

**SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS**  
**OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, & 30**

1. REQUISITION NUMBER: 1000066266  
 2. CONTRACT NO.: SPE300-19-D-P344  
 3. AWARD/EFFECTIVE DATE: 2018 DEC 06  
 4. ORDER NUMBER:  
 5. SOLICITATION NUMBER: SPE300-18-R-0026  
 6. SOLICITATION ISSUE DATE: 2018 JUN 06

7. FOR SOLICITATION INFORMATION CALL:   
 a. NAME:  
 b. TELEPHONE NUMBER (No collect calls):  
 8. OFFER DUE DATE/LOCAL TIME:

9. ISSUED BY: DLA TROOP SUPPORT, DIRECTORATE OF SUBSISTENCE, 700 ROBBINS AVENUE, PHILADELPHIA PA 19111-5096, USA. Local Admin: Joseph Forgach DJF0044 Tel: 215-737-0549 Email: Joseph.Forgach@dla.mil  
 CODE: SPE300  
 10. THIS ACQUISITION IS:  UNRESTRICTED OR  SET ASIDE: \_\_\_\_\_ % FOR:  
 SMALL BUSINESS  WOMEN-OWNED SMALL BUSINESS (WOSB) ELIGIBLE UNDER THE WOMEN-OWNED SMALL BUSINESS PROGRAM  
 HUBZONE SMALL BUSINESS  EDWOSB NAICS: 311991  
 SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS  8 (A) SIZE STANDARD:

11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED:  SEE SCHEDULE  
 12. DISCOUNT TERMS: Net 10 days  
 13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700):   
 13b. RATING:  
 14. METHOD OF SOLICITATION:  RFQ  IFB  RFP

15. DELIVER TO: SEE SCHEDULE  
 CODE:  
 16. ADMINISTERED BY: SEE BLOCK 9, Criticality: PAS: None  
 CODE: SPE300

17a. CONTRACTOR/OFFEROR: Creation Gardens, Inc. DBA Creation Gardens, 2055 Nelson Miller Pkwy, LOUISVILLE KY 40223-2185, USA  
 CODE: 6TQL5  
 FACILITY CODE:  
 18a. PAYMENT WILL BE MADE BY: DEF FIN AND ACCOUNTING SVC, BSM, P O BOX 182317, COLUMBUS OH 43218-2317, USA  
 CODE: SL4701  
 TELEPHONE NO.: 5025870912

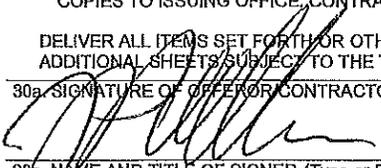
17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER:   
 18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED.  SEE ADDENDUM

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

25. ACCOUNTING AND APPROPRIATION DATA  
 26. TOTAL AWARD AMOUNT (For Govt. Use Only): \$49,500,000.00

27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4, FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA  ARE  ARE NOT ATTACHED.  
 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. FAR 52.212-5 IS ATTACHED. ADDENDA  ARE  ARE NOT ATTACHED.

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  
 29. AWARD OF CONTRACT: REF. SPE300-18-R-0026 OFFER DATED 2018-Nov-14. YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH, HEREIN IS ACCEPTED AS TO ITEMS: See Schedule of Items

30a. SIGNATURE OF OFFEROR CONTRACTOR:   
 31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER):   
 30b. NAME AND TITLE OF SIGNER (Type or Print): Jim Walker Vice President  
 30c. DATE SIGNED: 12-06-18  
 31b. NAME OF CONTRACTING OFFICER (Type or Print): Leah Albright  
 31c. DATE SIGNED: 12-6-18

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
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32e. MAILING ADDRESS OF AUTHORIZED GOVERNMENT REPRESENTATIVE	32f. TELEPHONE NUMBER OF AUTHORIZED GOVERNMENT REPRESENTATIVE
32g. E-MAIL OF AUTHORIZED GOVERNMENT REPRESENTATIVE	

33. SHIP NUMBER <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL	34. VOUCHER NUMBER	35. AMOUNT VERIFIED CORRECT FOR	36. PAYMENT <input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL	37. CHECK NUMBER
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38. S/R ACCOUNT NO.	39. S/R VOUCHER NUMBER	40. PAID BY
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41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT	42a. RECEIVED BY ( <i>Print</i> )
41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER	41c. DATE
42b. RECEIVED AT ( <i>Locallon</i> )	
42c. DATE REC'D ( <i>YY/MM/DD</i> )	42d. TOTAL CONTAINERS

**Form****I. SOLICITATION/CONTRACT FORM**

The terms and conditions set forth in solicitation SPE300-18-R-0026 are incorporated into subject contract.

