

<b>SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, &amp; 30</b>				1. REQUISITION NUMBER 1000058806		PAGE 1 OF 70	
2. CONTRACT NO.		3. AWARD/EFFECTIVE DATE		4. ORDER NUMBER		5. SOLICITATION NUMBER SPE300-17-R-0053	
6. SOLICITATION ISSUE DATE 2017 AUG 11		7. FOR SOLICITATION INFORMATION CALL:		a. NAME Kevin Buckman DKB0021		b. TELEPHONE NUMBER (No Collect calls) Phone: 215-737-4220	
8. OFFER DUE DATE/LOCAL TIME 2017 SEP 11 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"/> UNRESTRICTED OR <input type="checkbox"/> SET ASIDE: _____ % FOR: <input type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> WOMEN-OWNED SMALL BUSINESS (WOSB) ELIGIBLE UNDER THE WOMEN-OWNED SMALL BUSINESS PROGRAM <input type="checkbox"/> HUBZONE SMALL BUSINESS <input type="checkbox"/> EDWOSB NAICS: 311991 <input type="checkbox"/> SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS <input type="checkbox"/> 8 (A) SIZE STANDARD:	
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		14. METHOD OF SOLICITATION <input type="checkbox"/> RFQ <input type="checkbox"/> IFB <input checked="" type="checkbox"/> RFP			
19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES			21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
	See Schedule						
				(Use Reverse and/or Attach Additional Sheets as Necessary)			
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 1 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
<input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL			<input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> 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 ( <i>Print</i> )
41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER	42b. RECEIVED AT ( <i>Location</i> )
41c. DATE	42c. DATE REC'D (YY/MM/DD)
	42d. TOTAL CONTAINERS

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BLOCK 8 (Continued):

OFFER DUE DATE/ LOCAL TIME: September 11, 2017, at 3:00PM EASTERN STANDARD TIME

BLOCK 9 (Continued):

ALL OFFERS/MODIFICATIONS/WITHDRAWALS MUST BE PLAINLY MARKED ON THE OUTERMOST ENVELOPE WITH THE SOLICITATION NUMBER, CLOSING DATE, AND TIME SET FOR THE RECEIPT OF OFFERS.

SEND MAILED OFFER TO:

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

DELIVER HANDCARRIED OFFER, INCLUDING DELIVERY BY COMMERCIAL CARRIER TO:

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

NOTES:

(1) All hand carried offers are to be delivered to the Business Opportunities Office between 8:00 a.m. and 5:00 p.m., Monday through Friday, except for legal federal holidays as set forth in 5 USC 6103. Offerors using a commercial carrier service must ensure that the carrier service "hand carries" the package to the Business Opportunities Office specified above for hand carried offers prior to the scheduled opening/closing time. Package must be plainly marked ON THE OUTSIDE OF THE COMMERCIAL CARRIER'S ENVELOPE with the solicitation number, date, and time set forth for receipt of offers as indicated in Block 8 of the Standard Form 1449.

(2) Examples of "hand carried" offers include: In-person delivery by Contractor, Fed Ex, Airborne, UPS, DHL, Emery, other commercial carrier, USPS Express Mail and USPS Certified Mail.

(3) Contractors intending to deliver offers in-person should be advised that the Business Opportunities Office (Bid Room) is located within a secured military installation. In order to gain access to the facility, an escort may be required. The escort will be an employee of the Bid Room. The following are telephone numbers for the Bid Room: (215) 737-8511, (215) 737-9044, (215) 737-7354, (215) 737-0317, or (215) 737-8566. It is the offeror's responsibility to ensure that the offers are received at the correct location at the correct time. Please allow sufficient time to complete delivery of hand carried offers. Since the length of time necessary to gain access to the facility varies based on a number of circumstances, it is recommended that you arrive at the installation at least one hour prior to the time solicitation closes to allow for security processing and to secure an escort.

NOTE: THIS IS A SUGGESTION AND NOT A GUARANTEE THAT YOU WILL GAIN ACCESS TO THE BASE IF YOU ARRIVE ONE HOUR BEFORE THE OFFER IS DUE.

(4) Facsimile and e-mail offers are not acceptable forms of transmission for submission of initial proposals or revisions to initial proposals submitted in response to this solicitation. As directed by the Contracting Officer, facsimile and e-mail may be used during discussions/negotiations, if discussions/negotiations are held, for proposal revision(s), including Final Proposal revision(s).

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BLOCK 17A. (Continued):

OFFERORS: SPECIFY

CAGE CODE: \_\_\_\_\_

FAX NUMBER \_\_\_\_\_

EMAIL ADDRESS \_\_\_\_\_

COMPANY POC: \_\_\_\_\_

PHONE #: \_\_\_\_\_

BLOCK 17B. (Continued):

Remittance will be made to the address that the vendor has listed in the System for Award Management Database. (www.sam.gov). 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.

**Statement of Work****CAUTION NOTICE**

This solicitation is being issued as an Indefinite Quantity Contract (IQC). Request for Proposal (RFP). NAICS is 311991 and size standard is 500. The length of the contract is 18 months.

Please acknowledge all parts of DLAD clause 52.213-9012 INDEFINITE QUANTITY CONTRACT (IQC) Agreement with vendor remarks section of electronic quote or by printing out the clause, filling it in and emailing it to the buyer. Failure to acknowledge Clause 52.213-9012 in its entirety will remove a quote from consideration for award.

Delivery orders will be placed against it at the current 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).

In accordance with DLAD Clause 52.215-9023, Reverse Auction may be used for Distribution Prices only and the low offeror at the end of the Reverse Auction may not be the ultimate awardee. Award determination will be based on the lowest evaluated aggregate price for each group.

**CAUTION - 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

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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.

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### Rapid Gate, Defense Biometric Identification System (DBIDS) Requirement and/or Other Security Programs

Many bases may require enrollment in either RapidGate or the Defense Biometric Identification System (DBIDS). Both RapidGate and DBIDS manages access to Department of Defense (DoD) installations and will not allow entry without clearance. During the contract start-up/ implementation period, the Contractor must contact all customer locations to determine whether enrollment in RapidGate, DBIDS, or another security program is required for access to each location. If RapidGate, DBIDS, 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 clearance may result in a vendor being turned away from the base and being unable to complete delivery. The Contractor is responsible for any costs associated with RapidGate, DBIDS, and/or other security program enrollment and must ensure that a RapidGate or DBIDS 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 or DBIDS 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 or DBIDS is encountered during the start-up/implementation period, the Contractor MUST contact RapidGate, DBIDS, and/or the Security Officer at the applicable customer locations to resolve any issues with processing RapidGate, or DBIDS enrollment so that the Contractor will be able to deliver as required.

Please note that RapidGate and/or the Defense Biometric Identification System (DBIDS) is currently a requirement for access to some military bases; however, these and other locations may require enrollment in other security programs now or 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.

For additional information regarding RapidGate and DBIDS, including enrollment instructions, please visit their websites at [www.rapidgate.com](http://www.rapidgate.com) and <http://dbids.dmdc.mil/DBIDS>

### 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 all amendments.
- ☐ Return one (1) **COMPLETE & SIGNED** copy of the solicitation.
- ☐ Fill out all certifications and representations in solicitation or submit a copy of your firm's Online Representations and Certifications Applications ("ORCA") Registration.
- ☐ Submit prices for **every item** listed in the Schedule of Items
- ☐ Fill out Vendor Name & CAGE Code for Excel Spreadsheet cell "D2" for Group 1.
- ☐ Submit Distribution Price Excel Spreadsheet cell "H7" for Group 1.
- ☐ Check box stating you intend or do not intend to use one or more facilities as a place of performance under Federal Acquisition Regulation ("FAR") 52.215-6 Place of Performance.
- ☐ Submit proof of Perishable Agricultural Commodities Act (PACA) License.

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**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 Non-Department of Defense (USDA School) customers in the Central part of the State of Pennsylvania. 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 in the Central part of the State of Pennsylvania. Group 1 will consist of non-DoD customers (USDA School). The Government intends to make one (1) award based on the technically acceptable offer with the lowest aggregate evaluated price. Offerors are required to offer on all items in the Schedule of Items; failure to do so may result in exclusion from award consideration.
- C. This procurement is being solicited under the Federal Acquisition Regulations ("FAR") 13.5 – Simplified Procedures for Certain Commercial Items. Therefore, the Government will utilize simplified procedures for soliciting competition, evaluating offers, and awarding the contract(s). This procurement is being solicited on an unrestricted basis with Hubzone evaluation preference.
- D. Any award made against this solicitation will result in an Indefinite Quantity Contract (IQC) Fixed Price contract with Economic Price Adjustment-Actual Material Costs for Subsistence Delivered Price Business Model. An Indefinite Quantity Contract (IQC) will provide for an indefinite delivery, 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.

**II. EFFECTIVE PERIOD OF CONTRACT**

This is an Indefinite Quantity Contract (IQC). The total length of the contract will be 18 months. The contract period is expected to be from Sunday, October 01, 2017 through Saturday, March 30, 2019.

Start-up-Period: The Contractor's startup period may take place prior to the first order and may be included in the 18 month period of the contract. The Contractor shall submit a proposed implementation schedule to the Contracting Officer within fifteen (15) days after the award of the contract explaining 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 fifteen (15) days may be granted for actual implementation. No more than thirty (30) days after award will be permitted for each contractor to have fully functional distribution accounts in place for all customers.

**III. GUARANTEED MINIMUM / MAXIMUM**

Each resulting contract per Group will include a guaranteed minimum order obligation of 10% of that contract's awarded estimated dollar value.

Each resulting contract per Group will include a maximum ordering of 250% of that contract's awarded estimated dollar value.

**IV. 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

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<p>the contractor's inventory, dependent upon availability, after the Contracting Officer's determination of fair and reasonable pricing. The contractor shall utilize the form provided by the Contracting Officer when requesting all item approvals (additions and/or changes).</p> <p>(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.</p> <p>2. Catalog Pricing</p> <p>(a) <u>Schedule of Items Pricing</u>: Items priced in the Schedule of Items will be included in the ordering catalog following the award of the contract. The items in the Schedule of Items will be determined fair and reasonable prior to the award of the contract. The final proposed price for each item in the Schedule of Items will be the catalog during the first week of customer ordering.</p> <p>(b) <u>Catalog Price Changes</u>: Once an item is listed on the ordering catalog, the contracting officer will make price reasonableness determinations. In accordance with the Economic Price Adjustment –Actual Material Costs for Subsistence Delivered Price Business Model, contractors are permitted to submit EPA for items on the catalog biweekly (every two weeks). 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.</p> <p>(c) <u>Catalog Additions</u>: Before an item is added to the catalog, the vendors are required to submit to the contracting officer a request of the proposed catalog additions. The request shall include the stock number, Government item description, proposed unit price, a corresponding supplier invoice or quote, and proposed distribution price. <b>The request is due by 9:00 AM EST on the Monday prior to inclusion of the Wednesday catalog updates.</b> 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 the item will not be added to the catalog.</p> <p>(d) <u>Pricing Requirements</u>: 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 IAW the Economic Price Adjustment – Actual Material Costs for Subsistence Delivered Price Business Model.</p> <p>On the first week's catalog the vendor shall submit final evaluated prices as awarded using 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. There is no upward adjustment on the final evaluated price for the first week's catalog.</p> <p>3. Rebates/Discounts and Price-Related Provisions</p> <p>(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 or other similar economic incentives or benefits received by the Contractor at any time during the period of performance shall be passed to the Government via a reduced catalog price. Instructions for identifying discounts, rebates, allowances or other similar economic incentives or benefits that shall be provided to the Government or retained by the contractor are set forth in the submission requirements in the Business Proposal/Pricing and in the Reports section of the Statement of Work.</p> <p>(b) The contractor may retain Early Payment discounts that meet the following conditions:</p> <p>(i) The Early Payment discount is an incentive to encourage payment earlier than the normal payment due date;</p> <p>(ii) The Early Payment discount is consistent with commercial practice;</p> <p style="text-align: right;"><b>CONTINUED ON NEXT PAGE</b></p>		

