

AMENDMENT OF SOLICITATION MODIFICATION OF CONTRACT			1. CONTRACT ID CODE	PAGE OF PAGES
2. AMENDMENT/MODIFICATION NO. 0023			3. EFFECTIVE DATE 25 Nov 2009	4. REQUISITION/PURCHASE REQ. NO.
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			7. ADMINISTERED BY (If other than Item 6)	5. PROJECT NO. (If applicable)
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 _____ 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 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)	

The following revisions apply to attachments 1 and 2 to the solicitation:

1. Attachment 1 – An error was identified in the formula that extended the offerors Premium Distribution Price, categories 195 thru 237, in column “O”. The formula erroneously multiplied the 18 month quantity estimate by the offeror’s 3rd year option premium price, when the formula should have used the 4th year option price. This formula error was corrected.

2. Attachment 2.

(a) An error was identified in the distribution price formula in column “M” for items 196, 197, and 198. The formula erroneously used division in lieu of multiplication to convert the distribution price unit of measure to the government unit of issue. This formula error was corrected.

(b) The heading for column “V” was revised from “If not an exact Spec/Unit Match, please explain the difference between the Gov’t item and your offer” to “If not an exact Spec/Unit Match, please explain the difference between the Gov’t item and your offer. Other exceptions are also required to be noted here.” Other exceptions include but are not limited to: product price exception 1 – airfreight transportation applies; product price exception 2 – national price applies and lower distribution price offered; etc.

(b) Columns “AP-AR” were added to identify discrepancies found by the Government on the offerors originally submitted quotes and/or invoices.

(c) Column “AS” was added for the Government to identify the corrective action that offerors are required to take in relation to the invoice discrepancies noted in columns AP-AR.

(d) Column “AT” was added for the offeror to address each quote/invoice discrepancy or action taken in response to the Government findings in columns “AP-AS.”

(e). Column “AU” was added for the offeror to offer a lower distribution price on a per item basis when a “National Price” is offered in column “F.” This price must be offered per the government unit of measure identified in column “J.” Column “AU” must remain valued at \$0.00 if national pricing is not applicable.

(f). Column “AV” was added as a duplicate of column “J” for the offerors convenience.

(g). The formula in column “K” was revised to capture lower distribution prices identified in column “AU.” If a zero price is indicated in column “AU,” the distribution price will be captured from attachment 1 as the spreadsheet was originally structured.

The following revisions apply to the solicitation:

1. On pages 17 through 24, delete and replace **DFARS 252.225-7040** as follows:

DFARS 252.225-7040 CONTRACTOR PERSONNEL AUTHORIZED TO ACCOMPANY U.S. ARMED FORCES DEPLOYED OUTSIDE THE UNITED STATES. (Jan 2009)

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

“Combatant Commander” means the commander of a unified or specified combatant command established in accordance with 10 U.S.C. 161.

“Designated operational area” means a geographic area designated by the combatant commander or subordinate joint force commander for the conduct or support of specified military operations.

“Law of war” means that part of international law that regulates the conduct of armed hostilities. The law of war encompasses all international law for the conduct of hostilities binding on the United States or its individual citizens, including treaties and international agreements to which the United States is a party, and applicable customary international law.

“Subordinate joint force commander” means a sub-unified commander or joint task force commander.

(b) *General.*

(1) This clause applies when Contractor personnel are authorized to accompany U.S. Armed Forces deployed outside the United States in—

- (i) Contingency operations;
 - (ii) Humanitarian or peacekeeping operations; or
 - (iii) Other military operations or military exercises, when designated by the Combatant Commander.
- (2) Contract performance in support of U.S. Armed Forces deployed outside the United States may require work in dangerous or austere conditions. Except as otherwise provided in the contract, the Contractor accepts the risks associated with required contract performance in such operations.
- (3) Contractor personnel are civilians accompanying the U.S. Armed Forces.
- (i) Except as provided in paragraph (b)(3)(ii) of this clause, Contractor personnel are only authorized to use deadly force in self-defense.
 - (ii) Contractor personnel performing security functions are also authorized to use deadly force when such force reasonably appears necessary to execute their security mission to protect assets/persons, consistent with the terms and conditions contained in their contract or with their job description and terms of employment.
 - (iii) Unless immune from host nation jurisdiction by virtue of an international agreement or international law, inappropriate use of force by contractor personnel authorized to accompany the U.S. Armed Forces can subject such personnel to United States or host nation prosecution and civil liability (see paragraphs (d) and (j)(3) of this clause).
- (4) Service performed by Contractor personnel subject to this clause is not active duty or service under 38 U.S.C. 106 note.

