of 52.219-9.

\_\_\_ (iv) Alternate III (Nov 2016) of 52.219-9.

\_\_\_ (v) Alternate IV (Nov 2016) of 52.219-9.

\_\_\_ (18) 52.219-13, Notice of Set-Aside of Orders (Nov 2011) (15 U.S.C. 644(r)).

X (19) 52.219-14, Limitations on Subcontracting (Jan 2017) (15 U.S.C. 637(a)(14)).

\_\_\_ (20) 52.219-16, Liquidated Damages—Subcontracting Plan (Jan 1999) (15 U.S.C. 637(d)(4)(F)(i)).

\_\_\_ (21) 52.219-27, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (Nov 2011) (15 U.S.C. 657f).

\_\_\_ (22) 52.219-28, Post Award Small Business Program Rerepresentation (Jul 2013) (15 U.S.C. 632(a)(2)).

\_\_\_ (23) 52.219-29, Notice of Set-Aside for, or Sole Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns (Dec 2015) (15 U.S.C. 637(m)).

\_\_\_ (24) 52.219-30, Notice of Set-Aside for, or Sole Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (Dec 2015) (15 U.S.C. 637(m)).

**CONTINUED ON NEXT PAGE**

(25) 52.222-3, Convict Labor (June 2003) (E.O. 11755).

(26) 52.222-19, Child Labor—Cooperation with Authorities and Remedies (Oct 2016) (E.O. 13126).

(27) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).

(28) 52.222-26, Equal Opportunity (Sep 2016) (E.O. 11246).

(29) 52.222-35, Equal Opportunity for Veterans (Oct 2015) (38 U.S.C. 4212).

(30) 52.222-36, Equal Opportunity for Workers with Disabilities (Jul 2014) (29 U.S.C. 793).

(31) 52.222-37, Employment Reports on Veterans (Feb 2016) (38 U.S.C. 4212).

(32) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496).

(33) (i) 52.222-50, Combating Trafficking in Persons (Mar 2015) (22 U.S.C. chapter 78 and E.O. 13627).

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

(34) 52.222-54, Employment Eligibility Verification (Oct 2015). (E. O. 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in 22.1803.)

(35) 52.222-59, Compliance with Labor Laws (Executive Order 13673) (Oct 2016). (Applies at \$50 million for solicitations and resultant contracts issued from October 25, 2016 through April 24, 2017; applies at \$500,000 for solicitations and resultant contracts issued after April 24, 2017).

**Note to paragraph (b)(35):** By a court order issued on October 24, 2016, 52.222-59 is enjoined indefinitely as of the date of the order. The enjoined paragraph will become effective immediately if the court terminates the injunction. At that time, DoD, GSA, and NASA will publish a document in the Federal Register advising the public of the termination of the injunction.

(36) 52.222-60, Paycheck Transparency (Executive Order 13673) (Oct 2016).

(37) (i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Items (May 2008) (42 U.S.C. 6962(c)(3)(A)(ii)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

(ii) Alternate I (May 2008) of 52.223-9 (42 U.S.C. 6962(i)(2)(C)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

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

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

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

(ii) Alternate I (Oct 2015) of 52.223-13.

(41) (i) 52.223-14, Acquisition of EPEAT® -Registered Television (Jun 2014) (E.O.s 13423 and 13514).

(ii) Alternate I (Jun 2014) of 52.223-14.

(42) 52.223-15, Energy Efficiency in Energy-Consuming Products (Dec 2007) (42 U.S.C. 8259b).

**CONTINUED ON NEXT PAGE**

- (43) (i) 52.223-16, Acquisition of EPEAT® -Registered Personal Computer Products (Oct 2015) (E.O.s 13423 and 13514).
- (ii) Alternate I (Jun 2014) of 52.223-16.
- (44) 52.223-18, Encouraging Contractor Policies to Ban Text Messaging while Driving (Aug 2011) (E.O. 13513).
- (45) 52.223-20, Aerosols (Jun 2016) (E.O. 13693).
- (46) 52.223-21, Foams (Jun 2016) (E.O. 13696).
- (47) (i) 52.224-3, Privacy Training (Jan 2017) (5 U.S.C. 552a).
- (ii) Alternate I (Jan 2017) of 52.224-3.
- (48) 52.225-1, Buy American--Supplies (May 2014) (41 U.S.C. chapter 83).
- (49) (i) 52.225-3, Buy American--Free Trade Agreements--Israeli Trade Act (May 2014) (41 U.S.C. chapter 83, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, 19 U.S.C. 3805 note, 19 U.S.C. 4001 note, Pub. L. 103-182, 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, 110-138, 112-41, 112-42, and 112-43).
- (ii) Alternate I (May 2014) of 52.225-3.
- (iii) Alternate II (May 2014) of 52.225-3.
- (iv) Alternate III (May 2014) of 52.225-3.
- (50) 52.225-5, Trade Agreements (Oct 2016) (19 U.S.C. 2501, *et seq.*, 19 U.S.C. 3301 note).
- (51) 52.225-13, Restrictions on Certain Foreign Purchases (Jun 2008) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).
- (52) 52.225-26, Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).
- (53) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (Nov 2007) (42 U.S.C. 5150).
- (54) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov 2007) (42 U.S.C. 5150).
- (55) 52.232-29, Terms for Financing of Purchases of Commercial Items (Feb 2002) (41 U.S.C. 4505), 10 U.S.C. 2307(f)).
- (56) 52.232-30, Installment Payments for Commercial Items (Jan 2017) (41 U.S.C. 4505, 10 U.S.C. 2307(f)).
- (57) 52.232-33, Payment by Electronic Funds Transfer— System for Award Management (Jul 2013) (31 U.S.C. 3332).
- (58) 52.232-34, Payment by Electronic Funds Transfer—Other Than System for Award Management (Jul 2013) (31 U.S.C. 3332).
- (59) 52.232-36, Payment by Third Party (May 2014) (31 U.S.C. 3332).
- (60) 52.239-1, Privacy or Security Safeguards (Aug 1996) (5 U.S.C. 552a).
- (61) 52.242-5, Payments to Small Business Subcontractors (Jan 2017) (15 U.S.C. 637(d)(12)).

\_\_\_ (62) (i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx 1241(b) and 10 U.S.C. 2631).

\_\_\_ (ii) Alternate I (Apr 2003) of 52.247-64.

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or executive orders applicable to acquisitions of commercial items:

*[Contracting Officer check as appropriate.]*

\_\_\_ (1) 52.222-17, Nondisplacement of Qualified Workers (May 2014) (E.O. 13495)

\_\_\_ (2) 52.222-41, Service Contract Labor Standards (May 2014) (41 U.S.C. chapter 67.).

\_\_\_ (3) 52.222-42, Statement of Equivalent Rates for Federal Hires (May 2014) (29 U.S.C. 206 and 41 U.S.C. chapter 67).

\_\_\_ (4) 52.222-43, Fair Labor Standards Act and Service Contract Labor Standards -- Price Adjustment (Multiple Year and Option Contracts) (May 2014) (29 U.S.C.206 and 41 U.S.C. chapter 67).

\_\_\_ (5) 52.222-44, Fair Labor Standards Act and Service Contract Labor Standards -- Price Adjustment (May 2014) (29 U.S.C. 206 and 41 U.S.C. chapter 67).

\_\_\_ (6) 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment--Requirements (May 2014) (41 U.S.C. chapter 67).

\_\_\_ (7) 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services--Requirements (May 2014) (41 U.S.C. chapter 67).

\_\_\_ (8) 52.222-55, Minimum Wages Under Executive Order 13658 (Dec 2015) (E.O. 13658).

\_\_\_ (9) 52.222-62, Paid Sick Leave Under Executive Order 13706 (JAN 2017) (E.O. 13706).

\_\_\_ (10) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations. (May 2014) (42 U.S.C. 1792).

\_\_\_ (11) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations. (May 2014) (42 U.S.C. 1792).

\_\_\_ (12) 52.237-11, Accepting and Dispensing of \$1 Coin (Sep 2008) (31 U.S.C. 5112(p)(1)).

(d) *Comptroller General Examination of Record* The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, Audit and Records -- Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

**CONTINUED ON NEXT PAGE**

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e)

(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c) and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in this paragraph (e)(1) in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (Oct 2015) (41 U.S.C. 3509).

(ii) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).

(iii) 52.219-8, Utilization of Small Business Concerns (Nov 2016) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$700,000 (\$1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(iv) 52.222-17, Nondisplacement of Qualified Workers (May 2014) (E.O. 13495). Flow down required in accordance with paragraph (1) of FAR clause 52.222-17.

(v) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).

(vi) 52.222-26, Equal Opportunity (Sep 2016) (E.O. 11246).

(vii) 52.222-35, Equal Opportunity for Veterans (Oct 2015) (38 U.S.C. 4212).

(viii) 52.222-36, Equal Opportunity for Workers with Disabilities (Jul 2014) (29 U.S.C. 793).

(ix) 52.222-37, Employment Reports on Veterans (Feb 2016) (38 U.S.C. 4212).

(x) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause 52.222-40.

(xi) 52.222-41, Service Contract Labor Standards (May 2014), (41 U.S.C. chapter 67).

