

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

1. CONTRACT ID CODE

PAGE 1 OF 5

2. AMENDMENT/MODIFICATION NO. 0001	3. EFFECTIVE DATE 09/25/2019	4. REQUISITION/PURCHASE REQ. NO. See Block 14	5. PROJECT NO. (If applicable)
6. ISSUED BY DLA TROOP SUPPORT DIRECTORATE OF SUBSISTENCE 700 ROBBINS AVENUE PHILADELPHIA PA 19111-5096	CODE SPE300	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. SPE30019R0049
	(X)	9B. DATED (SEE ITEM 11) 2019 AUG 29
		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.

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

12. ACCOUNTING AND APPROPRIATION DATA (If required)

**13. THIS APPLIES ONLY TO MODIFICATIONS 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.
<input type="checkbox"/>	
<input checked="" type="checkbox"/>	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).
<input type="checkbox"/>	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
<input type="checkbox"/>	D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor is not, is required to sign this document and return 1 copies to issuing office.

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

Opening/Closing Date Changed to:
2019 AUG 29 / 2019 OCT 04
TIME 3:00 PM
See Attached Continuation Sheet(s).

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)

Solicitation SPE300-19-R-0049 is hereby amended as follows:

This Amendment includes two Sections. Section I includes revisions to language in the Solicitation. Section II includes questions and answers related to the Solicitation.

SECTION I:

The following paragraph on page 187:

"The Prime Vendor will obtain at least 22% of the supplies for proposed contract from all SB firms (vs. LB firms) as indicated the DoD Office of Small Business Programs pertaining to current subcontracting goals. Within the subcategories, the Prime Vendor will obtain the minimum percentage for the following goals: 22% from SB, 5% from SDB, 5% from WOSB, 3% from SDVOSB firms, and 3% from HZSB firms."

Is hereby changed to state:

"The Prime Vendor will obtain at least 23% of the supplies for proposed contract from all SB firms (vs. LB firms) as indicated the DoD Office of Small Business Programs pertaining to current subcontracting goals. Within the subcategories, the Prime Vendor will obtain the minimum percentage for the following goals: 23% from SB, 5% from SDB, 5% from WOSB, 3% from SDVOSB firms, and 3% from HZSB firms."
END

SECTION II:

The answers in Section II are provided for clarification purpose only and do not change the solicitation requirements. In the event of any discrepancy between the answers provided in Section II and the solicitation documents, the solicitation documents will take precedence.

The answers included in this Section are in response to relevant questions submitted regarding this solicitation. Please note, some questions may have been consolidated for convenience and/or revised to remove sensitive, misleading, irrelevant or extraneous information.

VENDOR QUESTION No.1:

Solicitation Section: pp. 79-80, Statement of Work ("SOW"), ¶I.7.C, Rebates/ Discounts and Price-Related Provisions

Background: The Solicitation provides: "Price Audits: [. . .] In the event of any undercharges, if the Contractor can demonstrate to the satisfaction of the Contracting Officer that the undercharges 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."

Issue: Whereas prior DLA contracts provided that "[t]he Contractor shall be entitled to a payment for the undercharges," the current Solicitation requires the Contractor to submit a request for equitable adjustment, which may be denied if the Contracting Officer determines the undercharge was the result of the fault or negligence of the Contractor. This requirement is inconsistent with customary commercial practice. Pricing in DLA's Food Services Prime Vendor contracts is complicated and DLA, consistent with the commercial sector practice, has historically recognized that overcharges may be reconciled against undercharges. The requirement to file a formal request for equitable adjustment appears to create a needlessly formal and administratively burdensome process to both parties to resolve what has been a fair process and businesslike practice. If DoD does not resolve this issue, contractors will have to price in the burden of recovering underpayments into their price risk.

Questions:

1.1. Will DLA remove this requirement?

DLA TROOP SUPPORT'S ANSWER:

DLA does not intend to remove this requirement.

1.2. If DLA will not remove the requirement-

1.2.1. Because this clause is inconsistent with customary commercial practice, has DLA obtained a waiver in accordance with DLA procedures as required by FAR 12.302(c) to include this term? If so, what is the basis of DLA's need for a more formal process?

DLA TROOP SUPPORT'S ANSWER:

DLA expects that any request for adjustment under its contracts are properly submitted and documented by the contractor making the request.

1.2.2. Will DLA apply the requirement only where the undercharges exceed the simplified acquisition threshold (currently \$250K for DoD)? Note that this is the standard at which DFARS 252.243-7002 requires certification of an REA.

DLA TROOP SUPPORT'S ANSWER:

DLA does not intend to revise this requirement.

