

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

1. REQUISITION NUMBER	PAGE 1 OF 31
5. SOLICITATION NUMBER SPM300-12-R-0053	6. SOLICITATION ISSUE DATE 09/20/2012
b. TELEPHONE NUMBER (No collect calls) (215) 737-7721	8. OFFER DUE DATE: LOCAL TIME 10/23/2012 3:00PM EST

2. CONTRACT NO. SPM300-13-D-P192	3. AWARD/EFFECTIVE DATE 03/28/2013	4. ORDER NUMBER
7. FOR SOLICITATION INFORMATION CALL: Candice Campbell		a. NAME

9. ISSUED BY	CODE	SPM300
DLA Troop Support Directorate of Subsistence, Bldg 6 700 Robbins Avenue Philadelphia, PA 19111-5092		

10. THIS ACQUISITION IS	<input type="checkbox"/> UNRESTRICTED OR	<input checked="" type="checkbox"/> SET ASIDE: 100% FOR:
NAICS: 311991	<input checked="" type="checkbox"/> SMALL BUSINESS	<input type="checkbox"/> EMERGING SMALL BUSINESS
SIZE STANDARD: 500	<input type="checkbox"/> HUBZONE SMALL BUSINESS	<input type="checkbox"/> SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS <input type="checkbox"/> B(A)

11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED	12. DISCOUNT TERMS
<input type="checkbox"/> SEE SCHEDULE	

13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)	13b. RATING
<input type="checkbox"/>	
14. METHOD OF SOLICITATION	<input type="checkbox"/> RFO <input type="checkbox"/> IFB <input checked="" type="checkbox"/> RFP

15. DELIVER TO	CODE
See Attachment 1	

16. ADMINISTERED BY	CODE
Same as Block 9	

17a. CONTRACTOR/OFFEROR	CODE	OP3S0	FACILITY CODE
Forestwood Farm Inc. 4101 Coalburg Road Birmingham, AL 35207			
TELEPHONE NO. (205) 262-4139			

18a. PAYMENT WILL BE MADE BY	CODE	SL4701
DFAS Columbus Center DFAS BVDP PO Box 369031 Columbus OH 43236-9031		

<input type="checkbox"/> 17b CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER

18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED <input type="checkbox"/> SEE ADDENDUM
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19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
	Full Line of Fresh Fruit and Vegetables for DoD Troop and Non-DoD USDA customers in Alabama & Florida Panhandle Zone.				
<i>(Use Reverse and/or Attach Additional Sheets as Necessary)</i>					

25. ACCOUNTING AND APPROPRIATION DATA

26. TOTAL AWARD AMOUNT (For Govt. Use Only) See Page 2

<input type="checkbox"/> 27a SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4, FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA	<input type="checkbox"/> ARE	<input type="checkbox"/> ARE NOT ATTACHED
<input checked="" type="checkbox"/> 27b CONTRACT PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4 FAR 52.212-5 IS ATTACHED. ADDENDA	<input checked="" type="checkbox"/> ARE	<input type="checkbox"/> ARE NOT ATTACHED

<input checked="" type="checkbox"/> 28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN 1 COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED

<input checked="" type="checkbox"/> 29. AWARD OF CONTRACT: REF. <u>Forestwood Farm</u> OFFER DATED <u>10/08/2012</u> . YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:
--

30a. SIGNATURE OF OFFEROR/CONTRACTOR

31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)

30b. NAME AND TITLE OF SIGNER (Type or print)
RANDY SCOTT President

30c. DATE SIGNED
3-28-13

31b. NAME OF CONTRACTING OFFICER (Type or print)
STEVEN PIZZO

31c. DATE SIGNED
3-28-13

SPM300-13-D-P192 Alabama & Florida Panhandle Zone

I. SOLICITATION/CONTRACT FORM

The terms and conditions set forth in solicitation SPM300-12-R-0053 are incorporated into subject contract.

II. PERFORMANCE PERIOD:

A. Effective Period of the Contract:

Base Period – March 28, 2013 through September 27, 2014.

Option Period 1 – September 28, 2014 through March 27, 2016.

Option Period 2 – March 28, 2016 through September 27, 2017.

ESTIMATED DOLLAR VALUE/GUARANTEED MINIMUM/MAXIMUM

- A. The following chart includes the 18 month estimated dollar value and the 4.5 year estimated dollar value, along with the guaranteed 10% minimum and 200% maximum. The guaranteed minimum and maximum, although based on estimates, are a firm dollar amount calculated as a percentage of the estimated dollar value; the minimum contract dollar value below constitutes the Government’s legal ordering obligation under the contract. The maximum contract dollar value is the legal limit of dollars that can be obligated against this contract.

Alabama & Florida Panhandle	18 Month Estimate (Base Period)	4.5 Year Estimate (Total incl. Options)	10% Min	200% Max (4.5 Years)
Group 1 (Troops)	\$3,400,000.00	\$10,200,000.00	\$340,000.00	\$20,400,000.00
Group 2 (Schools)	\$4,100,000.00	\$12,300,000.00	\$410,000.00	\$24,600,000.00
Total	\$7,500,000.00	\$22,500,000.00	\$750,000.00	\$45,000,000.00

The term “18 Month Estimate” refers to the Government’s good faith estimate of the requirement for the base period.

The total minimum contract dollar value is \$750,000.00.

The maximum contract dollar value is \$45,000,000.00.

SPM300-13-D-P192 Alabama & Florida Panhandle Zone

III. START-UP PERIOD

The Contractor's startup period will take place prior to the first order. The Contractor shall submit a proposed implementation schedule to the Contracting Officer within fifteen (15) days after award highlighting the steps that will be taken to implement a fully functional distribution account, including all EDI transactions for all customers covered by this solicitation. An additional thirty (30) days will be granted for actual implementation. No more than forty-five (45) days after award will be permitted for each contractor to have fully functional distribution accounts in place for all customers.

