

SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, & 30				1. REQUISITION NUMBER	PAGE 1 OF 19	
2. CONTRACT NO. SPM300-12-D-V537	3. AWARD/EFFECTIVE DATE 6-21-12	4. ORDER NUMBER	5. SOLICITATION NUMBER SPM300-12-R-0025	8. SOLICITATION ISSUE DATE 03/09/2012		
7. FOR SOLICITATION INFORMATION CALL: Dean L. Schoendorfer			b. TELEPHONE NUMBER (No collect calls) 215-737-7161	8. OFFER DUE DATE/ LOCAL TIME 4/10/12 3PM		
9. ISSUED BY DEFENSE LOGISTICS AGENCY TROOP SUPPORT 700 ROBBINS AVENUE PHILADELPHIA, PA 19111-5092		CODE SPM300	10. THIS ACQUISITION IS <input checked="" type="checkbox"/> UNRESTRICTED OR <input type="checkbox"/> SET ASIDE: _____ % FOR: <input type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> WOMEN-OWNED SMALL BUSINESS (WOSB) <input type="checkbox"/> HUBZONE SMALL BUSINESS <input type="checkbox"/> ECONOMICALLY DISADVANTAGED WOMEN-OWNED SMALL BUSINESS (EDWOSB) NAICS: 311511 <input type="checkbox"/> SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS <input type="checkbox"/> 8 (A) SIZE STANDARD: 500			
11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED <input type="checkbox"/> SEE SCHEDULE	12. DISCOUNT TERMS	<input type="checkbox"/> 13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)		13b. RATING		
16. DELIVER TO SEE ATTACHED DELIVERY SCHEDULE PAGE 8.	CODE	18. ADMINISTERED BY SAME AS BLOCK 9.		14. METHOD OF SOLICITATION <input type="checkbox"/> RFQ <input type="checkbox"/> IFB <input checked="" type="checkbox"/> RFP		
17a. CONTRACTOR/ OFFEROR Barrios Distributing 5265 Lovelock Street San Diego, CA 92110 TELEPHONE NO. (619) 295-3119	CODE ORLE9	FACILITY CODE	18a. PAYMENT WILL BE MADE BY DFAS COLUMBUS CENTER ATTN: DFAS-BVDP (SL4701) P.O. BOX 369031 COLUMBUS, OH 43236-9031			
17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER <input type="checkbox"/>		18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED <input type="checkbox"/> SEE ADDENDUM				
18. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES		21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
	ICE CREAM ITEMS FOR CUSTOMERS IN SAN DIEGO, CA - SHIPS SEE SCHEDULE OF ITEMS ON PAGES 2-3 TERM OF CONTRACT: 06/24/2012 - 06/21/2014 <i>(Use Reverse and/or Attach Additional Sheets as Necessary)</i>					
25. ACCOUNTING AND APPROPRIATION DATA Minimum Guarantee (25%) \$73,236.38; Maximum (200%) \$585,891.00			26. TOTAL AWARD AMOUNT (For Govt. Use Only) \$292,945.50			
<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 type="checkbox"/> ARE <input checked="" 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			<input checked="" type="checkbox"/> 29. AWARD OF CONTRACT; REF. <u>spm30012R0025</u> OFFER DATED <u>04/10/2012</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) Daniel Evans - Manager	30c. DATE SIGNED 6/21/12	31b. NAME OF CONTRACTING OFFICER (Type or print) H. SCARANGELLI		31c. DATE SIGNED 6-21-12		

