

AWARD/CONTRACT J		1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)		RATING	PAGE 1 OF 14 PAGES		
2. CONTRACT (Proc. Inst. Ident.) NO. SPE3S1-17-D-Z113		3. EFFECTIVE DATE 2016 OCT 21		4. REQUISITION/PURCHASE REQUEST/PROJECT NO. 1000046862			
5. ISSUED BY DLA TROOP SUPPORT DIRECTORATE OF SUBSISTENCE 700 ROBBINS AVENUE PHILADELPHIA PA 19111-5096 USA Local Admin: Candice Campbell PSPTPAE Tel: 215-737-7721 Fax: 215-737-3814 Email: CANDICE.CAMPBELL@DLA.ML		CODE SPE300	6. ADMINISTERED BY (If other than Item 5) DLA TROOP SUPPORT DIRECTORATE OF SUBSISTENCE 700 ROBBINS AVENUE PHILADELPHIA PA 19111-5096 USA Criticality: PAS: None		CODE SPE300		
7. NAME AND ADDRESS OF CONTRACTOR (No., street, city, county, State and ZIP Code) AMERIQUEL GROUP, LLC DBA AMERIQUEL FOODS 18200 HWY 41 N EVANSVILLE IN 47725-8588 USA			8. DELIVERY <input type="checkbox"/> FOB ORIGIN <input checked="" type="checkbox"/> OTHER (See below)				
9. DISCOUNT FOR PROMPT PAYMENT			10. SUBMIT INVOICES (4 copies unless otherwise specified) TO THE ADDRESS SHOWN IN ITEM				
CODE 4QFR8	FACILITY CODE		12. PAYMENT WILL BE MADE BY DEF FIN AND ACCOUNTING SVC BSM P O BOX 182317 COLUMBUS OH 43218-2317 USA				
11. SHIP TO/MARK FOR SEE SCHEDULE, DO NOT SHIP TO ADDRESS ON THIS PAGE			CODE SL4701				
13. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: <input checked="" type="checkbox"/> 10 U.S.C. 2304(c) 3 <input type="checkbox"/> 41 U.S.C. 253(c)			14. ACCOUNTING AND APPROPRIATION DATA				
15A. ITEM NO.	15B. SUPPLIES/SERVICES	15C. QUANTITY	15D. UNIT	15E. UNIT PRICE	15F. AMOUNT		
	See Schedule	0.000					
15G. TOTAL AMOUNT OF CONTRACT					\$0.00		
16. TABLE OF CONTENTS							
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	C	DESCRIPTION/SPECS./WORK STATEMENT			J	LIST OF ATTACHMENTS	
	D	PACKAGING AND MARKING		PART IV - REPRESENTATIONS AND INSTRUCTIONS			
	E	INSPECTION AND ACCEPTANCE			K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	
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CONTRACTING OFFICER WILL COMPLETE ITEM 17 OR 18 AS APPLICABLE							
17. <input checked="" type="checkbox"/> CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign this document and return 1 copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. (Attachments are listed herein.)			18. <input type="checkbox"/> SEALED-BID AWARD (Contractor is not required to sign this document.) Your bid on Solicitation Number _____, including the additions or changes made by you which additions or changes are set forth in full above, is hereby accepted as to the terms listed above and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) the Government's solicitation and your bid, and (b) this award/contract. No further contractual document is necessary. (Block 18 should be checked only when awarding a sealed-bid contract.)				
19A. NAME AND TITLE OF SIGNER (Type or Print) Robin Altmeyer VP of Assembly Operations			20A. NAME OF CONTRACTING OFFICER JAMES A. DECOLLIER				
19B. NAME OF CONTRACTOR BY _____ (Signature of person authorized to sign)		19C. DATE SIGNED 10-21-2016	20B. UNITED STATES OF AMERICA BY <u>James A. Decollier</u> (Signature of Contracting Officer)		20C. DATE SIGNED 2016 OCT 21		

The following documents are hereby incorporated by reference into this contract: Solicitation SPE3S1-16-R-0008, all solicitation amendments 0001, 0002, 0003 and your final offer, including final proposal revisions dated October 3, 2016, which is being accepted by the Government to form this contract.

