

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

1. CONTRACT ID CODE _____ PAGE _____ OF _____ PAGES

2. AMENDMENT/MODIFICATION NO. _____ 3. EFFECTIVE DATE _____ 4. REQUISITION/PURCHASE REQ. NO. _____ 5. PROJECT NO. (If applicable) _____

6. ISSUED BY _____ CODE _____ 7. ADMINISTERED BY (If other than Item 6) _____ CODE _____

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code) _____ (X) _____

9A. AMENDMENT OF SOLICITATION NO. _____

9B. DATED (SEE ITEM 11) _____

10A. MODIFICATION OF CONTRACT/ORDER NO. _____

10B. DATED (SEE ITEM 11) _____

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. Offers 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 your 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 ONLY APPLIES TO MODIFICATION OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

CHECK ONE	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.) _____

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	16B. UNITED STATES OF AMERICA
15C. DATE SIGNED	16C. DATE SIGNED
(Signature of person authorized to sign)	(Signature of Contracting Officer)

Question #1

Section (b)(3) of the Economic Price Adjustment Clause in the Contract Clauses portion of the solicitation (p. 60 of 107) provides that Product Allowances ("discounts, rebates, and allowances to be passed on to the Government") "shall be passed by the Contractor to the Government in the form of an up-front price reduction." Section (b)(3) also provides that "[a]ny rebates that must be passed to the government and which cannot be applied as an up-front price reduction must be submitted via check made to the US Treasury" Paragraph A.3(a) of Section VI (Catalogs) of the Statement of Work (p. 13

of 107) establishes an obligation to pursue discounts, rebates, allowances "or other similar economic incentives or benefits." This provision also specifically requires that "[a]ll NAPA discounts, food show discounts, early payment discounts (except as identified in paragraph (b) herein), and other discounts, rebates, allowances or other similar economic incentives or benefits received by the Contractor at any time during the period of performance shall be passed to the Government via a reduced catalog price."

Frequently, an inspection of produce items received at our facility reveals that some portion of the shipment is not suitable for delivery to our contract customers because it is damaged, does not meet quality standards, or is otherwise flawed or defective. In such a case, it is common practice in the industry to negotiate reductions in the invoice price with the grower or supplier after receipt of the product to compensate for (i) the decrease in the amount of product that can be delivered to contract customers and (ii) the extra costs of culling rejected product, disposing of it, and repacking the usable product. The negotiation of reductions from the invoice price with the supplier may not be resolved until as much as a month after delivery.

*Is it correct to interpret the contract provisions relating to discounts, rebates, and allowances as **not** applying to the negotiated price reductions described in the previous paragraph for purposes of (i) the discounts, rebates, and allowances to be passed to the Government that are required to be reflected in the up-front pricing, if known at the time catalog prices are set, and (ii) the rebates that must be passed to the Government subsequently by check if not known at that time?*

Government Response Question #1

1. In general, the provisions related to "discounts, rebates, and allowances" contained in the solicitation do not apply to negotiated price reductions between a contractor and its supplier resulting from damaged/defective product shipped to the former by the latter. For example, the Government pays the catalog price for the amount of product actually received. In fulfilling the Government's order, the contractor is tasked with inspecting its inventory as it is received from its supplier. The Government acknowledges that there are times when product received by the contractor is damaged/defective. In these circumstances, the Government would permit the contractor to retain negotiated price reductions obtained from the supplier that compensate the contractor for the expense of the additional work performed by the contractor (i.e. culling rejected product, disposing of it, repacking, etc.). Essentially, the Government considers these expenses to be a cost of doing

business which is off-set with the negotiated reduction. However, in a circumstance where the reduction received far exceeds those expenses and ultimately reduces the unit price of the order above and beyond the damaged/defective product portion, the Government expects that those savings be passed on to it as a rebate. The contractor is required to retain documentation of the transaction.

Question #2

Section (c)(1)(ii) of the Economic Price Adjustment Clause (p. 61 of 107) states that "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)." Prices for items of the same quality grade received on the same day or during the same week may vary significantly from supplier to supplier (because of factors like the popularity of the particular brand or the need for suppliers in a particular area of the country to sell the product quickly). In addition, prices for an item from the same supplier may vary significantly during the week in which prices are determined for the following week.

Is the requirement to use the last received price to be read literally as the last price to the minute, regardless of its relative price, when the Contractor pays different prices for the same item received on the same day or during the same week?