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<p>(iii) The Early Payment discount is routinely given by the manufacturer/growers to customers other than the Prime Vendor/Contractor at the same discount rate and under the same conditions as provided to the Prime Vendor/Contractor;</p> <p>(iv) The Early Payment discount is no more than 2 percent of the manufacturer/grower's invoice and the early payment is required within 10 days to obtain the discount; and</p> <p>(v) The contractor actually made the required payment within the period of time required to receive the discount.</p> <p>(c) The contractor shall provide to the Government any invoice, quote, or agreement relevant to the delivered price component for existing catalog items, for any new item added to the catalog and for any price change request to existing catalog items. The contractor must include detailed payment terms on each invoice or quote used to substantiate the delivered price including any applicable discounts or rebates. If there is no payment terms associated with the document, the contractor must annotate it with "No payment terms."</p> <p>(d) The government may require the contractor to submit invoices and other documentation from any subcontractor or any supplier or person in the delivered price supply chain to substantiate all discounts, rebates, allowances or other similar economic incentives or benefits. If after reviewing an invoice or other documentation, the Contracting Officer determines that a discount, rebate, allowance or other similar economic incentive should have been passed on to the Government, or if price verifications reveal any instance of overpricing or underpricing; the Government shall be entitled to a prospective delivered price reduction and a retroactive refund for the amount of the overcharges or discounts, rebates, allowances or other similar economic incentives or benefits, including interest and the contractor shall be entitled to a credit for any undercharges. The Contracting Officer or authorized representative shall have the right to examine and audit all the Contractor's records relevant to the existence of discounts, rebates, allowances or other similar economic incentives or benefits, and commercial customer delivered prices. Failure to exercise this right shall not constitute a defense or alter the Government's entitlement to any other remedies by contract or by law.</p>		
<p><b>V. DOMESTIC NON-AVAILABILITY DETERMINATION – FRESH FRUITS AND VEGETABLES</b></p> <p>A. A Class Domestic Non-Availability Determination (DNAD) for Federal Supply Class 8915 for Fresh Fruits and Vegetables dated May 16, 2008 was approved and is in effect for all 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. In accordance to DNAD, non-domestic FF&amp;V may be supplied under this contract when domestic FF&amp;V of satisfactory quality and sufficient quantity cannot be procured as and when needed at U.S. market prices. This determination will remain in effect until DNAD is rescinded.</p> <p>B. The DNAD as applied affects the contracts supporting the Department of Defense (i.e. Troops) customers only.</p>		
<p>The USDA requires that fresh the 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).</p>		
<p><b>VI. LOCAL PURCHASE (SCHOOLS/TRIBAL RESERVATIONS)</b></p> <p>DLA Troop Support and the USDA support the use of local purchase to the maximum extent practicable. Therefore, Contractors are encouraged to source local produce taking into consideration price, availability, quality, and other factors.</p> <p>For purposes of this Solicitation, "local purchase" is defined as product purchased from growers or manufacturers within the state the customer is located, within the contract zone, or from a state bordering the state in which the customer is located.</p> <p>For contracts using FFAVORS catalogs, Contractors are required to include state of origin information for all products in the FFAVORS catalog. FFAVORS includes a data field for this purpose.</p> <p>Within 45 days after contract award, the successful Contractor(s) for schools and/or tribal reservations will submit to the Contracting Officer a Local Purchase Procurement plan which will include the following elements:</p> <p style="text-align: right;"><b>CONTINUED ON NEXT PAGE</b></p>		

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<p>A list of specific items that the contractor currently purchases locally;  A list of local growers from which the contractor sources product;  Plans to expand the purchase of local items; and  A list of resources that might assist in efforts to source more local products.</p> <p>Contractors may be required to attend information sessions related to local sourcing and promotion of local products.</p>		
<p><b>VII. ADDITION OF NEW CUSTOMERS</b></p> <p>A. Adding Customers within the Contract's Geographic Distribution Region/Zone:</p> <ol style="list-style-type: none"> <li>1. After contract award, there may be instances when new customers request support of their fresh produce requirements. Additional DoD and/or Non-DoD federal government customers that request DLA Troop Support produce support may be added to the contract without any new acquisition or competition process, if the customer(s) is/are within the geographic distribution region/zone covered by this contract.</li> <li>2. 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 the sole decision of the DLA Troop Support Contracting Officer.</li> <li>3. Pursuant to the above, the Contracting Officer will instruct the contractor to include the customer(s) at the effective contract prices applicable to that distribution zone/region.</li> </ol> <p>B. Adding Customers outside the Contract's Geographic Distribution Region/Zone:</p> <ol style="list-style-type: none"> <li>1. This provision applies to the following customers: <ol style="list-style-type: none"> <li>(a) A new DoD or Non-DoD federal customer that is deemed by the Contracting Officer to be outside the contract's geographic distribution region/zone.</li> <li>(b) An existing DoD or non-DoD federal customer that is deemed by the Contracting Officer to be outside the contract's geographic distribution region/zone but has been previously supported on a separate contract covering a geographic distribution region/zone.</li> </ol> </li> <li>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: <ol style="list-style-type: none"> <li>(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 multiple existing produce contracts, the decision of which contract is most satisfactory to the Government for purposes of adding the customer(s) will be the sole decision 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). <ol style="list-style-type: none"> <li>(i) The Contracting Officer will request complete price proposals to support the subject new customer(s), to include distribution and delivered prices. 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.</li> </ol> </li> <li>(b) In the judgment of the Contracting Officer, the customer(s) at issue is/are not located in an area adjacent or proximal to the geographic distribution region/zone of the resulting contract, and/or the anticipated customer requirement is insubstantial, the customer(s) will not be added.</li> </ol> </li> </ol> <p>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.</p>		
<p><b>VIII. CUSTOMER SERVICE</b></p> <p>A. Military, USDA School Lunch Program and other Non-DoD and DOD activities have periodic food menu boards and other meetings which the vendor may be required to attend. At these meetings, the customers review their internal business practices and the offeror can utilize this forum to show new products, demonstrate produce preparation, and provide nutritional information.</p> <p>B. Vendors shall provide at least one 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, email address or any other method of communication shall be furnished to the customer after award. Since many of our customers only have access to the Government phone network, it is preferred that a toll free number be provided.</p> <p>C. The vendor shall assume the responsibility of introducing new food items to the customers and show cost effective alternatives to their choices.</p>		
<p><b>IX. ORDERING SYSTEMS</b></p> <p>A. <u>Fresh Fruits and Vegetable Order Receipt System (FFAVORS WEB)</u>: Non-DoD customers (USDA School customers) will utilize the Fresh Fruit and Vegetable Order Receipt System (FFAVORS) Web catalog. The</p> <p style="text-align: right;"><b>CONTINUED ON NEXT PAGE</b></p>		

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awardee will be provided a user ID and password to log in and receive orders through FFAVORS. The vendor is responsible for establishing and maintaining the FFAVORS WEB catalog.

1. FFAVORS WEB is the Government ordering system for USDA Customers. It is capable of accepting orders from the schools and tribal reservations.
2. Customers will be able to order through FFAVORS WEB. The system will transmit the 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).

#### **X. ORDER PLACEMENT**

School Customers shall place their orders to accommodate a 3-day order/ship time.

It is a minimum order requirement of \$100.00.

- C All the invoice pricing will be based upon the unit price at the time the order is placed. For example, for any item ordered on a Friday to be delivered the following week; the 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.

#### **XI. ITEM AVAILABILITY**

- A. Vendors must have access to items in sufficient quantities to fill all ordering activity requirements. The orders should be delivered completely. Partial deliveries are acceptable if the customer is notified in advance and agrees to the partial delivery s. However, the unfilled quantity is to be reported as not-in-stock (NIS). Vendors 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. The customer can request a substitute item with 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 receipt of the order 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. The substituted product shall not be delivered without prior consent by the customer. The substituted items must be noted on the invoice.

#### **XII. PACKAGING, PACKING, LABELING AND MARKINGS**

- A. All labeling, packaging and packing shall be in accordance with good commercial practice. The shipping containers shall comply with the National Motor Freight Classification and Uniform Freight Classification Code.
- B. Standard commercial precautionary markings as "KEEP REFRIGERATED" shall be used on cases when appropriate.
- C. Protection during inclement weather is required. The products that are susceptible and sensitive to temperature must be protected by any means to prevent damage.

#### **XIII. DELIVERY INSTRUCTIONS**

- A. Vendors shall ensure the products are delivered in sanitary trucks that follows commercially acceptable standard. The delivery trucks must be equipped with a lift gate to expedite the offloading of the products. Trucks shall maintain proper temperatures, as determined through standard commercial practices. The items will be delivered to the customer locations free of damage with all packaging intact. The contractor shall remove the excess pallets used for delivery from the delivery point.
- B. School delivery schedule routes and stop-off sequence will be coordinated and verified with the customers after the award of the contract by the awardee.
- C. The products for individual school customers must be segregated. The products shall be segregated by drop-off point and loaded into the delivery vehicle in reverse drop sequence. This requirement is to provide expeditious off-loading and delivery to the customer.

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<p>D. The vendor shall ensure that the personnel loading and delivering the product provide prompt and efficient service to the customer.</p> <p><b>XIV. INSPECTION AND ACCEPTANCE</b></p> <p>A. Inspection and Acceptance of products will be performed at destination. The inspection is normally limited to identity the quantity and the conditions of the product delivered. However, this may be expanded if deemed necessary by either the Dining Facility Manager, the Food Service Advisor/Officer, or the Contracting Officer. The 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. The supplies transported in vehicles that are not sanitary or which are not equipped to maintain prescribed temperatures may be rejected without further inspection.</p> <p>B. The Government receiving official at each delivery point is responsible for inspecting and accepting the products upon delivery. 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 Government receiving official will sign the delivery ticket after acceptance of the product.</p> <p>C. The contractor shall forward three (3) copies of the delivery ticket. The receiving official will use the delivery ticket as the receipt document. Two (2) copies of the signed and annotated delivery ticket will serve as the acceptance document. No electronic invoice may be submitted for payment until acceptance is verified. Additionally, upon completing the delivery and before the carrier leaves the installation, copies of the invoices may be required to be delivered to a central "Accounting/Troop Issue" activity on the installation.</p> <p><b>XV. AUTHORIZED RETURNS</b></p> <p>A. The vendor shall accept returns under the following conditions:</p> <ol style="list-style-type: none"> <li>1. Product shipped in error.</li> <li>2. Product damaged in delivery .</li> <li>3. Product with concealed or latent damage.</li> <li>4. Product that are recalled.</li> <li>5. Product that do not meet shelf life requirements.</li> <li>6. Product that do not meet the minimum quality requirements as defined for the items listed in the schedule.</li> <li>7. Product delivered in unsanitary delivery vehicles.</li> <li>8. Product delivered that fail to meet the minimum/maximum specified temperature.</li> <li>9. Excess of product as a result of order input error and/or purchase ratio factor error.</li> <li>10. Product that are not from a sanitarily approved source.</li> <li>11. Product that do not comply with DFARS 252.225-7012 Preference for Certain Domestic Commodities (Berry Amendment) and no waiver to this clause has been granted.</li> <li>12. Any other condition not specified above that the customer deems to be valid reasons for return.</li> </ol> <p><b>XVI. REJECTION/RETURN PROCEDURES</b></p> <p>A. In the event that an item is returned, the delivery invoice shall be annotated as to the item(s) rejected. These item(s) shall then be deducted from the delivery invoice. The total of the invoice must be adjusted to reflect the correct dollar value of the delivery. Replacements will be authorized based on the customer's needs. The customer may required re-delivery of items the same day if needed. 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.</p>		
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<p>B. In the event that a product is rejected, 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 using the receipt adjustment process in FFAVORS. If the vendor has already been paid for the product, a claim will be issued through DLA Troop Support's financial system. One copy of the credit memo is to be given to the customer and one copy of the credit memo is to be sent to the Contracting Officer.</p> <p>C. If a customer requires a one-to-one replacement, then no additional paper work is necessary. The vendor delivery invoice will show that the 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.</p> <p><b>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.</b></p> <p><b>XVII. INVOICING</b></p> <p>Each delivery will be accompanied by the contractor's delivery invoice. Three copies (an original plus two) shall accompany the delivery . The customer shall sign all copies of the invoice/delivery ticket, keep one copy and return the <b>Original</b> copy to the vendor. <b><u>Any changes must be made on the face of the delivery invoice; attachments are not acceptable.</u></b></p> <p><b><u>No paper invoices should be submitted to DFAS for payment.</u></b> The invoices for payment shall be done using FFAVORS.</p> <p>B. All invoices submitted by the vendor must be "clean", i.e. all debits and/or credits must be reflected on the invoice prior to its submission. All vendors are required to ensure the accuracy of their invoices; the reconciliation tool provides you that medium.</p> <p>C. <b><u>All internal debit/credit transactions must be completed prior to the submission of the invoice.</u></b> Invoice lines that do not contain the correct invoice data and/or contain incorrect quantities delivered or prices charged will be rejected. The vendor will be responsible for correction and re-submission.</p> <p>D. The same invoice cannot be submitted with different dollar amounts.</p> <p>E. Any manually keyed, or emergency order, must contain the word "Emergency" in the Purchase Order field when the invoice is submitted for payment. In addition, the CALL number and CLIN numbers will be entered as "9999" on the invoice. Failure to follow this procedure may result in the rejection of your invoice.</p> <p>F. <b><u>For catch weight items, standard rounding methods must be observed i.e. &lt;5, rounded down; &gt; or =5, rounded up. All weights must be rounded to whole pounds using standard rounding methods.</u></b> Any line submitted for other than whole numbers will be rejected and require correction and re-submission by the vendor. 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.</p> <p>G. Unit prices and extended prices must be formatted not more than two (2) places to the right of the decimal point. STORES and FFAVORS will not accommodate positions of three (3) and above beyond the decimal point.</p> <p>H. Although invoices must be submitted electronically via FFAVORS, 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</p> <p>Each invoice shall contain sufficient data for billing purposes. This includes, but is not limited to:</p> <p>Contract Number  Call or Delivery Order Number  Purchase Order Number;  DODAAC  Contract line listed in numeric sequence (also referred to as CLIN order);  Item nomenclature;  LSN or NSN;</p> <p style="text-align: right;"><b>CONTINUED ON NEXT PAGE</b></p>		

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<p>Quantity purchased per item in DLA Troop Support's unit of issue; Total dollar value on each invoice (reflecting changes to the delivery , if applicable).</p> <p>I. 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 vendor will be responsible for correction and re-submission.</p> <p><b>XVIII. PRICE AUDITS</b></p> <p>A. Price Verification Audits. Contractors are advised that the Government may conduct price verification analysis in the following manner:</p> <ol style="list-style-type: none"> <li>1. Monthly, an internal Price Verification Team in conjunction with the Contracting Officer may require the contractor to provide copies of specific invoices from suppliers and any other level of contractor, up to and including the initial shipper/grower/manufacturer covering up to 100 items that were previously ordered.</li> <li>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.</li> <li>3. A report of overcharges and undercharges (if applicable) will be forwarded to the contractor, and the contractor will 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.</li> <li>4. The Government may elect to expand the scope of the price verification analysis if overcharges are discovered. The Government may also elect to reduce the scope of the price verification analysis if no overcharges are discovered.</li> </ol> <p>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.</p> <p>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.</p> <p><b>XIX. FILL RATE</b></p> <p>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 <u>shall not include substitutions, mis-picks, damaged cases or rejected product</u> <b>(No other method of calculating fill rate will be accepted):</b></p> $\frac{\text{Cases accepted}}{\text{Cases ordered}} \times 100 = \text{fill rate \%}$ <p>B. <u>Definitions:</u></p> <ol style="list-style-type: none"> <li>1. <u>Cases Accepted:</u> Product that the customer has received and receipted not including damaged cases or rejected produce, mis-picks, and product substitutions.</li> <li>2. <u>Cases Ordered:</u> Product requested by a customer</li> </ol> <p>C. Vendors are required to maintain at a minimum a <b>98.0%</b> fill-rate without substitutions.</p> <p>D. The contractor will submit a monthly report, by customer, to the Contracting Officer with the following information:</p> <ol style="list-style-type: none"> <li>1. Fill Rate with and without Substitution</li> <li>2. List of all items that were Not in Stock, Returned, Damaged, Mis-picks and Substitutions.</li> </ol> <p><b>XX. HOLIDAYS</b></p> <p>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.</p> <p style="text-align: right;"><b>CONTINUED ON NEXT PAGE</b></p>		

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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.