(c) *Support.*

- (1)(i) The Combatant Commander will develop a security plan for protection of Contractor personnel in locations where there is not sufficient or legitimate civil authority, when the Combatant Commander decides it is in the interests of the Government to provide security because—
- (A) The Contractor cannot obtain effective security services;
 - (B) Effective security services are unavailable at a reasonable cost; or
 - (C) Threat conditions necessitate security through military means.
- (ii) The Contracting Officer shall include in the contract the level of protection to be provided to Contractor personnel.
- (iii) In appropriate cases, the Combatant Commander may provide security through military means, commensurate with the level of security provided DoD civilians.
- (2)(i) Generally, all Contractor personnel authorized to accompany the U.S. Armed Forces in the designated operational area are authorized to receive resuscitative care, stabilization, hospitalization at level III military treatment facilities, and assistance with patient movement in emergencies where loss of life, limb, or eyesight could occur. Hospitalization will be limited to stabilization and short-term medical treatment with an emphasis on return to duty or placement in the patient movement system.
- (ii) When the Government provides medical treatment or transportation of Contractor personnel to a selected civilian facility, the Contractor shall ensure that the Government is reimbursed for any costs associated with such treatment or transportation.
- (iii) Medical or dental care beyond this standard is not authorized unless specified elsewhere in this contract.
- (3) Unless specified elsewhere in this contract, the Contractor is responsible for all other support required for its personnel engaged in the designated operational area under this contract.
- (4) Contractor personnel must have a letter of authorization issued by the Contracting Officer in order to process through a deployment center or to travel to, from, or within the designated operational area. The letter of authorization also will identify any additional authorizations, privileges, or Government support that Contractor personnel are entitled to under this contract.

(d) *Compliance with laws and regulations.*

- (1) The Contractor shall comply with, and shall ensure that its personnel authorized to accompany U.S. Armed Forces deployed outside the United States as specified in paragraph (b)(1) of this clause are familiar with and comply with, all applicable—
- (i) United States, host country, and third country national laws;
 - (ii) Provisions of the law of war, as well as any other applicable treaties and international agreements;

- (iii) United States regulations, directives, instructions, policies, and procedures; and
- (iv) Orders, directives, and instructions issued by the Combatant Commander, including those relating to force protection, security, health, safety, or relations and interaction with local nationals.

(2) The Contractor shall institute and implement an effective program to prevent violations of the law of war by its employees and subcontractors, including law of war training in accordance with paragraph (e)(1)(vii) of this clause.

(e) *Pre-deployment requirements.*

(1) The Contractor shall ensure that the following requirements are met prior to deploying personnel authorized to accompany U.S. Armed Forces. Specific requirements for each category may be specified in the statement of work or elsewhere in the contract.

(i) All required security and background checks are complete and acceptable.

(ii) All deploying personnel meet the minimum medical screening requirements and have received all required immunizations as specified in the contract. The Government will provide, at no cost to the Contractor, any theater-specific immunizations and/or medications not available to the general public.

(iii) Deploying personnel have all necessary passports, visas, and other documents required to enter and exit a designated operational area and have a Geneva Conventions identification card, or other appropriate DoD identity credential, from the deployment center. Any Common Access Card issued to deploying personnel shall contain the access permissions allowed by the letter of authorization issued in accordance with paragraph (c)(4) of this clause.

(iv) Special area, country, and theater clearance is obtained for personnel. Clearance requirements are in DoD Directive 4500.54, Official Temporary Duty Abroad, and DoD 4500.54-G, DoD Foreign Clearance Guide. Contractor personnel are considered non-DoD personnel traveling under DoD sponsorship.

(v) All personnel have received personal security training. At a minimum, the training shall—

(A) Cover safety and security issues facing employees overseas;

(B) Identify safety and security contingency planning activities; and

(C) Identify ways to utilize safety and security personnel and other resources appropriately.

(vi) All personnel have received isolated personnel training, if specified in the contract, in accordance with DoD Instruction 1300.23, Isolated Personnel Training for DoD Civilian and Contractors.

(vii) Personnel have received law of war training as follows:

(A) Basic training is required for all Contractor personnel authorized to accompany U.S. Armed Forces deployed outside the United States. The basic training will be provided through—

(1) A military-run training center; or

(2) A web-based source, if specified in the contract or approved by the Contracting

Officer.

(B) Advanced training, commensurate with their duties and responsibilities, may be required for some Contractor personnel as specified in the contract.