IV. ORDERING CATALOGS

The following are a part of Forestwood Farm's offer and are hereby incorporated as part of subject contract:

- Offered delivered price to be utilized for first week of ordering. The Pricing Proposal spreadsheet submitted on January 10, 2013 is attached.
- Distribution prices are fixed for each Base Period and for each Option Period as follows:

Distribution Price	Troops (Group 1)	Schools (Group 2)
Distribution Price (18 month base)	\$1.79	\$2.20
Distribution Price (Option 1)	\$1.85	\$2.20
Distribution Price (Option 2)	\$1.95	\$2.40

SUPPLIES OF SERVICES AND PRICES

ITEMS: Full-Line Fresh Fruit and Vegetables

CUSTOMERS: DoD Troop and Non-DoD USDA School Customers in the Alabama & Florida Panhandle Zone, listed in Attachment 1 of this document.

FOB TERMS: FOB Destination for all items.

CATALOG #: DoD Troop customers will order under SPM300-13-D-P192, Non-DoD USDA School customers will order under SPM300-13-D-S192, and USDA School Warehouse customers will order under SPM300-13-D-S193. Forestwood Farm, Inc. will invoice in accordance with the customer's orders.

SPM300-13-D-P192 Alabama & Florida Panhandle Zone

As of 10/01/2013:

SPM300-13-D-S192 is hereby changed to SPM300-14-D-S192.

All orders placed on or before 30 September 2013 are to be invoiced under SPM300-13-D-S192 regardless of delivery date.

SPM300-13-D-S193 is hereby changed to SPM300-14-D-S193.

All orders placed on or before 30 September 2013 are to be invoiced under SPM300-13-D-S193 regardless of delivery date.

As of 10/01/2014:

SPM300-14-D-S192 is hereby changed to SPM300-15-D-S192.

All orders placed on or before 30 September 2014 are to be invoiced under SPM300-14-D-S192 regardless of delivery date.

SPM300-14-D-S193 is hereby changed to SPM300-15-D-S193.

All orders placed on or before 30 September 2013 are to be invoiced under SPM300-14-D-S193 regardless of delivery date.

As of 10/01/2015:

SPM300-15-D-S192 is hereby changed to SPM300-16-D-S192.

All orders placed on or before 30 September 2015 are to be invoiced under SPM300-15-D-S192 regardless of delivery date.

SPM300-15-D-S193 is hereby changed to SPM300-16-D-S193.

All orders placed on or before 30 September 2015 are to be invoiced under SPM300-15-D-S193 regardless of delivery date.

As of 10/01/2016:

SPM300-16-D-S192 is hereby changed to SPM300-17-D-S192.

All orders placed on or before 30 September 2016 are to be invoiced under SPM300-16-D-S192 regardless of delivery date.

SPM300-13-D-P192 Alabama & Florida Panhandle Zone

SPM300-16-D-S193 is hereby changed to SPM300-17-D-S193.

All orders placed on or before 30 September 2016 are to be invoiced under SPM300-16-D-S193 regardless of delivery date.

CATALOG PRICING

All catalog pricing is valid from Sunday thru Saturday. Catalog updates must be received no later than 12:00 P.M. EST the preceding Wednesday.

The USDA School Customers are required to place orders no later than 72 hours before delivery date.

All pricing will be firm at time of order.

Forestwood Farm, Inc. will not invoke any additional charges for emergency orders (defined as an order that is placed for same day delivery).

DELIVERIES AND PERFORMANCE

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

Place of Performance
Forestwood Farm, Inc. 4101 Coalburg Road Birmingham, AL 35207

V. CLAUSES

The following Clauses and are included in this contract:

Remove Far Clause 52.212-5 -- Contract Terms and Conditions Required to Implement Statutes or Executive Orders -- Commercial Items. (MAY 2012) from page 46 of the solicitation and replace with the following:

Replace with Far Clause 52.212-5 -- Contract Terms and Conditions Required to Implement Statutes or Executive Orders -- Commercial Items (JAN 2013)

(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)).

___ Alternate I (AUG 2007) of 52.222-50 (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 check as appropriate.]

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

X (2) 52.203-13, Contractor Code of Business Ethics and Conduct (Apr 2010) (Pub. L. 110-252, Title VI, Chapter 1 (41 U.S.C. 251 note)).

___ (3) 52.203-15, Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub L. 111-5) (Applies to contracts funded by the American Recovery and Reinvestment Act of 2009).

X (4) 52.204-10, Reporting Executive compensation and First-Tier Subcontract Awards (Aug 2012) (Pub. L. 109-282) (31 U.S.C. 6101 note).

SPM300-13-D-P192 Alabama & Florida Panhandle Zone

___ (5) 52.204-11, American Recovery and Reinvestment Act—Reporting Requirements (Jul 2010) (Pub. L. 111-5).

X (6) 52.209-6, Protecting the Government' Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (Dec 2010) (31 U.S.C. 6101 note).

X (7) 52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters (Feb 2012) (41 U.S.C. 2313).

___ (8) 52.209-10, Prohibition on Contracting with Inverted Domestic Corporations (May 2012) (section 738 of Division C of Public Law 112-74, section 740 of Division C of Pub. L. 111-117, section 743 of Division D of Pub. L. 111-8, and section 745 of Division D of Pub. L. 110-161).

___ (9) 52.219-3, Notice of HUBZone Set-Aside or Sole-Source Award (Nov 2011) (15 U.S.C. 657a).

___ (10) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Jan 2011) (if the offeror elects to waive the preference, it shall so indicate in its offer)(15 U.S.C. 657a).