1.3. What standard will the Contracting Officer apply to determine whether an undercharge is the result of the fault or negligence of the Contractor?

DLA TROOP SUPPORT'S ANSWER:

The Contracting Officer's decision will be based on the circumstances of the request.

VENDOR QUESTION No.2:

Solicitation Section: p. 79-80, Statement of Work ("SOW"), ¶I.7.C, Rebates/ Discounts and Price-Related Provisions

Background: The Solicitation provides: "Contractor pricing disclosures shall be treated as proprietary and will not be released outside the Government unless otherwise required by law or as agreed to by the Contractor. As a condition of this contract, the Contractor authorizes, and consents to, the Government communicating directly with the manufacturer, grower, private label holder, or redistributor used by the Contractor to validate that manufacturer's, grower's, private label holder's, or redistributor's pricing, including Delivered Prices and Rebates/Discounts/ Deviations as provided to the Government by the Contractor."

Issue: The Solicitation requires, for the first time, that the Contractor must authorize/consent to the Government's communicating directly with the manufacturer, grower, private label holder, or redistributor to validate pricing. With a few exceptions for mandatory sources of supply, most of the products supplied to DLA are purchased for commercial customers as well and US Foods' inventory is pooled. Our negotiation with our commercial suppliers is a long process that we only seek to engage in periodically. Our agreements with commercial suppliers do not typically provide for our ultimate customer to have the right to communicate directly with our suppliers. Large commercial suppliers with market dominance may not agree to allow outreach directly from DLA.

Questions:

2.1.What is DLA's need to communicate directly with the Contractor's manufacturer, grower, or redistributor?

2.2.Is DLA concerned that its contractual right to directly contact our suppliers directly may create privity between DLA and the contractor's manufacturers, growers, or redistributors?

DLA TROOP SUPPORT'S ANSWER:

DLA does not intend to revise these terms and the requirements remains the same.

2.3.Because this clause is inconsistent with customary commercial practice, has DLA obtained a waiver in accordance with DLA procedures as required by FAR 12.302(c) to include this term? If so, given that in an investigation, the government already would have subpoena powers of a subcontractor's records, what is DLA's need for direct manufacturer, grower, or redistributor?

DLA TROOP SUPPORT'S ANSWER:

To verify price.

2.4.Will DLA notify the Contractor of its communications with the Contractor's manufacturer, grower, or redistributor?

DLA TROOP SUPPORT'S ANSWER:

DLA would notify the contractor. The Contractor will be maintaining communication with their manufacturer, grower, or redistributors. DLA would contact the Contractor's manufacturer, grower, or redistributors if there were discrepancies with the documentation provided to safeguard against fraud.

2.5.Does this provision require the Contractor to notify DLA of the contact information for each of the Contractor's manufacturers, growers, or redistributors?

DLA TROOP SUPPORT'S ANSWER:

DLA would contact the Prime Vendor's manufacturer, grower, or redistributors if there were discrepancies with the documentation provided to safeguard against fraud.

VENDOR QUESTION No.3:

Solicitation Section: p. 98, Statement of Work ("SOW"), ¶IV.1.B, Contractor's Quality Assurance Program

Background: The Solicitation provides "The usage of First-Expired, First-Out (FEFO) is preferred; then First-In, First-Out (FIFO)."

Issue: Whereas previous DLA contracts have required FIFO procedures, the 2018 Solicitation states a "preference" for FEFO procedures. Many contractors have built their inventory procedures based on DLA's preference.

Questions:

3.1.What is DLA's need for the Contractor to apply FEFO procedures?

DLA TROOP SUPPORT'S ANSWER:

The FEFO method is the "preferred" method

3.2. Will the Contractor be required to comply with FEFO, or will application of FIFO procedures be sufficient to meet the Contract requirements?

DLA TROOP SUPPORT'S ANSWER:

It is generally not the practice of DLA to manage the Prime Vendor's inventory or shipments.

VENDOR QUESTION No.4:

Solicitation Section: p. 98, Statement of Work ("SOW"), ¶IV.1.D, Contractor's Quality Assurance Program

Background: The Solicitation provides: "The Prime Vendor will bear all risk, including associated costs, with product

expiration. The Government will not be liable for any expired product costs under this contract."

Issue: The Solicitation expressly requires the Contractor to bear all risk of loss due to product expiration. The Solicitation expressly requires the Contractor to bear all risk of loss due to product expiration. Pursuant to FAR 52.212-4(j), risk of loss passes to the Government upon delivery by the Prime Vendor at the destination specified in the Contract. It imposes unacceptable risk for the Prime Vendor to deliver food that complies with the product quality and shelf life requirements of the Contract and have the Government reject it months or years later because the Government, through its own failures, has failed to manage the product to allow its use within the designated shelf life.