(2) The Contractor shall notify all personnel who are not a host country national, or who are not ordinarily resident in the host country, that—

(i) Such employees, and dependents residing with such employees, who engage in conduct outside the United States that would constitute an offense punishable by imprisonment for more than one year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States, may potentially be subject to the criminal jurisdiction of the United States in accordance with the Military Extraterritorial Jurisdiction Act of 2000 (18 U.S.C. 3621, *et seq.*);

(ii) Pursuant to the War Crimes Act (18 U.S.C. 2441), Federal criminal jurisdiction also extends to conduct that is determined to constitute a war crime when committed by a civilian national of the United States;

(iii) Other laws may provide for prosecution of U.S. nationals who commit offenses on the premises of U.S. diplomatic, consular, military or other U.S. Government missions outside the United States (18 U.S.C. 7(9)); and

(iv) In time of declared war or a contingency operation, Contractor personnel authorized to accompany U.S. Armed Forces in the field are subject to the jurisdiction of the Uniform Code of Military Justice under 10 U.S.C. 802(a)(10).

(f) *Processing and departure points.* Deployed Contractor personnel shall—

(1) Process through the deployment center designated in the contract, or as otherwise directed by the Contracting Officer, prior to deploying. The deployment center will conduct deployment processing to ensure visibility and accountability of Contractor personnel and to ensure that all deployment requirements are met, including the requirements specified in paragraph (e)(1) of this clause;

(2) Use the point of departure and transportation mode directed by the Contracting Officer; and

(3) Process through a Joint Reception Center (JRC) upon arrival at the deployed location. The JRC will validate personnel accountability, ensure that specific designated operational area entrance requirements are met, and brief Contractor personnel on theater-specific policies and procedures.

(g) *Personnel data.*

(1) The Contractor shall enter before deployment and maintain data for all Contractor personnel that are authorized to accompany U.S. Armed Forces deployed outside the United States as specified in paragraph (b)(1) of this clause. The Contractor shall use the Synchronized Predeployment and Operational Tracker (SPOT) web-based system, at <http://www.dod.mil/bta/products/spot.html>, to enter and maintain the data.

(2) The Contractor shall ensure that all employees in the database have a current DD Form 93, Record of Emergency Data Card, on file with both the Contractor and the designated Government official. The Contracting Officer will inform the Contractor of the Government official designated to receive this data card.

(h) *Contractor personnel.*

(1) The Contracting Officer may direct the Contractor, at its own expense, to remove and replace any Contractor personnel who jeopardize or interfere with mission accomplishment or who fail to comply with or violate applicable requirements of this contract. Such action may be taken at the Government's discretion without prejudice to its rights under any other provision of this contract, including the Termination for Default clause.

(2) The Contractor shall have a plan on file showing how the Contractor would replace employees who are unavailable for deployment or who need to be replaced during deployment. The Contractor shall keep this plan current and shall provide a copy to the Contracting Officer upon request. The plan shall—

- (i) Identify all personnel who are subject to military mobilization;
- (ii) Detail how the position would be filled if the individual were mobilized; and
- (iii) Identify all personnel who occupy a position that the Contracting Officer has designated as mission essential.

(3) Contractor personnel shall report to the Combatant Commander or a designee, or through other channels such as the military police, a judge advocate, or an inspector general, any suspected or alleged conduct for which there is credible information that such conduct—

- (i) Constitutes violation of the law of war; or
- (ii) Occurred during any other military operations and would constitute a violation of the law of war if it occurred during an armed conflict.

(i) *Military clothing and protective equipment.*

(1) Contractor personnel are prohibited from wearing military clothing unless specifically authorized in writing by the Combatant Commander. If authorized to wear military clothing, Contractor personnel must—

- (i) Wear distinctive patches, arm bands, nametags, or headgear, in order to be distinguishable from military personnel, consistent with force protection measures; and
- (ii) Carry the written authorization with them at all times.

(2) Contractor personnel may wear military-unique organizational clothing and individual equipment (OCIE) required for safety and security, such as ballistic, nuclear, biological, or chemical protective equipment.

(3) The deployment center, or the Combatant Commander, shall issue OCIE and shall provide training, if necessary, to ensure the safety and security of Contractor personnel.

(4) The Contractor shall ensure that all issued OCIE is returned to the point of issue, unless otherwise directed by the Contracting Officer.

(j) *Weapons.*

(1) If the Contractor requests that its personnel performing in the designated operational area be authorized to carry weapons, the request shall be made through the Contracting Officer to the Combatant Commander, in accordance with DoD Instruction 3020.41, paragraph 6.3.4.1 or, if the contract is for security services, paragraph 6.3.5.3. The Combatant Commander will determine whether to authorize in-theater Contractor personnel to carry weapons and what weapons and ammunition will be allowed.

(2) If the Contracting Officer, subject to the approval of the Combatant Commander, authorizes the carrying of weapons—

- (i) The Contracting Officer may authorize the Contractor to issue Contractor-owned weapons and ammunition to specified employees; or
- (ii) The [Contracting Officer to specify the appropriate individual, e.g., Contracting Officer's Representative, Regional Security Officer] may issue Government-furnished weapons and ammunition to the Contractor for issuance to specified Contractor employees.

