

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT			1. CONTRACT ID CODE	PAGE OF PAGES
				1 7
2. AMENDMENT/MODIFICATION NO. 0004	3. EFFECTIVE DATE 18 July 2008	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable)	
6. ISSUED BY DEFENSE SUPPLY CENTER PHILADELPHIA DIRECTORATE OF SUBSISTENCE, BLDG. #6 700 ROBBINS AVENUE PHILADELPHIA, PA 19111-5092 POC: LINDA L. FORD/DSCP-FTAE/215-737-7804	CODE SPM300	7. ADMINISTERED BY (If other than Item 6) CODE		
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code)		(X) 9A. AMENDMENT OF SOLICITATION NO. SPM300-08-R-0061		
		X 9B. DATED (SEE ITEM 11) 02 May 08		
		10A. MODIFICATION OF CONTRACT/ORDER NO.		
		10B. DATED (SEE ITEM 13)		
CODE	FACILITY CODE			

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers is extended, is not extended.
Offer must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

(a) By completing Items 8 and 15, and returning 1 copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. Accounting and Appropriation Data (If required)

**13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS,
IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.**

(X) A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc). SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor is not, is required to sign this document and return _____ copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

The closing date for this solicitation has been extended to August 15 2008, 3 PM Local time.

Additional details of this amendment are provided on the following pages

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

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

This amendment contains revisions (adds/changes/deletions) to the solicitation.

1. On page 15, add the following clause to the chart (in numerical order):

<u>CLAUSE NUMBER</u>	<u>TITLE</u>	<u>DATE</u>
DLAD 52.246-9039	Removal of Government Identification from Non-Accepted Supplies	APR 2008

2. On page 52, E. Inventory & Warehouse Management, in paragraph 2, after the first sentence, add the following: It is estimated that a minimum of 36,000 pallet spaces will be required to support Zone I requirements and a minimum of 6,940 pallet spaces will be required to support Zone 2 requirements.
3. On page 52, F. Iraq Vehicle Transportation, add the following as the first sentence below the chart: It is estimated that a minimum of 1,121 trucks will be required to support Zone I requirements and a minimum of 180 trucks will be required to support Zone 2 requirements.
4. On page 63, delete B. Insurance, Liability, And Claims in its entirety and replace it as follows:

B. INSURANCE, LIABILITY, AND CLAIMS

DSCP will be identified as an authorized ordering office, through the Defense Distribution Center (DDC), for the Universal Services Contract (USC), a contract awarded by the United States Transportation Command (USTRANSCOM). The Prime Vendor will transmit its transportation requirements to DSCP, which will arrange government-funded transportation through orders against the USC. The Prime Vendor's products will be shipped through the Defense Transportation System (DTS) via commercial carriers receiving USC awards. As discussed above, the Prime Vendor will be shipping product via commercial carrier(s) under the DTS via a contract awarded by USTRANSCOM to commercial carriers. Although these carriers are responsible for any loss or damage to the products they transport, such responsibility or liability is limited by the terms of the USC USTRANSCOM contract, as well as, maritime law, customs, and practices, e.g., Carriage of Goods by Sea (COGSA) limitations 46 U.S. App. § 1300 et. seq.; Force Majeure; Carmack Amendment 49 USC § 14706; etc. It is, therefore, highly recommended that the offeror, prior to submitting an offer, review the current USTRANSCOM carrier contract(s). The current USTRANSCOM carrier contract can be viewed at

<http://www.sddc.army.mil/Public/Doing%20Business%20with%20SDDC/Contracts?summary=fullcontent>