(xii) (A) 52.222-50, Combating Trafficking in Persons (Mar 2015) (22 U.S.C. chapter 78 and E.O. 13627).

(B) Alternate I (Mar 2015) of 52.222-50 (22 U.S.C. chapter 78 E.O. 13627).

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

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

(xv) 52.222-54, Employment Eligibility Verification (Oct 2015) (E. O. 12989).

(xvi) 52.222-55, Minimum Wages Under Executive Order 13658 (Dec 2015).

**CONTINUED ON NEXT PAGE**

(xvii) 52.222-59, Compliance with Labor Laws (Executive Order 13673) (Oct 2016) (Applies at \$50 million for solicitations and resultant contracts issued from October 25, 2016 through April 24, 2017; applies at \$500,000 for solicitations and resultant contracts issued after April 24, 2017).

**Note to paragraph (e)(1)(xvii):** By a court order issued on October 24, 2016, 52.222-59 is enjoined indefinitely as of the date of the order. The enjoined paragraph will become effective immediately if the court terminates the injunction. At that time, DoD, GSA, and NASA will publish a document in the Federal Register advising the public of the termination of the injunction.

(xviii) 52.222-60, Paycheck Transparency (Executive Order 13673) (Oct 2016).

(xix) 52.222-62, Paid sick Leave Under Executive Order 13706 (JAN 2017) (E.O. 13706).

(xx) (A) 52.224-3, Privacy Training (Jan 2017) (5 U.S.C. 552a).

(B) Alternate I (Jan 2017) of 52.224-3.

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

(xxii) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations. (May 2014) (42 U.S.C. 1792). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6.

(xxiii) 52.247-64, Preference for Privately-Owned U.S. Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx 1241(b) and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the Contractor may include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

#### **CLAUSES ADDED TO PART 12 BY ADDENDUM**

**252.203-7000 REQUIREMENTS RELATING TO COMPENSATION OF FORMER DOD OFFICIALS (SEP 2011) DFARS**

**252.203-7002 REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (SEP 2013) DFARS**

**252.203-7003 AGENCY OFFICE OF THE INSPECTOR GENERAL (DEC 2012) DFARS**

**252.203-7996 PROHIBITION ON CONTRACTING WITH ENTITIES THAT REQUIRE CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS—REPRESENTATION (OCT 2015) DFARS**

(a) In accordance with section 101(a) of the Continuing Appropriations Act, 2016 (Pub. L. 114-53) and any subsequent FY 2016 appropriations act that extends to FY 2016 funds the same restrictions as are contained in section 743 of division E, title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235), none of the funds appropriated (or otherwise made available) by this or any other Act may be used for a contract with an entity that requires employees or subcontractors of such entity seeking to report fraud, waste, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or contactors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

(b) The prohibition in paragraph (a) of this provision does not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

(c) Representation. By submission of its offer, the Offeror represents that it does not require employees or subcontractors of such entity seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or contactors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

(End of provision)

**CONTINUED ON NEXT PAGE**

**252.203-7997 PROHIBITION ON CONTRACTING WITH ENTITIES THAT REQUIRE CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS (OCT 2015) DFARS**

(a) The Contractor shall not require employees or subcontractors seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or contractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

(b) The Contractor shall notify employees that the prohibitions and restrictions of any internal confidentiality agreements covered by this clause are no longer in effect.

(c) The prohibition in paragraph (a) of this clause does not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

(d)(1) Use of funds appropriated (or otherwise made available) by the Continuing Appropriations Act, 2016 (Pub. L. 114-53) or any other FY 2016 appropriations act that extends to FY 2016 funds the same prohibitions as contained in sections 743 of division E, title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) may be prohibited, if the Government determines that the Contractor is not in compliance with the provisions of this clause.

(2) The Government may seek any available remedies in the event the Contractor fails to perform in accordance with the terms and conditions of the contract as a result of Government action under this clause.

(End of clause)

**52.204-07 SYSTEM FOR AWARD MANAGEMENT (JUL 2013) FAR****52.204-13 SYSTEM FOR AWARD MANAGEMENT MAINTENANCE (JUL 2013) FAR****252.204-7003 CONTROL OF GOVERNMENT PERSONNEL WORK PRODUCT (APR 1992) DFARS****252.204-7004 ALTERNATE A, SYSTEM FOR AWRD MANAGEMENT (FEB 2014) DFARS****252.204-7009 LIMITATIONS ON THE USE OR DISCLOSURE OF THIRD-PARTY CONTRACTOR REPORTED CYBER INCIDENT INFORMATION (OCT 2016) DFARS**

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

“Compromise” means disclosure of information to unauthorized persons, or a violation of the security policy of a system, in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object, or the copying of information to unauthorized media may have occurred.

“Controlled technical information” means technical information with military or space application that is subject to controls on the access, use, reproduction, modification, performance, display, release, disclosure, or dissemination. Controlled technical information would meet the criteria, if disseminated, for distribution statements B through F using the criteria set forth in DoD Instruction 5230.24, Distribution Statements on Technical Documents. The term does not include information that is lawfully publicly available without restrictions.

“Covered defense information” means unclassified information that—

(1) Is—

- (i) Provided to the contractor by or on behalf of DoD in connection with the performance of the contract; or
- (ii) Collected, developed, received, transmitted, used, or stored by or on behalf of the contractor in support of the performance of the contract; and

(2) Falls in any of the following categories:

(i) Controlled technical information.

(ii) *Critical information (operations security).* Specific facts identified through the Operations Security process about friendly intentions, capabilities, and activities vitally needed by adversaries for them to plan and act effectively so as to guarantee failure or unacceptable consequences for friendly mission accomplishment (part of Operations Security process).

(iii) *Export control.* Unclassified information concerning certain items, commodities, technology, software, or other information whose export could reasonably be expected to adversely affect the United States national security and nonproliferation objectives. To include dual use items; items identified in export administration regulations, international traffic in arms regulations and munitions list; license applications; and sensitive nuclear technology information.

**CONTINUED ON NEXT PAGE**

(iv) Any other information, marked or otherwise identified in the contract, that requires safeguarding or dissemination controls pursuant to and consistent with law, regulations, and Governmentwide policies (e.g., privacy, proprietary business information).

“Cyber incident” means actions taken through the use of computer networks that result in a compromise or an actual or potentially adverse effect on an information system and/or the information residing therein.

(b) *Restrictions.* The Contractor agrees that the following conditions apply to any information it receives or creates in the performance of this contract that is information obtained from a third-party's reporting of a cyber incident pursuant to DFARS clause 252.204-7012, Safeguarding Covered Defense Information and Cyber Incident Reporting (or derived from such information obtained under that clause):

(1) The Contractor shall access and use the information only for the purpose of furnishing advice or technical assistance directly to the Government in support of the Government's activities related to clause 252.204-7012, and shall not be used for any other purpose.

(2) The Contractor shall protect the information against unauthorized release or disclosure.

(3) The Contractor shall ensure that its employees are subject to use and non-disclosure obligations consistent with this clause prior to the employees being provided access to or use of the information.

(4) The third-party contractor that reported the cyber incident is a third-party beneficiary of the non-disclosure agreement between the Government and Contractor, as required by paragraph (b)(3) of this clause.

(5) A breach of these obligations or restrictions may subject the Contractor to—

(i) Criminal, civil, administrative, and contractual actions in law and equity for penalties, damages, and other appropriate remedies by the United States; and

(ii) Civil actions for damages and other appropriate remedies by the third party that reported the cyber incident, as a third party beneficiary of this clause.

(c) *Subcontracts.* The Contractor shall include this clause, including this paragraph (c), in subcontracts, or similar contractual instruments, for services that include support for the Government's activities related to safeguarding covered defense information and cyber incident reporting, including subcontracts for commercial items, without alteration, except to identify the parties.

(End of clause)

## **252.204-7012 SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING (OCT 2016) DFARS**

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

“Adequate security” means protective measures that are commensurate with the consequences and probability of loss, misuse, or unauthorized access to, or modification of information.

“Compromise” means disclosure of information to unauthorized persons, or a violation of the security policy of a system, in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object, or the copying of information to unauthorized media may have occurred.

“Contractor attributional/proprietary information” means information that identifies the contractor(s), whether directly or indirectly, by the grouping of information that can be traced back to the contractor(s) (e.g., program description, facility locations), personally identifiable information, as well as trade secrets, commercial or financial information, or other commercially sensitive information that is not customarily shared outside of the company.

“Contractor information system” means an information system belonging to, or operated by or for, the Contractor.

“Controlled technical information” means technical information with military or space application that is subject to controls on the access, use, reproduction, modification, performance, display, release, disclosure, or dissemination. Controlled technical information would meet the criteria, if disseminated, for distribution statements B through F using the criteria set forth in DoD Instruction 5230.24, Distribution Statements on Technical Documents. The term does not include information that is lawfully publicly available without restrictions.

“Covered contractor information system” means an information system that is owned, or operated by or for, a contractor and that processes, stores, or transmits covered defense information.

