AMENDMENT OF SOLICITATION	1. CONTRACT ID COD	1. CONTRACT ID CODE					
2. AMENDMENT/MODIFICAITON NO.	3. EFF	ECTIVE DATE	4. REQUISITION/PURCHAS	SE REQ. NO.	REQ. NO. 5. PROJECT N		
00002		12/11/2009	IQC09170090	07	N/A		
6. ISSUED BY	DDE SPI	M300	7. ADMINISTERED BY	(If other than Item 6)	CODE		
DEFENSE SUPPLY CENTER PHILA Subsistence - FTAE 700 ROBBINS AVENUE PHILADELPHIA, PA 19111	DELPHIA						
8. NAME AND ADDRESS OF CONTRACTOR (No., stre	et, county, State	and ZIP Code)		(X) 9A. AMENDMEN	OF SOLICIATIO	N NO.	
				SPM300-0 9B. DATED (SEE 11/2- 10A. MODIFICAT	1TEM 11) 4/2009		
CODE	FACILITY C	CODE		1			
11. THIS	ITEM ONLY	APPLIES TO AME	NDMENTS OF SOLICI	TATIONS			
or (c) By separate letter or telegram which includes a refe DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE already submitted, such change may be made by telegra amendment, and is received prior to the opening hour ar	HOUR AND DA	TE SPECIFIED MAY RESU	JLT IN REJECTION OF YOUR O	FFER. If by virtue of this ar	D BE RECEIVED A	T THE PLACE desire to change an offer	
			CATION OF CONTRACTION				
CHECK ONE A. THIS CHANGE ORDER IS ISSUED PURS NO. IN ITEM 10A.	UANT TO:	(Specify authority)	THE CHANGES SET FORTH I	N ÎTEM 14 ARE MADE IN TI	HE CONTRACT O	RDER	
B. THE ABOVE NUMBERED CONTRAC appropriation date, etc.) SET FOF	RTH IN ITEM 14,	PURSUANT TO THE AUT	THORITY OF FAR 43.103(b).	(such as che	anges in paying o	ffice,	
D. OTHER (Specify type of modification	and authority)						
E. IMPORTANT: Contractor is not,	is req	uired to sign this o	document and return	co	opies to the i	ssuing office.	
14. DESCRIPTION OF AMENDMENT/MODIFICATION (DETAILS OF THIS AMENDMENT ALL OTHER TERMS AND CONDITION Except as provided herein, all terms and conditions of the 15A. NAME AND TITLE OF SIGNER (Type or print)	RE ON TH	IE FOLLOW ON ARDING THIS Prenced in Item 9A or 10	SOLICITATION R OA, as heretofore changed, rei	EMAIN UNCHANG mains unchanged and in form ONTRACTING OFFICER	GED.	t)	
15B. CONTRACTOR/OFFEROR		I SC. DATE SIGNED	16B. UNITED STATES OF AMI			16C. DATE SIGNED	
(Signature of person authorized to sign)	1		I (Sianatui	re of Contractina Officer)		1	

The following revisions apply to the solicitation:

1. On page 23, delete **DLAD 52.216-9XX1 ECONOMIC PRICE ADJUSTMENT (EPA)** – **ACTUAL MATERIAL COSTS** – **DLAD (Clause is in development. Clause will be furnished via amendment. Government expects to issue amendment in two weeks.)"** and add the following clause to the page.

DLAD 52.216-9065 ECONOMIC PRICE ADJUSTMENT - ACTUAL MATERIAL COSTS FOR SUBSISTENCE PRODUCT PRICE BUSINESS MODEL (NOV 2009)