Alternatively, will the Contractor have some flexibility in applying this section as a way to compensate for some of the price variability that will occur? For example:

- (i) May the Contractor use a higher price received the same day or during the same week if some subjective quality factor within the specified grade justifies the higher price?*
- (ii) May the Contractor use a higher price received the same day or during the same week to reflect anticipated availability of the item from the various sources during the following week, when orders for the item are required to be filled?*
- (iii) May the Contractor use an average price paid for an item on the day the item was most recently received or during the previous week?*

Government Response Question #2

2. The catalog delivered price is defined in section (c)(1)(ii) of the subject Economic Price Adjustment ("EPA") clause. Further, section (c)(1)(iii) of the EPA clause sets forth the deadline for submission of the updates in accordance with the clause. The intent of this clause is to capture the most updated market conditions by requiring the latest or the most up-to-date pricing available to the contractor prior to the deadline for catalog price revisions. Therefore, all price revisions required of the contractor shall reflect the last invoice received prior to the date and time

submissions are made, with the absolute last day being 12:00 PM EST on Wednesday of each week. Please note, however, that the contracting officer must find all price revisions fair and reasonable. Questionable price revisions, including those with supporting invoices which are not reflective of a representative weekly demand (i.e. case of an invoice showing a low quantity), may require additional supporting documentation or be rejected.

- a. The contractor does not have flexibility in applying the above requirements (i.e. selecting higher priced invoices over lower priced invoices outside of the time submission requirement established in the clause).
- b. No, the contractor may not use a higher price received (unless it is the last invoice received on the day the contractor requests its price revisions) in order to reflect anticipated availability of the item from various sources during the following week.
- c. No, the contractor may not use the average price paid for the item that day or during the previous week.

Question #3

Paragraph A.2(a) of Section VI (Catalogs) of the Statement of Work (p. 12 of 107) provides that "[t]he final proposed price for each item in the Schedule of items will be the catalog price during the first week of customer ordering." Section II (Schedule of Items: Pricing) in the Proposal Submission Information requires use of the most current unit pricing, i.e., delivered prices effective from Sunday February 24, 2013 through Saturday March 9, 2013. See Section II C and Section IV A, p103 of 107.

Do the same pricing rules discussed in Questions #1 and #2 above apply to the pricing of the bids (using the February 24 through March 9 time period)?

Do any clarifications and explanations provided in response to Questions #1 and #2 also apply to the pricing of bids?

Government Response Question #3

1. The pricing rules, clarifications, and explanations in the responses to Questions 1 and 2 do not necessarily apply to the submission requirements for initial proposals. The solicitation permits each offeror to submit its best price per item that can be substantiated via invoice (quotes in limited circumstances) during the effective period of Sunday, February 24, 2013 through Saturday, March 9, 2013 for its proposal.

Question #4

Section (c)(1)(i) of the Economic Price Adjustment Clause (pp. 60-61 of 107) states as

follows:

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) [relating to the maximum aggregate upward adjustment]. Emphasis added.

Prices for produce can fluctuate daily, and can vary upward or downward during the week following the determination of the Delivered Prices applicable that week. As a result, the Contractor may pay more or less for an item than the catalog Delivered Price for that item used to invoice that item to the Government customer.

Is it correct to interpret section (c)(1)(i) of the Economic Price Adjustment Clause as permitting, but not requiring, a price adjustment when the Contractor's Delivered Price changes from week to week, subject, of course, to the determination that each price is fair and reasonable?

In other words, even though the most recent prices paid by the Contractor for a particular item of produce changes from the existing catalog price, is the Contractor required to submit a price change to the catalog price or can the Contractor decide to maintain the catalog price until it decides it is desirable to request a change. For example, even though the price of a produce item may fluctuate from week to week, can the Contractor maintain the existing catalog price during those weeks, without being required to submit changes in the catalog price each week.

Government's Response Question #4

1. Section (c)(1)(i) of the Economic Price Adjustment clause requires a price adjustment when the contractor's delivered price changes week-to-week. The clause "...upon the Contractor's request" indicates the Government's expectation that the contractor will initiate such an adjustment week-to-week. The adjustment is not optional. If the contractor's invoices indicate that the delivered price has changed from the prior week, a price adjustment is required.

Question #5

Paragraph A.2(a) of Section VI (Catalogs) of the Statement of Work (p. 12 of 107) and subparagraph (c) on p. 60-62 of the Economic Adjustment Clause provide for determinations that a contractor's Unit Prices be fair and reasonable.

Will a Unit Price that is equal to or less than the market price published by Dept. of Agriculture in effect at the time be considered fair and reasonable?

Government Response Question #5

1. In accordance with FAR 15.404-1(b)(2), the Contracting Officer utilizes different price analysis techniques to determine a price fair and reasonable.

Question #6

If the Contractor incurs costs for inspecting and correcting defects in a shipment which are not reimbursed by a negotiated reduction in the price paid to the supplier, would it be permissible to include that cost in the Delivered Price?

Government Response Question #6

1. Delivered Price, as defined in section (b)(2) of the EPA clause, does not include costs for inspecting or correcting defects in a shipment. Expenses associated with that type of work must be included in a contractor's Distribution Price.