During the implementation period as defined in the solicitation, the Prime Vendor contractor shall enter into an agreement and work with the USC carriers handling routes within the Prime Vendor's geographical responsibility to develop a claims process involving the Prime Vendor contractor and the USC contractor(s). The purpose of such an agreement is to establish a working relationship with the USC contractor(s) in order to facilitate the transportation of product and to establish points of contact in order to resolve any issues that may arise during the performance of this contract. Such an agreement shall address issues such as claims processing and dispute resolution for losses

and damage to Prime Vendor cargo by the USC carrier(s) and for the resolution of claims by the USC carrier(s) against the Prime Vendor for detention of carrier containers, port storage for detained containers, and maintenance provided by a carrier for detained refrigerated containers. The Prime Vendor shall pay the USC carriers directly for any detention, port storage or maintenance charges incurred by the Prime Vendor and the USC carrier(s) shall pay the Prime Vendor directly for any charges for loss/damage to Prime Vendor cargo incurred by the USC carrier(s). The Prime Vendor contractor shall provide to the DSCP Contracting Officer with a copy of such agreement, as well as, any contact information that it receives from the USC contractor(s). The Prime Vendor shall update this information as necessary and provide the Contracting Officer with any changes made to such agreement. The Prime Vendor claims procedure developed for handling any claims between the Prime Vendor contractor and the USC contractor(s) shall be provided to the DSCP Contracting Officer. During the implementation/effective period, as defined in the solicitation, the Prime Vendor shall contact the USTRANSCOM designated carrier(s) for the routes within the Prime Vendor's geographical responsibility. The Prime Vendor shall copy the DSCP Contracting Officer with the contact information that it receives from the carrier(s) and shall update this information as required. During this implementation/effective period, the Prime Vendor and the carrier(s) shall develop a claims procedure for the handling of any claims that may arise between the Prime Vendor and the carrier(s) for the products shipped by the carrier(s). This procedure shall be the basis for the resolution of any claims for loss or damage, as well as any other issues that may arise. A copy of this procedure, and any changes or updates, shall be promptly furnished to the DSCP Contracting Officer.

The Prime Vendor should consider that substantive terms and conditions of the USC contract and this contract may be relevant to the agreement and procedures negotiated with the USC carrier(s) concerning claims procedures, dispute resolution procedures, etc. The Prime Vendor is an express third party beneficiary of the USC contract regarding its provisions governing the liability of the USC carrier(s) for loss/damage to Prime Vendor cargo. Similarly, the USC carrier (s) is an express third party beneficiary of the provisions of this contract governing the liability of the Prime Vendor for container detention, port storage, refrigerated container maintenance, etc. For example, the dollar amount of damage for detention of containers of the USC carrier by the Prime Vendor is established in the USC contract. Also, the Prime Vendor should consider in negotiating any agreement or procedures that the USC carrier may take remedial action, including the assertion of a lien on Prime Vendor cargo or other actions, to protect its interests. Similarly, the Prime Vendor may exercise any right of setoff involving a commercial contract or other remedial action against the USC carrier to protect its interests. Finally, the Prime Vendor should consider in negotiating any agreement or procedures that disputes between the Prime Vendor and the USC carrier will not be subject to the Contract Disputes Act or the "Disputes" clause of this contract. Because claims for loss/damage to Prime Vendor cargo, detention of USC carrier containers, port storage assessed against detained carrier containers, maintenance of detained carrier refrigerated containers, etc. are to be covered by agreement between the Prime Vendor and USC carrier(s), disputes regarding such matters will be covered by the business arrangement between the Prime Vendor and USC carrier(s) and laws applicable to such arrangements.

The Government is not responsible or liable for any loss or damage to the Prime Vendor's products shipped through under the DTS. Any such losses or problems can be mitigated by establishing a good working relationship with the carriers, being familiar with the terms and conditions of the USTRANSCOM contract, and obtaining maritime

insurance for the products shipped. Any discrepancy reports, notice of claims or claims for such loss or damage, as well as, any other communications regarding such loss or damage shall be submitted by the Prime Vendor directly to the carrier for resolution, not to DSCP or USTRANSCOM. The Prime Vendor shall copy the DSCP Contracting Officer with any such claims, notice, or reports. At the request of the Prime Vendor, the DSCP Contracting Officer may facilitate the resolution of the claim, but all communications regarding the claim shall be between the Prime Vendor and the carrier and not through DSCP or USTRANSCOM. This procedure is not subject to change or modification, except by the DSCP Contracting Officer. If the Prime Vendor is unable to communicate directly with the carrier for any reason, it should promptly so advise the DSCP Contracting Officer.