**XXI. EMERGENCY ORDERS**

- A. Unless specified by the customer, all emergency order(s) for supplies must be same day service. Expeditious 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. The contractor will provide up to one emergency order per month per customer at no additional cost to the Government.

**XXII. 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 offeror must ensure that products and/or packaging have not been tampered with or contaminated throughout the growing, storage, and delivery process. The offeror 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 awardees should be aware of the vital role they play in supporting our customers. It is incumbent upon the awardees 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 Offeror will insure that all products and/or packaging have not been tampered or contaminated throughout the manufacturing, storage and delivery process. The Offeror 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 awardee 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 awardee 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



**XXIII. 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 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/etcs: 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 a 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. 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.

**XXIV. QUALITY PROGRAM**

A. A Grower/Supplier 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.
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/manufacture, FDA, or DOD initiated food recalls are promptly reported to customers and Contracting Officer.

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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.

**XXV. 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.

**XXVI. 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 Clause 52.246.9044 "Sanitary Conditions" in this solicitation. It may also be found at <http://phc.amedd.army.mil/>, under "Veterinary Applications, DoD Approved Food Services" link.

**XXVII. QUALITY SYSTEMS MANAGEMENT VISITS & PRODUCE QUALITY AUDITS**

A. Unannounced Quality Systems Managements Visits (QSMVs):

1. The DLA Troop Support Quality Audit personnel may conduct unannounced Quality Systems Management Visits (QSMVs) to review the contractor's compliance with the terms of the contract. The visits will be scheduled as a result of unsatisfactory ratings received during Troop Support Produce Quality Audits, customers' complaints, requests from the Contracting Officer, or as deemed necessary by the Government. QSMVs may include visits to subcontractors, growers, and/or suppliers/food distributors used by the contractor. If DLA Troop Support deems it necessary to conduct an on-site visit with a subcontractor, grower, produce supplier, and/or food distributor used by the contractor, the contractor shall make arrangements for these visits.
2. During the QSMV the Government will review/verify the contractor's implemented Quality Program and several or all of the following areas (this list is not inclusive) as deemed necessary: The methods and procedures used to comply with the terms of the contract; condition of storage facilities; product shelf-life management; inventory in-stock (age of product and condition, labeling, product rotation, etc.); product substitutions; control of material targeted for destruction/disposal as a result of DLA customers' returns including DLA Troop Support's audit results and recalls; review of paperwork for product destroyed/condemned including but not limited to product rated Blue/Red during the last DLA Troop Support audit, customer, returns, etc.; customer's notification on product recalls (product rated Blue/Red/other reason), etc; contractor's response to customer returns/issues, and contractor's visits to customers. The QSMV may also include unannounced visits to DLA Troop Support customers served by the contractor. When the Troop Support Produce Quality Audit Team arrives at the contractor's facility, the contractor must provide the following: A copy of the current Produce Catalog for DLA customers and an inventory list of all items intended for DLA customers (identifying quantities by item, label/brand/Grower name, items Not-in-Stock, etc.) by commodity and sorted by warehouse location.

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<p>3. The contractor's proposal will be incorporated by reference into the contract. The contractor will be responsible for complying with its proposal. Procedures and processes set forth in the contractor's proposal may be used as standards for a QSMV. If there is any conflict between the solicitation language and the contractor's proposal, the solicitation/contract/ language governs.</p> <p>4. The Contractor must take corrective action to address any concerns identified as a result of the QSMV. Concerns identified during the QSMV, or contractor failure to take corrective action in response to QSMV findings, will be grounds for terminating the contract. The government may, at its discretion, take other action to correct the concerns identified during the QSMV such as but not limited to another QSMV or Special Produce Audit. Such action will not eliminate the government's right to terminate the contract should the identified concerns or contractor failure to take corrective action continue.</p> <p><b>B. <u>Produce Quality Audits:</u></b></p> <p>1. <b>Basic Audits:</b></p> <p>(a) The DLA Troop Support Produce Quality Audit Program covers all produce items listed in the contractor's catalog (fresh, fruits and vegetables, fresh-cut products, etc.) and functions as a Service and Quality Assurance check for DLA Troop Support customers to ensure customers are receiving safe produce of an optimum quality level. The audit objectives focus on the following:</p> <ul style="list-style-type: none"> <li>(i) Contractor's adherence to contractual requirements.</li> <li>(ii) Compliance with the specified US Grade or higher.</li> <li>(iii) The quality level of the products supplied is satisfactory and uniform.</li> <li>(iv) There is no product misrepresentation or unapproved substitution.</li> </ul> <p>(b) The Produce Quality Audit objectives are accomplished utilizing the expertise of the US. USDA Agricultural Marketing Service (AMS) Fresh Products Branch personnel and DLA Troop Support Quality Auditors. Representatives from the above agencies form the DLA Troop Support Produce Quality Audit Team.</p> <p>(c) Each contractor will undergo an initial audit once per contract period with the first audit occurring during the base period and other initial audits or QSMVs occurring once per Tier period. The Audits are conducted as a product cutting. The average cost of one Produce Quality Audit is approximately \$1,000.00 (product cost only). The contractor is expected to provide samples of the Government's choice of a cost of approximately \$1,000.00 per audit. The contractor is required to provide the following support to the DLA Troop Support Produce Quality Audit Team: Personnel and equipment to select separate/move/discard audit samples, control of samples while at the contractor facility and during the audit. Additional cost may be incurred by the contractor if additional produce samples are selected due to initial audit failure or customer complaint or if the contractor's facility does not have a facility/kitchen or the equipment needed to perform the audit and/or space to accommodate customers attending the audit. NOTE: The Government reserves the right to conduct an Unannounced QSMV in lieu of an initial audit or a follow-up audit during the base period and/or any Tier period if deemed in the best interest of the Government.</p> <p>2. <b><u>Audit Process:</u></b></p> <p>(a) The Contractor will be given advanced notice of sixty (60) calendar days of an impending audit. Notwithstanding this, the Government reserves the right to conduct unannounced Produce Quality Audits or QSMVs.</p> <p>(b) The DLA Troop Support Produce Quality Audit is typically a two (2) day process. Day One is devoted to sample selection at the contractor's warehouse and performance of the USDA's Good Agricultural Practices (GAP) &amp; Good Handling Practices (GHP) Audits. Day Two encompasses the performance of the actual Produce Quality audit.</p> <p>(c) Upon arrival at the contractor's facility (Day One), the Lead Auditor will provide a list of items identified for evaluation and the samples will be selected by a USDA-AMS' Auditor. The Lead Auditor will accompany the USDA-AMS during the performance of the GAP/GHP Audits.</p> <p>(d) Items selected for evaluation will be segregated from the contractor's regular inventory and appropriate procedures shall be used to maintain the integrity of the samples. Evidence that the contractor has replaced or tampered with samples, or otherwise interfered with the audit samples and/or audit process will result in the contractor failing the audit. One or more audit failures may be grounds for terminating the contract.</p>		
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<p>(e) During the Produce Quality Audit (Day Two), the DLA Troop Support Lead Auditor will assign an item rating based on compliance with or departure from stated requirements in the DLA Troop Support NSN catalog and the specified US Grade Standard. Items will also be audited to determine compliance with the Berry Amendment, as applicable, approved source requirements, FDA Retail Food Code, USDA Warehousing Standards, Good Manufacturing Practice, additional provisions of the Code of Federal Regulations and other applicable standards.</p> <p>(f) Failure to meet the specified US Grade, deviations from the required contract or stock number requirements will be color coded and classified based on the severity of departure from requirements as follows:</p> <p>(i) <u>Contractor Product Audit Ratings (Color Code Ratings Symbolology):</u></p> <p>a. <b>ACCEPTABLE (GREEN)</b> = Acceptable. No deviations from the contract or the item description stock number requirements.</p> <p>b. <b>MINOR NONCONFORMANCE (YELLOW)</b> = Not fully acceptable. A Minor nonconformance is a deviation from the contract or the item description stock number requirements. This minor nonconformance is not likely to materially reduce the usability or serviceability of the item for its intended purpose and, depending on the defect, or affect its condition and/or the continued storage of the item for further use. Products that meet the specified US Grade but exhibit product defects (decay, spoilage, skin breakdown, etc.) likely to continue affecting the condition of the product and continue deteriorating during storage and/or effecting good product if defective units are not removed from cases/containers. Examples of other minor nonconformances: Cataloging issues; Minor or workmanship/fabrication violations (fresh pre-cut products); Minor weight violations; Minor deviations from packing, packaging, labeling and marking requirements that would not necessitate a regulatory market suspension or affect DLA Troop Support's ability to recall the item. <b>ACTION REQUIRED:</b> Produce with defects (decay, spoilage, skin breakdown etc.) that will continue deteriorating or condition/defects that will affect the condition of good product during storage requires attention from the contractor such as reworking and removing defective product while in-storage or prior to delivering to customers. Minor nonconformances that will not change or further deteriorate (scars, size, weight, etc.) while product is in-storage or when delivered to the customer may be tolerated by the customer for a short period of time (until the contractor receives a new product at OCONUS but for no more than 30 days at CONUS locations).</p> <p>c. <b>MAJOR NONCONFORMANCE (BLUE)</b> = A major nonconformance, other than critical, is a deviation from the contract, the item description stock number and/or failure to meet the specified US Grade requirements. This major nonconformance is a deviation that materially affects or is likely to have a major effect on the serviceability, usability, condition and/or continued storage of an item for further use. Examples of major nonconformance's: Grade failures; Domestic source/regulatory/approved source violations; Wrong item; Major workmanship/fabrication violations (pre-cut items); Major weight violations; Item shelf life/ expiration date violations; Not latest season pack/crop year violations; Items that exhibit temperature abuse, and/or other off condition that although not likely to result in hazardous or unsafe conditions, the defect and/or combination of defects materially affect the item serviceability for its intended purpose; and/or major deviations from packing, packaging, labeling and markings that would necessitate a regulatory market suspension or have a major effect on DLA Troop Support's ability to recall the product. <b>ACTION REQUIRED:</b> The contractor is required to STOP ISSUE of the item immediately, unless otherwise approved by the Contracting Officer.</p> <p>d. <b>CRITICAL NONCONFORMANCE (RED)</b> = A critical nonconformance is a deviation that judgment and experience indicate consumption of the item is likely to result in hazardous or unsafe conditions for individuals. An item will receive a Red Rating if it contains a critical defect(s) that involve food safety issues such as wholesomeness, foreign material, contamination or adulteration issues that judgment and experience indicate consumption of the item is likely to result in hazardous or unsafe conditions for individuals. Examples of critical nonconformance's: Items with food safety concerns are those items that exhibit contamination, foreign material, and/or other conditions that render an item unfit for human consumption. <b>ACTION REQUIRED:</b> Contractors are required to immediately STOP ISSUE of the product and notify DLA Troop Support customers to return or dispose of the product in question, and notify grower/supplier/distributor of the product (if applicable).</p> <p>(ii) <u>Notes:</u></p>		
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<p>a. <b>MAJOR NONCONFORMANCE (BLUE)</b> = In OCONUS locations only, the Contracting Officer may approve continued issue of the product because of location extenuating circumstances and on a case-by-case basis. This approval is depending on the type and severity of the deviation/defect, the DLA Troop Support Quality Lead Auditor (lead Auditor that performed the audit) recommendation, customer approval, and if the substitute of equal/higher quality is Not-in-Stock at OCONUS location. Continue issue of the item may require and include contractor screening/rework of the nonconforming product (removal of defective product) and follow-up Government inspection/audit to verify action taken by the contractor (at no cost to the Government for inspection/travel costs). At CONUS/OCONUS locations, only the Contracting Officer, <b>NOT</b> the customer or the Lead Auditor, has the authority to accept wrong items (not meeting item description cited in DLA Troop Support catalog or not meeting the specified US Grade cited in the contract, etc.). The Rating assigned to the item WILL NOT be changed by the Lead Auditor because of acceptance with a waiver/rework/repair of the product in question. The DLA Troop Support Food Safety Office at the request of the Contracting Officer, may issue a restricted (to DLA Troop Support customers only) a Hazardous Food Recall for all those items originating from an unapproved source and distributed to DLA Troop Support customers.</p> <p>b. <b>CRITICAL NONCONFORMANCE (RED)</b> = The DLA Troop Support Food Safety Office will issue a Hazardous Food Recall for all critical nonconformance's involving items with food safety concerns that render an item unfit for human consumption or may present a health hazard for DLA Troop Support customers. If applicable, the Contracting Officer should suggest growers/suppliers of the item to review shipping documents to ensure the same item was not delivered to other DOD customers.</p> <p>3. <u>Contractor Audit Preparation:</u></p> <p>(a) The contractor is responsible and will bear all costs for the facility and the equipment/supplies used during the audit. Immediately upon receipt of the audit notification, the contractor shall make arrangements to use their normal product cutting room/kitchen (if adequate) or find another facility for the audit. If there is no space available at the contractor facility or the space is inadequate other arrangements must be made by the contractor. The room must be equipped with running water. To ensure accurate weight of audited items, it is highly recommended that scales used during the audit are calibrated within the 60-day notification period and an applicable set of test weights are available to verify scale accuracy. A digital scale capable of weighing small items and a scale capable of weighing full cases are required. Cleanup of the cutting area/room and continuous cleanup of equipment will be the contractor's responsibility. The contractor must contact the Lead Auditor to discuss the location, adequacy of the facility, and equipment available as soon as possible <u>but no later than 45 Calendar days prior to the audit</u>. The following is the list of equipment/supplies needed:</p> <ul style="list-style-type: none"> <li>(i) Storage area to store samples selected. (Approximately 2 pallets).</li> <li style="padding-left: 40px;">(ii) Chill storage area for samples that require refrigeration (Approximately 2 pallets).</li> <li>(iii) Tables for conducting the audit and demonstration.</li> <li style="padding-left: 40px;">(iv) Sinks/wash area equipped with sanitizing soap for cleaning knives and equipment.</li> <li>(v) Water jet spray attachment for the sink.</li> <li style="padding-left: 40px;">(vi) Calibrated Scales/Test Weights: One small digital scale able to record product weights in both ounces and grams and capable of measuring down to the nearest hundredth is preferable and a set of test weights with a recommended weight range of 1.0 ounce to 1 pound; and, one scale able to record product weights for full cases with an approximate weight range of 0 -100 lb and capable of measuring down to the nearest tenth is preferable and a 25 lbs test weight.</li> <li style="padding-left: 40px;">(vii) Cart to move samples around.</li> <li style="padding-left: 40px;">(viii) Cutting boards (two or three).</li> <li style="padding-left: 40px;">(ix) Large trash cans with bags.</li> </ul> <p style="text-align: right;"><b>CONTINUED ON NEXT PAGE</b></p>		