Effective period of performance:

Tier 1: October 21, 2016 - October 20, 2017
 Tier 2: October 21, 2017 - October 20, 2018
 Tier 3: October 21, 2018 - October 20, 2019
 Tier 4: October 21, 2019 - October 20, 2020
 Tier 5: October 21, 2020 - October 20, 2021

Guaranteed Minimum quantity: 2,500,000 CS
 Estimated quantity: 3,000,000 CS
 Maximum quantity: 37,500,000 CS

Section "B" Supplies and Prices

Delivery Year 1

The effective period of this contract is from date of award through November 20, 2021.

Line	Item Description	CS Price	F.O.B.
0001	Meal, Ready-to-Eat, Individual NSN 8970-00-149-1094		Origin

Minimum Quantity: 875,000 CS \$78.45
 Minimum Dollar Value: \$68,643,750.00

Maximum Quantity: 37,500,000 CS *

* The Government Overall Minimum Requirement (GOMR) is the total guaranteed minimum under this solicitation and will be apportioned among the resulting IQCs. The GOMAX is the total maximum that can be ordered under this solicitation without using the surge option provisions. The GOMR and GOMAX quantities will apply to all resulting IQCs combined. The total of the orders placed under the initial award and all subsequently competed orders will not exceed the above quantity. In the event of a surge, the contract maximum will be increased by the maximum surge quantities identified by each offeror in their Capability Assessment Plan (CAP).

0002	Humanitarian Daily Ration		
Origin	NSN 8970-01-375-0516		

Minimum Quantity: 9,000 CS \$54.32
 Minimum Dollar Value: \$622,800.00

Maximum Quantity: 3,750,000 CS*

* * The Government Overall Minimum Requirement (GOMR) is the total guaranteed minimum under this solicitation and will be apportioned among the resulting IQCs. The GOMAX is the total maximum that can be ordered under this solicitation without using the surge option provisions. The GOMR and GOMAX quantities will apply to all resulting IQCs combined. The total of the orders placed under the initial award and all subsequently competed orders will not exceed the above quantity.

Inspection and Acceptance points for this contract shall be as follows:

Item	Inspection	Acceptance
0001	Origin	Origin
0002	Origin	Origin

CONTINUED ON NEXT PAGE

Schedule of Items:

0001 Meal, Ready-to-Eat, Individual (MRE), Menus No. 1-24; NSN: 8970-00-149-1094
Beef Patty, Grilled, Jalapeno Jack Lot:6089A
Beef Ravioli in Meat Sauce Lot:6140A
Beef, Shredded, in Barbeque Sauce Lot:6123B
Beef, Southwest Style and Black Beans, w/Sauce Lot:6076A
Beef Stew Lot:6095
Beef Strips, Asian Style, w/Vegetables Lot:6102A
Beef Taco Filling Lot:6084A
Brisket Entrée Lot:6091
Cheese Tortellini in Tomato Sauce Lot:6088
Chicken Burrito Bowl Lot:6203A
Chicken Chunks, White Lot:6084A
Chicken, Noodles and Vegetables, in Sauce Lot:6152A
Chicken Pesto Pasta Lot:6225H
Chili and Macaroni Lot:6085B
Chili w/ Beans Lot:6111A
Creamy Spinach Fettuccini Lot:6081B
Elbow Macaroni in Tomato Sauce Lot:6095
Hash Brown Potatoes w/ Bacon, Peppers and Onions Lot:6146A
Meatballs in Marinara Sauce Lot:6106A
Mexican Style Chicken Stew Lot:6078A
Pork Sausage Patty, Maple Flavored Lot:6075A
Spaghetti w/Beef and Sauce Lot:6084A
Tuna, Chunk, Light, Water, Lemon Pepper Lot:#6 026 B 00397 P1 8
Vegetable Crumbles w/ Pasta in Taco Style Sauce Lot:6091A
Black Beans, Seasoned Lot:6096A
Cornbread Lot:6089
Granola, w/Milk and Blueberries Lot:6104
Italian Bread Sticks Lot:6095
Multigrain Snack Bread Lot:6116
Potatoes, Au Gratin Lot:6061A
Potatoes, Mashed, Garlic Lot:6095A
Rice and Beans, Santa Fe Style Lot:6092B
Cobbler, Cherry Blueberry Lot:6088B
Cranberries, Osmotically Lot:6095
Raisins, Osmotically Dried Lot:6096
Almonds, Unblanched, Smoke Flavored Lot:6083
Beef Snacks, Strips, Cured, Smoked Lot:6098
Beef Snacks, Sticks, Cured, Fermented, Teriyaki Lot:6120
Cashews, Halves, Jalapeno Lot:6075
Cinnamon Bun Lot:6123
Corn Kernels, Barbeque Lot: 6075
Corn Kernels, Plain Lot:6082
Crackers, Fortified, Plain Lot:6112
Crackers, Fortified, Veg Lot:6076
Crackers, Cheese Filled, Cheddar Lot:6103
Crackers, Cheese Filled, Pepperoni Pizza Lot:6090
Dessert, Pudding Chocolate Lot:6110
Dessert, Pudding Vanilla Lot:6104
Filled French Toast Lot:6132
First Strike Energy Bar, Apple Cinnamon Lot:6109
First Strike Energy Bar, Chocolate Lot:6102