AUTHORIZED FOR LOCAL REPRODUCTION
PREVIOUS EDITION IS NOT USABLE

Schedule of Items – Group II

Group II – Ships in San Diego, CA Area (Ice Cream)		Estimated Total Quantity	Unit Price	Total Amount
ITEM NO.	SUPPLIES/SERVICES			
ICE CREAM, FROZEN (FZ), <u>VANILLA</u>, 10% MF MIN				
21.	BULK 3 GALLON CONTAINER PRODUCT NUMBER: 7195	2,318 CO	\$15.15	\$35,117.70
ICE CREAM, FROZEN (FZ), <u>ASSORTED FLAVORS</u>, 8% MF MIN				
22.	BULK 3 GALLON CONTAINER	10,416 CO	\$15.15	\$157,802.40
	FLAVOR: CHOCOLATE PRODUCT CODE: 7121			
	FLAVOR: CHOCOLATE CHIP PRODUCT CODE: 7122			
	FLAVOR: COOKIES & CREAM PRODUCT CODE: 7130			
	FLAVOR: STRAWBERRY PRODUCT CODE: 7188			
	FLAVOR: MINT CHIP PRODUCT CODE: 7123			
	FLAVOR: COFFEE PRODUCT CODE: 7153			
	FLAVOR: PISTACCHIO PRODUCT CODE: 7175			
	FLAVOR: ROCKY ROAD PRODUCT CODE: 7184			
	FLAVOR: STRAW CHEESECAKE PRODUCT CODE: 7186			
	FLAVOR: BUTTER PECAN PRODUCT CODE: 7118			
SHERBET, FZ, <u>ASSORTED FLAVORS</u>				
23.	BULK 3 GALLON CONTAINER	114 CO	\$13.50	\$1,539.00
	FLAVOR: ORANGE PRODUCT CODE: 7455			
	FLAVOR: RAINBOW PRODUCT CODE: 7453			
	FLAVOR: RASPBERRY PRODUCT CODE: 7454			

Group II – Ships in San Diego, CA Area (Ice Cream)		Estimated Total Quantity	Unit Price	Total Amount
ITEM NO.	SUPPLIES/SERVICES			
<i>ICE CREAM NOVELTIES</i>				
24.	ICE CREAM BAR, FRZ: Vanilla Ice Cream, coated with Milk Chocolate, 3.0 OZ, 24/CO PRODUCT NUMBER: 8906	1,050 CO	\$6.00	\$6,300
25.	ICE CREAM CONE, FRZ: Vanilla Ice Cream, Sugar Cone, Topped with Chocolate & Peanuts, 4.6 OZ, 24/CO PRODUCT NUMBER: 8953	6,000 CO	\$13.00	\$78,000
26.	ICE CREAM SANDWICH, FRZ: Vanilla Ice Cream with Chocolate wafers, Min. 3.5 OZ, 24/CO PRODUCT NUMBER: 8933	2,056 CO	\$6.90	\$14,186.40

ESTIMATED TOTAL FOR GROUP II: \$292,945.50

Points of Contact

Point(s) of Contact for Ordering: Daniel Evans

Phone Number: (619) 295-3119

Email & Fax Number: juicefour@sbcglobal.net (619) 295-0926

Point(s) of Contact for Invoicing and Payment: Daniel Evans

Phone Number: (619) 295-3119

Email & Fax Number: juicefour@sbcglobal.net (619) 295-0926

Product Quality

Acceptance of supplies awarded under this solicitation will be limited to fresh product. All products delivered under this contract must conform to the following **freshness requirements**. Fluid dairy products and other dairy products shall have sufficient remaining shelf life commensurate with good commercial practice. Each container, carton, etc. shall have visible, legible, and understandable "sell-by-date" or equivalent.

1. Milk, Whipping Cream (fresh), Cream (fresh) and Half-and-Half (fresh), Ice Milk Mix, Fresh (soft serve), Milk Shake Mix, Fresh (direct draw), Buttermilk and Eggnog must be delivered with a minimum 10 days shelf life remaining.
2. Whipping Cream (ultra-pasteurized), Half-and-Half (ultra-pasteurized), and Cream (ultra-pasteurized) must be delivered with a minimum 14 days shelf life remaining.
3. Cottage Cheese, cultured and acidified, normal and extended shelf life must be delivered with a minimum 14 days shelf life remaining.
4. Sour Cream must be delivered with a minimum 21 days shelf life remaining.
5. Yogurt must be delivered with a minimum of 18 days shelf life remaining.
6. Ice Cream must be delivered with a minimum 120 days shelf life remaining.

Commercial standards should be used to maintain temperatures appropriate for the individual items.

Terms of Indefinite Quantity Contract

The duration of the contract is for a two-year period beginning on **June 24, 2012 through June 21, 2014**.