Questions:

4.1. Will DLA remove this requirement and rely upon the shelf life requirements already present in the Solicitation, which become a part of the awarded contract?

DLA TROOP SUPPORT'S ANSWER:

DLA does not intend to revise these terms.

4.2. If not—

4.2.1. Will DLA confirm that the Prime Vendor only bears the risk of loss up until delivery of the supplies to the Government at the destination specified in the contract, consistent with FAR 52.212-4(j) Risk of Loss, unless the Prime Vendor fails to comply with the shelf life requirements of the Contract?

4.2.2. Will DLA remove such risk of loss where the expiration of the product after delivery is without the fault or negligence of the contractor?

4.3. Will DLA place an outer limit on the liability (perhaps 1 month beyond the shelf life)? Otherwise, under DLA's language, a contractor may well be required to replace a can of green beans that was delivered ten years prior under a predecessor contract and sat on the Government's shelves.

DLA TROOP SUPPORT'S ANSWER:

The Prime Vendor generally bears the risk of loss until title to the items properly transfers to the Government under the terms of the contract. There will be no need to place an outer limit on the liability.

VENDOR QUESTION No.5:

Solicitation Section: p. 122, Statement of Work ("SOW"), V.9.A, Delivery Destinations and Instructions

Background: The Solicitation provides: "[T]he delivery schedules listed below are subject to change based on customer needs and such changes will be made at no expense of the Government and will not require a contract modification."

Issue: The Solicitation provides that the Government may unilaterally change the delivery schedules "at no expense of the Government" and without issuing a modification. The frequency of delivery is a material term, as it impacts the cost of servicing a particular customer.

Questions:

5.1. What is DLA's need to amend the delivery schedules "at no expense of the Government"?

DLA TROOP SUPPORT'S ANSWER:

Delivery schedules provided in the Statement of Work are anticipated schedules, however, these dates and times may change subject to the ordering and delivery requirements of the solicitation, e.g., "Skip Day" ordering. DLA expects that prior to revising a routine delivery schedule conversations are likely to occur between DLA, the customer and the contractor.

5.2. Because this clause is inconsistent with customary commercial practice, has DLA obtained a waiver in accordance with DLA procedures as required by FAR 12.302(c) to include this term?

DLA TROOP SUPPORT'S ANSWER:

The solicitation requires "Skip day" delivery, which is consistent with commercial practices.

5.3. This also appears to amend the Changes clause, because it creates a class of changes that the Government customer can make without any compensation to the contractor. Has DLA obtained approval for waiver of the Changes clause?

DLA TROOP SUPPORT'S ANSWER:

The solicitation requires "Skip day" delivery.

5.3.1 Will DLA allow the Contractor to submit requests for equitable adjustment if such adjustment to the delivery schedule causes the Contractor to incur additional costs?

DLA TROOP SUPPORT'S ANSWER:

Offerors should price proposals in accordance with the requirements of the solicitation.

VENDOR QUESTION No.6:

Solicitation Section: pp. 145-146, Statement of Work ("SOW"), VI.5, Small Business Effort

Background: The Solicitation provides: "The Contractor must achieve Small Business goals identified in proposal and accepted by the Government during the performance period of this contract. At a minimum, the Prime Vendor will obtain at least 23% of the supplies for proposed contract from all SB firms (vs. LB firms). Within the subcategories, the Prime Vendor will obtain the minimum percentage for the following goals: 5% from SDB; 5% from WOSB; 3% from SDVOSB firms, and 3% from HZSB firms."

Issue: Prior DLA contracts have stated small business requirements as goals rather than mandatory, in part based on Supreme Court precedence, and based on SBA policy. The 2019 Solicitation contains a new provision concerning mandatory performance requirements for small business effort.

Questions:

6.1. Will DLA amend the requirements to state them as goals, instead of minimum requirements? If not, why not?

DLA TROOP SUPPORT'S ANSWER:

No, the minimum requirements will remain the same.

6.2. How does DLA intend to measure the Contractor's compliance with these small business requirements?

DLA TROOP SUPPORT'S ANSWER:

The Small Business Administration requires federal agencies to ensure prime contract set goals are achieved by dollars and percentages for all categories. Per page 156-157 Reports Received from Contractor, Small Business reports are to be submitted monthly. The contracting officer will review the reports provided and the contractor's efforts to achieve those goals.

END

Solicitation SPE300-19-R-0049 closing date of 09/30/2019 is hereby extended to 10/04/2019.

All other terms and conditions remain unchanged.