- (a) WARRANTIES. For the portion of the schedule that is covered by this EPA clause, the contractor
- warrants that-
- (1) Contract Unit Prices covered by this contract do not include allowances for any portion of the contingency covered by this clause; and
- (2) All price adjustments invoiced under this contract shall be computed in accordance with the provisions of this clause.
- (b) DEFINITIONS. As used throughout this clause, the term:
- (1) "Contract Unit Price" means the total fixed price per unit charged to DSCP for a product delivered to DSCP's customers. The Contract Unit Price consists of two components: Product Price and Distribution Price. The unit price sum of the two component prices shall be rounded up or down as applicable, to the nearest cent.
- (2) "Product Price" is the most recent DSCP Manufacturer's Price Agreement (MPA) price or the most recent manufacture, grower or private label holder commercial price per unit to the Contractor, exclusive of standard freight. The Product Price shall be based on FOB Origin/Point of Manufacturer. Product Price shall exclude all costs that are to be covered in the Distribution Price, including but not limited to, all transportation, broker and dealer costs and fees, projected general and administrative expenses, COR and VETCOM office space (where applicable), workers compensation insurance as related the Defense Base Act (DBA), the Longshore and Harbor Workers compensation Act, overhead, packaging/marking/labeling costs, all Non Point of Manufacturer fees, palletization, procurement fees, storage, consolidation, distribution work and pallets and ice for Airlifts.

Exceptions:

- a) Airfreight Charges may be included in the Product price for Fresh Fruits and Vegetables (FF&V) when it is necessary to have product flown in for the exclusive use of this contract when the local market's supply cannot support DSCP Customer requirements.
- b) A CONUS-based manufacturer, grower or private label holder's product pricing which is a national price inclusive of transportation costs to a Distribution Point shall be supported by documentation and may be considered by the Government on a case by case basis, upon concurrence of the contracting officer.

c) Mandatory Source Items: The product price shall be limited to the nonprofit agency's price for product as set in accordance with applicable law. The product price shall be based on FOB Origin/Nonprofit Agency.(Prices set in accordance with applicable law (FOB Origin/Nonprofit Agency)

For this contract, the Product Price shall be the contractor's last Product Price through close of business 12:00 P.M. local Philadelphia time on the last Monday of each month for submission not later than 12:00 P.M. local Philadelphia time on the last Monday of each month for updating the following month's Ordering Catalog price. The Product Price shall have any and all Product Allowance subtractions made prior to presenting the Product Price to DSCP.

- (3) "Product Allowance" is discounts, rebates, and allowances to be passed on to the Government. All discounts, rebates, or allowances on particular items which are reflected in the amounts shown on the face of the manufacture's, grower's or private label holder's invoice (referred to as "off-invoice allowances") or designated by the manufacturer, grower or private label holder to be passed on to the Government or to similar commercial customers, shall be passed by the Contractor in the form of an up-front price reduction. The total of these discounts, rebates, and allowances (Product Allowance), shall be reflected via a reduced STORES price, resulting in a lower invoice price to the customer. Any rebates that must be passed to the Government and which cannot be applied as an up-front price reduction must be submitted via check made to the US Treasury, attached with itemized listing of all customer purchases by line item to include contract number, call number, purchase order number and CLIN number.
- (4) "Distribution Price (including normal and premium)" means the firm fixed price portion of the Contract Unit Price, offered as a dollar amount per unit of issue, rounded up or down to the nearest cent. The Distribution Price is the only method for the Contractor to bill the Government for all costs of contract performance other than Product Price, including but not limited to, operational costs, overhead and profit, all transportation costs from the Prime Vendor's OCONUS distribution facility to customer locations including routine airlift(where applicable), broker and dealer costs and fees, projected general and administrative expenses, COR and VETCOM office space (where applicable), workers compensation insurance as related the Defense Base Act (DBA), the Longshore and Harbor Workers compensation Act, overhead, packaging/marking/labeling costs, all Non Point of Manufacturer fees, palletization, procurement, storage, consolidation, distribution work and pallets and ice for Airlifts, and any other elements of Distribution Price not defined in this solicitation. The Distribution price shall remain constant for the entire contract period.
- (5) "Ordering Catalog" means the electronic listing of items and their corresponding contract unit prices available for ordering under this contract.
- (6) "Ordering Month" means from the Sunday (12:01 AM) of the First full week in a calendar month through the last Saturday (11:59 PM) in that calendar month (Eastern Time ET, standard or daylight as applicable).