___ (11) [Reserved]

X (12) (i) 52.219-6, Notice of Total Small Business Aside (Nov 2011) (15 U.S.C. 644).

X (ii) Alternate I (Nov 2011).

___ (iii) Alternate II (Nov 2011).

___ (13) (i) 52.219-7, Notice of Partial Small Business Set-Aside (June 2003) (15 U.S.C. 644).

___ (ii) Alternate I (Oct 1995) of 52.219-7.

___ (iii) Alternate II (Mar 2004) of 52.219-7.

X (14) 52.219-8, Utilization of Small Business Concerns (Jan 2011) (15 U.S.C. 637(d)(2) and (3)).

___ (15) (i) 52.219-9, Small Business Subcontracting Plan (Jan 2011) (15 U.S.C. 637 (d)(4).)

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

SPM300-13-D-P192 Alabama & Florida Panhandle Zone

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

___ (iv) Alternate III (July 2010) of 52.219-9.

___ (16) 52.219-13, Notice of Set-Aside of Orders (Nov 2011) (15 U.S.C. 644(r)).

X (17) 52.219-14, Limitations on Subcontracting (Nov 2011) (15 U.S.C. 637(a)(14)).

___ (18) 52.219-16, Liquidated Damages—Subcontracting Plan (Jan 1999) (15 U.S.C. 637(d)(4)(F)(i)).

___ (19) (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.

___ (20) 52.219-25, Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting (Dec 2010) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).

___ (21) 52.219-26, Small Disadvantaged Business Participation Program—Incentive Subcontracting (Oct 2000) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).

___ (22) 52.219-27, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (Nov 2011) (15 U.S.C. 657f).

X (23) 52.219-28, Post Award Small Business Program Rerepresentation (Apr 2012) (15 U.S.C. 632(a)(2)).

___ (24) 52.219-29, Notice of Set-Aside for Economically Disadvantaged Women-Owned Small Business (EDWOSB) Concerns (Apr 2012) (15 U.S.C. 637(m)).

___ (25) 52.219-30, Notice of Set-Aside for Women-Owned Small Business (WOSB) Concerns Eligible Under the WOSB Program (Apr 2012) (15 U.S.C. 637(m)).

X (26) 52.222-3, Convict Labor (June 2003) (E.O. 11755).

X (27) 52.222-19, Child Labor—Cooperation with Authorities and Remedies (Mar 2012) (E.O. 13126).

SPM300-13-D-P192 Alabama & Florida Panhandle Zone

X (28) 52.222-21, Prohibition of Segregated Facilities (Feb 1999).

X (29) 52.222-26, Equal Opportunity (Mar 2007) (E.O. 11246).

X (30) 52.222-35, Equal Opportunity for Veterans (Sep 2010) (38 U.S.C. 4212).

X (31) 52.222-36, Affirmative Action for Workers with Disabilities (Oct 2010) (29 U.S.C. 793).

X (32) 52.222-37, Employment Reports on Veterans (Sep 2010) (38 U.S.C. 4212).

X (33) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496).

X (34) 52.222-54, Employment Eligibility Verification (Jul 2012). (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in 22.1803.)

___ (35) (i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Items (May 2008) (42 U.S.C. 6962(c)(3)(A)(ii)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

___ (ii) Alternate I (May 2008) of 52.223-9 (42 U.S.C. 6962(i)(2)(C)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

___ (36) 52.223-15, Energy Efficiency in Energy-Consuming Products (Dec 2007) (42 U.S.C. 8259b).

___ (37) (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.

X (38) 52.223-18, Encouraging Contractor Policies to Ban Text Messaging while Driving (Aug 2011).

___ (39) 52.225-1, Buy American Act--Supplies (Feb 2009) (41 U.S.C. 10a-10d).

___ (40) (i) 52.225-3, Buy American Act--Free Trade Agreements--Israeli Trade Act (Nov 2012) (41 U.S.C. chapter 83, 19 U.S.C. 3301 note, 19

SPM300-13-D-P192 Alabama & Florida Panhandle Zone

U.S.C. 2112 note, 19 U.S.C. 3805 note, 19 U.S.C. 4001 note, Pub. L. 103-182, Pub. L. 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, 110-138, 112-41, 112-42, and 112-43).

___ (ii) Alternate I (Mar 2012) of 52.225-3.

___ (iii) Alternate II (Mar 2012) of 52.225-3.

___ (iv) Alternate III (Nov 2012) of 52.225-3.

___ (41) 52.225-5, Trade Agreements (Nov 2012) (19 U.S.C. 2501, *et seq.*, 19 U.S.C. 3301 note).

X (42) 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).

___ (43) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (Nov 2007) (42 U.S.C. 5150).

___ (44) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov 2007) (42 U.S.C. 5150).

___ (45) 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)).

___ (46) 52.232-30, Installment Payments for Commercial Items (Oct 1995) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).

X (47) 52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration (Oct. 2003) (31 U.S.C. 3332).

___ (48) 52.232-34, Payment by Electronic Funds Transfer—Other Than Central Contractor Registration (May 1999) (31 U.S.C. 3332).

___ (49) 52.232-36, Payment by Third Party (Feb 2010) (31 U.S.C. 3332).

___ (50) 52.239-1, Privacy or Security Safeguards (Aug 1996) (5 U.S.C. 552a).

___ (51) (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.

SPM300-13-D-P192 Alabama & Florida Panhandle Zone

(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.*).

X (7) 52.222-17, Nondisplacement of Qualified Workers (Jan 2013) (E.O. 13495).