CONTINUED ON NEXT PAGE

First Strike Energy Bar, Cran-Raspberry Lot:6111
Nuts and Raisins w/ Pan Coated Choc Disks Lot:6089
Peanuts, Dry Roasted, Salted Lot:6120
Pretzel, Sticks Lot:6089
Pretzels, Cheddar, Cheese Filled Lot:6081
Pretzels, Nuggets, Honey Mustard and Onion Lot:6083
Snack Crackers, Baked, Cheddar Cheese Lot:6091
Snack Crackers, Baked, Hot and Spicy Cheese Lot:6088
Toaster Pastry, Chocolate Chip, Frosted Lot:6082
Toaster Pastry, Brown Sugar Cinnamon, Frosted Lot:6095
Trail Mix, Recovery Lot:6110
Turnover, Apple Filled Lot:6126
Candy, Licorice, Cherry, Bite Size Lot:6056
Candy, Mint Rings, Peppermint Lot:6104
Candy, Pan-Coated, Fruit Flavored Disks, Berry Lot:6012-7517
Candy, Pan-Coated, Fruit Flavored Disks, Sour Lot:6076-3-16-17
Candy, Pan-Coated, Fruit Flavored Original Lot:6043-8-5-17
Candy, Pan-Coated, Choc Disks Lot:6036-605D
Candy, Pan-Coated, Chocolate w/Peanut Butter Lot:6069-79S
Candy, Pan-Coated, Choc Disks, Choc w/Peanuts Lot:6099-614D
Candy, Toffee, Rolls, Chocolate Flavored Lot:6062
Chocolate Protein Drink Powder Lot:6092
Bag, Beverage, Hot, Zip-lock Polybag Lot:6083-23245
Hot Sauce, Extra Hot Lot:6230
Hot Sauce, Buffalo Style Lot:6099
Hot Sauce, Chili and Lime Lot:6127
Ketchup, Tomato, Regular Lot:6074
Mustard, Prepared, Yellow Lot:6090
Pepper, Red, Crushed Lot:6109
Flameless Heater, for MRE, for ration assembly only Lot: 6069Z
Chewing Gum, Tablet, Sugar-free, Peppermint Lot:6067
Chewing Gum, Tablet, Sugar-free, Cinnamon Lot:6067
Coffee, Spray Dried, Agglomerated or freeze Dried Lot:6018
Hand Cleaner Towelette, Unscented Lot:16076
Matches, Safety Lot:1603299
Salt, Table Iodized, Fine Granulated or Evaporated Lot:6054
Sugar, Refined Granulated, Cane or Beet Lot:6063
Sugar Substitutes, Non-Carbohydrate, Sucralose Lot:5337

0002 Humanitarian Daily Ration (HDR) NSN:8970-01-375-0516

0003 Meal, Individual Pork Free Delivery Menus No 1-12 NSN: 8970-01-623-9560

Delivery terms: F.O.B. Origin

Pricing terms: Firm-Fixed-Price.

Inspection and acceptance point(s): Origin.