(c) PRICE ADJUSTMENTS.

- (1) General.
- (A) All Contract Unit Prices shall be fixed and remain unchanged until changed pursuant to this clause or other applicable provision of the contract. Only the Product price component of the Contract Unit Price is subject to adjustment under this clause. After the first Ordering month, if the Contractor's Product Price changes for any or all Contract Unit Prices, the Contract Unit Price shall be changed in the next month's Ordering Catalog upon the Contractor's request, submitted

in accordance with paragraph B below, by the same dollar amount of the change in the Product price, subject to the limitations in paragraph (d). The price change shall be effective at the beginning of the next Ordering Month. All Ordering Catalog Unit Prices computed in accordance with this clause and in effect when an order is placed shall remain in effect for that order through delivery. DSCP will be charged the Contract Unit Price in effect at the time of each order regardless of any changes in the unit price occurring in any subsequent Ordering Month.

- (B) All notices and requests for price changes shall be submitted monthly, no later than 12:00 P.M. local Philadelphia time on the last Monday of each month, to be effective in the following Ordering Month's Ordering Catalog prices. The Contractor shall notify the Contracting Officer of its notice/request in the form of an EDI 832 transaction set. The change notice shall include the Contractor's adjustment in the Product Price component of the applicable Contract Unit Price. Upon the Contracting Officer's acceptance of such 832 price changes in accordance with D below, the price change transaction sets will post in the next month's Ordering Catalog and each contract unit price shall be changed by the same dollar amount of the change in the Product Price in the next month's Ordering Catalog.
- (C) 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 months. 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, Supplier documentation regarding rebates/allowances, and any other substantiating information requested by the Contracting Officer.
- (D) Price change requests that the Contracting Officer questions or finds to be inconsistent with the requirements of this clause shall not be posted until the Contracting Officer specifically authorizes the posting. If the Contracting Officer does not notify the Contractor by close of business local Philadelphia time o the Thursday immediately following the Monday when price changes are due 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 Month. The posting of updated prices in the Ordering Catalog, calculated in accordance with this clause, constitutes a modification to this contract. No further contract modification is required to effect this change.
- (E) Should the Contracting Officer determine or question that a price change request contained an erroneous unit price or price change, or cannot otherwise determine the changed price(s) to be fair and reasonable, such as when the changed price(s) is (are) higher than lower Product Prices for items of comparable quality which are reasonably available to the Government or Contractor from other sources, the Contracting Officer will so advise the Contractor, prior to close of business local Philadelphia time on the Thursday immediately following the Monday when price changes are due. If the Contracting Officer cannot determine or negotiate a fair and reasonable price, the Contracting Officer may reject any price change and direct in writing that the item in question be removed from the Contractor's Ordering Catalog, without liability to the Government. The Contracting Officer may subsequently remove any such item from the Ordering Catalog if the Contractor does not take the appropriate corrective action. The Government has the right to procure such removed items from any alternate source of supply, and the failure of the Contractor to supply such item will be considered a negative instance of performance.
- (F) In the event of a price change not posting or an Ordering Catalog Contract Unit Price not computed in accordance with this clause, resulting in an incorrectly increased or decreased Contract Unit Price, the Prime Vendor shall immediately notify the Contracting Officer in writing and promptly thereafter correct its Ordering Catalog and submit a refund proposal for any

amounts paid to the Contractor resulting from the erroneous price. In the event of an erroneous price decrease in the Ordering Catalog, if the Contractor can demonstrate to the satisfaction of the Contracting Officer that the error did not result from the fault or negligence of the Contractor, the Contractor may submit a request for equitable adjustment for consideration by the Contracting Officer.