___ (8) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations. (Mar 2009) (Pub. L. 110-247).

___ (9) 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.

SPM300-13-D-P192 Alabama & Florida Panhandle Zone

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e)

(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c) and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in this paragraph (e)(1) in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (Apr 2010) (Pub. L. 110-252, Title VI, Chapter 1 (41 U.S.C. 251 note)).

(ii) 52.219-8, Utilization of Small Business Concerns (Dec 2010) (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 \$650,000 (\$1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(iii) 52.222-17, Nondisplacement of Qualified Workers (Jan 2013) (E.O. 13495). Flow down required in accordance with paragraph (1) of FAR clause 52.222-17.

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

(v) 52.222-35, Equal Opportunity for Veterans (Sep 2010) (38 U.S.C. 4212).

(vi) 52.222-36, Affirmative Action for Workers with Disabilities (Oct 2010) (29 U.S.C. 793).

(vii) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause 52.222-40.

SPM300-13-D-P192 Alabama & Florida Panhandle Zone

(viii) 52.222-41, Service Contract Act of 1965, (Nov 2007), (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 (Jul 2012).

(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.

Alternate I (Feb 2000). As prescribed in [12.301\(b\)\(4\)\(i\)](#), delete paragraph (d) from the basic clause, redesignate paragraph (e) as paragraph (d), and revise the reference to “paragraphs (a), (b), (c), or (d) of this clause” in the redesignated paragraph (d) to read “paragraphs (a), (b), and (c) of this clause”.

Alternate II (Jul 2012). As prescribed in [12.301\(b\)\(4\)\(ii\)](#), substitute the following paragraphs (d)(1) and (e)(1) for paragraphs (d)(1) and (e)(1) of the basic clause as follows:

(d)

(1) The Comptroller General of the United States, an appropriate Inspector General appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), or an authorized representative of either of the foregoing officials shall have access to and right to—

(i) Examine any of the Contractor’s or any subcontractors’ records that pertain to, and involve transactions relating to, this contract; and

SPM300-13-D-P192 Alabama & Florida Panhandle Zone

(ii) Interview any officer or employee regarding such transactions.

(e)

(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), and (c), of this clause, the Contractor is not required to flow down any FAR clause in a subcontract for commercial items, other than—

(i) *Paragraph (d) of this clause.* This paragraph flows down to all subcontracts, except the authority of the Inspector General under paragraph (d)(1)(ii) does not flow down; and

(ii) *Those clauses listed in this paragraph (e)(1).* Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—

(A) 52.203–13, Contractor Code of Business Ethics and Conduct (Apr 2010) (Pub. L. 110–252, Title VI, Chapter 1 (41 U.S.C. 251 note)).

(B) 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub. L. 111-5).

(C) 52.219–8, Utilization of Small Business Concerns (Dec 2010) (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 \$650,000 (\$1.5 million for construction of any public facility), the subcontractor must include 52.219–8 in lower tier subcontracts that offer subcontracting opportunities.

(D) 52.222–26, Equal Opportunity (Mar 2007) (E.O. 11246).

(E) 52.222–35, Equal Opportunity for Veterans (Sept 2010) (38 U.S.C. 4212).

(F) 52.222–36, Affirmative Action for Workers with Disabilities (Oct 2010) (29 U.S.C. 793).

(G) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause 52.222-40.

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

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

SPM300-13-D-P192 Alabama & Florida Panhandle Zone

(J) 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.*).

(K) 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.*).

(L) 52.222–54, Employment Eligibility Verification (Jul 2012).

(M) 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.

(N) 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.

[Class Deviation- 2009-O0005, Commercial Item Omnibus Clauses for Acquisitions Using the Standard Procurement System. This clause deviation is effective on May 1, 2009, and remains in effect until April 30, 2014, or until otherwise rescinded.]

FAR 52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS--COMMERCIAL ITEMS (Nov 2012) (DEVIATION)

(a) *Comptroller General Examination of Record.* The Contractor shall comply with the provisions of this paragraph (a) 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.

SPM300-13-D-P192 Alabama & Florida Panhandle Zone

(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.

(b)

(1) Notwithstanding the requirements of any other clause in this contract, the Contractor is not required to flow down any FAR clause, other than those in this paragraph (b)(1) in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (Apr 2010) (Pub. L. 110-252, Title VI, Chapter 1 (41 U.S.C. 251 note)).

(iii) 52.219-8, Utilization of Small Business Concerns (Dec 2010) (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 \$650,000 (\$1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities

(ix) [Reserved]

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

(v) 52.222-35, Equal Opportunity for Veterans (Sep 2010) (38 U.S.C. 4212).

(vi) 52.222-36, Affirmative Action for Workers with Disabilities (Oct 2010) (29 U.S.C. 793).

(vii) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause 52.222-40.

(viii) 52.222-41, Service Contract Act of 1965, (Nov 2007), (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.*).

SPM300-13-D-P192 Alabama & Florida Panhandle Zone

(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.

Alternate I (Feb 2000) (Deviation). As prescribed in 12.301(b)(4), delete paragraph (a) from the basic clause, redesignate paragraph (b)(1) as paragraph (a), and redesignate paragraphs (b)(1)(i) through (b)(1)(xiv) as paragraphs (a)(1) through (a)(14) and redesignate paragraph (b)(2) as paragraph (b).

Alternate II (Dec 2010) (Deviation). As prescribed in 12.301(b)(4)(ii), substitute the following paragraphs (a)(1) and (b)(1) for paragraphs (a)(1) and (b)(1) of the basic clause as follows:

(a)

(1) The Comptroller General of the United States, an appropriate Inspector General appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), or an authorized representative of either of the foregoing officials shall have access to and right to—

(i) Examine any of the Contractor's or any subcontractors' records that pertain to, and involve transactions relating to, this contract; and

(ii) Interview any officer or employee regarding such transactions.