DLA Troop Support will establish Rations National Contracts (RNC) with component manufacturers, and will authorize the MRE assemblers to order directly from the national contracts in lieu of DLA providing the components as GFM. The Rations National Contracts will establish the component prices, but the assemblers, Wornick, SOPAKCO, and AmeriQual, will order and pay for the material directly. The assemblers will have full control over when to order, how much to order, and have full responsibility for the supply chain and inventory. See FAR 52.216-19 - Order limitations for more information.

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Note: Terms and conditions of the individual component contract shall prevail in case of a conflict between the MRE assembly contract(s) and this individual component contract.

THE FOLLOWING CLAUSES ARE HEREBY INCORPORATED BY REFERENCE:

252.211-7006 Passive Radio Frequency Identification (JUN 2016) DFARS
 52.222-26 -- Equal Opportunity (Sept 2016)
 52.222-37 -- Employment Reports on Veterans (FEB 2016)
 252.225-7002 Qualifying Country Sources as Subcontractors (Aug 2016) DFARS
 52.244-6 -- Subcontracts for Commercial Items (Sept 2016)

THE FOLLOWING CLAUSES ARE HEREBY INCORPORATED BY FULL TEXT:

FAR 52.223-11 -- Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons.

As prescribed in 23.804(a), insert the following clause:

Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (Jun 2016)

(a) Definitions. As used in this clause--

"Global warming potential" means how much a given mass of a chemical contributes to global warming over a given time period compared to the same mass of carbon dioxide. Carbon Dioxide's global warming potential is defined as 1.0.

"High global warming potential hydrofluorocarbons" means any hydrofluorocarbons in a particular end use for which EPA's Significant New Alternatives Policy (SNAP) program has identified other acceptable alternatives that have lower global warming potential. The SNAP list of alternatives is found at 40 CFR part 82, subpart G, with supplemental tables of alternatives available at (<http://www.epa.gov/snap/>).

"Hydrofluorocarbons" means compounds that only contain hydrogen, fluorine, and carbon.

"Ozone-depleting substance" means any substance the Environmental Protection Agency designates in 40 CFR Part 82 as--

(1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or

(2) Class II, including, but not limited to hydrochlorofluorocarbons.

(b) The Contractor shall label products which contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b), (c), (d), and (e) and 40 CFR Part 82, Subpart E, as follows:

Warning

Contains (or manufactured with, if applicable) * _____, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.

* The Contractor shall insert the name of the substance(s).

(c) Reporting. For equipment and appliances that normally each contain 50 or more pounds of hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons, the Contractor shall--

(1) Track on an annual basis, between October 1 and September 30, the amount in pounds of hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons contained in the equipment and appliances delivered to the Government under this contract by--

(i) Type of hydrofluorocarbon (e.g., HFC-134a, HFC-125, R-410A, R-404A, etc.);

(ii) Contract number; and

(iii) Equipment/appliance;

(2) Report that information to the Contracting Officer for FY16 and to www.sam.gov, for FY17 and after00

(i) Annually by November 30 of each year during contract performance; and

(ii) At the end of contract performance.

(d) The Contractor shall refer to EPA's SNAP program (available at <http://www.epa.gov/snap>) to identify alternatives. The SNAP list of alternatives is found at 40 CFR part 82, subpart G, with supplemental tables available at <http://www.epa.gov/snap>.

(End of Clause)

DFARS 252.225-7012 Preference for Certain Domestic Commodities.

As prescribed in 225.7002-3(a), use the following clause:

PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES (AUG 2016)

(a) Definitions. As used in this clause-

"Component" means any item supplied to the Government as part of an end product or of another component.

"End product" means supplies delivered under a line item of this contract.

"Qualifying country" means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia

Austria

Belgium

Canada

Czech Republic

Denmark

Egypt

Finland

France

Germany

Greece

Israel

Italy

Japan

Luxembourg

Netherlands

Norway

Poland

Portugal

Slovenia

Spain

Sweden

Switzerland

Turkey

United Kingdom of Great Britain and Northern Ireland.

"Structural component of a tent"-

(i) Means a component that contributes to the form and stability of the tent (e.g., poles, frames, flooring, guy ropes, pegs);

(ii) Does not include equipment such as heating, cooling, or lighting.