“Covered defense information” means unclassified information that—

(i) Is—

(A) Provided to the contractor by or on behalf of DoD in connection with the performance of the contract; or  
(B) Collected, developed, received, transmitted, used, or stored by or on behalf of the contractor in support of the performance of the contract; and

(ii) Falls in any of the following categories:

(A) *Controlled technical information.*

(B) *Critical information (operations security).* Specific facts identified through the Operations Security process about friendly intentions, capabilities, and activities vitally needed by adversaries for them to plan and act effectively so as to guarantee failure or unacceptable consequences for friendly mission accomplishment (part of Operations Security process).

**CONTINUED ON NEXT PAGE**

(C) *Export control.* Unclassified information concerning certain items, commodities, technology, software, or other information whose export could reasonably be expected to adversely affect the United States national security and nonproliferation objectives. To include dual use items; items identified in export administration regulations, international traffic in arms regulations and munitions list; license applications; and sensitive nuclear technology information.

(D) Any other information, marked or otherwise identified in the contract, that requires safeguarding or dissemination controls pursuant to and consistent with law, regulations, and Governmentwide policies (e.g., privacy, proprietary business information).

“Cyber incident” means actions taken through the use of computer networks that result in a compromise or an actual or potentially adverse effect on an information system and/or the information residing therein.

“Forensic analysis” means the practice of gathering, retaining, and analyzing computer-related data for investigative purposes in a manner that maintains the integrity of the data.

“Malicious software” means computer software or firmware intended to perform an unauthorized process that will have adverse impact on the confidentiality, integrity, or availability of an information system. This definition includes a virus, worm, Trojan horse, or other code-based entity that infects a host, as well as spyware and some forms of adware.

“Media” means physical devices or writing surfaces including, but is not limited to, magnetic tapes, optical disks, magnetic disks, large-scale integration memory chips, and printouts onto which information is recorded, stored, or printed within an information system.

“Operationally critical support” means supplies or services designated by the Government as critical for airlift, sealift, intermodal transportation services, or logistical support that is essential to the mobilization, deployment, or sustainment of the Armed Forces in a contingency operation.

“Rapid(ly) report(ing)” means within 72 hours of discovery of any cyber incident.

“Technical information” means technical data or computer software, as those terms are defined in the clause at DFARS 252.227-7013, Rights in Technical Data-Non Commercial Items, regardless of whether or not the clause is incorporated in this solicitation or contract. Examples of technical information include research and engineering data, engineering drawings, and associated lists, specifications, standards, process sheets, manuals, technical reports, technical orders, catalog-item identifications, data sets, studies and analyses and related information, and computer software executable code and source code.

(b) *Adequate security.* The Contractor shall provide adequate security for all covered defense information on all covered contractor information systems that support the performance of work under this contract. To provide adequate security, the Contractor shall—

(1) Implement information systems security protections on all covered contractor information systems including, at a minimum—

(i) For covered contractor information systems that are part of an Information Technology (IT) service or system operated on behalf of the Government—

(A) Cloud computing services shall be subject to the security requirements specified in the clause 252.239-7010, Cloud Computing Services, of this contract; and

(B) Any other such IT service or system (i.e., other than cloud computing) shall be subject to the security requirements specified elsewhere in this contract; or

(ii) For covered contractor information systems that are not part of an IT service or system operated on behalf of the Government and therefore are not subject to the security requirement specified at paragraph (b)(1)(i) of this clause—

(A) The security requirements in National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171, “Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations,” <http://dx.doi.org/10.6028/NIST.SP.800-171> that is in effect at the time the solicitation is issued or as authorized by the Contracting Officer, as soon as practical, but not later than December 31, 2017. The Contractor shall notify the DoD CIO, via email at [osd.dibcsia@mail.mil](mailto:osd.dibcsia@mail.mil), within 30 days of contract award, of any security requirements specified by NIST SP 800-171 not implemented at the time of contract award; or

(B) Alternative but equally effective security measures used to compensate for the inability to satisfy a particular requirement and achieve equivalent protection accepted in writing by an authorized representative of the DoD CIO; and

(2) Apply other information systems security measures when the Contractor reasonably determines that information systems security measures, in addition to those identified in paragraph (b)(1) of this clause, may be required to provide adequate security in a dynamic environment based on an assessed risk or vulnerability.

(c) *Cyber incident reporting requirement.*

(1) When the Contractor discovers a cyber incident that affects a covered contractor information system or the covered defense information residing therein, or that affects the contractor's ability to perform the requirements of the contract that are designated as operationally critical support, the Contractor shall—

- (i) Conduct a review for evidence of compromise of covered defense information, including, but not limited to, identifying compromised computers, servers, specific data, and user accounts. This review shall also include analyzing covered contractor information system(s) that were part of the cyber incident, as well as other information systems on the Contractor's network(s), that may have been accessed as a result of the incident in order to identify compromised covered defense information, or that affect the Contractor's ability to provide operationally critical support; and
- (ii) Rapidly report cyber incidents to DoD at <http://dibnet.dod.mil>.

(2) *Cyber incident report*. The cyber incident report shall be treated as information created by or for DoD and shall include, at a minimum, the required elements at <http://dibnet.dod.mil>.

(3) *Medium assurance certificate requirement*. In order to report cyber incidents in accordance with this clause, the Contractor or subcontractor shall have or acquire a DoD-approved medium assurance certificate to report cyber incidents. For information on obtaining a DoD-approved medium assurance certificate, see <http://iase.disa.mil/pki/eca/Pages/index.aspx>.

(d) *Malicious software*. The Contractor or subcontractors that discover and isolate malicious software in connection with a reported cyber incident shall submit the malicious software in accordance with instructions provided by the Contracting Officer.

(e) *Media preservation and protection*. When a Contractor discovers a cyber incident has occurred, the Contractor shall preserve and protect images of all known affected information systems identified in paragraph (c)(1)(i) of this clause and all relevant monitoring/packet capture data for at least 90 days from the submission of the cyber incident report to allow DoD to request the media or decline interest.

(f) *Access to additional information or equipment necessary for forensic analysis*. Upon request by DoD, the Contractor shall provide DoD with access to additional information or equipment that is necessary to conduct a forensic analysis.

(g) *Cyber incident damage assessment activities*. If DoD elects to conduct a damage assessment, the Contracting Officer will request that the Contractor provide all of the damage assessment information gathered in accordance with paragraph (e) of this clause.

(h) *DoD safeguarding and use of contractor attributional/proprietary information*. The Government shall protect against the unauthorized use or release of information obtained from the contractor (or derived from information obtained from the contractor) under this clause that includes contractor attributional/proprietary information, including such information submitted in accordance with paragraph (c). To the maximum extent practicable, the Contractor shall identify and mark attributional/proprietary information. In making an authorized release of such information, the Government will implement appropriate procedures to minimize the contractor attributional/proprietary information that is included in such authorized release, seeking to include only that information that is necessary for the authorized purpose(s) for which the information is being released.

(i) *Use and release of contractor attributional/proprietary information not created by or for DoD*. Information that is obtained from the contractor (or derived from information obtained from the contractor) under this clause that is not created by or for DoD is authorized to be released outside of DoD—

- (1) To entities with missions that may be affected by such information;
- (2) To entities that may be called upon to assist in the diagnosis, detection, or mitigation of cyber incidents;
- (3) To Government entities that conduct counterintelligence or law enforcement investigations;
- (4) For national security purposes, including cyber situational awareness and defense purposes (including with Defense Industrial Base (DIB) participants in the program at 32 CFR part 236); or
- (5) To a support services contractor ("recipient") that is directly supporting Government activities under a contract that includes the clause at 252.204-7009, Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information.

(j) *Use and release of contractor attributional/proprietary information created by or for DoD*. Information that is obtained from the contractor (or derived from information obtained from the contractor) under this clause that is created by or for DoD (including the information submitted pursuant to paragraph (c) of this clause) is authorized to be used and released outside of DoD for purposes and activities authorized by paragraph (i) of this clause, and for any other lawful Government purpose or activity, subject to all applicable statutory, regulatory, and policy based restrictions on the Government's use and release of such information.

(k) The Contractor shall conduct activities under this clause in accordance with applicable laws and regulations on the interception, monitoring, access, use, and disclosure of electronic communications and data.

(l) *Other safeguarding or reporting requirements*. The safeguarding and cyber incident reporting required by this clause in no way abrogates the Contractor's responsibility for other safeguarding or cyber incident reporting pertaining to its unclassified information systems as required by other applicable clauses of this contract, or as a result of other applicable U.S. Government statutory or regulatory requirements.

(m) *Subcontracts*. The Contractor shall—

(1) Include this clause, including this paragraph (m), in subcontracts, or similar contractual instruments, for operationally critical support, or for which subcontract performance will involve a covered contractor information system, including subcontracts for commercial items, without alteration, except to identify the parties; and

(2) When this clause is included in a subcontract, require subcontractors to rapidly report cyber incidents directly to DoD at <http://dibnet.dod.mil> and the prime Contractor. This includes providing the incident report number, automatically assigned by DoD, to the prime Contractor (or next higher-tier subcontractor) as soon as practicable.

