



## CONTINUATION SHEET

Order Number:

SPM3S1-11-C-Z103

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## SECTION B

PR 0040497565  
 NSN 8920-01-525-3622

ITEM DESCRIPTION: Tortillas, Shelf Stable, min 6 ozflex pg, PCR-T-008

CLIN	PR	PRLI	U/I	QUANTITY	UNIT PRICE	TOTAL PRICE
0001	0040497565	0001	PG	2657250	\$ [REDACTED]	\$ [REDACTED]

  

NSN	UPC	SIZE	PGC
8920015253622	N/A	N/A	N/A

QTY VARIANCE: PLUS 0% MINUS 0%

INSPECTION POINT: ORIGIN - CONTRACT PAID USDA FOR ALL LINES

USDA ADDRESS: USDA AMS FV, PPB

Officer-in-charge: Tony Chartrand  
 4318 North Technology Drive  
 South Bend, Indiana 46628

ACCEPTANCE POINT: DESTINATION

FOB: DESTINATION

## DELIVERY SCHEDULE:

Shipment request	NSN	Units	\$Value	Date	Assembler	Unit Price
SH0001	01-525-3622	265,725	\$ [REDACTED]	03/15/11	Sopakco	\$ [REDACTED]
SH0002	01-525-3622	265,725	\$ [REDACTED]	04/15/11	Sopakco	\$ [REDACTED]
SH0003	01-525-3622	265,725	\$ [REDACTED]	05/13/11	Sopakco	\$ [REDACTED]
SH0004	01-525-3622	265,725	\$ [REDACTED]	06/15/11	Sopakco	\$ [REDACTED]
SH0005	01-525-3622	265,725	\$ [REDACTED]	07/15/11	Sopakco	\$ [REDACTED]
SH0006	01-525-3622	265,725	\$ [REDACTED]	08/15/11	Sopakco	\$ [REDACTED]
SH0007	01-525-3622	265,725	\$ [REDACTED]	09/15/11	Sopakco	\$ [REDACTED]
SH0008	01-525-3622	265,725	\$ [REDACTED]	10/14/11	Sopakco	\$ [REDACTED]
SH0009	01-525-3622	265,725	\$ [REDACTED]	11/15/11	Sopakco	\$ [REDACTED]
SH0010Z	01-525-3622	265,725	\$ [REDACTED]	12/15/11	Sopakco	\$ [REDACTED]
Total Sopakco		2,657,250	\$ [REDACTED]			

## SHIP TO:

UY1008

Sopakco Inc.

118 S. Cypress Street

Mullins, SC 29574

## SECTION B

PR 0040497565  
NSN 8920-01-525-3622

ITEM DESCRIPTION: Tortillas, Shelf Stable, min 6 ozflex pg, PCR-T-008

<u>CLIN</u>	<u>PR</u>	<u>PRLI</u>	<u>U/I</u>	<u>QUANTITY</u>	<u>UNIT PRICE</u>	<u>TOTAL PRICE</u>
0002	0040497565	0002	PG	765000	\$ [REDACTED]	\$ [REDACTED]

  

<u>NSN</u>	<u>UPC</u>	<u>SIZE</u>	<u>PGC</u>
8920015253622	N/A	N/A	N/A

QTY VARIANCE: PLUS 0% MINUS 0%  
INSPECTION POINT: ORIGIN - CONTRACT PAID USDA FOR ALL LINES  
USDA ADDRESS: USDA AMS FV, PPB  
Officer-in-charge: Tony Chartrand  
4318 North Technology Drive  
South Bend, Indiana 46628