MINIMUM DOLLAR VALUE IS 25% OF THE ESTIMATE:	\$73,236.38
ESTIMATED DOLLAR VALUE OF AWARD GROUP II;	\$292,945.50
MAXIMUM DOLLAR VALUE IS 200% OF THE ESTIMATE:	\$585,891.00

This contract incorporates by reference all of the terms and conditions found in the following documents: SPM300-12-R-0025 (solicitation dated March 09, 2012) (amendment 0001 dated May 23, 2012) and the awardee's offer(s) dated (April 9, 2012) and (May 29, 2012)

Item Availability and Delivery Instructions

I. ITEM AVAILABILITY

All items must be available in sufficient quantities to fill the customers' requirements. All deliveries must be made in accordance with the contractually established number of hours after order placement unless otherwise authorized by the customer.

II. DELIVERY INSTRUCTIONS

- A. Deliveries shall be made FOB Destination to each ordering activity and shall be free of damage, with all packing and packaging intact.
- B. Deliveries shall be made when and as requested by the Ordering Officer(s) of the activity concerned, and shall be accompanied by the delivery ticket of the dealer in triplicate, showing the exact quantities delivered. Deliveries shall be made by the contractor any day except Holidays, between the hours and location specified by the ordering officer (see Delivery Points /Schedule).

III. DELIVERY VEHICLE REQUIREMENTS

- A. Supplies transported in vehicles that are not sanitary, or that have not maintained the proper temperatures, may be rejected at destination without further inspection.
- B. Shipping containers shall be in compliance with the National Motor Freight Classification and Uniform Freight Classification Code.

IV. NO SUBSTITUTIONS

If an item is not available, vendor is NOT to substitute an item without having a separate purchase order for the additional item. Customer MUST zero-out unavailable item(s) in STORES. Customer will be directly responsible for payment of any items not appearing on a STORES purchase order.

V. HOLIDAYS

- A. All orders are to be delivered on the specified delivery date, except for Federal holidays as outlined below. When a scheduled delivery day falls on one of these days, or one designated by your firm, delivery should occur on the next scheduled business day, unless otherwise agreed to by the customer.

New Year's Day
 Martin Luther King's Birthday
 President's Day
 Memorial Day
 Independence Day

Labor Day
 Columbus Day
 Veteran's Day
 Thanksgiving Day
 Christmas Day

NOTE: Saturday holidays are celebrated on the preceding Friday; Sunday holidays are celebrated on the following Monday.

VI. EMERGENCY ORDERS

- A. In order to adequately support emergency order, the vendor must have the ability to provide "same day service" to a customer that is experiencing an emergency situation.

- B. The vendor shall provide, at maximum, two (2) emergency orders per month, per individual ordering activity or individual ship or vessel, at no additional cost to the Government.
- C. The vendor is responsible for furnishing the name of the designated point of contact responsible for handling emergency orders, and his/her phone number and/or pager number, to the customers.

VII. AUTHORIZED RETURNS

- A. The contractor shall accept returns under the following conditions:
 - 1. Products shipped in error;
 - 2. Products damaged in shipment;
 - 3. Products with concealed or latent damage;
 - 4. Products that are recalled;
 - 5. Products that do not meet shelf life requirements;
 - 6. Products that do not meet the minimum quality requirements;
 - 7. Products delivered in unsanitary vehicles;
 - 8. Quantity excess as a result of order input error and/or Purchase Ratio Factor error.
- B. Any other conditions not specified above that are deemed to be valid reasons for return by the customer.

VIII. SHORT SHIPMENTS/SHIPPING ERRORS

- A. All short shipments must be annotated by the receiving official on the delivery ticket/invoices accompanying the shipment.
- B. Any product delivered in error must be picked up by the vendor on the same day or by the next delivery day after notification by the ordering activity.

IX. DELIVERY

- A. A delivery ticket will accompany each delivery citing order number, unit price, itemized, extended and totaled.
- B. It is mandatory that the Delivery Ticket include the contract number, call number, lead CLIN number, purchase order number, government unit of issue. Total quantity shall be based on Government unit of issue.
- C. Prices cited on delivery tickets for STORES orders will be the prices at the time of order and not the prices at time of delivery.
- D. All deliveries exclude national legal holidays unless otherwise indicated by ordering activity.
- E. Items will be off-loaded from the contractor(s) vehicle(s) and contractor personnel will place items delivered inside the dining halls, etc. Deliveries to ships shall be brought to the brow of the vessel, when applicable.
- F. The minimum quantity per destination is \$50.00.