(3) The Contractor shall ensure that its personnel who are authorized to carry weapons—

- (i) Are adequately trained to carry and use them—

- (A) Safely;
 - (B) With full understanding of, and adherence to, the rules of the use of force issued by the Combatant Commander; and
 - (C) In compliance with applicable agency policies, agreements, rules, regulations, and other applicable law;
 - (ii) Are not barred from possession of a firearm by 18 U.S.C. 922; and
 - (iii) Adhere to all guidance and orders issued by the Combatant Commander regarding possession, use, safety, and accountability of weapons and ammunition.
- (4) Whether or not weapons are Government-furnished, all liability for the use of any weapon by Contractor personnel rests solely with the Contractor and the Contractor employee using such weapon.
- (5) Upon redeployment or revocation by the Combatant Commander of the Contractor's authorization to issue firearms, the Contractor shall ensure that all Government-issued weapons and unexpended ammunition are returned as directed by the Contracting Officer.
- (k) *Vehicle or equipment licenses.* Contractor personnel shall possess the required licenses to operate all vehicles or equipment necessary to perform the contract in the designated operational area.
- (l) *Purchase of scarce goods and services.* If the Combatant Commander has established an organization for the designated operational area whose function is to determine that certain items are scarce goods or services, the Contractor shall coordinate with that organization local purchases of goods and services designated as scarce, in accordance with instructions provided by the Contracting Officer.
- (m) *Evacuation.*
- (1) If the Combatant Commander orders a mandatory evacuation of some or all personnel, the Government will provide assistance, to the extent available, to United States and third country national Contractor personnel.
 - (2) In the event of a non-mandatory evacuation order, unless authorized in writing by the Contracting Officer, the Contractor shall maintain personnel on location sufficient to meet obligations under this contract.
- (n) *Next of kin notification and personnel recovery.*
- (1) The Contractor shall be responsible for notification of the employee-designated next of kin in the event an employee dies, requires evacuation due to an injury, or is isolated, missing, detained, captured, or abducted.
 - (2) In the case of isolated, missing, detained, captured, or abducted Contractor personnel, the Government will assist in personnel recovery actions in accordance with DoD Directive 2310.2, Personnel Recovery.
- (o) *Mortuary affairs.* Mortuary affairs for Contractor personnel who die while accompanying the U.S. Armed Forces will be handled in accordance with DoD Directive 1300.22, Mortuary Affairs Policy.
- (p) *Changes.* In addition to the changes otherwise authorized by the Changes clause of this contract, the Contracting Officer may, at any time, by written order identified as a change order, make changes in the place of performance or Government-furnished facilities, equipment, material, services, or site. Any change order issued in accordance with this paragraph (p) shall be subject to the provisions of the Changes clause of this contract.
- (q) *Subcontracts.* The Contractor shall incorporate the substance of this clause, including this paragraph (q), in all subcontracts when subcontractor personnel are authorized to accompany U.S. Armed Forces deployed outside the United States in—
- (1) Contingency operations;
 - (2) Humanitarian or peacekeeping operations; or
 - (3) Other military operations or military exercises, when designated by the Combatant Commander.

2. On page 31, add the following clause:

DLAD 52.219-9003 – DLA MENTORING BUSINESS AGREEMENTS (MBA) PERFORMANCE (DEC 1997)

- (a) The contractor's proposed MBA plan shall become part of this contract upon award. The contractor is hereby obligated, as part of its contractual undertaking, to enter into a written, binding mentoring business agreement with a protégé based on and reflective of this plan. Performance under the MBA plan shall be evaluated by the Contracting Officer, and may become a consideration prior to option exercise for the follow-on years of long-term contracts. MBA plan implementation may also become an independent evaluation factor and/or part of the overall past performance evaluation factor in future source-selection decisions.
- (b) The contractor-mentor and its protégé(s) shall meet semi-annually with the DLA Contracting Officer and the small business specialist(s) from the buying activity and/or the DCMA component to review progress/accomplishments under applicable MBA proposals. The contractor is also required to submit periodic progress reports (no less frequently than annually) to the Contracting Officer regarding proposal fulfillment. Any

MBA with a protégé that has voluntarily been submitted to the Government shall be compared by the Contracting Officer to the contractor's proposed plan, hereby incorporated into this contract, to ensure that it adequately reflects the mentor's obligations expressed therein.

3. On page 35, delete DSCP 52.246-9P32 and replace it as follows:

DLAD 52.246-9045 FEDERAL FOOD, DRUG AND COSMETIC ACT-WHOLESALE MEAT ACT (Aug 2008)

(a) The contractor warrants that the supplies delivered under this contract comply with the Federal Food, Drug and Cosmetic Act and the Wholesome Meat Act and regulations promulgated there under. This warranty will apply regardless of whether or not the supplies have been:

- (1) Shipped in interstate commerce,
- (2) Seized under either Act or inspected by the Food and Drug Administration or Department of Agriculture.