(End of clause)

## **252.204-7015 DISCLOSURE OF INFORMATION TO LITIGATION SUPPORT CONTRACTORS (FEB 2014) DFARS**

### **L01 ELECTRONIC AWARD TRANSMISSION (SEP 2016)**

Supplies procured through the Defense Logistics Agency (DLA) may be ordered via electronic ordering. Offerors must check one of the following alternatives for paperless order transmission:

**Electronic Data Interchange (EDI) transmissions** in accordance with ANSI X12 Standards through DLA Transaction Services approved value added network (VAN).

**Electronic Mail (email) award notifications** containing Web links to electronic copies of the Department of Defense (DD) Form 1155, Order for Supplies or Services.

\*\*\*\*

### **L02 ELECTRONIC ORDER TRANSMISSION (SEP 2016)**

Offerors shall identify one of the following alternatives for paperless order transmission:

American National Standards Institute (ANSI) X12 Standards through a DLA transaction services approved value added network (VAN).

Electronic mail (email) award notifications containing web links to electronic copies of the Department of Defense (DD) Form 1155, Order for Supplies or Services.

Email notification requires registration on the DLA internet bid board system (DIBBS) home page at <https://www.dibbs.bsm.dla.mil/>.

If the offeror elects ANSI/VAN order transmission, DLA will send Electronic Data Interchange (EDI) transaction sets at time of award. The contractor shall acknowledge receipt of transaction sets with a functional acknowledgement or order receipt message within 24 hours. If the award transaction set is received on a weekend or Federal holiday, the acknowledgement must be received on the next working day. This acknowledgement will confirm that the contractor's interface with the system is working as needed for contract ordering.

Note: Information regarding EDI, ANSI X12 transactions, and DLA transaction services approved VANs can be obtained from the DAAS web site by going to <https://www.transactionservices.dla.mil/daashome/edi-vanlist-dla.asp>.

Questions concerning electronic ordering should be directed to the appropriate procuring organization point of contact below:

DLA Land and Maritime, [Helpdesk.EBS.L&M.LTCs@dla.mil](mailto:Helpdesk.EBS.L&M.LTCs@dla.mil)

DLA Troop Support, [dlaedigroup@dla.mil](mailto:dlaedigroup@dla.mil)

DLA Aviation, [avnprocsysproceddiv@dla.mil](mailto:avnprocsysproceddiv@dla.mil), phone # 804-279-4026

\*\*\*\*

## **252.205-7000 PROVISION OF INFORMATION TO COOPERATIVE AGREEMENT HOLDERS (DEC 1991) DFARS**

### **252.209-7004 SUBCONTRACTING WITH FIRMS THAT ARE OWNED OR CONTROLLED BY THE GOVERNMENT OF A TERRORIST COUNTRY (OCT 2015) DFARS**

### **252.209-7991 REPRESENTATION BY CORPORATIONS REGARDING AN UNPAID DELINQUENT TAX LIABILITY OR A FELONY CONVICTION UNDER ANY FEDERAL LAW—FISCAL YEAR 2016 APPROPRIATIONS (OCT 2015) DFARS**

(a) In accordance with section 101(a) of the Continuing Appropriations Act, 2016 (Pub. L. 114-53) and any subsequent FY 2016 appropriations act that extends to FY 2016 funds the same restrictions as are contained in sections 744 and 745 of division E, title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235), none of the funds made available by this or any other Act may be used to enter into a contract with any corporation that—

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

**CONTINUED ON NEXT PAGE**

(2) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless the agency has considered suspension or debarment of the corporation and made a determination that this action is not necessary to protect the interests of the Government.

(b) The Offeror represents that—

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

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

(End of provision)

**52.211-05 MATERIAL REQUIREMENTS (AUG 2000) FAR**

**52.211-17 DELIVERY OF EXCESS QUANTITIES (SEP 1989) FAR**

**52.215-06 PLACE OF PERFORMANCE (OCT 1997) FAR**

(a) The offeror or respondent, in the performance of any contract resulting from this solicitation,  **intends**,  **does not intend** [check applicable block] to use one or more plants or facilities located at a different address from the address of the offeror or respondent as indicated in this proposal or response to request for information.

(b) If the offeror or respondent checks “intends” in paragraph (a) of this provision, it shall insert in the following spaces the required information:

**Place of Performance**

(Street Address, City, State, County, ZIP Code)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Name and Address of Owner and Operator of the Plant or Facility if Other than Offeror or Respondent**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(End of Provision)

**REVERSE AUCTION (OCT 2013)**

**52.216-19 ORDER LIMITATIONS (OCT 1995) FAR**

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

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

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

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

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

(End of clause)

**52.216-22 INDEFINITE QUANTITY (OCT 1995) FAR**

- (a) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.
- (b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The Contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the "maximum." The Government shall order at least the quantity of supplies or services designated in the Schedule as the "minimum."
- (c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.
- (d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period ; provided, that the Contractor shall not be required to make any deliveries under this contract after
- (End of clause)

**252.216-7006 ORDERING (MAY 2011) DFARS**

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

\*\*\*\*

**52.216-9064 ECONOMIC PRICE ADJUSTMENT (EPA)**

ECONOMIC PRICE ADJUSTMENT (EPA) – ACTUAL MATERIAL COSTS FOR SUBSISTENCE DELIVERED PRICE BUSINESS MODEL – DLA TROOP SUPPORT SUBSISTENCE PRIME VENDOR (SPV) CONTIGUOUS UNITED STATES (CONUS), ALASKA, AND HAWAII

(APR 2014)

- (a) Warranties. For the portion of the schedule that is covered by this EPA clause, the Contractor warrants that—
- (1) Contract unit prices covered by this contract do not include allowances for any portion of the contingency covered by this clause; and
- (2) Price adjustments invoiced under this contract shall be computed in accordance with the provisions of this clause.
- (b) Definitions. As used throughout this clause, the term:
- (1) "Private label holder" means:
- (i) A manufacturer or grower with whom the contractor holds an ownership and/or financial interest, or ownership and/or financial interest in a specific item(s) produced by a manufacturer or grower; or
- (ii) An entity holding an intellectual property interest, whether by ownership or license, in the label under which product is being sold in the commercial marketplace; or
- (iii) An entity holding exclusive marketing and/or sales authority of a product, or one holding property rights in a proprietary product formula.
- (2) "Redistributor" means an entity independent of the contractor from which the contractor purchases product for purposes of consolidating quantities and/or obtaining a competitive delivered price.
- (3) "Standard Freight" means the published list price or prevailing market rate for transportation of subsistence and food service operating supplies, i.e. the transportation charge for delivery from the manufacturer/grower/private label holder or redistributor to the SPV Contractor. This may include inter-division transfers between the SPV Contractor's warehouses provided the delivered price (inclusive of standard freight) of a product at a given time is identical to the delivered price of the same product at the same time to other commercial customers in the SPV Contractor's electronic purchasing system.

**CONTINUED ON NEXT PAGE**

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

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

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

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

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

(5) Delivered price.

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

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

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

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

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

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

(7) "Government rebates and discounts" means all rebates, discounts, and limited discounts designated for the Government, including National Allowance Pricing Agreements (NAPA) discounts, food show discounts, early payment discounts (other than qualifying early payment discounts as defined in the Rebates, Discounts and Price Related Provisions section of the solicitation), and any other

**CONTINUED ON NEXT PAGE**

rebates, discounts, or similar arrangements designated by the manufacturer/grower/ private label holder or redistributor to be passed to the Government or passed to all customers without specific designation. In accordance with other provisions of the contract (and subject to any applicable exceptions in those provisions), all Government rebates and discounts shall be passed to the Government via a reduced catalog price (i.e. "off invoice"). Any Government rebates and discounts that must be passed to the Government and which cannot be applied as an up-front price reduction must be submitted via check payable to the U.S. Treasury, with an attached itemized listing of all customer purchases by line item to include contract number, call number, purchase order number and contract line item number (CLIN).

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

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

(c) Price adjustments.

(1) General.

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

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

(iii) Updates to the delivered price: All notices and requests for new item delivered prices and price changes shall be submitted weekly, no later than 12:00PM 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 electronic data interchange (EDI) 832 transaction set. The change notice shall include the Contractor's adjustment in the delivered price component of the applicable Contract unit price. Upon the Contracting Officer's acceptance of such EDI 832 price changes in accordance with paragraph (v) below, the price change transaction sets will post in the next week's ordering catalog and each Contract unit price shall be changed by the same dollar amount of the change in the delivered price in the next week's ordering catalog.

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

(v) Price change requests that the Contracting Officer questions or finds to be inconsistent with the requirements of this clause shall not be posted until the Contracting Officer specifically authorizes the posting. If the Contracting Officer does not notify the Contractor by close of business 3:00PM 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 3:00PM Eastern Time on Friday. If the

**CONTINUED ON NEXT PAGE**

Contracting Officer cannot determine a price fair and reasonable, and the Contracting Officer and the Contractor cannot negotiate a fair and reasonable price, the Contracting Officer may reject any price change and direct in writing that the item in question be removed from the Contractor's ordering catalog, without Government liability. The Contracting Officer may subsequently remove any such item from the ordering catalog if the Contractor fails to remove it. The Government has the right to procure such removed items from any alternate source of supply, and the failure of the Contractor to supply such item may be considered negatively in any evaluation of performance.