- (2) Limitations. All adjustments under this clause shall be limited to the effect on Contract Unit Prices of actual increases or decreases in the Product Prices for material. There shall be no upward adjustment for ----
 - (A) Supplies for which the Product Price is not affected by such changes;
 - (B) Changes in unit prices other than those in or subsequently added in the Ordering Catalog;
 - (C) Changes in the quantities of material; and
 - (D) Increases in unit prices that the Contracting Officer determines are computed incorrectly (i.e. not adhering to the Contract Unit Price definition in this clause) and/or increases in unit prices that the Contracting Officer determines are not fair and reasonable.
- (d) UPWARD CEILING ON ECONOMIC PRICE ADJUSTMENT: The aggregate of contract unit price increases for each item under this clause during any contract period shall not exceed 10 percent (%) of the initial Contract unit price in such performance period, except as provided below: (Buyer shall insert the appropriate item price ceiling percentage(s) considering market volatility of each item covered by the contract.)
- (1) If at any time the Contractor has reason to believe that within the near future a price adjustment under the provisions of this clause will be required that will exceed the current contract ceiling price for any item, the Contractor shall promptly notify the Contracting Officer in writing of the expected increase. In the event the latest actual market price for an item would result in a contract unit price that will exceed the allowable ceiling price under the contract, then the Contractor shall immediately notify the Contracting Officer in writing or via its EDI 832 price change request and separate email no later than the time specified in paragraph (c)(1)(B) above. With either such notification the Contractor shall include a revised ceiling the Contractor believes is sufficient to permit completion of remaining contract performance, along with appropriate explanation and documentation as required by the Contracting Officer.
- (2) If an actual increase in the reference price would raise a contract unit price for an item above the current ceiling, the Contractor shall have no obligation under this contract to fill pending or future orders for such items, as of the effective date of the increase, unless the Contracting Officer issues a contract modification to raise the ceiling. If the contract ceiling will not be raised, the Contracting Officer shall so promptly notify the Contractor in writing. After evaluation of a requested actual price increase, if the Contracting Officer authorizes the change in the contract unit price, the Contractor shall submit an EDI 832 price change. The price change shall be posted for the following month's ordering catalog.
- (e) There is no downward limitation on the aggregated percentage of decreases that may be made under this clause.
- (f) EXAMINATION OF RECORD: The Contracting Officer or designated representative shall have the right to examine the Contractor's books, records, documents and other data, to include commercial sales data, the Contracting Officer deems necessary to verify Contractor adherence to the provisions of this clause. Such examination may occur during all reasonable times until the end of 3 years after the date of final payment under this contract or the time periods specified in Subpart 4.7 of the Federal Acquisition Regulation (FAR), whichever is earlier.

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

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

On page 279, replace "For 832 catalog (Vendor to DCSP)" with "For 832 catalog (Vendor to DSCP)"—In the table, within segment PID Product /Item Description add the following elements:

Segment	Element	Value	Size	M/O
PID06	n/a			
PID07	n/a			
PID08		andard Acceptance es, "N" = No	1 ID	M

On page 57 under Management Reports the following is added:

The contractor is required to add the following statement to every management report submitted to DSCP:

"I certify that the information submitted to the Government is complete and accurate to the best of my knowledge. I understand that false statements contained herein, may be punishable by law."

In addition on page 57, remove the section labeled "A. FILL RATES" in its entirety and replace with the following:

A. FILL RATES

- 1. The required contract order fill-rate is 98.5%. It is not necessary to propose a higher fill rate, nor will we evaluate a proposed higher fill rate. During contract performance, higher fill-rates may result in a higher Past Performance and Experience rating for option determinations and future acquisitions. Fill rates will be documented in the Contractor Performance Review System (CPARS) and low fill rates may impact past performance evaluations on subsequent acquisitions.
- 2. The Government's in-house record for non catch weight fill rate shall be calculated utilizing the order and receipt information located in STORES, as specified below. The vendor's submitted non catch weight fill rate reports will be based on the same formula, and shall not include substitutions, mispicks, damaged cases, etc.