Rapid Gate

Many bases currently require enrollment in RapidGate and will not allow entry without RapidGate clearance. During the contract implementation period, the Contractor must contact all customer locations to determine whether enrollment in RapidGate or another security program is required for access to each location. If RapidGate or other security enrollment is required, the contractor must take all necessary steps to obtain this in time for the start of performance under this contract. Failure to have RapidGate clearance may result in a vendor being turned away from the base and being unable to complete delivery. The contractor is responsible for the additional cost for RapidGate enrollment and must ensure that a RapidGate enrolled driver is available for all deliveries. We currently estimate that RapidGate enrollment will cost about \$250 per company and \$200 per enrolled employee for 1 year of access to multiple locations, but the cost of RapidGate or other security enrollment may vary, so the contractor should contact RapidGate to determine its own costs. If more than one driver is required, RapidGate enrollment must be obtained for each driver. Note that enrollment can take several weeks, so an awardee that is not already enrolled must begin enrollment at the time of award notification at the latest. If difficulty or delay in enrollment in RapidGate is encountered during the implementation period, the contractor MUST contact RapidGate and/or the Security Officer at the applicable customer locations to resolve any issues with processing RapidGate enrollment so that the contractor will be able to deliver as required. For additional information regarding RapidGate, including enrollment instructions, please visit their website at <http://www.rapidgate.com>.

RAPID GATE

Be advised that vendors providing supplies to these customers will be required to enroll in the RAPID Gate Program and they will need access to multiple facilities. Vendors must have enough drivers enrolled in the RAPID Gate program to ensure deliveries are made at the required time and place for the duration of the contract and that service is never interrupted due to not having the required RAPID Gate authorization.

Schedule of Delivery Points – Groups II

Group II – Ships in San Diego, CA Area (Milk and Dairy)		Delivery Time	Frequency
NO.	ACTIVITY		
1.	Naval Base San Diego (NBSD) San Diego, CA 92136 (Multiple Delivery Points / Piers)		
2.	Naval Base Point Loma (NBPL) San Diego, CA 92106 (Multiple Delivery Points / Piers)		
3.	Naval Base Coronado (NBC) Coronado, CA 92170 (Naval Air Station North Island and Naval Amphibious Base) (Multiple Delivery Points / Piers)		
4.	BAE Shipyards San Diego, CA 92170 (NASSCO, Southwest Marine and Continental Maritime Shipyards)		
5.	Broadway Pier San Diego, CA 92132		As Needed
6.	Camp Pendleton – ACU5 Camp Pendleton, CA 92055		As Needed
7.	Anti-Submarine Warfare (ASW) Base San Diego, CA 92147		
8.	US Coast Guard – NBSD or 10th Ave. Terminal POC: SCPO Scott Bowen (215) 737-2915 (These orders are not placed by the FLC)		
9.	Any other delivery point in the San Diego Area specified at time of order, to include Shore Facilities if deemed an emergency and approved by the Contracting Officer.		

POC Information:

PHONE:

619-556-0419	MONET BERNHARDT	monet.bernhardt@navy.mil
619-556-2583	REYNA GUZMAN	reyna.guzman@navy.mil
619-556-4962	LYNDA EVERETTE ROPER	lynda.everetteroper@navy.mil
619-556-9736	AGUSTIN DEGUZMAN	agustin.deguzman@navy.mil
619-556-0402	THERESA MAGNUSON	theresa.magnuson@navy.mil

Deliveries are required six (6) days per week, Monday through Saturday between the hours of 5:00 AM to 3:00 PM for all items. On occasion, delivery will be required on Sunday. All deliveries exclude National Legal Holidays unless otherwise indicated by ordering activity. Ordering and use of these items are for US Navy Ships and USNS vessels in San Diego.

DELIVERY CHANGES TO BE MADE AS REQUIRED:

The customer will be responsible to notify the contractor of any changes in location or departure date. NAVSUP Fleet Logistics Center (FLC), San Diego will place orders in the name of the customer.