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

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

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

(ii) Changes in the quantities of materials; and

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

(3) If the Contracting Officer rejects a proposed adjustment for an item because the adjusted unit price cannot be determined fair and reasonable, the Contractor shall have no obligation to fill future orders for such item as of the effective date of the proposed adjustment unless such item is subsequently added to the contract at a Unit Price that is determined fair and reasonable. Alternately, the item may be retained on the catalog at the prior (unadjusted) price for as long as both parties agree to do so.

(d) Upward ceiling on economic price adjustment. The aggregate of contract delivered price increases for each item under this clause during the contract period inclusive of any option period(s) shall not exceed N/A 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 up to twice a year (except as provided for below) until the end of 3 years after the date of final payment under this contract or the time periods specified in Subpart 4.7 of the Federal Acquisition Regulation (FAR), whichever is earlier. These will normally involve Government selection of a statistically significant sample size of invoices/records to examine based on the number of line items on the specific contract catalog. If an examination of records reveals

**CONTINUED ON NEXT PAGE**

irregularities, further examinations and/or a larger sample size may be required. In addition to normal examination, the Government may conduct additional examinations at the Contracting Officer's discretion.

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

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

(End of Clause)

**52.217-02 CANCELLATION UNDER MULTI-YEAR CONTRACTS (OCT 1997) FAR**

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

**52.227-01 AUTHORIZATION AND CONSENT (DEC 2007) FAR**

**52.227-02 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEC 2007) FAR**

**52.232-17 INTEREST (MAY 2014) FAR**

**252.232-7010 LEVIES ON CONTRACT PAYMENTS (DEC 2006) DFARS**

**52.242-13 BANKRUPTCY (JUL 1995) FAR**

**52.242-15 STOP-WORK ORDER (AUG 1989) FAR**

**52.242-17 GOVERNMENT DELAY OF WORK (APR 1984) FAR**

**252.243-7002 REQUESTS FOR EQUITABLE ADJUSTMENTS (DEC 2012) DFARS**

\*\*\*\*

(b) In accordance with 10 U.S.C. 2410(a), any request for equitable adjustment to contract terms that exceeds the simplified acquisition threshold shall bear, at the time of submission, the following certificate executed by an individual authorized to certify the request on behalf of the Contractor:

**I certify that the request is made in good faith, and that the supporting data are accurate and complete to the best of my knowledge and belief.**

\_\_\_\_\_  
(Official's Name)

\_\_\_\_\_  
(Title)

**52.247-34 F.O.B. DESTINATION (NOV 1991) FAR**

**252.247-7023 TRANSPORTATION OF SUPPLIES BY SEA (APR 2014) DFARS**

**52.252-02 CLAUSES INCORPORATED BY REFERENCE (FEB 1998) FAR**

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

(End of Clause)

**52.253-01 COMPUTER GENERATED FORMS (JAN 1991) FAR**

**252.225-7048 EXPORT CONTROLLED ITEMS (JUN 2013) DFARS**

CONTINUED ON NEXT PAGE

(a) *Definition.* "Export-controlled items," as used in this clause, means items subject to the Export Administration Regulations (EAR) (15 CFR Parts 730-774) or the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120-130). The term includes:

- (1) "Defense items," defined in the Arms Export Control Act, 22 U.S.C. 2778(j)(4)(A), as defense articles, defense services, and related technical data, and further defined in the ITAR, 22 CFR Part 120.
- (2) "Items," defined in the EAR as "commodities", "software", and "technology," terms that are also defined in the EAR, 15 CFR 772.1.

(b) The Contractor shall comply with all applicable laws and regulations regarding export-controlled items, including, but not limited to, the requirement for contractors to register with the Department of State in accordance with the ITAR. The Contractor shall consult with the Department of State regarding any questions relating to compliance with the ITAR and shall consult with the Department of Commerce regarding any questions relating to compliance with the EAR.

(c) The Contractor's responsibility to comply with all applicable laws and regulations regarding export-controlled items exists independent of, and is not established or limited by, the information provided by this clause.

(d) Nothing in the terms of this contract adds, changes, supersedes, or waives any of the requirements of applicable Federal laws, Executive orders, and regulations, including but not limited to—

- (1) The Export Administration Act of 1979, as amended (50 U.S.C. App. 2401, *et seq.*);
- (2) The Arms Export Control Act (22 U.S.C. 2751, *et seq.*);
- (3) The International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.*);
- (4) The Export Administration Regulations (15 CFR Parts 730-774);
- (5) The International Traffic in Arms Regulations (22 CFR Parts 120-130); and
- (6) Executive Order 13222, as extended.

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in all subcontracts.

(End of clause)

**Attachments**

**List of Attachments**

Description	File Name
ATTACH.Attachment 1 - Schedule of Items	Attachment 1
ATTACH.Attachment 2 - Request for New Items	Attachment 2
ATTACH.Attachment 3 - Delivery Schedule	Attachment 3
ATTACH.Attachment 4 - STORES and EDI Requirements	Attachment 4
ATTACH.Attachment 5 - FFAVORS Webmanual	Attachment 5
ATTACH.Attachment 6 - DIBBS Proposal Uploaded Guide for Vendors	Attachment 6
ATTACH.Attachment 7 - QSMV & Quality Audits	Attachment 7

**Part 12 Provisions**

**52.212-01 INSTRUCTIONS TO OFFERORS - COMMERCIAL ITEMS (JAN 2017)**

**ADDENDUM 52.212-01**

Note: 52.212-1, Instructions to Offerors – Commercial Items (Jan 2017) is incorporated in this solicitation by reference. Its full text may be accessed electronically at <https://www.acquisition.gov/far/index.html>. Text is available for viewing in Subpart 52.2 Text of Provisions and Clauses, through either the HTML or PDF Format links.

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

- 1. **Paragraph (b)**, Submission of Offers.

- a. See pages 3-4, for any specific instructions on how to submit your offer if mailed or hand carried and see pages 24-28 for proposal submission information.
- b. Facsimile and e-mail offers are NOT authorized forms of transmission for submission of initial proposals or revisions to initial proposals (if necessary) submitted in response to this solicitation. If deemed necessary by the Contracting Officer, the Government reserves the right to conduct negotiations for the subject acquisition. All responses to discuss/negotiations, including Final Proposal revisions shall be in a form of communication customary in the industry for transmitting information to include phone, facsimile transmission, letter, in-person and e-mail.

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

Period of acceptance is **180** days.

**3. Paragraph (f),** Late *Submissions, Modifications, Revisions, and Withdrawals of Offers*, is deleted in its entirety and replaced with the following:

(f) Late Submissions, Modifications, Revision, and Withdrawals of Offers.

- (1) Any proposal received at the office designated in the solicitation after the exact time specified for receipt of offers will not be considered unless it is received before award is made and:
  - (i) It was sent by mail or hand-carried (including delivery by a commercial carrier) if it is determined by the Government that the late receipt was due primarily to Government mishandling after the receipt at the Government installation.
  - (ii) It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals.
  - (iii) There is acceptable evidence to establish that it was received at the activity designated for receipt of offers and was under the Government's control to the time set for receipt of offers, and the Contracting Officer determines that accepting the late offer would not unduly delay the procurement; or it is the only proposal received.
- (2) Any modification or revision of a proposal or response to requested information, including any final proposal revision, is subject to the same conditions indicated above.
- (3) Notwithstanding the above, a late modification or revision of any otherwise successful proposal that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.
- (4) Proposals may be withdrawn by written notice (including facsimile) received at any time before award.

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

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

**52.212-02 EVALUATION - COMMERCIAL ITEMS (OCT 2014) FAR**

(a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered. The following factors shall be used to evaluate offers:

Technical and past performance, when combined, are [Contracting Officer state the relative importance of all other evaluation factors, when combined, when compared to price.]

(b) Options. The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are significantly unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(c) A written notice of award or acceptance of an offer, mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer's specified

**CONTINUED ON NEXT PAGE**

expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

(End of Provision)

**ADDENDUM 52.212-02**

Addendum to FAR 52.212-2

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

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

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

A. Perishable Agricultural Commodities Act (PACA) License – The offeror shall possess and submit proof of a valid current PACA license. The submitted PACA license must be effective for at least six (6) months after the solicitation closing date.

B. USDA Good Agricultural Practices (GAP) and Good Handling Practices (GHP) Audit – The offeror shall submit a GAP/GHP audit report for each place of performance identified in the offeror's proposal. The audit report(s) must demonstrate that a passing score(s) was/were received and the report(s) must be dated no more than six (6) months prior to the solicitation closing date.

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

Technical and past performance, when combined, are not applicable.

(b) Options are not included in this solicitation.

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

(d) Price Components:

1. Weighted Aggregate Distribution Price:

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

**CONTINUED ON NEXT PAGE**

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

2. Aggregate Delivered Price:

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

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

**52.212-03 OFFEROR REPRESENTATIONS AND CERTIFICATIONS - COMMERCIAL ITEMS (OCT 2016) FAR**

An offeror shall complete only paragraph (b) of this provision if the offeror has completed the annual representations and certifications electronically via <https://www.acquisition.gov> If an offeror has not completed the annual representations and certifications electronically at the ORCA website, the offeror shall complete only paragraphs (c) through (o) of this provision.