(Cases accepted / cases ordered) X 100 = Fill Rate %

3. The fill rate for catch weight items shall be calculated as follows <u>and shall not include</u> <u>substitutions, mis-picks, damaged cases, etc.</u>:

(Pounds accepted / Pounds ordered) X 100 = Fill Rate %

4. <u>Definitions:</u>

- a. <u>Cases accepted:</u> The product quantity that the customer has received and receipted, not including damaged cases, and mis-picks.
- b. <u>Cases ordered:</u> The product quantity requested by a customer.
- c. <u>Catch-weight item</u>: An item for which a weight range is acceptable; normally meat items purchased by the pound, e.g. 8905-01-E29-2117, Beef Flank Steak, 11-15 LB.
- 5. Regardless of the line item/LSN unit of issue or unit of measure (LB, CO, CS), the Government will calculate the fill-rate for each delivery order line item based on cases ordered & accepted, utilizing the units per pack, or purchase ratio factor, to convert all order/receipt quantities to cases. In calculating catch-weight item order/receipt cases and fill-rates, the weight range average will be utilized to convert pounds to cases. The government system will round down and up as follows:

```
0 - 0.4999 will round down 0.5 - 0.999 will round up
```

d. As an example, for the item at C.3 herein, the average weight is 13 LB. In the event a customer wants 50 lbs of flank steak, the ordering system will place the order for a multiple of 13 LB equal to or greater than the requirement, in this case 52 LBS. If the contractor delivers 45 LB, the fill-rate will be calculated as follows:

```
Order = 52 LB / 13 = 4 cases
Receipt = 45 LB / 13 = 3.46 = 3 cases
Fill-rate= 3 / 4 = 75.0%
```

If the contractor delivers 46 LB, the fill-rate = 46 / 13 = 3.53 = 4 cases = 4 / 4 = 100%

e. Contractors shall assure that the 832 catalog transaction set for each catch-weight LSN contains (1) the correct average case weight of cases to be delivered in 832 field CTP04, Catch-Weight Multiple, and (2) 832 field PO404, Packaging Code, includes the catch-weight indicator "AVG".

Catch-weight items are items which permit a weight range per case, normally meat items with a LB weight range. For catch-weight items only, the allowable quantity variation is:

```
Decrease: minus (-) 49% of the item average weight Increase: plus (+) the item average weight
```

For example, for 8905-01-E29-2117, Beef Flank Steak, 11-15 LB, with a 13 LB average, order quantities will be in multiples of the 13 LB item average weight. The allowable variations in quantity

for any order for this item are:

```
Decrease = 13 \times .49 = 6 LB
Increase = 13 LB
```

For an order for 104 LB of 8905-01-E29-2117, Beef Flank Steak, 11-15 LB, the contractor may deliver

98-117 LB and receive a 100% fill-rate.

6. **Designation of catch-weight items:** To designate a catch-weight item, the Contractor must input catch-weight indicator "AVG" in 832 catalog field PO404, Packaging Code, for each catch-weight item. The Contractor shall assure that the correct average case weight (i.e. the actual weight average of cases that will be delivered) is input in 832 catalog field CTP04, Catch Weight Multiple.

- 7. See paragraph V.3 below for the calculation of fill-rate for catch-weight items.
- 8. No single line item will be credited for more than 100% fill-rate. This includes both catch-weight and non-catch-weight items and for any items should the accepted quantity be greater than the quantity ordered.
- 9. Substitute items will be accepted/receipted against the new STORES order line as described at paragraph IV.7.B above, and the original order line will be counted as a zero fill. As an example: 8 cases of #10 can applesauce is ordered, the PV is NIS and recommends #303 CN applesauce as a substitute, customer accepts substitute and places a new order for 6 cases of the #303 CN applesauce (for a different quantity in this example due to package/pack size difference), and PV delivers the substitute order in full:

Original: 8915-00-127-8272, Applesauce #10 CN, 6/CS: Order = 48 CN = 8 CS: Receipt = 0

Substitution: 8915-00-127-6272, Applesauce #303 CN, 24/CS: Order = 144 CN = 6 CS: Receipt = 6 CS

The fill-rate for the original line is 0%; the fill-rate on the substitute line is 100%. The weighted average fill-rate for the 2 lines is 42.9% (6 cases accepted /14 cases ordered).