"United States" means the 50 States, the District of Columbia, and outlying areas.

"U.S.-flag vessel" means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.

(b) The Contractor shall deliver under this contract only such of the following items, either as end products or components, that have been grown, reprocessed, reused, or produced in the United States:

(1) Food.

(2) Clothing and the materials and components thereof, other than sensors, electronics, or other items added to, and not normally associated with, clothing and the materials and components thereof. Clothing includes items such as outerwear, headwear, underwear, nightwear, footwear, hosiery, handwear, belts, badges, and insignia.

(3) (i) Tents and structural components of tents;

(ii) Tarpaulins; or

(iii) Covers.

(4) Cotton and other natural fiber products.

(5) Woven silk or woven silk blends.

(6) Spun silk yarn for cartridge cloth.

(7) Synthetic fabric, and coated synthetic fabric, including all textile fibers and yarns that are for use in such fabrics.

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(8) Canvas products.

(9) Wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles).

(10) Any item of individual equipment (Federal Supply Class 8465) manufactured from or containing fibers, yarns, fabrics, or materials listed in this paragraph (b).

(c) This clause does not apply-

(1) To items listed in section 25.104(a) of the Federal Acquisition Regulation (FAR), or other items for which the Government has determined that a satisfactory quality and sufficient quantity cannot be acquired as and when needed at U.S. market prices;

(2) To incidental amounts of cotton, other natural fibers, or wool incorporated in an end product, for which the estimated value of the cotton, other natural fibers, or wool-

(i) Is not more than 10 percent of the total price of the end product; and

(ii) Does not exceed the simplified acquisition threshold in FAR Part 2;

(3) To waste and byproducts of cotton or wool fiber for use in the production of propellants and explosives;

(4) To foods, other than fish, shellfish, or seafood, that have been manufactured or processed in the United States, regardless of where the foods (and any component if applicable) were grown or produced. Fish, shellfish, or seafood manufactured or processed in the United States and fish, shellfish, or seafood contained in foods manufactured or processed in the United States shall be provided in accordance with paragraph (d) of this clause;

(5) To chemical warfare protective clothing produced in a qualifying country; or

(6) To fibers and yarns that are for use in synthetic fabric or coated synthetic fabric (but does apply to the synthetic or coated synthetic fabric itself), if-

(i) The fabric is to be used as a component of an end product that is not a textile product. Examples of textile products, made in whole or in part of fabric, include#

(A) Draperies, floor coverings, furnishings, and bedding (Federal Supply Group 72, Household and Commercial Furnishings and Appliances);

(B) Items made in whole or in part of fabric in Federal Supply Group 83, Textile/leather/furs/apparel/findings/tents/flags, or Federal Supply Group 84, Clothing, Individual Equipment and Insignia;

(C) Upholstered seats (whether for household, office, or other use); and

(D) Parachutes (Federal Supply Class 1670); or

(ii) The fibers and yarns are para-aramid fibers and continuous filament para-aramid yarns manufactured in a qualifying country.

(d) (1) Fish, shellfish, and seafood delivered under this contract, or contained in foods delivered under this contract-

(i) Shall be taken from the sea by U.S.-flag vessels; or

(ii) If not taken from the sea, shall be obtained from fishing within the United States; and

(2) Any processing or manufacturing of the fish, shellfish, or seafood shall be performed on a U.S.-flag vessel or in the United States.

(End of clause)

52.225-1 -- Buy American-Supplies. (May 2014)

(a) Definitions. As used in this clause--

"Commercially available off-the-shelf (COTS) item"--

(1) Means any item of supply (including construction material) that is-

(i) A commercial item (as defined in paragraph (1) of the definition at FAR 2.101);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

"Component" means an article, material, or supply incorporated directly into an end product.

"Cost of components" means--

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

"Domestic end product" means--

(1) An unmanufactured end product mined or produced in the United States;

(2) An end product manufactured in the United States, if--

(i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic; or

(ii) The end product is a COTS item.

"End product" means those articles, materials, and supplies to be acquired under the contract for public use.

"Foreign end product" means an end product other than a domestic end product.

"United States" means the 50 States, the District of Columbia, and outlying areas.