(3) Inspected, accepted, paid for or consumed, or any or all of these, provided however, that the supplies are not required to comply with requirements of said Acts and regulations promulgated there under when a specific paragraph of the applicable specification directs otherwise and the supplies are being contracted for military rations, not for resale.

(b) The government shall have six months from the date of delivery of the supplies to the government within which to discover a breach of this warranty. Notwithstanding the time at which such breach is discovered, the government reserves the right to give notice of breach of this warranty at any time within this six-month period or within 30 days after expiration of such period, and any such notice shall preserve the rights and remedies provided herein.

(c) Within a reasonable time after notice to the contractor of breach of this warranty, the government may, at its election:

(1) Retain all or part of the supplies and recover from the contractor, or deduct from the contract price, a sum the government determines to be equitable under the circumstances;

(2) Return or offer to return all or part of the supplies to the contractor in place and recover the contract price and transportation, handling, inspection and storage costs expended therefore; provided, that if the supplies are seized under either Act or regulations promulgated there under, such seizure, at government option, shall be deemed a return of supplies within the meaning of this clause and thereby allow the government to pursue the remedy provided herein. Failure to agree to any deduction or recovery provided herein shall be a dispute within the meaning of the clause of this contract entitled "Disputes".

(d) The rights and remedies provided by this clause shall not be exclusive and are in addition to other rights and remedies provided by law or under this contract, nor shall pursuit of a remedy herein or by law either jointly, severally or alternatively, whether simultaneously or at different times, constitute an election of remedies.

4. On pages 39-44, delete and replace FAR 52.212-5 as follows:

FAR 52.212-5 – CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS – COMMERCIAL ITEMS (SEP 2009)

(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) 52.222-50, Combating Trafficking in Persons (FEB 2009) (22 U.S.C. 7104(g)).

(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) (Pub. L. 108-77, 108-78).

(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 shall check as appropriate.]

 X (1) 52.203-6, Restrictions on Subcontractor Sales to the Government (Sep 2006), with Alternate I (Oct 1995)(41 U.S.C. 253g and 10 U.S.C. 2402).

 X (2) 52.203-13, Contractor Code of Business Ethics and Conduct (Dec 2008) (Pub. L. 110-252, Title VI, Chapter 1 (41 U.S.C. 251 note)).

 X (3) 52.203-15, Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (Mar 2009) (Section 1553 of Pub L. 111-5) (Applies to contracts funded by the American Recovery and Reinvestment Act of 2009).

- (4) 52.204-11, American Recovery and Reinvestment Act—Reporting Requirements (Mar 2009) (Pub. L. 111-5).
- (5) 52.219-3, Notice of Total HUBZone Set-Aside (Jan 1999)(15 U.S.C. 657a).
- (6) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Jul 2005) (if the offeror elects to waive the preference, it shall so indicate in its offer)(15 U.S.C. 657a).
- (7) [Reserved]
- (8) (i) 52.219-6, Notice of Total Small Business Aside (June 2003) (15 U.S.C. 644).
- (ii) Alternate I (Oct 1995) of 52.219-6.
- (iii) Alternate II (Mar 2004) of 52.219-6.
- (9) (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.
- (10) 52.219-8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d)(2) and (3)).
- (11) (i) 52.219-9, Small Business Subcontracting Plan (Apr 2008)(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.
- (12) 52.219-14, Limitations on Subcontracting (Dec 1996)(15 U.S.C. 637(a)(14)).
- (13) 52.219-16, Liquidated Damages—Subcontracting Plan (Jan 1999)(15 U.S.C. 637(d)(4)(F)(i)).
- (14) (i) 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (Oct 2008)(10 U.S.C. 2323) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).
- (ii) Alternate I (June 2003) of 52.219-23.
- (15) 52.219-25, Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting (Apr 2008)(Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
- (16) 52.219-26, Small Disadvantaged Business Participation Program—Incentive Subcontracting (Oct 2000) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
- (17) 52.219-27, Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside (May 2004) (15 U.S.C. 657 f).
- (18) 52.219-28, Post Award Small Business Program Rerepresentation (Apr 2009) (15 U.S.C. 632(a)(2)).
- (19) 52.222-3, Convict Labor (June 2003)(E.O. 11755).
- (20) 52.222-19, Child Labor—Cooperation with Authorities and Remedies (Aug 2009) (E.O. 13126).
- (21) 52.222-21, Prohibition of Segregated Facilities (Feb 1999).
- (22) 52.222-26, Equal Opportunity (Mar 2007)(E.O. 11246).
- (23) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sep 2006)(38 U.S.C. 4212).
- (24) 52.222-36, Affirmative Action for Workers with Disabilities (Jun 1998)(29 U.S.C. 793).
- (25) 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sep 2006)(38 U.S.C. 4212).
- (26) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201).
- (27) 52.222-54, Employment Eligibility Verification (Jan 2009). (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.)
- (28) (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.)