- 10. Non-conforming cases, e.g. incorrect items (mis-picks) and damaged cases will not be accepted and receipted.
- 11. The Government in-house record for fill-rate calculates the fill-rate for each line item of each purchase order, the fill rate per purchase order, the fill-rate per customer, and the fill-rate for all customers, for any period of time, based on order required delivery dates (RDD). Fill-rates are calculated for non-catch-weight items, catch-weight items, and overall (all items) fill rate.
- 12. The Contractor shall promptly inform the Contract Specialist or Contracting Officer of any specific instances that would absolve or excuse its failure to deliver an order, or individual line item(s), in full; e.g. customer cancelled line or quantity without adjusting STORES, customer ordered incorrect quantity, item being discontinued, etc. If the Government agrees with the justification, the Government will post the exception into its in-house system which will result in the order or line(s) either being excluded from the Government fill-rate calculation or the correct order and receipt quantities being included in the calculation. These excusable instances represent Fill-Rate Exceptions, and are shown below.
- 13. The contractor shall submit its fill-rate report (to include overall fill rate based on cases; overall non-catch weight item fill rate based on cases; overall catch weight fill rate based on cases; overall catch weight fill rate based on pounds) to the DSCP Contracting Officer. The reports shall be based on order required delivery dates (RDD), not order placement dates. The Government will compare and attempt to reconcile the Government and contractor's report. The Government's fill-rate report will be the official government record for contract performance evaluation.

FILL RATE EXCEPTIONS:

- A STORES Receipt Data Out of Date**
- B STORES Catalog Problem, PRF Incorrect
- C STORES Catalog Problem, Catch Weight Item Pkg Data Incorrect
- D Monthly Item Demand Exceeds Average Demand By >/= 300%
- E Newly Cataloged Item/Insufficient Time for Vendor to Procure**
- F Low Shelf Life Item. Frequent Restocking Required**
- G Customer Cancelled Item Without Using STORES.
- H Customer Based Order Qty on Incorrect Unit of Issue
- I DSCP Demand Forecast Problem
- J Special Order Item**
- K Item Being Phased Out
- L Customer Ordered Wrong Item
- M- Customer Ordered Incorrect Quantity for Catch Weight Items*
- Z Other, Not Listed***
- * Note: When using exception M, the fill rate should be calculated as outline above regardless of the fill rate percentage, i.e., 30 lbs accepted / 20 lbs ordered = 150%. Using this code will explain why the fill rate is over 100%.
- ** Note: Not Applicable in OCONUS.
- ***Note: Column Z is to be used for other Exceptions not listed, for example: DTS Delays, NIS Waivers etc. and must be explained in a separate Word document.

Following is a sample Fill Rate report template:

		1		1	1	Fill Rate Re	oort							
Contract#	DODAAC	PO Number	Overall %	CS Non Catch Weight %	CS Catch Weight %	LB Catch Weight %		Overall Rcpt Cases	Non Catch Wgt Ord Cases	Non Catch Wgt Rcpt Cases	Catch Ord Cases	Catch Rcpt Cases	Catch Ord Wgt	Catch Rcpt Wgt
				_					_					

Following is a sample Discrepancy Report template:

		PO Number	Stock#	Fill Rate Ex	xception Repo	ort	Actual Order Wgt (Catch)					
Contract #	DODAAC			Exception Code	Actual Order Cases	Actual Rcpt Cases						
Notes:	e indication	g that the	O line she	ould be com	poletely evolu	ded from the	e fill rate calcu	lation entert	he numbe	or "O" for co	olumns E th	ru l
		_		veight item		dea from the	illi rate carcu	lation, enter t	ne numbe	1 0 101 0	Julillis I til	141.
•		•			•	d fill rate exc	eption codes.					
4) Use the l	header pro	vided with	nout alteri	ng.								
5) Do not a	dd additio	nal column	ıs.									
6) Do not d	elete exist	ing colum	ns.									