(b)

(1) Notwithstanding the requirement of any other clause in this contract, the Contractor is not required to flow down any FAR clause in a subcontract for commercial items, other than—

(i) *Paragraph (a) of this clause.* This paragraph flows down to all subcontracts, except the authority of the Inspector General under paragraph (a)(1)(ii) does not flow down; and

SPM300-13-D-P192 Alabama & Florida Panhandle Zone

(ii) *Those clauses listed in this paragraph (b)(1).* Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—

(A) 52.203-13, Contractor Code of Business Ethics and Conduct (Apr 2010) (Pub. L. 110-252, Title VI, Chapter 1 (41 U.S.C. 251 note)).

(B) 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub. L. 111-5).

(C) 52.219-8, Utilization of Small Business Concerns (Dec 2010) (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 \$650,000 (\$1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

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

(E) 52.222-35, Equal Opportunity for Veterans (Sep 2010) (38 U.S.C. 4212).

(F) 52.222-36, Affirmative Action for Workers with Disabilities (Oct 2010) (29 U.S.C. 793).

(G) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause 52.222-40.

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

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

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

(K) 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.*).

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

(M) 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.

SPM300-13-D-P192 Alabama & Florida Panhandle Zone

(N) 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

Remove DFARS Clause 252.212-7001 Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items. (AUG 2012) from page 53 of the solicitation and replace with the following:

Replace with DFARS Clause 252.212-7001 Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items. (FEB 2013)

(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.

 X 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) X [252.203-7000](#), Requirements Relating to Compensation of Former DoD

Officials (SEP 2011) (Section 847 of Pub. L. 110-181).

(2) X [252.203-7003](#), Agency Office of the Inspector General (DEC 2012)(section 6101 of Pub. L. 110-252, 41 U.S.C. 3509).

(3) X [252.205-7000](#), Provision of Information to Cooperative Agreement

Holders (DEC 1991) (10 U.S.C. 2416).

(4) [252.219-7003](#), Small Business Subcontracting Plan (DoD Contracts)

(AUG 2012) (15 U.S.C. 637).

(5) [252.219-7004](#), Small Business Subcontracting Plan (Test Program)

(JAN 2011) (15 U.S.C. 637 note).

SPM300-13-D-P192 Alabama & Florida Panhandle Zone

(6)(i) [252.225-7001](#), Buy American and Balance of Payments Program

(DEC 2012) (41 U.S.C. chapter 83, E.O. 10582).

(ii) Alternate I (OCT 2011) of [252.225-7001](#).

(7) [252.225-7008](#),
Restriction on Acquisition of Specialty Metals (JUL 2009)(10 U.S.C. 2533b).

(8) [252.225-7009](#),
Restriction on Acquisition of Certain Articles Containing Specialty Metals (JUN 2012) (10 U.S.C. 2533b).

(9) [252.225-7012](#),
Preference for Certain Domestic Commodities (FEB 2013) (10 U.S.C. 2533a).

(10) [252.225-7015](#), Restriction on Acquisition of Hand or Measuring Tools

(JUN 2005) (10 U.S.C. 2533a).

(11) [252.225-7016](#), Restriction on Acquisition of Ball and Roller Bearings (JUN 2011) (Section 8065 of Pub. L. 107-117 and the same restriction in subsequent DoD appropriations acts).

(12) [252.225-7017](#), Photovoltaic Devices (DEC 2012) (Section 846 of Pub.

L. 111-383).

(13)(i) [252.225-7021](#), Trade Agreements (DEC 2012) (19 U.S.C. 2501-2518

and 19 U.S.C. 3301 note).

(ii) Alternate I (OCT 2011) of [252.225-7021](#).

(iii) Alternate II (OCT 2011) of [252.225-7021](#).

(14) [252.225-7027](#), Restriction on Contingent Fees for Foreign Military

Sales (APR 2003) (22 U.S.C. 2779).

SPM300-13-D-P192 Alabama & Florida Panhandle Zone

(15) ____ [252.225-7028](#), Exclusionary Policies and Practices of Foreign Governments (APR 2003) (22 U.S.C. 2755).

(16)(i) ____ [252.225-7036](#), Buy American—Free Trade Agreements—Balance of Payments Program (DEC 2012) (41 U.S.C. chapter 83 and 19 U.S.C. 3301 note).

(ii) ____ Alternate I (JUN 2012) of [252.225-7036](#).

(iii) ____ Alternate II (NOV 2012) of [252.225-7036](#).

(iv) ____ Alternate III (JUN 2012) of [252.225-7036](#).

(v) ____ Alternate IV (NOV 2012) of [252.225-7036](#).

(vi) ____ Alternate V (NOV 2012) of [252.225-7036](#).

(17) ____ [252.225-7038](#), Restriction on Acquisition of Air Circuit Breakers (JUN 2005) (10 U.S.C. 2534(a)(3)).

(18) ____ [252.225-7039](#), Contractors Performing Private Security Functions (JUN 2012) (Section 862 of Pub. L. 110-181, as amended by section 853 of Pub. L. 110-417 and sections 831 and 832 of Pub. L. 111-383).

(19) X [252.226-7001](#), Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns (SEP 2004) (Section 8021 of Pub. L. 107-248 and similar sections in subsequent DoD appropriations acts).

(20) ____ [252.227-7013](#), Rights in Technical Data—Noncommercial Items (FEB 2012), if applicable (see [227.7103-6\(a\)](#)).

(21) ____ [252.227-7015](#), Technical Data—Commercial Items (DEC 2011)

SPM300-13-D-P192 Alabama & Florida Panhandle Zone

(10 U.S.C. 2320).