___ (29) 52.223-15, Energy Efficiency in Energy-Consuming Products (Dec 2007) (42 U.S.C. 8259b).

___ (30) (i) 52.223-16, IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products (Dec 2007) (E.O. 13423).

___ (ii) Alternate I (Dec 2007) of 52.223-16.

___ (31) 52.225-1, Buy American Act--Supplies (Feb 2009)(41 U.S.C. 10a-10d).

___ (32) (i) 52.225-3, Buy American Act --Free Trade Agreements -- Israeli Trade Act (Jun 2009) (41 U.S.C. 10a-10d, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, 19 U.S.C. 3805 note, Pub. L. 108-77, 108-78, 108-286, 108-301, 109-53, 109-169, 109-283, and 110-138).

___ (ii) Alternate I (Jan 2004) of 52.225-3.

___ (iii) Alternate II (Jan 2004) of 52.225-3.

___ (33) 52.225-5, Trade Agreements (Aug 2009) (19 U.S.C. 2501, *et seq.*, 19 U.S.C. 3301 note).

X (34) 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).

___ (35) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (Nov 2007) (42 U.S.C. 5150).

___ (36) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov 2007) (42 U.S.C. 5150).

___ (37) 52.232-29, Terms for Financing of Purchases of Commercial Items (Feb 2002) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).

___ (38) 52.232.30, Installment Payments for Commercial Items (Oct 1995)(41 U.S.C. 255(f), 10 U.S.C. 2307(f)).

X (39) 52.232-33, Payment by Electronic Funds Transfer--Central Contractor Registration (Oct. 2003)(31 U.S.C. 3332).

___ (40) 52.232-34, Payment by Electronic Funds Transfer--Other Than Central Contractor Registration (May 1999)(31 U.S.C. 3332).

___ (41) 52.232-36, Payment by Third Party (May 1999)(31 U.S.C. 3332).

___ (42) 52.239-1, Privacy or Security Safeguards (Aug 1996)(5 U.S.C. 552a).

___ (43) (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) 52.222-41, Service Contract Act of 1965 (Nov 2007)(41 U.S.C. 351, *et seq.*).

___ (2) 52.222-42, Statement of Equivalent Rates for Federal Hires (May 1989)(29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).

___ (3) 52.222-43, Fair Labor Standards Act and Service Contract Act -- Price Adjustment (Multiple Year and Option Contracts) (Sep 2009) (29 U.S.C.206 and 41 U.S.C. 351, *et seq.*).

___ (4) 52.222-44, Fair Labor Standards Act and Service Contract Act -- Price Adjustment (Sep 2009)(29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).

___ (5) 52.222-51, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment--Requirements (Nov 2007) (41 U.S.C. 351, *et seq.*).

___ (6) 52.222-53, Exemption from Application of the Service Contract Act to Contracts for Certain Services--Requirements (Feb 2009) (41 U.S.C. 351, *et seq.*).

___ (7) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations. (Mar 2009) (Pub. L. 110-247).

___ (8) 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 paragraphs (e)(1) of this paragraph 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 (Dec 2008) (Pub. L. 110-252, Title VI, Chapter 1 (41 U.S.C. 251 note)).

(ii) 52.219-8, Utilization of Small Business Concerns (May 2004)(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 \$550,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(iii) [Reserved]

(iv) 52.222-26, Equal Opportunity (Mar 2007)(E.O. 11246).

(v) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sep 2006)(38 U.S.C. 4212).

(vi) 52.222-36, Affirmative Action for Workers with Disabilities (June 1998)(29 U.S.C. 793).

(vii) 52.222-39, Notification of Employee rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201).

(viii) 52.222-41, Service Contract Act of 1965, (Nov 2007), flow down required for all subcontracts subject to the Service Contract Act of 1965 (41 U.S.C. 351, et seq.)

(ix) 52.222-50, Combating Trafficking in Persons (Feb 2009) (22 U.S.C. 7104(g)).

___ Alternate I (Aug 2007) of 52.222-50 (22 U.S.C. 7104(g)).

(x) 52.222-51, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment--Requirements (Nov 2007) (41 U.S.C. 351, et seq.)

(xi) 52.222-53, Exemption from Application of the Service Contract Act to Contracts for Certain Services--Requirements (Feb 2009) (41 U.S.C. 351, et seq.)

(xii) 52.222-54, Employment Eligibility Verification (Jan 2009).

(xiii) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations. (Mar 2009) (Pub. L. 110-247). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6.

(xiv) 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.