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(x) Power hook-up for 2 computers.

(xi) Access to a copy machine.

(xii) Miscellaneous supplies: Paper towels; large heavy-duty plastic trash bags; one box of large latex gloves; paper flip chart/easel with markers (RED, BLUE, ORANGE, GREEN, BLACK); cellophane tape; binder clips; and a stapler.

(xiii) Optional but considered highly desirable: Cloth towels and floor covering to maintain clean and sanitary floor areas.

4. Sample List / Selection of Samples:

(a) Sample List/Selection of Samples the DLA Troop Support Lead Auditor will provide a list of sample items upon arrival at the contractor's facility. Two-case sample for each item will be selected. An on-hand inventory quantity report (i.e. number of cases on hand) should be developed for each item after receipt of the list. Warehousing assistance will be required to pull and prepare samples for the audit. Assistance with moving samples from the storage areas to the audit area and also continuous removal of items after review will be required on audit days. Some samples may require refrigeration; an area will need to be provided for sample storage. All samples must be stored in a controlled environment to protect from temperature abuse or tampering. Fruit and Vegetable commodities will consist of 8 - 13 samples (2-case/ shipping container per item) randomly selected per each commodity depending on last audit acceptability rating for each commodity. The entire contents of the two-case samples will be examined during the audit. Additional samples may be selected at the request of the Contracting Officer due to customer complaints.

**Note:** Certification/Documentation - To avoid delays/questions during the audit, the contractor should ensure that ALL products intended for DLA Troop Support's customers are derived from Approved Sources and meet the Berry Amendment requirements (unless otherwise is excluded in the contract/FAR/DFAR or authorized by the Contracting Officer). The contractor should obtain and have certification/documentation available during the sample selection (preferable) and/or during the audit should the Lead Auditor need to review documentation to verify compliance.

5. Audit Results:

(a) The audit results are performance indicators that will be used in conjunction with a contractor's past performance. DLA Troop Support considers 85% acceptability for each commodity (fresh fruits and vegetables) as the minimum standard for acceptable performance. Contractors will be given a detailed report on each product reviewed. It will be the Contractor's responsibility to take immediate action to correct any deficiency uncovered during the audit. Corrective action must include action to address the deficiency and the system which allowed the deficiency to occur. Audit failures and/or failure to take corrective action will be grounds for terminating the contract.

6. Follow-Up Audits:

(a) Follow up audits may be scheduled within a one-year period of the initial audit or sooner as deemed necessary by the Government. Grounds for follow-up audits include but are not limited to failure to obtain an acceptable rating (<85%) in one or more commodities, repetitive failures, and customer complaints. All samples, audit facility, and equipment/supplies needed for the follow-up, same as indicated above for the initial audit, are to be at the expense of the Contractor. During a follow-up audit only the commodity that failed the initial audit (scored <85%) will be audited. Also, a commodity that had an unreasonable number of items not-in-stock (more than 50% of items listed in the contractor's catalog were NIS) during the initial audit, may also be audited during a follow-up. If the follow-up audit is for failure of the USDA-AMS' GAP or GHP Audits or other non-product issue, no product will be audited during the follow-up audit.

7. Audit Failures:

(a) As noted herein, audit failures and/or failure to take corrective action will be grounds for terminating the contract. The government may, at its discretion, take other action to address the audit failure such as, but not limited to unannounced QSMVs and/or follow-up audits. Such action will not eliminate the

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<p>government's right to terminate the contract should the deficiency or system which allowed the deficiency to occur remain uncorrected.</p> <p>C. <u>Markings:</u></p> <p>1. <u>Code Dates:</u></p> <p>(a) Products, as applicable, shall be identified with readable open code dates clearly showing the Use by Date, Date of Pack (DOP), Expiration Date, Manufacturer Sell-by-Date, and/or similar marking. The contractor/packer's product label shall clearly identify the item(s) shelf life information (using an open code date on the exterior of each case, if required or applicable). Fresh-cut products bags must be marked with the appropriate shelf life from the Date of Production (DOP).</p> <p>2. <u>Traceability Requirements for Contractors, Contractor's Suppliers Re-Packaging and Re-Labeling Products:</u></p> <p>(a) All fresh fruits and vegetables must be able to be traced back to the grower/supplier of the product. If the contractor or the contractor's distributor/supplier removes the produce from the grower/packer's original packaging/shipping container and re-packages/re-labels an item, documentation must be maintained to trace back to the grower/packer to verify domestic origin, approved source as applicable, and/or in case of a hazardous food recall or an item is rated Red/Critical during a DLA Troop Support Produce Quality Audit. The contractor shall maintain or request from their suppliers/distributors documentation/certificates containing the following information: Item nomenclature, name of establishment/Grower, location, country of origin, date of production/pack (DOP), lot number, etc. If packaging of the item occurred in more than one establishment, documentation for each item must also be maintained / provided. These records must maintain traceability of the item to the extent that an item can be traced back to the original grower/packer of a product. In addition; the contractor shall maintain records of quantities and when and where the re-packaged/re-labeled item(s) were shipped. The contractor must be able to show/provide DLA Troop Support Produce Quality Audit Team the documentation for samples selected during Produce Quality Audits or Unannounced QSMVs. It is the contractor's responsibility to notify and ensure their suppliers understand and comply with this requirement. The above requirements are necessary in the event of a Hazardous Food Recall (i.e., ALFOODACT) of potentially hazardous product when a recall is issued by a Regulatory Agency and for the contractor to isolate suspected items in order to notify customers in an expeditious manner whenever products are rated "Red/Critical" during a DLA Troop Support Produce Quality Audit. The above requirements serve two main purposes:</p> <p>(i) To protect DLA Troop Support 's customers and expeditiously notify them in case of accidental or intentional tempering/contamination and/or to prevent consumption of unsafe/hazardous Produce and</p> <p>To maintain traceability of re-packaged/re-labeled products in order to verify country of origin, approved source requirement during the shelf life cycle of a pre-cut/package product in the contractor storage and during the customer's receipt/storage of the product and be able to expedite the recall process for all suspected products intended for DLA Troop Support customers.</p> <p><b>XXIII. RECALL PROCEDURES REQUIREMENTS</b></p> <p>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:</p> <p>1. Immediately notify the following personnel:</p> <p>(a) Customers that have received the recalled product.</p> <p>(b) Contracting Officer.</p> <p>(c) DLA Troop Support Account Manager.</p> <p>(d) DLA Troop Support Customer Safety Officer at (215) 737- 2922.</p> <p>2. Provide the following information to the DLA Troop Support Consumer Safety Officer:</p>		

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<p>(a) Reason for recall.</p> <p>(b) of recall, i.e., Type I, II or III.</p> <p>(c) Description of product.</p> <p>(d) Amount of product.</p> <p>(e) List of customers that have received product.</p> <p>(f) Name and phone number of responsible person (Recall Coordinator).</p> <p>3. The vendor should provide a Final Status Report of Recall, when completed, to the DLA Troop Support Consumer Safety Officer.</p> <p>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.</p>		
<p><b>XXIX. PERISHABLE AGRICULTURAL COMMODITIES ACT (PACA) LICENSE</b></p> <p>A. All offerors must possess a valid PACA license at the time they submit their initial proposals. Proof of a current valid PACA license must be submitted with the offeror's proposal or the offer may be deemed technically unacceptable. 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.</p>		
<p><b>XXX. SEASONAL ACQUISITION</b></p> <p>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.</p>		
<p><b>XXXI. MANAGEMENT REPORTS</b></p> <p>A. The contractor shall electronically transmit the following reports to the 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).</p> <ol style="list-style-type: none"> <li>1. <u>Product Line Grower/Supplier Listing</u>: This report shall list all items purchased along with quantity and dollar value. It shall be sorted by Grower/Supplier and annotate whether the grower/supplier is a large business or small business and whether the grower/supplier is local or non-local.</li> <li>2. <u>Fill Rate Report</u>: The fill-rate is calculated by dividing the number of cases accepted by the customer by the number of cases ordered. <u>No other method of calculating fill rates should be included.</u> 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.</li> <li>3. <u>Rebate Reports</u>: All rebates that have been passed along to the customer or that are due to the customers shall be summarized by listing each customer and the rebate amount. Also include the grower/supplier offering the rebate and the product usage. The total should be per customer and per order.</li> <li>4. <u>Financial Status Reports</u>: In order to track timely payments, an accounts receivable and/or a "days of outstanding sales" shall be submitted on a monthly basis, at a minimum. Many vendors elect to submit this report, in the form of a spreadsheet, on a weekly basis. The report should contain information on: customer, invoice number, call number, and invoice amount, amount paid, credit adjustments and balance due. It is suggested that this report contain as much information as possible to alleviate problems immediately.</li> <li>5. <u>Customer Service Report</u>: 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.</li> </ol>		
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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.

**XXXII. CONTRACT ADMINISTRATION INFORMATION**

- A. Contract Authority: The 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 Contracting Officer.
1. In the event the vendor effects any change at the direction of any person other than the Contracting Officer, the change will be considered to have been made without authority and no adjustment will be made. 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 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. Vendor is responsible to make arrangements with their financial institution to obtain data, if information by the vendor is required. DFAS Columbus will no longer forward a detailed summary of payment(s); this information will only be available from your bank.
  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 DLA Troop Support Supplier Operations - Produce 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 Contracting Officer must approve any changes to the resultant contract.

**XXXIII. 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 18 months for that particular group. Offers 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:

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

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- (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 (EPA).
- (b) "Delivered Price" See Economic Price Adjustment (EPA).
- (c) "Distribution Price" See Economic Price Adjustment (EPA).
- (d) Distribution prices shall be formatted to no more than two (2) places to the right of the decimal point, for example, \$2.50.
- (e) If multiple groups are covered under this solicitation, the offeror may submit a separate distribution price for each group. However, only one distribution price shall be offered for all items in each Tier period

B. Schedule of Items: Pricing

1. The Schedule of Items 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.
2. Estimated quantities for 18 month period are indicated next to each item and are for information and evaluation purposes only. The unit price found in the Schedule of Items will be multiplied by the estimate to calculate the aggregate against the eighteen (18) month requirements of the ordering activities and evaluated for the lowest overall aggregate cost to the Government.
3. Offerors are to submit the most current unit prices. These prices are effective from Sunday, July 24 through Saturday, August 6, 2016. This 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 \$0.50, pricing should be formulated as follows:

$$\text{\$ 2.00} + \text{\$ .50} = \text{\$ 2.50}$$

(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). 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 independent standard distribution pricing for each group in the Schedule of Items. Each distribution price shall be a case price. One Distribution price shall be offered on all items for each Tier period for each group in the Schedule of Items.
2. The distribution prices shall remain constant for the contract period.