(b) 41 U.S.C. chapter 83, Buy American, provides a preference for domestic end products for supplies acquired for use in the United States. In accordance with 41 U.S.C. 1907, the component test of the Buy American statute is waived for an end product that is a COTS item (See 12.505(a)(1)).

(c) Offerors may obtain from the Contracting Officer a list of foreign articles that the Contracting Officer will treat as domestic for this contract.

(d) The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the solicitation entitled "Buy American Certificate."

SECTION I - CONTRACT CLAUSES**252.204-7008 COMPLIANCE WITH SAFEGUARDING COVERED DEFENSE INFORMATION CONTROLS (DEC 2015) DFARS**

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

"Controlled technical information," "covered contractor information system," and "covered defense information" are defined in clause 252.204-7012, Safeguarding Covered Defense Information and Cyber Incident Reporting.

(b) The security requirements required by contract clause 252.204-7012, Covered Defense Information and Cyber Incident Reporting, shall be implemented for all covered defense information on all covered contractor information systems that support the performance of this contract.

(c) For covered contractor information systems that are not part of an information technology (IT) service or system operated on behalf of the Government (see 252.204-7012(b)(1)(ii))—

(1) By submission of this offer, the Offeror represents that it will implement the security requirements specified by National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171, "Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations" (see <http://dx.doi.org/10.6028/NIST.SP.800-171>), not later than December 31, 2017.

(2)(i) If the Offeror proposes to vary from any of the security requirements specified by NIST SP 800-171 that is in effect at the time the solicitation is issued or as authorized by the Contracting Officer, the Offeror shall submit to the Contracting Officer, for consideration by the DoD Chief Information Officer (CIO), a written explanation of—

(A) Why a particular security requirement is not applicable; or
(B) How an alternative but equally effective, security measure is used to compensate for the inability to satisfy a particular requirement and achieve equivalent protection.

(ii) An authorized representative of the DoD CIO will adjudicate offeror requests to vary from NIST SP 800-171 requirements in writing prior to contract award. Any accepted variance from NIST SP 800-171 shall be incorporated into the resulting contract.

(End of provision)

252.204-7012 SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING (DEC 2015) DFARS

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

"Adequate security" means protective measures that are commensurate with the consequences and probability of loss, misuse, or unauthorized access to, or modification of information.

"Compromise" means disclosure of information to unauthorized persons, or a violation of the security policy of a system, in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object, or the copying of information to unauthorized media may have occurred.

"Contractor attributional/proprietary information" means information that identifies the contractor(s), whether directly or indirectly, by the grouping of information that can be traced back to the contractor(s) (e.g., program description, facility locations), personally identifiable information, as well as trade secrets, commercial or financial information, or other commercially sensitive information that is not customarily shared outside of the company.

"Contractor information system" means an information system belonging to, or operated by or for, the Contractor.

"Controlled technical information" means technical information with military or space application that is subject to controls on the access, use, reproduction, modification, performance, display, release, disclosure, or dissemination. Controlled technical information would meet the criteria, if disseminated, for distribution statements B through F using the criteria set forth in DoD Instruction 5230.24, Distribution Statements on Technical Documents. The term does not include information that is lawfully publicly available without restrictions.

"Covered contractor information system" means an information system that is owned, or operated by or for, a contractor and that processes, stores, or transmits covered defense information.

"Covered defense information" means unclassified information that—

(i) Is—

(A) Provided to the contractor by or on behalf of DoD in connection with the performance of the contract; or
(B) Collected, developed, received, transmitted, used, or stored by or on behalf of the contractor in support of the performance of the contract; and

(ii) Falls in any of the following categories:

(A) *Controlled technical information.*

(B) *Critical information (operations security).* Specific facts identified through the Operations Security process about friendly intentions, capabilities, and activities vitally needed by adversaries for them to plan

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and act effectively so as to guarantee failure or unacceptable consequences for friendly mission accomplishment (part of Operations Security process).

(C) *Export control.* Unclassified information concerning certain items, commodities, technology, software, or other information whose export could reasonably be expected to adversely affect the United States national security and nonproliferation objectives. To include dual use items; items identified in export administration regulations, international traffic in arms regulations and munitions list; license applications; and sensitive nuclear technology information.