5. On pages 45-46, delete and replace DFARS 252.212-7001 as follows:

252.212-7001 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS APPLICABLE TO DEFENSE ACQUISITIONS OF COMMERCIAL ITEMS (NOV 2009)

(a) The Contractor agrees to comply with the following Federal Acquisition Regulation (FAR) clause which, if checked, is included in this contract by reference to implement a provision of law applicable to acquisitions of commercial items or components.

52.203-3, Gratuities (APR 1984) (10 U.S.C. 2207).

(b) 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) 252.203-7000, Requirements Relating to Compensation of Former DoD Officials (JAN 2009) (Section 847 of Pub. L. 110-181).

(2) 252.205-7000, Provision of Information to Cooperative Agreement Holders (DEC 1991) (10 U.S.C. 2416).

(3) 252.219-7003, Small Business Subcontracting Plan (DoD Contracts) (APR 2007) (15 U.S.C. 637).

(4) 252.219-7004, Small Business Subcontracting Plan (Test Program) (AUG 2008) (15 U.S.C. 637 note).

(5) 252.225-7001, Buy American Act and Balance of Payments Program (JAN 2009) (41 U.S.C. 10a-10d, E.O. 10582).

(6) 252.225-7008, Restriction on Acquisition of Specialty Metals (JUL 2009) (10 U.S.C. 2533b).

(7) 252.225-7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals (JUL 2009) (10 U.S.C. 2533b).

(8) 252.225-7012, Preference for Certain Domestic Commodities (DEC 2008) (10 U.S.C. 2533a).

(9) 252.225-7015, Restriction on Acquisition of Hand or Measuring Tools (JUN 2005) (10 U.S.C. 2533a).

(10) 252.225-7016, Restriction on Acquisition of Ball and Roller Bearings (MAR 2006) (Section 8065 of Public Law 107-117 and the same restriction in subsequent DoD appropriations acts).

(11) 252.225-7021, Trade Agreements (NOV 2009) (19 U.S.C. 2501-2518 and 19 U.S.C. 3301 note).

(12) 252.225-7027, Restriction on Contingent Fees for Foreign Military Sales (APR 2003) (22 U.S.C. 2779).

(13) 252.225-7028, Exclusionary Policies and Practices of Foreign Governments (APR 2003) (22 U.S.C. 2755).

(14)(i) 252.225-7036, Buy American Act--Free Trade Agreements--Balance of Payments Program (JUL 2009) (41 U.S.C. 10a-10d and 19 U.S.C. 3301 note).

(ii) Alternate I (JUL 2009) of 252.225-7036.

(15) 252.225-7038, Restriction on Acquisition of Air Circuit Breakers (JUN 2005) (10 U.S.C. 2534(a)(3)).

(16) 252.226-7001, Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns (SEP 2004) (Section 8021 of Public Law 107-248 and similar sections in subsequent DoD appropriations acts).

(17) 252.227-7015, Technical Data--Commercial Items (NOV 1995) (10 U.S.C. 2320).

(18) 252.227-7037, Validation of Restrictive Markings on Technical Data (SEP 1999) (10 U.S.C. 2321).

- (19) X 252.232-7003, Electronic Submission of Payment Requests and Receiving Reports (MAR 2008) (10 U.S.C. 2227).
- (20) X 252.237-7019, Training for Contractor Personnel Interacting with Detainees (SEP 2006) (Section 1092 of Public Law 108-375).
- (21) X 252.243-7002, Requests for Equitable Adjustment (MAR 1998) (10 U.S.C. 2410).
- (22) 252.247-7003, Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer (JUL 2009) (Section 884 of Public Law 110-417).
- (23)(i) X 252.247-7023, Transportation of Supplies by Sea (MAY 2002) (10 U.S.C. 2631).
- (ii) X Alternate I (MAR 2000) of 252.247-7023.
- (iii) Alternate II (MAR 2000) of 252.247-7023.
- (iv) Alternate III (MAY 2002) of 252.247-7023.
- (24) X 252.247-7024, Notification of Transportation of Supplies by Sea (MAR 2000) (10 U.S.C. 2631).

(c) In addition to the clauses listed in paragraph (e) of the Contract Terms and Conditions Required to Implement Statutes or Executive Orders--Commercial Items clause of this contract (FAR 52.212-5), the Contractor shall include the terms of the following clauses, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under this contract:

- (1) 252.237-7019, Training for Contractor Personnel Interacting with Detainees (SEP 2006) (Section 1092 of Public Law 108-375).
- (2) 252.247-7003, Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer (JUL 2009) (Section 884 of Public Law 110-417).
- (3) 252.247-7023, Transportation of Supplies by Sea (MAY 2002) (10 U.S.C. 2631).
- (4) 252.247-7024, Notification of Transportation of Supplies by Sea (MAR 2000) (10 U.S.C. 2631).