(a) Definitions. As used in this provision—

"Economically disadvantaged women-owned small business (EDWOSB) concern" means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States and who are economically disadvantaged in accordance with 13 CFR part 127. It automatically qualifies as a women-owned small business eligible under the WOSB Program.

"Forced or indentured child labor" means all work or service—

(1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or

(2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

"Inverted domestic corporation" as used in this section, but now is incorporated in a foreign country, or is a subsidiary whose parent corporation is incorporated in a foreign country, that meets the criteria specified in 6 U.S.C 395(b), applied in accordance with the rules and definitions of 6 U.S.C. 395(c). An inverted domestic corporation as herein defined does not meet the definition of an inverted domestic corporation as defined by the Internal Revenue code at 26 U.S.C. 7874.

"Manufactured end product" means any end product in Federal Supply Classes (FSC) 1000-9999, except—

- (1) FSC 5510, Lumber and Related Basic Wood Materials;
- (2) Federal Supply Group (FSG) 87, Agricultural Supplies;
- (3) FSG 88, Live Animals;
- (4) FSG 89, Food and Related Consumables;
- (5) FSC 9410, Crude Grades of Plant Materials;
- (6) FSC 9430, Miscellaneous Crude Animal Products, Inedible;
- (7) FSC 9440, Miscellaneous Crude Agricultural and Forestry Products;
- (8) FSC 9610, Ores;
- (9) FSC 9620, Minerals, Natural and Synthetic; and
- (10) FSC 9630, Additive Metal Materials.

**CONTINUED ON NEXT PAGE**

“Place of manufacture” means the place where an end product is assembled out of components, or otherwise made or processed from raw materials into the finished product that is to be provided to the Government. If a product is disassembled and reassembled, the place of reassembly is not the place of manufacture.

“Restricted business operations” means business operations in Sudan that include power production activities, mineral extraction activities, oil-related activities, or the production of military equipment, as those terms are defined in the Sudan Accountability and Divestment Act of 2007 (Pub. L. 110-174). Restricted business operations do not include business operations that the person (as that term is defined in Section 2 of the Sudan Accountability and Divestment Act of 2007) conducting the business can demonstrate—

- (1) Are conducted under contract directly and exclusively with the regional government of southern Sudan;
- (2) Are conducted pursuant to specific authorization from the Office of Foreign Assets Control in the Department of the Treasury, or are expressly exempted under Federal law from the requirement to be conducted under such authorization;
- (3) Consist of providing goods or services to marginalized populations of Sudan;
- (4) consist of providing goods or services to an internationally recognized peacekeeping force or humanitarian organization;
- (5) Consist of providing goods or services that are used only to promote health or education; or
- (6) Have been voluntarily suspended.

“Sensitive technology” –

- (1) Means hardware, software, telecommunications equipment, or any other technology that is to be used specifically -
  - (i) To restrict the free flow of unbiased information in Iran; or
  - (ii) To disrupt, monitor, or otherwise restrict speech of the people or Iran; and
- (2) Does not include information or informational materials the export of which the President does not have the authority to regulate or prohibit pursuant to section 203(b)(3) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)(3)).

“Service-disabled veteran-owned small business concern”—

- (1) Means a small business concern—
  - (i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and
  - (ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.
- (2) Service-disabled veteran means a veteran, as defined in 38 U.S.C 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

“Small business concern” means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR Part 121 and size standards in this solicitation.

“Subsidiary” means an entity in which more than 50 percent of the entity is owned –

- (1) Directly by a parent corporation; or
- (2) Through another subsidiary of a parent corporation.

“Veteran-owned small business concern” means a small business concern—

- (1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and
- (2) The management and daily business operations of which are controlled by one or more veterans.

“Women-owned business concern” means a concern which is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of its stock is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

“Women-owned small business concern” means a small business concern—

- (1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
- (2) Whose management and daily business operations are controlled by one or more women.

“Women-owned small business (WOSB) concern eligible under the WOSB Program” (in accordance with 13 CFR part 127), means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States.

(b) (1) Annual Representations and Certifications. Any changes provided by the offeror in paragraph (b)(2) of this provision do not automatically change the representations and certifications posted on the Online Representations and Certifications Application (ORCA) website.

**CONTINUED ON NEXT PAGE**

(2) The offeror has completed the annual representations and certifications electronically via the ORCA website at <https://www.acquisition.gov>. After reviewing the ORCA database information, the offeror verifies by submission of this offer that the representations and certifications currently posted electronically at FAR 52.212-3, Offeror Representations and Certifications—Commercial Items, have been entered or updated in the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer and are incorporated in this offer by reference (see FAR 4.1201), **except for paragraphs \_\_\_\_\_**.

[Offeror to identify the applicable paragraphs at (c) through (o) of this provision that the offeror has completed for the purposes of this solicitation only, if any.

These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.

Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted on ORCA.]

(c) Offerors must complete the following representations when the resulting contract will be performed in the United States or its outlying areas. Check all that apply.

(1) Small business concern. The offeror represents as part of its offer **that it ( ) is, ( ) is not a small business concern.**

(2) Veteran-owned small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] **The offeror represents as part of its offer that it ( ) is, ( ) is not a veteran-owned small business concern.**

(3) Service-disabled veteran-owned small business concern. [Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (c)(2) of this provision.] **The offeror represents as part of its offer that it ( ) is, ( ) is not a service-disabled veteran-owned small business concern.**

(4) Small disadvantaged business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.]

**The offeror represents, for general statistical purposes, that it ( ) is, ( ) is not a small disadvantaged business concern as defined in 13 CFR 124.1002.**

(5) Women-owned small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] **The offeror represents that it ( ) is, ( ) is not a women-owned small business concern.**

(6) WOSB concern eligible under the WOSB Program. [Complete only if the offeror represented itself as a women-owned small business concern in paragraph (c)(5) of this provision.] The offeror represents that—

**(i) It [ ] is, [ ] is not a WOSB concern eligible under the WOSB Program,** has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and

**(ii) It [ ] is, [ ] is not a joint venture that complies with the requirements of 13 CFR part 127,** and the representation in paragraph (c)(6)(i) of this provision is accurate for each WOSB concern eligible under the WOSB Program participating in the joint venture. [The offeror shall enter the name or names of the WOSB concern eligible under the WOSB Program and other small businesses that are in the **joint venture:** \_\_\_\_\_.] Each WOSB concern eligible under the WOSB Program participating in the joint venture shall submit a separate signed copy of the WOSB representation.

(7) Economically disadvantaged women-owned small business (EDWOSB) concern. [Complete only if the offeror represented itself as a WOSB concern eligible under the WOSB Program in (c)(6) of this provision.] The offeror represents that—

**(i) It [ ] is, [ ] is not an EDWOSB concern,** has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and

**(ii) It [ ] is, [ ] is not a joint venture that complies with the requirements of 13 CFR part 127,** and the representation in paragraph (c)(7)(i) of this provision is accurate for each EDWOSB concern participating in the joint venture. The offeror shall enter the name or names of the EDWOSB concern and other small businesses that are **participating in the joint venture:** \_\_\_\_\_ . Each EDWOSB concern participating in the joint venture shall submit a separate signed copy of the EDWOSB representation.

**NOTE:** Complete paragraphs (c)(8) and (c) (9) only if this solicitation is expected to exceed the simplified acquisition threshold.

(8) Women-owned business concern (other than small business concern). [Complete only if the offeror is a women-owned business concern and did not represent itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it o is a women-owned business concern.

(9) Tie bid priority for labor surplus area concerns. If this is an invitation for bid, small business offerors may identify the labor surplus areas in which costs to be incurred on account of manufacturing or production (by offeror or first-tier subcontractors) amount to more than 50 percent of the **contract price:** \_\_\_\_\_

(10) [Complete only if the solicitation contains the clause at FAR 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns, or FAR 52.219-25, Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting, and the offeror desires a benefit based on its disadvantaged status.]

(i) General. The offeror represents that either—

**(A) It [ ] is, [ ] is not certified by the Small Business Administration** as a small disadvantaged business concern and identified, on the date of this representation, as a certified small disadvantaged business concern in the CCR Dynamic Small Business Search database maintained by the Small Business Administration, and that no material change in disadvantaged ownership and control has occurred since its certification, and, where the concern is owned by one or more individuals claiming disadvantaged status, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); or

**(B) It [ ] has, [ ] has not submitted a completed application to the Small Business Administration** or a Private Certifier to be certified as a small disadvantaged business concern in accordance with 13 CFR 124, Subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since its application was submitted.

**(ii) [ ] Joint Ventures** under the Price Evaluation Adjustment for Small Disadvantaged Business Concerns. The offeror represents, as part of its offer, that it is a joint venture that complies with the requirements in 13 CFR 124.1002(f) and that the representation in paragraph (c)(10)(i) of this provision is accurate for the small disadvantaged business concern that is participating in the joint venture. [The offeror shall enter the name of the small disadvantaged business concern that is participating in the **joint venture**: \_\_\_\_\_.]