D. Delivered Prices

1. For evaluation purposes the schedule of items should reflect the delivered prices effective from Sunday, July 24 through Saturday, August 6, 2016. The offeror is required to submit pricing on all items that will meet the Government's minimum requirement.
2. As part of the evaluation process the Government reserves the right to request that the offeror substantiate their proposed delivered price with an invoice. The Item Number must be marked on each invoice so as to identify the invoice's corresponding item. The preferred documentation is the grower/shipper invoice. If invoices are not available for that time period, a written quote from the grower/shipper will be accepted. If you do not have an

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invoice, the offeror needs to explain why, i.e. not in season, do not carry, etc. The Government has a strong preference for invoices over market quotes. All invoices and quotes must be from sources that the offeror currently uses or plans to use to support the resultant contract. Any quote must be presented in the following manner:

- (a) Detailed on shipper/grower/manufacture letterhead;
- (b) Date price quote was supplied;
- (c) Time period price quote is effective; to include expiration date;
- (d) Quantity covered by price quote;
- (e) Shipper/Grower/Manufacturer part number; and
- (f) Shipper/Grower/Manufacturer's point of contact: including name, title, address, and phone numbers.

3. Prices must not extend more than two [2] places to the right of the decimal point. Standard rounding methods should be observed. For example, a delivered price of \$4.578 should be rounded to \$4.58.

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 procured from a Sanitarly Approved Source. All invoices and quotes must reflect compliance to contract terms and conditions.

6. Offerors are required to submit this portion on a spreadsheet containing the following information:

- (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 grower/manufacturer invoice.
- (f) Distribution Price (DIP): Your distribution price.
- (g) 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

- Please fill in the white boxes only. For Group 1, Non-DoD (USDA School) customers fill in Delivered Price Including Freight cells G7 to G50 and Distribution Price cell H7. This will calculate your total evaluated price. All components of the unit price must be rounded to two (2) places beyond the decimal point. 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 will not be accepted.
- When preparing the spreadsheet, totals must appear in the row titled **"TOTAL EVALUATION"**. Each firm must submit a hard copy of their spreadsheet (s), 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.

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3. If requested to submit an invoice and the price on the invoice does not match the offered price due to a freight charge, the **freight charge must be indicated on the invoice. This must appear on the invoice submitted by the offeror if requested.** However, a separate freight invoice may be required as further documentation. Bulk freight charges are to be broken down by the case.

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**ECONOMIC PRICE ADJUSTMENT (“EPA”) – ACTUAL MATERIAL COSTS FOR SUBSISTENCE FRESH FRUITS & VEGETABLES (“FF&V”) AND SHELL EGGS MODEL**

- A. Warranties. For any items covered by this EPA language, the Contractor warrants that:
1. Contract Unit Price and the components of the Contract Unit Price, i.e. Delivered Price and Distribution Price, shall not include allowances for any portion of the contingency covered by this language; and
  2. Price adjustments requested during the performance of the contract shall be computed in accordance with the provisions of this language.
- B. Definitions. As used throughout this language the term:
1. **“Contract Unit Price”** means the total price per unit of a particular item charged to the Government for a product delivered to customers under this contract. The Contract Unit Price consists of two separate and distinct components: 1) Delivered Price, less Rebates/Discounts, and 2) Distribution Price. The unit price sum of these two components shall be rounded up or down to the nearest cent, to determine the Contract Unit Price.
  2. **“Delivered Price”**
    - (i) “Delivered Price” means the commercial manufacturer, grower, or private label holder price per unit charged to the Contractor, inclusive of standard freight to the Contractor's facility/facilities, for the purchase of a representative quantity of the item as compared to orders under this contract. Delivered Price is the manufacturer, grower, or private label holder price that is input into the Contractor's purchasing system as the starting basis for its pricing to customers prior to applying or deducting any additional costs or expenses, such as distribution, overhead, profit, rebates/discounts, or other costs/expenses stemming from separate financial arrangements. Delivered Price shall be substantiated with an actual invoice paid by the Contractor. In limited circumstances, quotations may be used to substantiate a Delivered Price, but only with specific approval of the Contracting Officer. The Delivered Price shall not include costs to be included in the Distribution Price.

**Redistributor Exception:**

On a case by case basis, for a specific item or stock keeping unit (“SKU”), a contiguous United States (CONUS) redistributor's most recent commercial price per unit, inclusive of standard freight to the Contractor's facility/facilities to the Contractor of a representative quantity of product as compared to orders under the contract may be used to establish Delivered Price. A redistributor's commercial price may only be used to establish Delivered Price when the redistributor's price for the quantity ordered is equal to or lower than a manufacturer's, grower's, or private label holder's current market price for a representative quantity of product inclusive of rebates/discounts. The Contracting Officer must specifically approve the use this exception. When seeking approval for the use of this exception, at a minimum, the Contractor must supply invoices from the redistributor. Quotes from the redistributor are unacceptable. Additional supporting documentation (e.g., published price list, manufacturer letter, or similar proof of price comparison) may be required. The determination of whether the supporting documentation offered is sufficient to establish a manufacturer's, grower's, or private label holder's current market price, as well as the decision to permit the use of this exception, rests solely with the Contracting Officer.

3. **“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 component includes all costs associated with the Contractor's performance that are not included in the Delivered Price, including, but not limited to: human resources, insurance, special packaging, overhead, profit, transportation from the Contractor's facility or other place of performance to the end customers, split-case fees, ancillary in-house processing fees, subcontractor costs, etc.
4. **“Grower”** means the business concern that raises produce for marketing.
5. **“Manufacturer”** mean the business concern that, with its own facilities, performs primary activities of processing or transforming agricultural products into the end item being acquired.
6. **“Ordering Catalog”** means the electronic listing of items and Contract unit prices available for ordering under this contract.

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7. **"Ordering Week"** means from Sunday at 12:00 AM (Eastern Time (ET), standard or daylight as applicable) through 11:59 PM on the Saturday of the following week.
8. **"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;
  - (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.
9. **"Rebates/Discounts"** means all rebates, discounts, product allowances, food show discounts, early payment discounts (other than qualifying early payment discounts as may be defined elsewhere in this contract), and any other rebates, discounts, economic incentives, or similar financial arrangements available at the manufacturer, grower, private label holder, or redistributor level that ultimately reduces the Contractor's price paid for a product supplied under the contract. In accordance with this language as well as other provisions of this contract, and subject to any applicable exceptions, all rebates/discounts shall be passed on to the Government via a reduced catalog price for the item to which the rebates/discounts pertain (i.e. "off invoice"). Any rebates/discounts that cannot be applied as an up-front price reduction must be submitted to the Contracting Officer 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").
10. **"Redistributor"** means an entity independent of the contractor that operates in the existing commercial marketplace and from which the contractor purchases product for purposes of consolidating quantities and/or obtaining lower delivered prices. Examples may include: brokers, dealers, distributors, and buying groups.
11. **"Standard Freight"** means the published list price or prevailing market rate for transportation of items ordered under this contract from the manufacturer, grower, private label holder, or redistributor (when the Redistributor Exception applies) to the Contractor's facility/facilities. Standard Freight must be documented in an invoice; however, quotes may be an acceptable form of substantiation in limited circumstances and if authorized by the Contracting Officer. Standard freight may include certain ancillary costs associated with transportation which are consistent with commercial practice in the produce industry, including, but are not limited to, pallets, temperature recording devices, Tectrol, etc.
- (i) In the event that the Contractor picks up its own product directly from a manufacturer, grower, private label holder, or redistributor (when the Redistributor Exception applies) on an F.O.B Origin basis, or arranges for delivery transportation from a third party source other than the manufacturer, grower, private label holder, or redistributor (when the Redistributor Exception applies), the standard freight cost shall be based on market tariffs/conditions and consistent with prevailing market rates. At no time shall that cost exceed the manufacturer's, grower's, private label holder's, or redistributor's, or such entity's carrier's freight price normally payable by the Contractor for inbound delivery s of such products and quantities to the Contractor's facility(ies).

C. Price adjustments.

1. General.

- (i) All Contract Unit Prices shall be fixed and remain unchanged until changed pursuant to this language or other applicable provision of the contract. Only the Delivered Price component of the Contract Unit Price is subject to adjustment under this section. 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 Contracting Officer's approval of the Contractor's request, which must be submitted in accordance with paragraph (iii) below, by the same dollar amount of the change in the Delivered Price, subject to the limitations in paragraphs C.2 and D, below. Any price changes approved by the Contracting Officer shall become effective at the beginning of the next ordering week. All ordering catalog unit prices computed in accordance with this section 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 the order is placed, regardless of any changes in the Contract Unit Price occurring before delivery or in any subsequent ordering week.

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(ii) Delivered Prices included in the catalog shall equal the Contractor's last receipt price for the item as reflected in an invoice (or quote in limited circumstances) for a representative quantity compared to typical Government purchases. For the purpose of the contract catalog, the "last receipt price" means the price of the product charged on the most recent invoice at the time the price change is requested. For example, if by Wednesday (i.e. the day price change requests are due to the Contracting Officer) the Contractor had recently received two invoices for the product in question, one on Monday and one on Tuesday, then the most recent invoice is the one from Tuesday (assuming it contains a representative quantity as described above). It is important to note that a Delivered Price must in almost all cases be justified using an invoice as described in this paragraph. Use of a quote is only permitted in extremely limited circumstances, such as when an item has not been purchased before by the Contractor or the price of the item is stale due to seasonality and other similar issues. Outside of those limited circumstances, which will be reviewed and approved by the Contracting Officer on a case-by-case basis, a Delivered Price will not be substantiated by using the price of an item that is the latest to arrive at the Contractor's facility but does not yet have an invoice to support it. Ultimately, the invoice (or quote in limited circumstances) justifying the Delivered Price request is subject to review by the Contracting Officer at the time the request is made.

(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 12:00 p.m. (Noon) Eastern Time on Wednesday to be effective in the following week's ordering catalog. Invoices submitted to support price change requests shall also identify all rebates/discounts that will be subtracted from the requested delivered prices when calculating the revised contract unit prices that would go on the catalog. The Contractor shall notify the Contracting Officer of its notice/request in the form of an electronic data interchange ("EDI") 832 transaction set when using STORES or an update to FFAVORS web. 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/FFAVORS Web 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, documentation regarding rebates/discounts, and any other substantiating information from the Contractor and any and all of its suppliers in the supply chain, including the manufacturer, grower, private label holder, or redistributor.

(v) Price change requests that the Contracting Officer questions or finds to be inconsistent with the requirements of this provision shall not be posted until the Contracting Officer specifically authorizes the posting. If the Contracting Officer does not notify the Contractor by 9:00 a.m. 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 section, 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 Solicitation, any resulting contract(s), or otherwise by law or regulation.

(vi) Should the Contracting Officer determine that, or question whether, a price change request contained an erroneous Contract 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 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 9:00 a.m. Eastern Time on Friday. If the Contracting Officer cannot determine a price fair and reasonable, and the Contracting Officer and the Contractor cannot negotiate a fair and reasonable price, the Contracting Officer may reject any price change and direct, in writing, that the item in question be retained on the catalog at the most recent previously-approved price consistent with current market conditions. In the alternative, the Contracting Officer may authorize the removal of an item.

(vii) In the event of a price change not posting or an ordering catalog Contract Unit Price not computed in accordance with this section, resulting in an incorrectly increased or decreased Contract Unit Price, upon

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discovery of such occurrence the Contractor shall immediately notify the Contracting Officer in writing and promptly thereafter correct its ordering catalog. In the event of an erroneous price increase in the ordering catalog, the Contractor shall submit a refund, including interest if applicable, for any amounts paid to the Contractor resulting from the erroneous price. In the event of an erroneous price decrease in the ordering catalog, the Contractor may submit a request for an equitable adjustment in the amount of the undercharge for consideration by the Contracting Officer. The request may be entertained 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 will not be entitled to reimbursement if the undercharge was the fault or negligence of the Contractor.

2. Limitations. All adjustments under this section 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 Contract Unit Prices that the Contracting Officer determines are computed incorrectly (i.e. not adhering to the Contract Unit Price definition in this provision) and/or increases in Contract Unit Prices that the Contracting Officer determines are not fair and reasonable.

D. Upward ceiling on economic price adjustment. The aggregate of Delivered Price increases for each item under this section during the entire contract period shall not exceed [Fill in]% for Department of Defense (DoD) Troop and [Fill in]% for United States Department of Agriculture (USDA) School & Tribal Reservation customers, 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 language will be required that will exceed the Delivered Price ceiling for any item, the Contractor shall promptly notify the Contracting Officer in writing of the expected increase. In the event that the latest actual market price for an item does result in a Delivered Price that exceeds the allowable ceiling price under the contract, the Contractor shall immediately notify the Contracting Officer in writing or via its EDI 832/FFAVORS Web price change request no later than the time specified in paragraph C.1.(iii), above. With either such notification, the Contractor shall include a revised ceiling that 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. The price change shall be posted for the following week's ordering catalog. If an actual increase in the Delivered Price would raise the price for an item above its current ceiling, and the Contracting Officer and Contractor cannot negotiate a fair and reasonable price below the ceiling or if the Contracting Officer does not issue a contract modification to raise the ceiling, the Contracting Officer may reject the price change and direct that the item be retained on the contract at the last approved price. If the Contracting Officer decides to retain the item, the contractor shall continue to perform with the item at the last approved price. In the alternative, the Contracting Officer may authorize the removal of an item. The decision regarding whether to modify the contract, retain the item, or remove the item rests solely with the Contracting Officer.

E. Downward limitation on economic price adjustments. There is no downward limitation on the aggregated percentage of decreases that may be made under this section.