5. On pages 86 & 87, delete XVII. Rebates/Discounts and Price-Related Provision in its entirety, and replace it as follows:

XVII. REBATES/DISCOUNTS AND PRICE-RELATED PROVISIONS

(a) The contractor shall employ prevailing commercial methods in the pursuit of discounts, rebates, allowances or other similar economic incentives or benefits for the customers supported under this contract throughout the period of performance. For all items, including those covered by Manufacturer's Pricing Agreements, the contractor warrants, on a continuing basis throughout the period of performance, that its product price under this contract is equal to or lower than its product price to its most favored customer. 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 given to any other customer 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 cost or price proposal and in the reports section.

(b) The contractor may retain Early Payment discounts that meet the following conditions:

- (i) the Early Payment discount is an incentive to encourage payment earlier than the normal payment due date; such as, 14, 30, or 60 days;
- (ii) the Early Payment discount is consistent with commercial practice;
- (iii) the Early Payment discount is routinely given by the suppliers to customers other than the Prime Vendor at the same discount rate and under the same conditions as provided to the Prime Vendor;
- (iv) the Early Payment discount is not established, requested, or negotiated for the purpose of avoiding giving DSCP a lower cost or a rebate or in exchange for a higher invoice price;
- (v) the Early Payment discount is no more than 2 percent and the early payment is required within 10 days to obtain the discount; and
- (vi) the contractor actually made the required payment within the time period required to receive the discount.

(c) Upon request the contractor shall provide to the Government any invoices, quotes, or agreements relevant to the product price component for existing catalog items, for any new items being added to the catalog, and for requested price changes to existing catalog

items. The contractor must include detailed payment terms on each invoice or quote used to substantiate product price. If there are no payment terms associated with the document, the contractor must annotate it with “No payment terms.”

Documents not in English will be accompanied by a copy translated into English and documents not denominated in American dollars will include a copy converted to American dollars at the exchange rate specified using the FXConverter on the OANDA Currency Site (<http://www.oanda.com>) as of the close of business on the effective date of the document.

(d) The government may require the contractor to submit invoices and other documentation from all subcontractor tiers or any supplier or person in the product price supply chain, to substantiate discounts, rebates, allowances or other similar economic incentives or benefits, and/or to substantiate that product prices under this contract are equal to or lower than product prices that are given to the contractor’s most favored customer. If the contracting officer determines that a discount, rebate, allowance or other similar economic incentive or benefit should have been passed on to the Government, the Government shall be entitled to a prospective product price reduction and a retroactive refund for the amount of the discounts, rebates, allowances or other similar economic incentives or benefits. Likewise, if the contracting officer determines that a product price was not equal to or lower than that given the contractor’s most favored customer, the Government shall be entitled to a prospective product price reduction and a retroactive refund for the difference between the product price charged to the Government and the product price charged to the contractor’s most favored customer. The Contracting Officer, or authorized representative, shall have the right to examine and audit all the Contractor’s records (as defined at FAR 52.215-2(a)) relevant to the existence of discounts, rebates, allowances or other similar economic incentives or benefits, and most favored customer product 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.

6. On page 100, number XXX. FREE ON BOARD (F.O.B.) POINT, delete the first paragraph and replace it as follows.

Under normal conditions F.O.B. Destination terms apply. The Government shall not be liable for any delivery, storage, demurrage, accessorial, or other charge involved before the actual delivery (or “constructive placement” as defined in carrier tariffs) of the supplies to the final destination. The Prime Vendor may be liable directly to the USTRANSCOM Universal Services Contract (USC) ocean carrier(s) for charges for detained containers, port storage of detained containers, and maintenance of detained refrigerated containers. (See Page 63, 6.B. Insurance, Liability, And Claims) The Contractor shall pay and bear all charges to the specified point of delivery. For complete definition of F.O.B. Destination, see FAR Clause, 52.247-34, F.O.B. DESTINATION.”

7. On page 130, paragraph C, revise the referenced schedule of items, attachments from “4 thru 7” to “3 thru 5.”
8. On page 130, paragraph C.2., revise the third sentence to read as follows: There are approximately 397 CSNs.