(11) HUBZone small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents, as part of its offer, that—

**(i) It [ ] is, [ ] is not a HUBZone small business concern** listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material changes in ownership and control, principal office, or HUBZone employee percentage have occurred since it was certified in accordance with 13 CFR Part 126; and

**(ii) It [ ] is, [ ] is not a HUBZone joint venture** that complies with the requirements of 13 CFR Part 126, and the representation in paragraph (c)(11)(i) of this provision is accurate for each HUBZone small business concern participating in the HUBZone joint venture. [The offeror shall enter the names of each of the HUBZone small business concerns participating in the HUBZone **joint venture**: \_\_\_\_\_.] Each HUBZone small business concern participating in the HUBZone joint venture shall submit a separate signed copy of the HUBZone representation.

(d) Representations required to implement provisions of Executive Order 11246—

(1) Previous contracts and compliance. The offeror represents that—

**(i) It ( ) has, ( ) has not participated in a previous contract or subcontract** subject to the Equal Opportunity clause of this solicitation; and

**(ii) It ( ) has, ( ) has not filed all required compliance reports.**

(2) Affirmative Action Compliance. The offeror represents that—

**(i) It ( ) has developed and has on file, ( ) has not developed and does not have on file,** at each establishment, affirmative action programs required by rules and regulations of the Secretary of Labor (41 CFR parts 60-1 and 60-2), or

**(ii) It ( ) has not previously had contracts subject to the written affirmative action programs** requirement of the rules and regulations of the Secretary of Labor.

(e) Certification Regarding Payments to Influence Federal Transactions (31 U.S.C. 1352). (Applies only if the contract is expected to exceed \$150,000.) By submission of its offer, the offeror certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress on his or her behalf in connection with the award of any resultant contract. If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this contract, the offeror shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. The offeror need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

(f) Buy American Act Certificate. (Applies only if the clause at Federal Acquisition Regulation (FAR) 52.225-1, Buy American Act—Supplies, is included in this solicitation.)

(1) The offeror certifies that each end product, except those listed in paragraph (f)(2) of this provision, is a domestic end product and that for other than COTS items, the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products, i.e., an end product that is not a COTS item and does not meet the component test in paragraph (2) of the definition of “domestic end product.” The terms “commercially available off-the-shelf (COTS) item” “component,” “domestic end product,” “end product,” “foreign end product,” and “United States” are defined in the clause of this solicitation entitled “Buy American Act—Supplies.”

**(2) Foreign End Products:**

Line Item No.	Country of Origin

--	--

(List as necessary)

(3) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25.

(g)(1) Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate. (Applies only if the clause at FAR 52.225-3, Buy American Act—Free Trade Agreements—Israeli Trade Act, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (g)(1)(ii) or (g)(1)(iii) of this provision, is a domestic end product and that for other than COTS items, the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The terms “Bahrainian, Moroccan, Omani, or Peruvian end product,” “commercially available off-the-shelf (COTS) item,” “component,” “domestic end product,” “end product,” “foreign end product,” “Free Trade Agreement country,” “Free Trade Agreement country end product,” “Israeli end product,” and “United States” are defined in the clause of this solicitation entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act.”

(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products (other than Bahrainian, Moroccan, Omani, Panamanian, or Peruvian end products) or Israeli end products as defined in the clause of this solicitation entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act”:

**Free Trade Agreement Country End Products (Other than Bahrainian, Moroccan, Omani, Panamanian, or Peruvian End Products) or Israeli End Products:**

Line Item No.	Country of Origin

(List as necessary)

(iii) The offeror shall list those supplies that are foreign end products (other than those listed in paragraph (g)(1)(ii) of this provision) as defined in the clause of this solicitation entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act.” The offeror shall list as other foreign end products those end products manufactured in the United States that do not qualify as domestic end products, i.e., an end product that is not a COTS item and does not meet the component test in paragraph (2) of the definition of “domestic end product.”

**Other Foreign End Products:**

Line Item No.	Country of Origin

(List as necessary)

(iv) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25.

(2) Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate, Alternate I. If Alternate I to the clause at FAR 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products as defined in the clause of this solicitation entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act”:

**Canadian End Products:**

Line Item No.

(List as necessary)

(3) Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate, Alternate II. If Alternate II to the clause at FAR 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products or Israeli end products as defined in the clause of this solicitation entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act”:

**Canadian or Israeli End Products:**

Line Item No.	Country of Origin

--	--

(List as necessary)

(4) Buy American Act – Free Trade Agreements – Israeli Trade Act Certificate, Alternate III. If Alternate III to the clause at 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products (other than Bahrainian, Korean, Moroccan, Omani, Panamanian, or Peruvian end products) or Israeli end products as defined in the clauses of this solicitation entitled “Buy American Act-Free Trade Agreements – Israeli Trade Act::

Free Trade Agreement Country End Products (Other than Bahrainian, Korean, Moroccan, Omani, or Peruvian End Products) or Israeli End Products:

Line Item No.	Country of Origin

(List as necessary)

(54) Trade Agreements Certificate. (Applies only if the clause at FAR 52.225-5, Trade Agreements, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (g)(5)(ii) of this provision, is a U.S.-made or designated country end product, as defined in the clause of this solicitation entitled “Trade Agreements.”

(ii) The offeror shall list as other end products those end products that are not U.S.-made or designated country end products.

**Other End Products:**

Line Item No.	Country of Origin

(List as necessary)

(iii) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25. For line items covered by the WTO GPA, the Government will evaluate offers of U.S.-made or designated country end products without regard to the restrictions of the Buy American Act. The Government will consider for award only offers of U.S.-made or designated country end products unless the Contracting Officer determines that there are no offers for such products or that the offers for such products are insufficient to fulfill the requirements of the solicitation.

(h) Certification Regarding Responsibility Matters (Executive Order 12689). (Applies only if the contract value is expected to exceed the simplified acquisition threshold.) The offeror certifies, to the best of its knowledge and belief, that the offeror and/or any of its principals—

**(1) ( ) Are, ( ) are not presently debarred**, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

**(2) ( ) Have, ( ) have not, within a three-year period** preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, state or local government contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;

**(3) ( ) Are, ( ) are not presently indicted for**, or otherwise criminally or civilly charged by a Government entity with, commission of any of these offenses enumerated in paragraph (h)(2) of this clause; and

**(4) ( ) Have, ( ) have not, within a three-year period preceding this offer**, been notified of any delinquent Federal taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied.

(i) Taxes are considered delinquent if both of the following criteria apply:

(A) The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(B) The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(ii) Examples.

(A) The taxpayer has received a statutory notice of deficiency, under I.R.C. §6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(B) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. §6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(C) The taxpayer has entered into an installment agreement pursuant to I.R.C. §6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.

(D) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. §362 (the Bankruptcy Code).

(i) Certification Regarding Knowledge of Child Labor for Listed End Products (Executive Order 13126). [The Contracting Officer must list in paragraph (i)(1) any end products being acquired under this solicitation that are included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, unless excluded at 22.1503(b).]

**(1) Listed end products.**

Listed End Product	Listed Countries of Origin

(2) Certification. [If the Contracting Officer has identified end products and countries of origin in paragraph (i)(1) of this provision, then the offeror must certify to either (i)(2)(i) or (i)(2)(ii) by checking the appropriate block.]

(i) **The offeror will not supply any end product** listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product.

(ii) **The offeror may supply an end product** listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. The offeror certifies that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any such end product furnished under this contract. On the basis of those efforts, the offeror certifies that it is not aware of any such use of child labor.

(j) Place of manufacture. (Does not apply unless the solicitation is predominantly for the acquisition of manufactured end products.) For statistical purposes only, the offeror shall indicate whether the place of manufacture of the end products it expects to provide in response to this solicitation is predominantly—

(1)  **In the United States** (Check this box if the total anticipated price of offered end products manufactured in the United States exceeds the total anticipated price of offered end products manufactured outside the United States); or

(2)  **Outside the United States.**

(k) Certificates regarding exemptions from the application of the Service Contract Act. (Certification by the offeror as to its compliance with respect to the contract also constitutes its certification as to compliance by its subcontractor if it subcontracts out the exempt services.) [The contracting officer is to check a box to indicate if paragraph (k)(1) or (k)(2) applies.]

(1) **Maintenance, calibration**, or repair of certain equipment as described in FAR 22.1003-4 (c)(1). **The offeror ( ) does ( ) does not certify that—**

(i) The items of equipment to be serviced under this contract are used regularly for other than Governmental purposes and are sold or traded by the offeror (or subcontractor in the case of an exempt subcontract) in substantial quantities to the general public in the course of normal business operations;

(ii) The services will be furnished at prices which are, or are based on, established catalog or market prices (see FAR 22.1003-4 (c)(2)(ii)) for the maintenance, calibration, or repair of such equipment; and

(iii) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract will be the same as that used for these employees and equivalent employees servicing the same equipment of commercial customers.