The following documents are incorporated by reference into the subject contract: your final offer, which is being accepted by the Government to form this contract, Solicitation SPE300-18-R-0026 dated November 14, 2018, and all solicitation amendments issued there under as follows:

**II. PERFORMANCE PERIOD:****A. Effective Period of the Contract:**

Tier 1 - December 6, 2018 through June 5, 2020

Tier 2 - June 6, 2020 through December 5, 2021

Ordering commences on February 3, 2019 with first deliveries beginning February 6, 2019 for Troop and February 11, 2019 for School customers.

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

The following chart includes the 3 year estimated dollar value, along with the guaranteed 10% minimum and 300% maximum. The guaranteed minimum and maximum, although based on estimates, are a firm dollar amount calculated as a percentage of the estimated dollar value; that firm dollar amount constitutes the Government's legal ordering obligation under the contract.

Kentucky/Indiana Zone	18 Month Estimate (1 <sup>st</sup> Tier)	3 Year Estimate (Total Including all Tiers)	10% Min (1 <sup>st</sup> Tier)	300% Max (3 Years)
Group 1 – KY Troops	\$700,000.00	\$1,400,000.00	\$70,000.00	\$4,200,000.00
Group 2 – KY Schools	\$5,500,000.00	\$11,000,000.00	\$550,000.00	\$33,000,000.00
Group 3a – IN Troops	\$50,000.00	\$100,000.00	\$5,000.00	\$300,000.00
Group 3b – IN Schools	\$2,000,000.00	\$4,000,000.00	\$200,000.00	\$12,000,000.00
<b>Total</b>	<b>\$8,250,000.00</b>	<b>\$16,500,000.00</b>	<b>\$825,000.00</b>	<b>\$49,500,000.00</b>

The term "3 Year Estimate" refers to the Government's good faith estimate of the requirement for two (2) Tier periods.

The total minimum contract dollar value is \$825,000.00.

The maximum contract dollar value is \$49,500,000.00.

**III. START-UP PERIOD**

The Contractor's startup period will take place prior to the first order and is included in the 18-month base Tier period. The Contractor

**CONTINUED ON NEXT PAGE**

**Form (CONTINUED)**

shall submit a proposed implementation schedule to the Contracting Officer within fifteen (15) days after award highlighting the steps that will be taken to implement a fully functional distribution account, including all EDI transactions for all customers covered by this solicitation. An additional thirty (45) days will be granted for actual implementation. No more than sixty (60) days after award will be permitted for each contractor to have fully functional distribution accounts in place for all customers.

**IV. ORDERING CATALOGS**

The following are part of Creation Garden, Inc., LLC's (Creation Gardens) offer and are hereby incorporated as part of subject contract:

Offered delivered price to be utilized for first week of ordering. The Pricing Proposal spreadsheet submitted on November 14, 2018 is attached.

Distribution price for the Contract Period is as follows:

Distribution Price	Tier 1	Tier 2
Group 1 KY (Troop)		
Group 2 KY (Schools)		
Group 3a IN (Troops)		
Group 3b IN (Schools)		

**SUPPLIES OF SERVICES AND PRICES**

**ITEMS:** Full-Line Fresh Fruit and Vegetables

**CUSTOMERS:** DoD and Non-DoD USDA Customers in the Kentucky/Indiana Zone listed in Attachment 2 of this document.

**FOB TERMS:** FOB Destination for all items.

NOTE: Paragraph (D) of Section VII "ECONOMIC PRICE ADJUSTMENT" contained in the Solicitation enforces an upward ceiling on any economic price adjustments applicable to the instant Contract. Specifically, the aggregate of contract Delivered Price increases for each line item on the catalog subject to this provision shall not exceed 110 percent (%) for DoD Troops and 70 percent (%) for USDA Schools above that line item's initial Delivered Price on the awarded catalog. The respective percent (%) ceiling for each line item is in effect throughout the entire length of the contract period. To further illustrate this point, Attachment 1 (Final Pricing) includes a separate column that identifies the percentage EPA ceiling for the individual Delivered Prices of each line item on the catalog. This price represents the maximum increase in Delivered Price allowable for the entire 5-year length of the Contract. For additional information, see the EPA provision as specified in the Solicitation. That said, please be aware that just because an awardee furnishes a price revision on a bi-weekly basis that falls within the EPA clause's 110 percent (%) for DoD Troops and 70 percent (%) for USDA Schools ceiling, does not automatically deem that price "fair and reasonable" and thus acceptable. The EPA provision is merely one separate factor that is considered by the Contracting Officer in arriving at his/her final "fair and reasonable" price determinations. Therefore, it is important to note that all other provisions of the Solicitation/Contract must be adhered to in conjunction with the aforementioned EPA provision.