(D) Any other information, marked or otherwise identified in the contract, that requires safeguarding or dissemination controls pursuant to and consistent with law, regulations, and Governmentwide policies (e.g., privacy, proprietary business information).

"Cyber incident" means actions taken through the use of computer networks that result in a compromise or an actual or potentially adverse effect on an information system and/or the information residing therein.

"Forensic analysis" means the practice of gathering, retaining, and analyzing computer-related data for investigative purposes in a manner that maintains the integrity of the data.

"Malicious software" means computer software or firmware intended to perform an unauthorized process that will have adverse impact on the confidentiality, integrity, or availability of an information system. This definition includes a virus, worm, Trojan horse, or other code-based entity that infects a host, as well as spyware and some forms of adware.

"Media" means physical devices or writing surfaces including, but is not limited to, magnetic tapes, optical disks, magnetic disks, large-scale integration memory chips, and printouts onto which information is recorded, stored, or printed within an information system.

"Operationally critical support" means supplies or services designated by the Government as critical for airlift, sealift, intermodal transportation services, or logistical support that is essential to the mobilization, deployment, or sustainment of the Armed Forces in a contingency operation.

"Rapid(ly) report(ing)" means within 72 hours of discovery of any cyber incident.

"Technical information" means technical data or computer software, as those terms are defined in the clause at DFARS 252.227-7013, Rights in Technical Data-Non Commercial Items, regardless of whether or not the clause is incorporated in this solicitation or contract. Examples of technical information include research and engineering data, engineering drawings, and associated lists, specifications, standards, process sheets, manuals, technical reports, technical orders, catalog-item identifications, data sets, studies and analyses and related information, and computer software executable code and source code.

(b) *Adequate security.* The Contractor shall provide adequate security for all covered defense information on all covered contractor information systems that support the performance of work under this contract. To provide adequate security, the Contractor shall—

(1) Implement information systems security protections on all covered contractor information systems including, at a minimum—

(i) For covered contractor information systems that are part of an Information Technology (IT) service or system operated on behalf of the Government—

(A) Cloud computing services shall be subject to the security requirements specified in the clause 252.239-7010, Cloud Computing Services, of this contract; and

(B) Any other such IT service or system (i.e., other than cloud computing) shall be subject to the security requirements specified elsewhere in this contract; or

(ii) For covered contractor information systems that are not part of an IT service or system operated on behalf of the Government and therefore are not subject to the security requirement specified at paragraph (b)(1)(i) of this clause—

(A) The security requirements in National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171, "Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations," <http://dx.doi.org/10.6028/NIST.SP.800-171> that is in effect at the time the solicitation is issued or as authorized by the Contracting Officer, as soon as practical, but not later than December 31, 2017. The Contractor shall notify the DoD CIO, via email at osd.dibcsia@mail.mil, within 30 days of contract award, of any security requirements specified by NIST SP 800-171 not implemented at the time of contract award; or

(B) Alternative but equally effective security measures used to compensate for the inability to satisfy a particular requirement and achieve equivalent protection accepted in writing by an authorized representative of the DoD CIO; and

(2) Apply other information systems security measures when the Contractor reasonably determines that information systems security measures, in addition to those identified in paragraph (b)(1) of this clause, may be required to provide adequate security in a dynamic environment based on an assessed risk or vulnerability.

(c) *Cyber incident reporting requirement.*

(1) When the Contractor discovers a cyber incident that affects a covered contractor information system or the covered defense information residing therein, or that affects the contractor's ability to perform the requirements of the contract that are designated as operationally critical support, the Contractor shall—

- (i) Conduct a review for evidence of compromise of covered defense information, including, but not limited to, identifying compromised computers, servers, specific data, and user accounts. This review shall also include analyzing covered contractor information system(s) that were part of the cyber incident, as well as other information systems on the Contractor's network(s), that may have been accessed as a result of the incident in order to identify compromised covered defense information, or that affect the Contractor's ability to provide operationally critical support; and
- (ii) Rapidly report cyber incidents to DoD at <http://dibnet.dod.mil>.