(22) ____ [252.227-7037](#), Validation of Restrictive Markings on Technical Data

(JUN 2012), if applicable (see [227.7102-4\(c\)](#)).

(23) X [252.232-7003](#), Electronic Submission of Payment Requests and Receiving Reports (MAR 2008) (10 U.S.C. 2227).

(24) ____ [252.237-7010](#), Prohibition on Interrogation of Detainees by Contractor

Personnel (NOV 2010) (Section 1038 of Pub. L. 111-84)

(25) ____ [252.237-7019](#), Training for Contractor Personnel Interacting with

Detainees (SEP 2006) (Section 1092 of Pub. L. 108-375).

(26) X [252.243-7002](#), Requests for Equitable Adjustment (DEC 2012) (10

U.S.C. 2410).

(27) ____ [252.246-7004](#), Safety of Facilities, Infrastructure, and Equipment

For Military Operations (OCT 2010) (Section 807 of Pub. L. 111-84).

(28) ____ [252.247-7003](#), Pass-Through of Motor Carrier Fuel Surcharge

Adjustment to the Cost Bearer (SEP 2010) (Section 884 of Pub. L. 110-417).

(29)(i) ____ [252.247-7023](#), Transportation of Supplies by Sea (MAY 2002) (10

U.S.C. 2631).

(ii) ____ 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](#).

SPM300-13-D-P192 Alabama & Florida Panhandle Zone

(30) ___ [252.247-7024](#), Notification of Transportation of Supplies by Sea (MAR

2000) (10 U.S.C. 2631).

(31) X [252.247-7027](#), Riding Gang Member Requirements (OCT 2011)

(Section 3504 of Pub. L. 110-417).

(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) [252.225-7039](#), Contractors Performing Private Security Functions

(JUN 2012) (Section 862 of Pub. L. 110-181, as amended by section 853 of Pub. L. 110-417 and sections 831 and 832 of Pub. L. 111-383).

(2) [252.227-7013](#), Rights in Technical Data—Noncommercial Items (FEB 2012), if applicable (see [227.7103-6\(a\)](#)).

(3) [252.227-7015](#), Technical Data—Commercial Items (DEC 2011), if applicable (see [227.7102-4\(a\)](#)).

(4) [252.227-7037](#), Validation of Restrictive Markings on Technical Data (JUN 2012), if applicable (see [227.7102-4\(c\)](#)).

(5) [252.237-7010](#), Prohibition on Interrogation of Detainees by Contractor

Personnel (NOV 2010) (Section 1038 of Pub. L. 111-84).

(6) [252.237-7019](#), Training for Contractor Personnel Interacting with Detainees (SEP 2006) (Section 1092 of Pub. L. 108-375).

(7) [252.247-7003](#), Pass-Through of Motor Carrier Fuel Surcharge Adjustment

to the Cost Bearer (SEP 2010) (Section 884 of Pub. L. 110-417).

(8) [252.247-7023](#), Transportation of Supplies by Sea (MAY 2002) (10 U.S.C

SPM300-13-D-P192 Alabama & Florida Panhandle Zone

2631).

(9) [252.247-7024](#), Notification of Transportation of Supplies by Sea (MAR 2000)

(10 U.S.C. 2631).

Replace DLAD Clause 52.216-9064 Economic Price Adjustment (EPA) – Actual Material Costs for Subsistence Delivered Price Business Model. (NOV 2011) from page 61 of the solicitation and replace with the following:

52.216-9064 Economic Price Adjustment (EPA) – Actual Material Costs for Subsistence Delivered Price Business Model Economic Price Adjustment (EPA) - DLA Troop Support Subsistence Prime Vendor (SPV) Continuous United States (CONUS). (FEB 2013)

As prescribed in [16.203-4\(d\)\(2\)\(S-95\)](#), insert the following clause:

ECONOMIC PRICE ADJUSTMENT (EPA) – ACTUAL MATERIAL COSTS FOR
SUBSISTENCE DELIVERED PRICE BUSINESS MODEL – DLA TROOP SUPPORT
SUBSISTENCE PRIME VENDOR (SPV) CONTIGUOUS UNITED STATES (CONUS)
(FEB 2013)

(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) 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) “Private label holder” means:

(i) a manufacturer or grower with whom the contractor holds an ownership and/or financial interest, or ownership and/or financial interest in a specific item(s) produced by a manufacturer or grower; or

(ii) an entity holding an intellectual property interest, whether by ownership or license, in the label under which product is being sold in the commercial marketplace; or

(iii) an entity holding exclusive marketing and/or sales authority of a product, or one holding property rights in a proprietary product formula.

SPM300-13-D-P192 Alabama & Florida Panhandle Zone

(2) “Redistributor” means an entity independent of the contractor from which the contractor purchases product for purposes of consolidating quantities and/or obtaining a competitive delivered price.

(3) “Standard Freight” means the published list price or prevailing market rate for transportation of subsistence and food service operating supplies, i.e. the transportation charge for delivery from the manufacturer/grower/private label holder or redistributor to the SPV Contractor. This may include inter-division transfers between the SPV Contractor’s warehouses provided the delivered price (inclusive of standard freight) of a product at a given time is identical to the delivered price of the same product at the same time to other commercial customers in the SPV Contractor’s electronic purchasing system.

(i) In the event the SPV Contractor picks up product free on board (f.o.b.) origin from a manufacturer/grower/ private label holder, or arranges for delivery transportation from a third party source other than the manufacturer/grower/private label holder, the standard freight charge shall be based on market tariffs/conditions and shall not exceed the lesser of:

(A) the manufacturer/grower/private label holder’s or manufacturer/grower/private label holder’s carrier’s freight price normally payable by the SPV Contractor for inbound shipments of such products and quantities to the Contractor’s distribution point; or

(B) an average price based on market conditions for freight in the same market for the same type of freight service for like products, shipping methods and quantities.