(2) **Certain services as described in FAR 22.1003-4 (d)(1).** **The offeror ( ) does ( ) does not certify that—**

- (i) The services under the contract are offered and sold regularly to non-Governmental customers, and are provided by the offeror (or subcontractor in the case of an exempt subcontract) to the general public in substantial quantities in the course of normal business operations;
- (ii) The contract services will be furnished at prices that are, or are based on, established catalog or market prices (see FAR 22.1003-4(d)(2)(iii));
- (iii) Each service employee who will perform the services under the contract will spend only a small portion of his or her time (a monthly average of less than 20 percent of the available hours on an annualized basis, or less than 20 percent of available hours during the contract period if the contract period is less than a month) servicing the Government contract; and
- (iv) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract is the same as that used for these employees and equivalent employees servicing commercial customers.

**(3) If paragraph (k)(1) or (k)(2) of this clause applies—**

- (i) If the offeror does not certify to the conditions in paragraph (k)(1) or (k)(2) and the Contracting Officer did not attach a Service Contract Act wage determination to the solicitation, the offeror shall notify the Contracting Officer as soon as possible; and
- (ii) The Contracting Officer may not make an award to the offeror if the offeror fails to execute the certification in paragraph (k)(1) or (k)(2) of this clause or to contact the Contracting Officer as required in paragraph (k)(3)(i) of this clause.

(l) Taxpayer Identification Number (TIN) (26 U.S.C 6109, 31 U.S.C. 7701). (Not applicable if the offeror is required to provide this information to a central contractor registration database to be eligible for award.)

(1) All offerors must submit the information required in paragraphs (l)(3) through (l)(5) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the Internal Revenue Service (IRS).

(2) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the Government (31 U.S.C. 7701(c) (3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

**(3) Taxpayer Identification Number (TIN).**

- TIN: \_\_\_\_\_.
- TIN has been applied for.
- TIN is not required because:
- Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;
- Offeror is an agency or instrumentality of a foreign government;
- Offeror is an agency or instrumentality of the Federal Government.

**(4) Type of organization.**

- Sole proprietorship;
- Partnership;
- Corporate entity (not tax-exempt);
- Corporate entity (tax-exempt);
- Government entity (Federal, State, or local);
- Foreign government;
- International organization per 26 CFR 1.6049-4;
- Other \_\_\_\_\_.

**(5) Common parent.**

- Offeror is not owned or controlled by a common parent;
- Name and TIN of common parent:

Name \_\_\_\_\_.

TIN \_\_\_\_\_.

(m) Restricted business operations in Sudan. By submission of its offer, the offeror certifies that the offeror does not conduct any restricted business operations in Sudan.

(n) Prohibition on Contracting with Inverted Domestic Corporations.

(1) Relation to Internal Revenue Code. An inverted domestic corporation as herein defined does not meet the definition of an inverted domestic corporation as defined by the Internal Revenue Code 25 U.S.C. 7874.

(2) Representation. By submission of its offer, the offeror represents that –

- (i) it is not an inverted domestic corporation; and
- (ii) It is not a subsidiary of an inverted domestic corporation.

(o) Prohibition on contracting with entities engaging in certain activities or transactions relating to Iran.

(1) The offeror shall e-mail questions concerning sensitive technology to the Department of State at CISADA106@state.gov.

(2) Representation and Certifications. Unless a waiver is granted or an exception applies as provided in paragraph (o)(3) of this provision, by submission of its offer, the offeror—

- (i) Represents, to the best of its knowledge and belief, that the offeror does not export any sensitive technology to the government of Iran or any entities or individuals owned or controlled by, or acting on behalf or at the direction of, the government of Iran;
  - (ii) Certifies that the offeror, or any person owned or controlled by the offeror, does not engage in any activities for which sanctions may be imposed under section 5 of the Iran Sanctions Act; and
  - (iii) Certifies that the offeror, and any person owned or controlled by the offeror, does not knowingly engage in any transaction that exceeds \$3,000 with Iran's Revolutionary Guard Corps or any of its officials, agents, or affiliates, the property and interests in property of which are blocked pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) (see OFAC's Specially Designated Nationals and Blocked Persons List at <http://www.treasury.gov/ofac/downloads/t11sdn.pdf>).
- (3) The representation and certification requirements of paragraph (o)(2) of this provision do not apply if—
- (i) This solicitation includes a trade agreements certification (e.g., 52.212-3(g) or a comparable agency provision); and
  - (ii) The offeror has certified that all the offered products to be supplied are designated country end products.
- (End of provision)

#### **52.212-03 OFFEROR REPRESENTATIONS AND CERTIFICATIONS - COMMERCIAL ITEMS (MAR 2015), ALT I (OCT 2014) FAR**

As prescribed in 12.301(b)(2), add the following paragraph (c)(12) to the basic provision:

(12) (Complete if the offeror has represented itself as disadvantaged in paragraph (c)(4) or (c)(8) of this provision.)

**The offeror shall check the category in which its ownership falls:**

- Black American.
- Hispanic American.
- Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).
- Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).
- Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).
- Individual/concern, other than one of the preceding.

#### **PROVISIONS ADDED TO PART 12 BY ADDENDUM**

#### **52.203-03 GRATUITIES (APR 1984) FAR**

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

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

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

“Controlled technical information,” “covered contractor information system,” and “covered defense information” are defined in clause 252.204-7012, Safeguarding Covered Defense Information and Cyber Incident Reporting.

(b) The security requirements required by contract clause 252.204-7012, Covered Defense Information and Cyber Incident Reporting, shall be implemented for all covered defense information on all covered contractor information systems that support the performance of this contract.

(c) For covered contractor information systems that are not part of an information technology (IT) service or system operated on behalf of the Government (see 252.204-7012(b)(1)(ii))—

(1) By submission of this offer, the Offeror represents that it will implement the security requirements specified by National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171, “Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations” (see <http://dx.doi.org/10.6028/NIST.SP.800-171>), not later than December 31, 2017.

(2)(i) If the Offeror proposes to vary from any of the security requirements specified by NIST SP 800-171 that is in effect at the time the solicitation is issued or as authorized by the Contracting Officer, the Offeror shall submit to the Contracting Officer, for consideration by the DoD Chief Information Officer (CIO), a written explanation of—

**CONTINUED ON NEXT PAGE**

(A) Why a particular security requirement is not applicable; or  
 (B) How an alternative but equally effective, security measure is used to compensate for the inability to satisfy a particular requirement and achieve equivalent protection.

(ii) An authorized representative of the DoD CIO will adjudicate offeror requests to vary from NIST SP 800-171 requirements in writing prior to contract award. Any accepted variance from NIST SP 800-171 shall be incorporated into the resulting contract.  
 (End of provision)

**52.207-04 ECONOMIC PURCHASE QUANTITY - SUPPLIES (AUG 1987) FAR**

**(a) Offerors are invited to state an opinion on whether the quantity(ies) of supplies on which bids, proposals or quotes are requested in this solicitation is (are) economically advantageous to the Government.**

---



---



---

(b) Each offeror who believes that acquisitions in different quantities would be more advantageous is invited to recommend an economic purchase quantity. If different quantities are recommended, a total and a unit price must be quoted for applicable items. An economic purchase quantity is that quantity at which a significant price break occurs. If there are significant price breaks at different quantity points, this information is desired as well.

**OFFEROR RECOMMENDATIONS**

<b>ITEM</b>	
<b>QUANTITY</b>	
<b>PRICE QUOTATION</b>	
<b>TOTAL</b>	

(c) The information requested in this provision is being solicited to avoid acquisitions in disadvantageous quantities and to assist the Government in developing a data base for future acquisitions of these items. However, the Government reserves the right to amend or cancel the solicitation and resolicit with respect to any individual item in the event quotations received and the Government's requirements indicate that different quantities should be acquired.  
 (End of provision)

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

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

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

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

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

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

(2) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless the agency has considered suspension or debarment of the corporation and made a determination that this action is not necessary to protect the interests of the Government.

(b) The Offeror represents that-

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

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

(End of provision)

**52.211-9011 DELIVERY TERMS AND EVALUATION (APR 2014) DLAD**

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

(a) Exceptions from cost or pricing data.

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

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

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

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

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

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

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

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

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

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

(End of provision)

**52.216-01 TYPE OF CONTRACT (APR 1984) FAR**

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

(End of provision)

**52.225-25 PROHIBITION ON CONTRACTING WITH ENTITIES ENGAGING IN SANCTIONED ACTIVITIES RELATING TO IRAN - REPRESENTATION AND CERTIFICATION (OCT 2015) FAR**

**252.225-7001 BUY AMERICAN ACT AND BALANCE OF PAYMENTS PROGRAM (AUG 2016) DFARS**

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

**52.233-9000 AGENCY PROTESTS (NOV 2011) DLAD**

**52.233-9001 DISPUTES - AGREEMENT TO USE ALTERNATIVE DISPUTE RESOLUTION (NOV 2011) DLAD**

\*\*\*\*

**(c) The offeror should check here to opt out of this clause:**

. Alternate wording may be negotiated with the contracting officer.

**CONTINUED ON NEXT PAGE**

**52.251-01 GOVERNMENT SUPPLY SOURCES (APR 2012) FAR****52.252-01 SOLICITATION PROVISIONS INCORPORATED BY REFERENCE (FEB 1998) - FAR**

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

<http://www.dla.mil/Acquisition> and <http://farsite.hil.af.mil/> .

(End of Provision)