The contractor warrants that they will provide a person and telephone number where orders and changes can be received between 9:00 A.M. and 4:00 P.M., Monday thru Saturday. Additionally, a point of contact (name and phone number) must be provided in case of emergency at all times (24 hours / 7 days).

If the contractor is unable to deliver product for any reason, contact the Fleet Logistics Center (POC numbers listed above). Customers must place a new STORES Purchase Order for any additional items required instead of adding the line items to an existing order, and to promptly input a STORES order for any prior non-STORES emergency order.

FOSSAC

The Fitting Out and Supply Support Assistance Center (FOSSAC) was hired to continue the delivery process for the ships by transporting the stores from the brow of the ship into their storeroom. In order to accomplish this, the Contractor may have to schedule deliveries through the NAVSUP Fleet Logistics Center (FLS) when making deliveries of their product; FLC Supervisor is Monet Bernhardt.

FAR 52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items. (May 2012)

(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:

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).

___ (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 (Feb 2012) (Pub. L. 109-282) (31 U.S.C. 6101 note).

___ (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 Public Law 111-117, section 743 of Division D of Public Law 111-8, and section 745 of Division D of Public Law 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]

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

(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.

(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.

(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)).

(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 Representation (Apr 2012) (15 U.S.C. 632(a)(2)).

___ (24) 52.219-29, Notice of Set-Aside for Economically Disadvantaged Women-Owned Small Business Concerns (Nov 2011).

___ (25) 52.219-30, Notice of Set-Aside for Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (Nov 2011).

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).

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 (Jan 2009). (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in 22.1803.)

___ (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 (MAY 2012) (41 U.S.C. chapter 83, 19 U.S.C 3301 note, 19 U.S.C. 2112 note, 19 U.S.C. 3805 note, 19 U.S.C. 4001 note, Pub. L. 103-182, 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, and 110-138, 112-41, and 112-42).

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

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

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

___ (41) 52.225-5, Trade Agreements (MAY 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.

(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:

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

___ (8) 52.237-11, Accepting and Dispensing of \$1 Coin (Sep 2008) (31 U.S.C. 5112(p)(1)).

(d) *Comptroller General Examination of Record* The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, Audit and Records -- Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

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

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

(e)

(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c) and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in 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) [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.*)

(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.

DFARS 252.212-7001 Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items. (May 2012)

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

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

(b) The Contractor agrees to comply with any clause that is checked on the following list of Defense FAR Supplement clauses which, if checked, is included in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items or components.

(1) [252.203-7000](#), Requirements Relating to Compensation of Former DoD Officials (SEP 2011) (Section 847 of Pub. L. 110-181).

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

(3) [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)(SEP 2011) (15 U.S.C. 637).

(5) [252.219-7004](#), Small Business Subcontracting Plan (Test Program)(JAN 2011) (15 U.S.C. 637 note).

(6)(i) [252.225-7001](#), Buy American Act and Balance of Payments Program(OCT 2011) (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 (JAN 2011) (10 U.S.C. 2533b).

(9) [252.225-7012](#), Preference for Certain Domestic Commodities (JUN 2010) (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 (MAY 2012) (Section 846 of Pub.L. 111-383).

(13)(i) ____ [252.225-7021](#), Trade Agreements (MAY 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).

(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 Act—Free Trade Agreements—Balance of Payments Program (MAY 2012) (41 U.S.C. chapter 83 and 19 U.S.C. 3301 note).

(ii) ____ Alternate I (OCT 2011) of [252.225-7036](#).

(iii) ____ Alternate II (OCT 2011) of [252.225-7036](#).

(iv) ____ Alternate III (OCT 2011) of [252.225-7036](#).

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

(vi) ____ Alternate V (MAY 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 (AUG 2011) (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) (10 U.S.C. 2320).

- (22) ____ [252.227-7037](#), Validation of Restrictive Markings on Technical Data (SEP 2011), 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 (MAR 1998) (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) X [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](#).
- (30) ____ [252.247-7024](#), Notification of Transportation of Supplies by Sea (MAR 2000) (10 U.S.C. 2631).
- (31) ____ [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 (AUG 2011) (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 (SEP 2011), 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. 2631).
- (9) [252.247-7024](#), Notification of Transportation of Supplies by Sea (MAR 2000) (10 U.S.C. 2631).