(ii) In rare circumstances, and only with the Contracting Officer’s written approval, the SPV Contractor may use drop shipments, i.e. the product is shipped directly from the manufacturer/grower / private label holder to the customer without the SPV Contractor taking possession. This may involve transportation charges using non-standard freight such as FedEx, United Parcel Service (UPS), or the United States (U.S.) Postal Service. In such instances the Contracting Officer will determine price reasonableness on the unit price inclusive of freight.

(4) “Contract unit price” means the total price per unit charged to DLA Troop Support for a product delivered to DLA Troop Support’s customers. The Contract unit price consists of three components: delivered price plus distribution price less Government rebates and discounts. The unit price sum of the three component prices shall be rounded up or down as applicable, to the nearest cent to determine the final Contract unit price.

(5) Delivered price

(i) Delivered price” means the most recent manufacturer, grower, or private label holder commercial price per unit to the Contractor, inclusive of all standard freight, that is input in the contractor’s purchasing system as the starting basis for its pricing to customers prior to the application of any specific distribution fees, rebates, discounts, limited discounts, or other financial agreements with the Contractor’s customers. The delivered price shall be based on

SPM300-13-D-P192 Alabama & Florida Panhandle Zone

f.o.b. destination delivered using standard freight. The delivered price shall exclude all costs that are to be covered in the distribution price. The SPV Contractor warrants that the delivered price to its delivering warehouse of a product sold at any given time by the SPV Contractor to DLA Troop Support customers is identical to the delivered price of such product sold at the same time to its other customers.

(A) Exception: For mandatory source items, the delivered price shall be limited to the nonprofit agency's price for product as set in accordance with applicable law, plus standard freight.

(B) Exception: A redistributor's price for a specific manufacturer/grower/private label holder's product (or stock keeping unit (SKU)) may be used as long as the redistributor's price for the quantity ordered is equal to or lower than the manufacturer's/ grower's/ private label holder's current price inclusive of Government rebates and discounts (as defined below). Supporting documentation (published price list, manufacturer letter/email, or similar proof of price comparison) may be required. The determination that the supporting documentation is sufficient to establish the manufacturer's/ grower's/ private label holder's current price rests solely with the Contracting Officer.

(C) Exception: Standard freight may not apply to drop shipments and f.o.b. origin pickups.

(ii) The Contractor shall utilize best commercial practices in purchasing its food items under this contract, to include seeking and using competition to the maximum extent practicable for all purchases and purchasing in the most economical order quantities and terms and conditions.

(6) "Distribution Price(s)" means the firm fixed price portion of the Contract Unit price, offered as a dollar amount per unit of issue, rounded up or down to the nearest cent. The distribution price is the only method for the Contractor to bill the Government for all aspects of contract performance other than delivered price; including but not limited to, the performance requirements of the statement of work (SOW) for the applicable SPV solicitation and resulting contract. As detailed above in paragraph (5), delivered price is distinct from and not to be included in the distribution price. For both drop shipments and Government pick-ups, the Contracting Officer may negotiate a reduced distribution price with the Contractor since the Contractor is not handling the product.

(7) "Government rebates and discounts" means all rebates, discounts, and limited discounts designated for the Government, including National Allowance Pricing Agreements (NAPA) discounts, food show discounts, early payment discounts (other than qualifying early payment discounts as defined in the Rebates, Discounts and Price Related Provisions section of the solicitation), and any other rebates, discounts, or similar arrangements designated by the manufacturer/grower/ private label holder or redistributor to be passed to the Government or passed to all customers without specific designation. In accordance with other provisions of the contract (and subject to any applicable exceptions in those provisions), all Government rebates and discounts shall be passed to the Government via a reduced catalog price (i.e. "off invoice").

SPM300-13-D-P192 Alabama & Florida Panhandle Zone

Any Government rebates and discounts that must be passed to the Government and which cannot be applied as an up-front price reduction must be submitted via check payable to the U.S. Treasury, with an attached itemized listing of all customer purchases by line item to include contract number, call number, purchase order number and contract line item number (CLIN).

(8) "Ordering catalog" means the electronic listing of items and their corresponding Contract unit prices available for ordering under this contract.

(9) "Ordering Week" means from Sunday at 12:01 AM through the following Saturday until midnight (Eastern Time ET, standard or daylight as applicable).

(c) Price adjustments.

(1) General.

(i) 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 delivered price component of the Contract unit price is subject to adjustment under this clause. After the first ordering week, if the Contractor's delivered price changes for any or all Contract unit prices, the Contract unit price shall be changed in the next week's ordering catalog upon the Contractor's request, submitted in accordance with paragraph (iii) below, by the same dollar amount of the change in the delivered price, subject to the limitations in paragraph (d). The price change shall be effective at the beginning of the next ordering week. 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. DLA Troop Support 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 week.

(ii) Catalog delivered prices must be reflective of the prime vendor's last receipt price (the price of the stock most recently received into SPV contractor's inventory).

(iii) Updates to the delivered price: All notices and requests for new item delivered prices and price changes shall be submitted weekly, 9:00AM Eastern Standard Time on Monday to be effective in the following Ordering Week's Ordering Catalog prices. The delivered price shall have any and all Government rebates and discounts subtractions made prior to presenting the delivered price to DLA Troop Support. The Contractor shall notify the Contracting Officer of its notice/request in the form of an electronic data interchange (EDI) 832 transaction set. The change notice shall include the Contractor's adjustment in the delivered price component of the applicable Contract unit price. Upon the Contracting Officer's acceptance of such EDI 832 price changes in accordance with paragraph (v) below, the price change transaction sets will post in the next week's ordering catalog and each Contract unit price shall be changed by the same dollar amount of the change in the delivered price in the next week's ordering catalog.