9. On page 130, paragraph C.3., revise the first two sentences to read as follows: The intent of the Prime Vendor Go to War Catalog is for the contractor to maintain a capability to deliver the war time catalog items. Items that are only used by the Navy may not be selected for inclusion in a specific vendor's catalog even though these products are part of the wartime catalog if this vendor's normal customers do not include the Navy.
10. On page 130, paragraph C.4., delete the web site address in the second sentence and replace it as follows: <https://spiders.dla.mil> – Select Documents.
11. On page 130, paragraph C.5., revise the first sentence to read as follows: Select the document entitled “Class 1 – Revised Subsistence Solicitation SPM300-08-R-0061.”
12. On page 131, paragraph C.6., delete the following sentence: No one prime vendor is expected to meet the quantities listed on worksheet 4.
13. On page 131, paragraph C.7., line 3 – change the word “provider” to “supplier.”
14. On page 131, paragraph D.2., revise the last sentence to read: In addition, the successful offeror will be required to report available quantities for the complete list of items in prime vendor Go To War Catalog within 180 days of contract award.
15. On page 142, FAR 52.212-1, Instructions to Offerors – Commercial Items, revise the date from APR 2008 to JUN 2008. Also, delete and replace paragraph (b) (8) as follows:

(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);
16. On page 153, revise the first sentence to read as follows: 1. Provide a brief performance record of your five (5) highest dollar value or most comparable Prime Vendor/Regular dealer contracts for the period from January 1, 2005 through December 31, 2007 (the “selected contracts”), whether they are commercial or Government contracts.
17. On page 153, paragraph B., revise the first sentence to read as follows: B. If an offeror has had any Government contracts, including, but not limited to any of its top five (5) selected contracts, the offeror must submit information regarding its performance against socioeconomic (i.e., Small Business) and Javits-Wagner-O'Day Entity Support goals as part of its past performance information.
18. On page 157, paragraph 8 (iv) (b) (1), delete the web site address and replace it as follows: <https://spiders.dla.mil> – Select Documents.
19. On page 157, paragraph 8 (iv) (b) (2), revise the first sentence to read as follows: 2. Select the document entitled “Class1 – Revised Subsistence Solicitation SPM300-08-R0061.
20. On page 158, paragraph 8 (iv) (6) (b), delete the following sentence: No one prime vendor is expected to meet the quantities listed on worksheet 4.

21. On page 175, Factor II Experience / Past Performance, paragraph A. Experience, revise the first sentence to read as follows: Element 1 – Size and Complexity – The Government will evaluate the offeror’s experience in fulfilling requirements of similar size and complexity as a contractor on the battlefield for customers in a prime vendor/regular dealer capacity on an individual contract basis only for its top five (5) selected contracts, including Government contracts, if any.
22. On page 176, paragraph B. Past Performance, revise the first sentence to read as follows: Contract Performance/Customer Satisfaction – The Government will evaluate the offeror’s record of performance with both commercial and Government contracts (if any) for its top five (5) selected contracts.
23. On page 176, paragraph C. Socioeconomic Past Performance, revise the first sentence to read as follows: If an offeror has performed on Government contracts that are subject to prior socioeconomic goals (including any such contracts are within the offeror’s top five (5) selected contracts and any other Government contracts), they will be evaluated on their adherence to the requirements of these various socioeconomic considerations of past and current contracts.
24. On page 176, paragraph D. JWOD, revise the first sentence to read as follows: If an offeror has performed on Government contracts that are subject to prior JWOD requirements (including any such contracts are within the offeror’s top five (5) selected contracts and any other Government contracts), they will be evaluated on their adherence to the requirements of the Javits-Wagner-O’Day Act Entity Support of past and current contracts.
25. On Attachment 6, the NAPA Holders Listing, add the following company:

Agreement Number	Vendor	Brands
0423	4C Foods Corp 480 Fountain Ave. Brooklyn, NY 11208	• 4C

26. Attachments 6 through 8 do not contain page numbers (pages 199 thru 257). Insert the page number on the attachment pages in the same format as the previous pages within the solicitation document.
27. On attachments 6 through 8, delete the word “DRAFT” from the heading on each page.