F. Price Audit. The Contracting Officer may require the Contractor to submit invoices and other documentation from all subcontractors at all tiers and/or all suppliers or persons in the Delivered Price supply chain, up to and including the grower, manufacturer, and/or redistributor, for the purpose of confirming Delivered Prices charged to the Government, as well as to substantiate all rebate/discounts applicable to orders under the contract. In performing the price audit, the Government shall have the right to examine 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 section and any other terms and conditions of the contract. Such price audits 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. In addition to price audits, the Government may conduct additional examinations of records, as required by the Contracting Officer to ensure contract compliance.

G. Final invoice. The Contractor shall include a statement on the final invoice for each order that the amounts invoiced hereunder have applied all decreases required or authorized by this section.

H. Disputes. Any dispute arising under this section shall be determined in accordance with the "Disputes" clause of the contract.

**Sanitary Conditions**

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## 52.246-9044 Sanitary Conditions.

### SANITARY CONDITIONS (APR 2014)

#### (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>.

(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

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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

52.212-4 -- Contract Terms and Conditions -- Commercial Items (Jan 2017) 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 41 U.S.C. chapter 71, Contract Disputes. 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 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, 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

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<p>(ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.</p> <p>(x) Electronic funds transfer (EFT) banking information.</p> <p>(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.</p> <p>(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—System for Award Management, or 52.232-34, Payment by Electronic Funds Transfer—Other Than System for Award Management), or applicable agency procedures.</p> <p>(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.</p> <p>(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.</p> <p>(h) <i>Patent indemnity</i>. 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.</p> <p>(i) <i>Payment</i>.</p> <p>(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.</p> <p>(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.</p> <p>(3) Electronic Funds Transfer (EFT). If the Government makes payment by EFT, see 52.212-5(b) for the appropriate EFT clause.</p> <p>(4) <i>Discount</i>. 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.</p> <p>(5) <i>Overpayments</i>. 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—</p> <p>(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—</p> <p>(A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);</p> <p>(B) Affected contract number and delivery order number, if applicable;</p> <p>(C) Affected line item or subline item, if applicable; and</p> <p>(D) Contractor point of contact.</p> <p>(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.</p> <p>(6) <i>Interest</i>.</p> <p>(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 41 U.S.C. 7109, 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 at fixed by the Secretary until the amount is paid.</p> <p>(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.</p> <p>(iii) <i>Final decisions</i>. The Contracting Officer will issue a final decision as required by 33.211 if—</p> <p>(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days;</p> <p>(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</p> <p>(C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see 32.607-2).</p> <p>(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.</p> <p>(v) Amounts shall be due at the earliest of the following dates:</p> <p>(A) The date fixed under this contract.</p> <p>(B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.</p> <p>(vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—</p> <p>(A) The date on which the designated office receives payment from the Contractor;</p>		

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<p>(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</p> <p>(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.</p> <p>(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.</p> <p>(j) <i>Risk of loss.</i> 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:</p> <ol style="list-style-type: none"> <li>(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or</li> <li>(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.</li> </ol> <p>(k) <i>Taxes.</i> The contract price includes all applicable Federal, State, and local taxes and duties.</p> <p>(l) <i>Termination for the Government's convenience.</i> 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.</p> <p>(m) <i>Termination for cause.</i> 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.</p> <p>(n) <i>Title.</i> 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.</p> <p>(o) <i>Warranty.</i> 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> <p>(p) <i>Limitation of liability.</i> 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.</p> <p>(q) <i>Other compliances.</i> The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.</p> <p>(r) <i>Compliance with laws unique to Government contracts.</i> 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. chapter 37, Contract Work Hours and Safety Standards; 41 U.S.C. chapter 87, Kickbacks; 41 U.S.C. 4712 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. chapter 21 relating to procurement integrity.</p> <p>(s) <i>Order of precedence.</i> Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:</p> <ol style="list-style-type: none"> <li>(1) The schedule of supplies/services.</li> <li>(2) The Assignments, Disputes, Payments, Invoice, Other Compliances, Compliance with Laws Unique to Government Contracts, and Unauthorized Obligations paragraphs of this clause.</li> <li>(3) The clause at 52.212-5.</li> <li>(4) Addenda to this solicitation or contract, including any license agreements for computer software.</li> <li>(5) Solicitation provisions if this is a solicitation.</li> <li>(6) Other paragraphs of this clause.</li> <li>(7) The Standard Form 1449.</li> <li>(8) Other documents, exhibits, and attachments.</li> <li>(9) The specification.</li> </ol> <p>(t) <i>System for Award Management (SAM).</i></p> <ol style="list-style-type: none"> <li>(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 SAM database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the SAM 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 SAM database to ensure it is current, accurate and complete. Updating information in the SAM does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.</li> <li>(2) <ol style="list-style-type: none"> <li>(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 Subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to:</li> </ol> </li> </ol>		

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- (A) Change the name in the SAM database;
- (B) Comply with the requirements of Subpart 42.12 of the FAR;
- (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 SAM 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 SAM record to reflect an assignee for the purpose of assignment of claims (see FAR Subpart 32.8, Assignment of Claims).

Assignees shall be separately registered in the SAM database. Information provided to the Contractor's SAM 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 SAM accessed through <https://www.acquisition.gov>.

**(u) Unauthorized Obligations.**

(1) Except as stated in paragraph (u)(2) of this clause, when any supply or service acquired under this contract is subject to any End Use License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

- (i) Any such clause is unenforceable against the Government.
- (ii) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an "I agree" click box or other comparable mechanism (e.g., "click-wrap" or "browse-wrap" agreements), execution does not bind the Government or any Government authorized end user to such clause.
- (iii) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.

(2) Paragraph (u)(1) of this clause does not apply to indemnification by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

(v) *Incorporation by reference.* The Contractor's representations and certifications, including those completed electronically via the System for Award Management (SAM), are incorporated by reference into the contract.

**Addendum 52.212-4**

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

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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 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.

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. ☒ X 52.203-3, Gratuities (APR 1984) (10 U.S.C. 2207).
2. ☒ X 252.203-7000, Requirements Relating to Compensation of Former DoD Officials (SEP 2011)
3. ☒ X 252.203-7003, Agency Office of the Inspector General (DEC 2012)
4. ☒ X 252.205-7000, Provision of Information to Cooperative Agreement Holders (DEC 1991)
5. ☐ 252.219-7003, Small Business Subcontracting Plan (DoD Contracts) (AUG 2012)
6. ☒ X 252.225-7001, Buy American and Balance of Payments Program (DEC 2012)
  - a. ☐ Alternate I (OCT 2011) of 252.225-7001
7. ☐ 252.225-7008, Restriction on Acquisition of Specialty Metals (MAR 2013)
8. ☐ 252.225-7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals (JUN 2013)
9. ☒ X 252.225-7012, Preference for Certain Domestic Commodities (FEB 2013)
10. ☐ 252.225-7015, Restriction on Acquisition of Hand or Measuring Tools (JUN 2005)
11. ☐ 252.225-7016, Restriction on Acquisition of Ball and Roller Bearings (JUN 2011)
12. ☐ 252.225-7021, Trade Agreements (AUG 2013)
  - a. ☐ Alternate I (OCT 2011) of 252.225-7021
  - b. ☐ Alternate II (OCT 2011) of 252.225-7021
13. ☐ 252.225-7027, Restriction on Contingent Fees for Foreign Military Sales (APR 2003)
14. ☐ 252.225-7028, Exclusionary Policies and Practices of Foreign Governments (APR 2003)
15. ☐ 252.225-7036, Buy American --Free Trade Agreements--Balance of Payment Program (DEC 2012)
  - a. ☐ Alternate I (JUN 2012) of 252.225-7036
  - b. ☐ Alternate II (NOV 2012) of 252.225-7036
  - c. ☐ Alternate III (JUN 2012) of 252.225-7036
  - d. ☐ Alternate IV (NOV 2012) of 252.225-7036
  - e. ☐ Alternate V (NOV 2012) of 252.225-7036
16. ☐ 252.225-7039, Contractors Performing Private Security Functions (JUN 2013)
17. ☒ X 252.226-7001, Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns (SEP 2004)
18. ☐ 252.227-7013, Rights in Technical Data -- Noncommercial Items (JUN 2013)
19. ☐ 252.227-7015, Technical Data -- Commercial Items (JUN 2013)
20. ☐ 252.227-7037, Validation of Restrictive Markings on Technical Data (JUN 2013),
21. ☐ 252.232-7003, Electronic Submission of Payment Requests and Receiving Reports (JUN 2012)
22. ☐ 252.237-7010, Prohibition on Interrogation of Detainees by Contractor Personnel (JUN 2013)
23. ☐ 252.237-7019, Training for Contractor Personnel Interacting with Detainees (JUN 2013)
24. ☒ X 252.243-7002, Requests for Equitable Adjustment (DEC 2012)
25. ☐ 252.246-7004, Safety of Facilities, Infrastructure, and Equipment for Military Operations (OCT 2010)
26. ☐ 252.247-7003, Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer (JUN 2013)
27. ☒ X 252.247-7023, Transportation of Supplies by Sea (APR 2014).
  - a. ☐ Alternate I (MAR 2000) of 252.247-7023.
  - b. ☐ Alternate III (MAY 2002) of 252.247-7023
28. ☐ 252.247-7024, Notification of Transportation of Supplies by Sea (MAR 2000)
29. ☐ 252.247-7027, Riding Gang Member Requirements (OCT 2011)

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

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(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).

☐ (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]

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

☒ (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.

☒ (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)).

☒ (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)).

☒ (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).

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- \_\_\_X\_ (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).  
 \_\_\_X\_ (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).  
 \_\_\_ (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.  
 \_\_\_X\_ (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).  
 \_\_\_X\_ (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)).  
 \_\_\_X\_ (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.).

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- \_\_\_ (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).
- \_\_\_X\_ (10) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations. (May 2014) (42 U.S.C. 1792).
- \_\_\_ (11) 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.
- (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).
- (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.

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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.

#### **Addendum 52.212-05**

52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items

(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) 52.209-10, Prohibition on Contracting with Inverted Domestic Corporations (Nov 2015)

(2) 52.233-3, Protest After Award (AUG 1996) (31 U.S.C. 3553).

(3) 52.233-4, Applicable Law for Breach of Contract Claim (OCT 2004)(Public Laws 108-77 and 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]

  X   (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).

  X   (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 (June 2010) (Section 1553 of Pub. L. 111-5). (Applies to contracts funded by the American Recovery and Reinvestment Act of 2009.)

  X   (4) 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards (Oct 2015) (Pub. L. 109-282) (31 U.S.C. 6101 note).

       (5) [Reserved].

       (6) 52.204-14, Service Contract Reporting Requirements (Jan 2014) (Pub. L. 111-117, section 743 of Div. C).

       (7) 52.204-15, Service Contract Reporting Requirements for Indefinite-Delivery Contracts (Jan 2014) (Pub. L. 111-117, section 743 of Div. C).

  X   (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).

  X   (9) 52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters (Jul 2013) (41 U.S.C. 2313).

       (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 Set-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 (Oct 2014) (15 U.S.C. 637(d)(2) and (3)).

       (17)(i) 52.219-9, Small Business Subcontracting Plan (Oct 2015) (15 U.S.C. 637(d)(4)).

       (ii) Alternate I (Oct 2001) of 52.219-9.

       (iii) Alternate II (Oct 2001) of 52.219-9.

       (iv) Alternate III (Oct 2015) 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 (Nov 2011) (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. 657 f).

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- \_\_\_ (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)).
- \_X\_ (25) 52.222-3, Convict Labor (June 2003) (E.O. 11755).
- \_X\_ (26) 52.222-19, Child Labor—Cooperation with Authorities and Remedies (Feb 2016) (E.O. 13126).
- \_X\_ (27) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).
- \_X\_ (28) 52.222-26, Equal Opportunity (Apr 2015) (E.O. 11246).
- \_X\_ (29) 52.222-35, Equal Opportunity for Veterans (Oct 2015)(38 U.S.C. 4212).
- \_X\_ (30) 52.222-36, Equal Opportunity for Workers with Disabilities (Jul 2014) (29 U.S.C. 793).
- \_X\_ (31) 52.222-37, Employment Reports on Veterans (FEB 2016) (38 U.S.C. 4212).
- \_X\_ (32) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496).
- \_X\_ (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).
- \_X\_ (34) 52.222-54, Employment Eligibility Verification (OCT 2015). (Executive Order 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)(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.)
- \_\_\_ (36) 52.223-11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (JUN 2016) (E.O. 13693).
- \_\_\_ (37) 52.223-12, Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (JUN 2016) (E.O. 13693).
- \_\_\_ (38)(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.
- \_\_\_ (39)(i) 52.223-14, Acquisition of EPEAT®-Registered Televisions (JUN 2014) (E.O.s 13423 and 13514).
- \_\_\_ (ii) Alternate I (Jun 2014) of 52.223-14.
- \_\_\_ (40) 52.223-15, Energy Efficiency in Energy-Consuming Products (DEC 2007) (42 U.S.C. 8259b).
- \_\_\_ (41)(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.
- \_X\_ (42) 52.223-18, Encouraging Contractor Policies to Ban Text Messaging While Driving (AUG 2011) (E.O. 13513).
- \_\_\_ (43) 52.223-20, Aerosols (JUN 2016) (E.O. 13693).
- \_\_\_ (44) 52.223-21, Foams (JUN 2016) (E.O. 13693).
- \_\_\_ (45) 52.225-1, Buy American—Supplies (May 2014) (41 U.S.C. chapter 83).
- \_\_\_ (46)(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.
- \_\_\_ (47) 52.225-5, Trade Agreements (FEB 2016) (19 U.S.C. 2501, et seq., 19 U.S.C. 3301 note).
- \_X\_ (48) 52.225-13, Restrictions on Certain Foreign Purchases (June 2008) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).
- \_\_\_ (49) 52.225-26, Contractors Performing Private Security Functions Outside the United States (Jul 2013) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).
- \_\_\_ (50) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (Nov 2007) (42 U.S.C. 5150).
- \_\_\_ (51) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov 2007) (42 U.S.C. 5150).
- \_\_\_ (52) 52.232-29, Terms for Financing of Purchases of Commercial Items (Feb 2002) (41 U.S.C. 4505, 10 U.S.C. 2307(f)).
- \_\_\_ (53) 52.232-30, Installment Payments for Commercial Items (Oct 1995) (41 U.S.C. 4505, 10 U.S.C. 2307(f)).
- \_X\_ (54) 52.232-33, Payment by Electronic Funds Transfer—System for Award Management (Jul 2013) (31 U.S.C. 3332).
- \_\_\_ (55) 52.232-34, Payment by Electronic Funds Transfer—Other than System for Award Management (Jul 2013) (31 U.S.C.3332).
- \_\_\_ (56) 52.232-36, Payment by Third Party (May 2014) (31 U.S.C. 3332).
- \_\_\_ (57) 52.239-1, Privacy or Security Safeguards (Aug 1996) (5 U.S.C. 552a).
- \_\_\_ (58)(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).