(iv) All price changes, and catalog contract prices, are subject to review by the Government. The Contracting Officer may at any time require the submission of supporting data to substantiate any requested price change or the requested continuation of the pre-existing price

SPM300-13-D-P192 Alabama & Florida Panhandle Zone

for any item, including prices applicable to prior ordering weeks. Upon notice from the Contracting Officer that supporting data is required, the Contractor shall promptly furnish to the Government all supporting data, including but not limited to, invoices, quotes, price lists, manufacturer/grower/private label holder documentation regarding Government rebates and discounts, and any other substantiating information requested by the Contracting Officer.

(v) 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 3:00PM Eastern Standard Time each Friday that a price or a price change request is being questioned or has been found to be erroneous, the price change(s) will post to the ordering catalog effective the beginning of the following ordering week. The posting of updated prices in the ordering catalog, calculated in accordance with this clause, constitutes a modification to this contract. No further contract modification is required to effect this change. Any changes that post to the ordering catalog do not constitute a waiver of any of the rights delineated elsewhere in the contract.

(vi) Should the Contracting Officer determine that, or question whether 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 delivered prices for items of comparable quality which are reasonably available to the Government or Contractor from other sources, the Contracting Officer will so advise the Contractor, prior to close of business 3:00PM Eastern Standard Time on Friday. If the Contracting Officer cannot determine a price fair and reasonable, and the Contracting Officer and the Contractor cannot negotiate a fair and reasonable price, the Contracting Officer may reject any price change and direct in writing that the item in question be removed from the Contractor's ordering catalog, without Government liability. The Contracting Officer may subsequently remove any such item from the ordering catalog if the Contractor fails to remove it. 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 may be considered negatively in any evaluation of performance.

(vii) 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, upon discovery of such event the Contractor shall promptly notify the Contracting Officer in writing and promptly thereafter correct its ordering catalog and submit a refund including interest 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 delivered prices for material. There shall be no upward adjustment for—

SPM300-13-D-P192 Alabama & Florida Panhandle Zone

- (i) Supplies for which the delivered price is not affected by such changes;
- (ii) Changes in the quantities of materials; and

(iii) 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.

(3) If the Contracting Officer rejects a proposed adjustment for an item because the adjusted unit price cannot be determined fair and reasonable, the Contractor shall have no obligation to fill future orders for such item as of the effective date of the proposed adjustment unless such item is subsequently added to the contract at a Unit Price that is determined fair and reasonable. Alternately, the item may be retained on the catalog at the prior (unadjusted) price for as long as both parties agree to do so.

(d) Upward ceiling on economic price adjustment. The aggregate of contract delivered price increases for each item under this clause during the contract period inclusive of any option period(s) shall not exceed N/A percent (%) for all items except fresh fruits and vegetables (FF&V) and 90 percent (%) for fresh fruits and vegetables (FF&V) of the initial contract delivered price, except as provided below:

(1) If at any time the Contractor has reason to believe that within the near future a price adjustment under the provisions of this 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)(iii) 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 delivered 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 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 week's ordering catalog.

(e) Downward limitation on economic price adjustments. There is no downward limitation on the aggregated percentage of decreases that may be made under this clause.

(f) Examination of records. The Contracting Officer or designated representative shall have the right to examine the Contractor's books, records, documents and other data, to include

SPM300-13-D-P192 Alabama & Florida Panhandle Zone

commercial sales data, that the Contracting Officer deems necessary to verify Contractor adherence to the provisions of this clause. Such examination may occur up to twice a year (except as provided for below) until the end of 3 years after the date of final payment under this contract or the time periods specified in Subpart 4.7 of the Federal Acquisition Regulation (FAR), whichever is earlier. These will normally involve Government selection of a statistically significant sample size of invoices/records to examine based on the number of line items on the specific contract catalog. If an examination of records reveals irregularities, further examinations and/or a larger sample size may be required. In addition to normal examination, the Government may conduct additional examinations at the Contracting Officer's discretion.

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

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

Remove FAR Clause 52.252-2 Clauses Incorporated By Reference (FEB 1998) from page 75 of the solicitation and replace with the following:

Replace with FAR Clause 52.252-2 Clauses Incorporated By Reference (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

- FAR: <https://www.acquisition.gov/far/index.html>;
- DFARS: <http://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html>
- DLAD: <http://www.dla.mil/Acquisition/Documents/DLAD%20Rev%205.htm>

The following additional clauses are incorporated by REFERENCE:

<u>CLAUSE NUMBER</u>	<u>TITLE</u>	<u>DATE</u>
DLAD 52.211-9014	Contractor Retention of Traceability Documentation	AUG 2012
FAR 52.227-1	Authorization and Consent	DEC 2007
FAR 52.232-17	Interest	OCT 2010
FAR 52.242-13	Bankruptcy	JULY 1995
FAR 52.242-15	Stop-Work Order	AUG 1989
DLAD 52.247-9012	Requirements for Treatment of Wood Packaging Material (WPM)	FEB 2007
FAR 52.251-1	Government Supply Sources	APR 2012
DFARS 252.204-7003	Control of Government Personnel Work	APR 1992

SPM300-13-D-P192 Alabama & Florida Panhandle Zone

	Product	
DFARS 252.209-7004	Subcontracting with Firms that are Owned or Controlled by the Government of a Terrorist Country	DEC 2006
DFARS 252.225-7002	Qualifying Countries as Subcontractors	DEC 2012
DFARS 252.232-7010	Levies on Contract Payments	DEC 2006