**CATALOG #:** Kentucky DoD Troop customers will order under SPE300-19-D-P344, Indiana DoD Troop Customers will order under SPE300-19-D-PA09, Kentucky Non-DoD USDA School customers will order under SPE300-19-D-S344 and Indiana Non-DoD USDA School customers will order under SPE300-19-D-SA44. Creation Gardens will invoice in accordance with the customer's orders.

CONTINUATION SHEET	REFERENCE NO. OF DOCUMENT BEING CONTINUED: SPE300-19-D-P344	PAGE 5 OF 7 PAGES
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**Form (CONTINUED)**

All catalog pricing is valid 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 (bi-weekly). Catalog updates must be received no later than 12:00 P.M. EST the preceding Wednesday of the ordering period.

The Troop Customers are required to place orders for "skip day" delivery. The School Customers are required to place orders no later than 96 hours before delivery date.

All pricing will be firm at time of order.

Creation Gardens will not invoke any additional charges for emergency orders (defined as an order that is placed for same day delivery).

**DELIVERIES AND PERFORMANCE**

The following are the designated plant locations for the performance of this contract for all contract line items:

**Place of Performance:**

Creation Gardens, Inc., Inc.  
2055 Nelson Miller Parkway  
Louisville, KY 40233

**Clauses:**

**52.204-23-Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Jul 2018)**

Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities. As prescribed in 4.2004, Insert the following clause:

Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Jul 2018)

(a) Definitions. As used in this clause--

Covered article means any hardware, software, or service that--

- (1) Is developed or provided by a covered entity;
- (2) Includes any hardware, software, or service developed or provided in whole or in part by a covered entity; or
- (3) Contains components using any hardware or software developed in whole or in part by a covered entity.

Covered entity means--

- (1) Kaspersky Lab;
- (2) Any successor entity to Kaspersky Lab;
- (3) Any entity that controls, is controlled by, or is under common control with Kaspersky Lab; or
- (4) Any entity of which Kaspersky Lab has a majority ownership.

(b) Prohibition. Section 1634 of Division A of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91) prohibits

**Form (CONTINUED)**

Government use of any covered article. The Contractor is prohibited from--

(1) Providing any covered article that the Government will use on or after October 1, 2018; and

(2) Using any covered article on or after October 1, 2018, in the development of data or deliverables first produced in the performance of the contract.

(c) Reporting requirement. (1) In the event the Contractor identifies a covered article provided to the Government during contract performance, or the Contractor is notified of such by a subcontractor at any tier or any other source, the Contractor shall report, in writing, to the Contracting Officer or, in the case of the Department of Defense, to the website at <https://dibnet.dod.mil/>. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at <https://dibnet.dod.mil/>.

(2) The Contractor shall report the following information pursuant to paragraph (c)(1) of this clause:

(i) Within 1 business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; brand; model number (Original Equipment Manufacturer (OEM) number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the report pursuant to paragraph (c)(1) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of a covered article, any reasons that led to the use or submission of the covered article, and any additional efforts that will be incorporated to prevent future use or submission of covered articles.

(d) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts, including subcontracts for the acquisition of commercial items.

(End of clause)

**Part 12 Clauses**

52.204-19 INCORPORATION BY REFERENCE OF REPRESENTATIONS AND CERTIFICATIONS (DEC 2014) FAR

252.204-7009 LIMITATIONS ON THE USE OR DISCLOSURE OF THIRD-PARTY CONTRACTOR REPORTED CYBER INCIDENT INFORMATION (OCT 2016) DFARS

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

52.232-40 PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (DEC 2013) FAR

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

52.233-3 PROTEST AFTER AWARD (AUG 1996) FAR

**Attachments**

List of Attachments

CONTINUED ON NEXT PAGE

**Attachments (CONTINUED)**

File Name	Description
ATTACH_Attachment_1_Schedule_of_Items	Attachment 1 - KY & IN Schedule of Items.xlsx
ATTACH_Attachment_2_Delivery_Schedule	Attachment 2 - KY & IN Delivery Schedule .xlsx