6. On page 127, delete and replace paragraph VI. Fill Rate/Substitutions as follows:

VI. FILL RATES

A. A minimally acceptable contract order fill-rate is 97%. Higher fill-rates may result in a higher Past Performance and Experience rating for option determinations and future acquisitions.

B. The Government's in-house record for fill rate shall be calculated by the Government, utilizing the order and receipt information located in STORES, as follows:

$$\text{(Cases accepted/cases ordered)} \times 100 = \text{Fill Rate \%}$$

Please note that this could take up to three months to be calculated due to system reconciliation. However, the governments finding will act as the final rate.

C. Definitions:

Cases accepted: The product quantity that the customer has received and receipted, not including damaged cases, and mis-picks.

Cases ordered: The product quantity requested by a customer.

Catch-weight item: 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.

D. 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

a. As an example, for the item at C.c. 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%

b. 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 x .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.

E. 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.

F. See paragraph D.a. above for the calculation of fill-rate for catch-weight items.

G. 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.

H. 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).

I. Non-conforming cases, e.g. incorrect items (mis-picks) and damaged cases, will not be accepted and receipted.

J. 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.

K. 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.

L. The contractor shall submit its monthly fill-rate report (to include overall fill rate; non-catch weight item fill rate; and catch-weight item fill rate) to the DSCP Contracting Officer. The monthly report shall be based on order required delivery dates (RDD), not order placement dates, i.e. the monthly report for March xx shall include all orders placed for deliveries 01-31 March xx. This would normally include orders placed the last day(s) of February xx. 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 Demand exceeds Average Monthly Demand by $\geq 300\%$ *
 - 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 Quantity on Incorrect Unit of Issue
 - I: DSCP Demand Forecast Problem
 - J: Special Order Item*
 - K: Item Being Phased Out
 - Z: Other, Not Listed (note: Need to explain in separate Word Document)
- Note: * Not Applicable

An additional Fill Rate exception code is anticipated for Defense Transportation System (DTS)* delays (if applicable). The code was not ready at the time of this solicitation.

7. On page 137, paragraph II. Management Reports, add the following as the first paragraph:

The Contractor is required to add the following statement to every management report submitted to DSCP: "I certify that all 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."

8. On pages 137 and 138, revise paragraph II (A), Fill Rate Report as follows:

A. Fill Rate Report. Shall be submitted in non-protected Excel format.

1. Monthly Fill Rate Report – The fill rate is calculated by dividing the number of cases accepted by the customer by the number of cases ordered. Mis-picks and damaged cases are considered as not-in-stock (NIS) in the fill rate calculation.

2. Weekly Fill Rate Report – In addition to the monthly fill rate report, the Prime Vendor will also submit a weekly report reflecting the previous week's business. Previous week is defined as Sunday through Saturday Required Delivery Date (RDD) orders.

The Monthly and Weekly fill rate reports should specify fill rates grouped by contract/catalog number(s) (if applicable), DODAAC (first six positions of the purchase order) and purchase order number. The date range of the report shall be based on the customer's RDD for the previous week as defined in para 2 above.

The report shall contain all orders for the specified time period, as well as, a worksheet summary roll-up report tab which captures all contract/catalog numbers combined. The summary shall contain the following information:

- a. Overall fill rate based on cases
- b. Overall non-catch weight fill rate based on cases
- c. Overall catch weight fill rate based on cases
- d. Overall catch weight fill rate based on pounds
- e. Purchase orders shall be grouped by DODAAC. Within each DODAAC sort fill rates by purchase order number

Overall discrepancy report shall only include purchase orders that contain less than 100% fill rate and reason code for discrepancy.

The contractor shall submit a separate discrepancy spreadsheet containing a list of Government authorized and verifiable fill rate exceptions using acceptable codes outlined below:

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 Demand exceeds Average Monthly Demand by $\geq 300\%$ *
- 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 Quantity 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: Need to explain in separate Word Document)

Note: * Not Applicable

Note: When using exception M, the fill rate should be calculated as outlined below regardless of the fill rate percentage; i.e., 30 lbs accepted / 20 pounds ordered = 150%. Using this code will explain why the fill rate is over 100%.

Note: An additional Fill Rate exception code is anticipated for Defense Transportation System (DTS)* delays (if applicable). The code was not ready at the time of this solicitation.

9. On page 180, change the date of the Clause **FAR 52.212-3** from (FEB 2009) to (AUG 2009) and add the following definition after the definition for “forced or indentured child labor” and before the definition for “place of manufacturer:”

“Inverted domestic corporation” means a foreign incorporated entity which is treated as an inverted domestic corporation under 6 U.S.C. 395(b), *i.e.*, a corporation that used to be incorporated in the United States, or used to be a partnership in the United States, 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).