(2) *Cyber incident report.* The cyber incident report shall be treated as information created by or for DoD and shall include, at a minimum, the required elements at <http://dibnet.dod.mil>.

(3) *Medium assurance certificate requirement.* In order to report cyber incidents in accordance with this clause, the Contractor or subcontractor shall have or acquire a DoD-approved medium assurance certificate to report cyber incidents. For information on obtaining a DoD-approved medium assurance certificate, see <http://iase.disa.mil/pki/eca/Pages/index.aspx>.

(d) *Malicious software.* The Contractor or subcontractors that discover and isolate malicious software in connection with a reported cyber incident shall submit the malicious software in accordance with instructions provided by the Contracting Officer.

(e) *Media preservation and protection.* When a Contractor discovers a cyber incident has occurred, the Contractor shall preserve and protect images of all known affected information systems identified in paragraph (c)(1)(i) of this clause and all relevant monitoring/packet capture data for at least 90 days from the submission of the cyber incident report to allow DoD to request the media or decline interest.

(f) *Access to additional information or equipment necessary for forensic analysis.* Upon request by DoD, the Contractor shall provide DoD with access to additional information or equipment that is necessary to conduct a forensic analysis.

(g) *Cyber incident damage assessment activities.* If DoD elects to conduct a damage assessment, the Contracting Officer will request that the Contractor provide all of the damage assessment information gathered in accordance with paragraph (e) of this clause.

(h) *DoD safeguarding and use of contractor attributional/proprietary information.* The Government shall protect against the unauthorized use or release of information obtained from the contractor (or derived from information obtained from the contractor) under this clause that includes contractor attributional/proprietary information, including such information submitted in accordance with paragraph (c). To the maximum extent practicable, the Contractor shall identify and mark attributional/proprietary information. In making an authorized release of such information, the Government will implement appropriate procedures to minimize the contractor attributional/proprietary information that is included in such authorized release, seeking to include only that information that is necessary for the authorized purpose(s) for which the information is being released.

(i) *Use and release of contractor attributional/proprietary information not created by or for DoD.* Information that is obtained from the contractor (or derived from information obtained from the contractor) under this clause that is not created by or for DoD is authorized to be released outside of DoD—

- (1) To entities with missions that may be affected by such information;
- (2) To entities that may be called upon to assist in the diagnosis, detection, or mitigation of cyber incidents;
- (3) To Government entities that conduct counterintelligence or law enforcement investigations;
- (4) For national security purposes, including cyber situational awareness and defense purposes (including with Defense Industrial Base (DIB) participants in the program at 32 CFR part 236); or
- (5) To a support services contractor ("recipient") that is directly supporting Government activities under a contract that includes the clause at 252.204-7009, Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information.

(j) *Use and release of contractor attributional/proprietary information created by or for DoD.* Information that is obtained from the contractor (or derived from information obtained from the contractor) under this clause that is created by or for DoD (including the information submitted pursuant to paragraph (c) of this clause) is authorized to be used and released outside of DoD for purposes and activities authorized by paragraph (i) of this clause, and for any other lawful Government purpose or activity, subject to all applicable statutory, regulatory, and policy based restrictions on the Government's use and release of such information.

(k) The Contractor shall conduct activities under this clause in accordance with applicable laws and regulations on the interception, monitoring, access, use, and disclosure of electronic communications and data.

(l) *Other safeguarding or reporting requirements.* The safeguarding and cyber incident reporting required by this clause in no way abrogates the Contractor's responsibility for other safeguarding or cyber incident reporting pertaining to its unclassified information systems as required by other applicable clauses of this contract, or as a result of other applicable U.S. Government statutory or regulatory requirements.

(m) *Subcontracts.* The Contractor shall—

(1) Include this clause, including this paragraph (m), in subcontracts, or similar contractual instruments, for operationally critical support, or for which subcontract performance will involve a covered contractor information system, including subcontracts for commercial items, without alteration, except to identify the parties; and

(2) When this clause is included in a subcontract, require subcontractors to rapidly report cyber incidents directly to DoD at <http://dibnet.dod.mil> and the prime Contractor. This includes providing the incident report number, automatically assigned by DoD, to the prime Contractor (or next higher-tier subcontractor) as soon as practicable.

(End of clause)