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\_\_\_ (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).  
 \_\_\_ (9) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (May 2014) (42 U.S.C. 1792).  
 \_\_\_ (10) 52.237-11, Accepting and Dispensing of \$1 Coin (Sept 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.  
 (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) 52.219-8, Utilization of Small Business Concerns (Oct 2014) (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.  
 (iii) 52.222-17, Nondisplacement of Qualified Workers (May 2014) (E.O. 13495). Flow down required in accordance with paragraph (I) of FAR clause 52.222-17.  
 (iv) 52.222-21, Prohibition of Segregated Facilities (Apr 2015)  
 (v) 52.222-26, Equal Opportunity (Apr 2015) (E.O. 11246).  
 (vi) 52.222-35, Equal Opportunity for Veterans (Oct 2015) (38 U.S.C. 4212).  
 (vii) 52.222-36, Equal Opportunity for Workers with Disabilities (Jul 2014) (29 U.S.C. 793).  
 (viii) 52.222-37, Employment Reports on Veterans (Feb 2016) (38 U.S.C. 4212)  
 (ix) 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.  
 (x) 52.222-41, Service Contract Labor Standards (May 2014) (41 U.S.C. chapter 67).  
 (xi) 52.222-50, Combating Trafficking in Persons (Mar 2015) (22 U.S.C. chapter 78 and E.O 13627). Alternate I (Mar 2015) of 52.222-50 (22 U.S.C. chapter 78 and E.O 13627).  
 (xii) 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).  
 (xiii) 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).  
 (xiv) 52.222-54, Employment Eligibility Verification (OCT 2015) (E.O. 12989).  
 (xv) 52.222-55, Minimum Wages Under Executive Order 13658 (Dec 2015).  
 (xvi) 52.225-26, Contractors Performing Private Security Functions Outside the United States (Jul 2013) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).  
 (xvii) 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.  
 (xviii) 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.

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**CLAUSES ADDED TO PART 12 BY ADDENDUM**

**52.203-19 PROHIBITION ON REQUIRING CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS OR STATEMENTS (JAN 2017) FAR**

**252.203-7000 REQUIREMENTS RELATING TO COMPENSATION OF FORMER DOD OFFICIALS (OCT 2016) 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**

**252.203-7995 PROHIBITION ON CONTRACTING WITH ENTITIES THAT REQUIRE CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS (NOV 2016) DFARS**

**52.204-07 SYSTEM FOR AWARD MANAGEMENT (OCT 2016) FAR**

**52.204-13 SYSTEM FOR AWARD MANAGEMENT MAINTENANCE (OCT 2016) FAR**

**52.204-21 BASIC SAFEGUARDING OF COVERED CONTRACTOR INFORMATION SYSTEMS (JUN 2016) 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.
- (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):

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- (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).
  - (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.

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<p>“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.</p> <p>“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.</p> <p>“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.</p> <p>“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.</p> <p>“Rapid(ly) report(ing)” means within 72 hours of discovery of any cyber incident.</p> <p>“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.</p> <p>(b) <i>Adequate security.</i> 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—</p> <p>(1) Implement information systems security protections on all covered contractor information systems including, at a minimum—</p> <p>(i) For covered contractor information systems that are part of an Information Technology (IT) service or system operated on behalf of the Government—</p> <p>(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</p> <p>(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</p> <p>(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—</p> <p>(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,” <a href="http://dx.doi.org/10.6028/NIST.SP.800-171">http://dx.doi.org/10.6028/NIST.SP.800-171</a> 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 <a href="mailto:osd.dibcsia@mail.mil">osd.dibcsia@mail.mil</a>, 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</p> <p>(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</p> <p>(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.</p> <p>(c) <i>Cyber incident reporting requirement.</i></p> <p>(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—</p> <p>(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</p> <p>(ii) Rapidly report cyber incidents to DoD at <a href="http://dibnet.dod.mil">http://dibnet.dod.mil</a>.</p>		

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- (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)



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#### **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.

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#### **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@dlam.mil](mailto:Helpdesk.EBS.L&M.LTCs@dlam.mil)

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

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

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#### **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**

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

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

#### **C03 CONTRACTOR RETENTION OF SUPPLY CHAIN TRACEABILITY DOCUMENTATION (SEP 2016)**

#### **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**

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(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 90 days from contract completion

(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 *October 1, 2017 through March 30, 2019 [insert dates]*.

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**252.219-7003 SMALL BUSINESS SUBCONTRACTING PLAN (DoD CONTRACTS) (MAR 2016) DFARS**

**52.225-01 BUY AMERICAN - SUPPLIES (MAY 2014) FAR**

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

**252.225-7012 PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES (DEC 2016) DFARS**

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

"Component" means any item supplied to the Government as part of an end product or of another component.

"End product" means supplies delivered under a line item of this contract.

"Qualifying country" means a country with a reciprocal defense procurement

memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia  
Austria  
Belgium  
Canada  
Czech Republic  
Denmark  
Egypt  
Finland  
France  
Germany  
Greece  
Israel  
Italy  
Luxembourg

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<p>Netherlands</p> <p>Norway</p> <p>Poland</p> <p>Portugal</p> <p>Spain</p> <p>Sweden</p> <p>Switzerland</p> <p>Turkey</p> <p>United Kingdom of Great Britain and Northern Ireland.</p> <p>“Structural component of a tent”—</p> <p style="padding-left: 40px;">(i) Means a component that contributes to the form and stability of the tent (e.g., poles, frames, flooring, guy ropes, pegs);</p> <p style="padding-left: 40px;">(ii) Does not include equipment such as heating, cooling, or lighting.</p> <p>“United States” means the 50 States, the District of Columbia, and outlying areas.</p> <p>“U.S.-flag vessel” means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.</p> <p>(b) The Contractor shall deliver under this contract only such of the following items, either as end products or components, that have been grown, reprocessed, reused, or produced in the United States:</p> <p style="padding-left: 20px;">(1) Food.</p> <p style="padding-left: 20px;">(2) Clothing and the materials and components thereof, other than sensors, electronics, or other items added to, and not normally associated with, clothing and the materials and components thereof. Clothing includes items such as outerwear, headwear, underwear, nightwear, footwear, hosiery, handwear, belts, badges, and insignia.</p> <p style="padding-left: 20px;">(3)</p> <p style="padding-left: 60px;">(i) Tents and structural components of tents;</p> <p style="padding-left: 60px;">(ii) Tarpaulins; or</p> <p style="padding-left: 60px;">(iii) Covers.</p> <p style="padding-left: 20px;">(4) Cotton and other natural fiber products.</p> <p style="padding-left: 20px;">(5) Woven silk or woven silk blends.</p> <p style="padding-left: 20px;">(6) Spun silk yarn for cartridge cloth.</p> <p style="padding-left: 20px;">(7) Synthetic fabric, and coated synthetic fabric, including all textile fibers and yarns that are for use in such fabrics.</p> <p style="padding-left: 20px;">(8) Canvas products.</p> <p style="padding-left: 20px;">(9) Wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles).</p> <p style="padding-left: 20px;">(10) Any item of individual equipment (Federal Supply Class 8465) manufactured from or containing fibers, yarns, fabrics, or materials listed in this paragraph (b).</p> <p>(c) This clause does not apply—</p> <p style="padding-left: 20px;">(1) To items listed in section 25.104(a) of the Federal Acquisition Regulation (FAR), or other items for which the Government has determined that a satisfactory quality and sufficient quantity cannot be acquired as and when needed at U.S. market prices;</p> <p style="padding-left: 20px;">(2) To incidental amounts of cotton, other natural fibers, or wool incorporated in an end product, for which the estimated value of the cotton, other natural fibers, or wool—</p> <p style="padding-left: 60px;">(i) Is not more than 10 percent of the total price of the end product; and</p> <p style="padding-left: 60px;">(ii) Does not exceed the simplified acquisition threshold in FAR Part 2;</p> <p style="padding-left: 20px;">(3) To waste and byproducts of cotton or wool fiber for use in the production of propellants and explosives;</p> <p style="padding-left: 20px;">(4) To foods, other than fish, shellfish, or seafood, that have been manufactured or processed in the United States, regardless of where the foods (and any component if applicable) were grown or produced. Fish, shellfish, or seafood manufactured or</p>		
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<p>processed in the United States and fish, shellfish, or seafood contained in foods manufactured or processed in the United States shall be provided in accordance with paragraph (d) of this clause;</p> <p>(5) To chemical warfare protective clothing produced in a qualifying country; or</p> <p>(6) To fibers and yarns that are for use in synthetic fabric or coated synthetic fabric (but does apply to the synthetic or coated synthetic fabric itself), if—</p> <p style="padding-left: 40px;">(i) The fabric is to be used as a component of an end product that is not a textile product. Examples of textile products, made in whole or in part of fabric, include□</p> <p style="padding-left: 80px;">(A) Draperies, floor coverings, furnishings, and bedding (Federal Supply Group 72, Household and Commercial Furnishings and Appliances);</p> <p style="padding-left: 80px;">(B) Items made in whole or in part of fabric in Federal Supply Group 83, Textile/leather/furs/apparel/findings/tents/flags, or Federal Supply Group 84, Clothing, Individual Equipment and Insignia;</p> <p style="padding-left: 80px;">(C) Upholstered seats (whether for household, office, or other use); and</p> <p style="padding-left: 80px;">(D) Parachutes (Federal Supply Class 1670); or</p> <p style="padding-left: 40px;">(ii) The fibers and yarns are para-aramid fibers and continuous filament para-aramid yarns manufactured in a qualifying country.</p> <p>(d)</p> <p style="padding-left: 40px;">(1) Fish, shellfish, and seafood delivered under this contract, or contained in foods delivered under this contract—</p> <p style="padding-left: 80px;">(i) Shall be taken from the sea by U.S.-flag vessels; or</p> <p style="padding-left: 80px;">(ii) If not taken from the sea, shall be obtained from fishing within the United States; and</p> <p style="padding-left: 40px;">(2) Any processing or manufacturing of the fish, shellfish, or seafood shall be performed on a U.S.-flag vessel or in the United States.</p> <p style="text-align: center;">(End of clause)</p> <p><b>252.226-7001 UTILIZATION OF INDIAN ORGANIZATIONS, INDIAN-OWNED ECONOMIC ENTERPRISES, AND NATIVE HAWAIIAN SMALL BUSINESS CONCERNS (SEP 2004) DFARS</b></p> <p><b>52.227-01 AUTHORIZATION AND CONSENT (DEC 2007) FAR</b></p> <p><b>52.227-02 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEC 2007) FAR</b></p> <p><b>52.232-17 INTEREST (MAY 2014) FAR</b></p> <p><b>252.232-7010 LEVIES ON CONTRACT PAYMENTS (DEC 2006) DFARS</b></p> <p><b>52.242-13 BANKRUPTCY (JUL 1995) FAR</b></p> <p><b>52.242-15 STOP-WORK ORDER (AUG 1989) FAR</b></p> <p><b>52.242-17 GOVERNMENT DELAY OF WORK (APR 1984) FAR</b></p> <p><b>52.247-34 F.O.B. DESTINATION (NOV 1991) FAR</b></p> <p><b>252.247-7023 TRANSPORTATION OF SUPPLIES BY SEA (APR 2014) DFARS</b></p> <p><b>52.247-9011 VENDOR SHIPMENT MODULE (VSM) (NOV 2011) DLAD</b></p> <p><b>52.247-9036 SHIPPING INSTRUCTIONS (EXPORT) (NOV 2011) DLAD</b></p> <p><b>52.251-01 GOVERNMENT SUPPLY SOURCES (APR 2012) FAR</b></p> <p><b>52.252-02 CLAUSES INCORPORATED BY REFERENCE (FEB 1998) FAR</b></p> <p style="text-align: right;"><b>CONTINUED ON NEXT PAGE</b></p>		

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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**

(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)

**52.247-9037 TRANSSHIPMENT OF MATERIAL THROUGH DLA CONTAINERIZATION AND CONSOLIDATION POINTS (CCP) (NOV 2011) DLAD**

**Attachments**

**List of Attachments**

Description	File Name
ATTACH.Attachment 1 - Schedule of Items	A
ATTACH.Attachment 2 - Customers Delivery Schedule	A
ATTACH.Attachment 3 - FFAVORS Manual	A

**Part 12 Provisions**

**52.212-1 -- Instructions to Offerors -- Commercial Items (Jan 2017) FAR**

(a) *North American Industry Classification System (NAICS) code and small business size standard.* The NAICS code and small business size standard for this acquisition appear in Block 10 of the solicitation cover sheet (SF 1449). However, the small business size standard for a concern which submits an offer in its own name, but which proposes to furnish an item which it did not itself manufacture, is 500 employees.

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(b) *Submission of offers.* Submit signed and dated offers to the office specified in this solicitation at or before the exact time specified in this solicitation. Offers may be submitted on the SF 1449, letterhead stationery, or as otherwise specified in the solicitation. As a minimum, offers must show --

- (1) The solicitation number;
- (2) The time specified in the solicitation for receipt of offers;
- (3) The name, address, and telephone number of the offeror;
- (4) A technical description of the items being offered in sufficient detail to evaluate compliance with the requirements in the solicitation. This may include product literature, or other documents, if necessary;
- (5) Terms of any express warranty;
- (6) Price and any discount terms;
- (7) "Remit to" address, if different than mailing address;
- (8) A completed copy of the representations and certifications at FAR 52.212-3 (see FAR 52.212-3(b) for those representations and certifications that the offeror shall complete electronically);
- (9) Acknowledgment of Solicitation Amendments;
- (10) Past performance information, when included as an evaluation factor, to include recent and relevant contracts for the same or similar items and other references (including contract numbers, points of contact with telephone numbers and other relevant information); and
- (11) If the offer is not submitted on the SF 1449, include a statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation. Offers that fail to furnish required representations or information, or reject the terms and conditions of the solicitation may be excluded from consideration.

(c) *Period for acceptance of offers.* The offeror agrees to hold the prices in its offer firm for 30 calendar days from the date specified for receipt of offers, unless another time period is specified in an addendum to the solicitation.

(d) *Product samples.* When required by the solicitation, product samples shall be submitted at or prior to the time specified for receipt of offers. Unless otherwise specified in this solicitation, these samples shall be submitted at no expense to the Government, and returned at the sender's request and expense, unless they are destroyed during preaward testing.

(e) *Multiple offers.* Offerors are encouraged to submit multiple offers presenting alternative terms and conditions, including alternative line items (provided that the alternative line items are consistent with subpart 4.10 of the Federal Acquisition Regulation), or alternative commercial items for satisfying the requirements of this solicitation. Each offer submitted will be evaluated separately.

(f) *Late submissions, modifications, revisions, and withdrawals of offers.*

- (1) Offerors are responsible for submitting offers, and any modifications, revisions, or withdrawals, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that offers or revisions are due.
- (2)
  - (i) Any offer, modification, revision, or withdrawal of an offer received at the Government office designated in the solicitation after the exact time specified for receipt of offers is "late" and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and—

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(A) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of offers; or

(B) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers; or

(C) If this solicitation is a request for proposals, it was the only proposal received.

(ii) However, a late modification of an otherwise successful offer, that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(3) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the offer wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(4) If an emergency or unanticipated event interrupts normal Government processes so that offers cannot be received at the Government office designated for receipt of offers by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation or other notice of an extension of the closing date, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(5) Offers may be withdrawn by written notice received at any time before the exact time set for receipt of offers. Oral offers in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before the exact time set for receipt of offers, subject to the conditions specified in the solicitation concerning facsimile offers. An offer may be withdrawn in person by an offeror or its authorized representative if, before the exact time set for receipt of offers, the identity of the person requesting withdrawal is established and the person signs a receipt for the offer.

(g) *Contract award (not applicable to Invitation for Bids)*. The Government intends to evaluate offers and award a contract without discussions with offerors. Therefore, the offeror's initial offer should contain the offeror's best terms from a price and technical standpoint. However, the Government reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary. The Government may reject any or all offers if such action is in the public interest; accept other than the lowest offer; and waive informalities and minor irregularities in offers received.

(h) *Multiple awards*. The Government may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in the Schedule, offers may not be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the offeror specifies otherwise in the offer.

(i) Availability of requirements documents cited in the solicitation.

(1)

(i) The GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101-29, and copies of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained for a fee by submitting a request to--

GSA Federal Supply Service Specifications Section

Suite 8100  
470 L'Enfant Plaza, SW  
Washington, DC 20407  
Telephone (202) 619-8925

Facsimile (202 619-8978).

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<p>(ii) If the General Services Administration, Department of Agriculture, or Department of Veterans Affairs issued this solicitation, a single copy of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained free of charge by submitting a request to the addressee in paragraph (i)(1)(i) of this provision. Additional copies will be issued for a fee.</p> <p>(2) Most unclassified Defense specifications and standards may be downloaded from the following ASSIST websites--</p> <p>(i) ASSIST (<a href="https://assist.dla.mil/online/start/">https://assist.dla.mil/online/start/</a>).</p> <p>(ii) Quick Search (<a href="http://quicksearch.dla.mil/">http://quicksearch.dla.mil/</a>).</p> <p>(iii) ASSISTdocs.com (<a href="http://assistdocs.com">http://assistdocs.com</a>).</p> <p>(3) Documents not available from ASSIST may be ordered from the Department of Defense Single Stock Point (DoDSSP) by—</p> <p>(i) Using the ASSIST Shopping Wizard ( <a href="https://assist.dla.mil/wizard/index.cfm">https://assist.dla.mil/wizard/index.cfm</a> );</p> <p>(ii) Phoning the DoDSSP Customer Service Desk (215) 697-2179, Mon-Fri, 0730 to 1600 EST; or</p> <p>(iii) Ordering from DoDSSP, Building 4 Section D, 700 Robbins Avenue, Philadelphia, PA 19111-5094, Telephone (215) 697/2197, Facsimile (215) 697-1462.</p> <p>(4) Nongovernment (voluntary) standards must be obtained from the organization responsible for their preparation, publication, or maintenance.</p> <p>(j) <i>Unique entity identifier.</i> (Applies to all offers exceeding \$3,500, and offers of \$3,500 or less if the solicitation requires the Contractor to be registered in the System for Award Management (SAM) database.) The Offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "Unique Entity Identifier" followed by the unique entity identifier that identifies the Offeror's name and address. The Offeror also shall enter its Electronic Funds Transfer (EFT) indicator, if applicable. The EFT indicator is a four-character suffix to the unique entity identifier. The suffix is assigned at the discretion of the Offeror to establish additional SAM records for identifying alternative EFT accounts (see subpart 32.11) for the same entity. If the Offeror does not have a unique entity identifier, it should contact the entity designated at <a href="http://www.sam.gov">www.sam.gov</a> for unique entity identifier establishment directly to obtain one. The Offeror should indicate that it is an offeror for a Government contract when contacting the entity designated at <a href="http://www.sam.gov">www.sam.gov</a> for establishing the unique entity identifier.</p> <p>(k) <i>System for Award Management.</i> Unless exempted by an addendum to this solicitation, by submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the SAM database prior to award, during performance and through final payment of any contract resulting from this solicitation. If the Offeror does not become registered in the SAM database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror. Offerors may obtain information on registration and annual confirmation requirements via the SAM database accessed through <a href="https://www.acquisition.gov">https://www.acquisition.gov</a>.</p> <p>(l) <i>Debriefing.</i> If a post-award debriefing is given to requesting offerors, the Government shall disclose the following information, if applicable:</p> <p>(1) The agency's evaluation of the significant weak or deficient factors in the debriefed offeror's offer.</p> <p>(2) The overall evaluated cost or price and technical rating of the successful and debriefed offeror and past performance information on the debriefed offeror.</p> <p>(3) The overall ranking of all offerors, when any ranking was developed by the agency during source selection.</p> <p>(4) A summary of rationale for award;</p> <p>(5) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror.</p>		

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(6) Reasonable responses to relevant questions posed by the debriefed offeror as to whether source-selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.

**Addendum 52.212-1**

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

1. **Paragraph (b), Submission of Offers.**
  - a. See continuation pages, for any specific instructions on how to submit your offer if mailed or hand carried and see pages 101-106 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.

**52.212-2 -- 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:

- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- [Contracting Officer shall insert the significant evaluation factors, such as*
- (i) technical capability of the item offered to meet the Government requirement;*
  - (ii) price;*
  - (iii) past performance (see FAR 15.304);*

Technical and past performance, when combined, are \_\_\_\_\_ [Contracting Officer state, in accordance with FAR 15.304, 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).

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(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.

**ADDENDUM TO 52.212-02 EVALUATION- COMMERCIAL ITEMS (OCT 2014)**

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 thirty (30) days after the solicitation closing date.

B. USDA Good Agricultural Practices (GAP) and Good Handling Practices (GHP) Audit – The offeror shall submit a valid 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.

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

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<p>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 (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.</p> <p>2. Aggregate Delivered Price:</p> <p>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.</p> <p>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.</p>		
<p><b>52.212-03 OFFEROR REPRESENTATIONS AND CERTIFICATIONS - COMMERCIAL ITEMS (JAN 2017) FAR</b></p> <p>An offeror shall complete only paragraph (b) of this provision if the offeror has completed the annual representations and certifications electronically via <a href="https://www.acquisition.gov">https://www.acquisition.gov</a> 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.</p> <p>(a) Definitions. As used in this provision—</p> <p>"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.</p> <p>"Forced or indentured child labor" means all work or service—</p> <p>(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</p> <p>(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.</p> <p>"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.</p> <p>"Manufactured end product" means any end product in Federal Supply Classes (FSC) 1000-9999, except—</p> <p>(1) FSC 5510, Lumber and Related Basic Wood Materials;</p> <p>(2) Federal Supply Group (FSG) 87, Agricultural Supplies;</p> <p>(3) FSG 88, Live Animals;</p> <p>(4) FSG 89, Food and Related Consumables;</p> <p>(5) FSC 9410, Crude Grades of Plant Materials;</p> <p>(6) FSC 9430, Miscellaneous Crude Animal Products, Inedible;</p> <p>(7) FSC 9440, Miscellaneous Crude Agricultural and Forestry Products;</p> <p>(8) FSC 9610, Ores;</p> <p>(9) FSC 9620, Minerals, Natural and Synthetic; and</p> <p>(10) FSC 9630, Additive Metal Materials.</p> <p>"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.</p> <p>"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—</p> <p style="text-align: right;"><b>CONTINUED ON NEXT PAGE</b></p>		

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<p>(1) Are conducted under contract directly and exclusively with the regional government of southern Sudan;</p> <p>(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;</p> <p>(3) Consist of providing goods or services to marginalized populations of Sudan;</p> <p>(4) consist of providing goods or services to an internationally recognized peacekeeping force or humanitarian organization;</p> <p>(5) Consist of providing goods or services that are used only to promote health or education; or</p> <p>(6) Have been voluntarily suspended.</p> <p>“Sensitive technology” –</p> <p>(1) Means hardware, software, telecommunications equipment, or any other technology that is to be used specifically -</p> <p>(i) To restrict the free flow of unbiased information in Iran; or</p> <p>(ii) To disrupt, monitor, or otherwise restrict speech of the people or Iran; and</p> <p>(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)).</p> <p>“Service-disabled veteran-owned small business concern”—</p> <p>(1) Means a small business concern—</p> <p>(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</p> <p>(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.</p> <p>(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).</p> <p>“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.</p> <p>“Subsidiary” means an entity in which more than 50 percent of the entity is owned –</p> <p>(1) Directly by a parent corporation; or</p> <p>(2) Through another subsidiary of a parent corporation.</p> <p>“Veteran-owned small business concern” means a small business concern—</p> <p>(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</p> <p>(2) The management and daily business operations of which are controlled by one or more veterans.</p> <p>“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.</p> <p>“Women-owned small business concern” means a small business concern—</p> <p>(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</p> <p>(2) Whose management and daily business operations are controlled by one or more women.</p> <p>“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.</p> <p>(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.</p> <p>(2) The offeror has completed the annual representations and certifications electronically via the ORCA website at <a href="https://www.acquisition.gov">https://www.acquisition.gov</a>. 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), <b>except for paragraphs _____</b>.</p> <p>[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.</p>		

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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.

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(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 ads 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:

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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.

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(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—

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(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

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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**

#### **52.203-18 PROHIBITION ON CONTRACTING WITH ENTITIES THAT REQUIRE CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS OR STATEMENTS-REPRESENTATION (JAN 2017) FAR**

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

#### **252.203-7994 PROHIBITION ON CONTRACTING WITH ENTITIES THAT REQUIRE CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS—REPRESENTATION (NOV 2016) 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—

(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)

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**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.

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(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>	<hr/>
<b>QUANTITY</b>	<hr/>
<b>PRICE QUOTATION</b>	<hr/>
<b>TOTAL</b>	<hr/>

(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)

**252.209-7003 RESERVE OFFICER TRAINING CORPS AND MILITARY RECRUITING ON CAMPUS—REPRESENTATION (MAR 2012) 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

(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)

**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.

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(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)

**M05 EVALUATION FACTOR FOR USED, RECONDITIONED, REMANUFACTURED SUPPLIES OR UNUSED FORMER GOVERNMENT SURPLUS PROPERTY (SEP 2016)**

**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 “i ntends” 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)

**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—

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(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)

#### **L09 REVERSE AUCTION (OCT 2016)**

##### **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**

#### **L06 AGENCY PROTESTS (DEC 2016)**

##### **52.233-9001 DISPUTES - AGREEMENT TO USE ALTERNATIVE DISPUTE RESOLUTION (DEC 2016) DLAD**

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

☐ . Alternate wording may be negotiated with the contracting officer.

##### **52.247-9001 PORT HANDLING AND OCEAN COSTS IN OFFER EVALUATION (APR 1985) DLAD**

##### **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)