ACCEPTANCE POINT: DESTINATION  
FOB: DESTINATION

## DELIVERY SCHEDULE:

First Strike Ration

Shipment request	NSN	Units	\$Value	Date	Assembler	Unit Price
SH0001	01-525-3622	61,200	\$ [REDACTED]	03/15/11	Sopakco	\$ [REDACTED]
SH0002	01-525-3622	183,600	\$ [REDACTED]	04/15/11	Sopakco	\$ [REDACTED]
SH0003	01-525-3622	183,600	\$ [REDACTED]	05/13/11	Sopakco	\$ [REDACTED]
SH0004	01-525-3622	183,600	\$ [REDACTED]	06/15/11	Sopakco	\$ [REDACTED]
SH0005Z	01-525-3622	153,000	\$ [REDACTED]	07/15/11	Sopakco	\$ [REDACTED]
<b>Total Sopakco</b>		<b>765,000</b>	<b>\$ [REDACTED]</b>			

SHIP TO:  
UY1008  
Sopakco Inc.  
118 S. Cypress Street  
Mullins, SC 29574

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SECTION B

PR 0040497565  
NSN 8920-01-525-3622

ITEM DESCRIPTION: Tortillas, Shelf Stable, min 6 ozflex pg, PCR-T-008

CLIN	PR	PRLI	U/I	QUANTITY	UNIT PRICE	TOTAL PRICE
0003	0040497565	0003	PG	1170000	\$ [REDACTED]	\$ [REDACTED]

  

NSN	UPC	SIZE	PGC
8920015253622	N/A	N/A	N/A

QTY VARIANCE: PLUS 0% MINUS 0%  
 INSPECTION POINT: ORIGIN - CONTRACT PAID USDA FOR ALL LINES  
 USDA ADDRESS: USDA AMS FV, PPB  
 Officer-in-charge: Tony Chartrand  
 4318 North Technology Drive  
 South Bend, Indiana 46628

ACCEPTANCE POINT: DESTINATION  
 FOB: DESTINATION

DELIVERY SCHEDULE:

Shipment request	NSN	Units	\$Value	Date	Assembler	Unit Price
SH0001	01-525-3622	117,000	\$ [REDACTED]	03/15/11	Wornick	\$ [REDACTED]
SH0002	01-525-3622	117,000	\$ [REDACTED]	04/15/11	Wornick	\$ [REDACTED]
SH0003	01-525-3622	117,000	\$ [REDACTED]	05/13/11	Wornick	\$ [REDACTED]
SH0004	01-525-3622	117,000	\$ [REDACTED]	06/15/11	Wornick	\$ [REDACTED]
SH0005	01-525-3622	117,000	\$ [REDACTED]	07/15/11	Wornick	\$ [REDACTED]
SH0006	01-525-3622	117,000	\$ [REDACTED]	08/15/11	Wornick	\$ [REDACTED]
SH0007	01-525-3622	117,000	\$ [REDACTED]	09/15/11	Wornick	\$ [REDACTED]
SH0008	01-525-3622	117,000	\$ [REDACTED]	10/14/11	Wornick	\$ [REDACTED]
SH0009	01-525-3622	117,000	\$ [REDACTED]	11/15/11	Wornick	\$ [REDACTED]
SH0010Z	01-525-3622	117,000	\$ [REDACTED]	12/15/11	Wornick	\$ [REDACTED]
<b>Total Wornick</b>		1,170,000	\$ [REDACTED]			

SHIP TO:  
 UY0303  
 The Wornick Company  
 9756 International Blvd  
 Cincinnati, OH 45246

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## SECTION B

PR 0040497565  
NSN 8920-01-525-3622

ITEM DESCRIPTION: Tortillas, Shelf Stable, min 6 ozflex pg, PCR-T-008

<u>CLIN</u>	<u>PR</u>	<u>PRLI</u>	<u>U/I</u>	<u>QUANTITY</u>	<u>UNIT PRICE</u>	<u>TOTAL PRICE</u>
0004	0040497565	0004	PG	2551500	\$ [REDACTED]	\$ [REDACTED]
<u>NSN</u>	<u>UPC</u>	<u>SIZE</u>	<u>PGC</u>			
8920015253622	N/A	N/A	N/A			

QTY VARIANCE: PLUS 0% MINUS 0%  
INSPECTION POINT: ORIGIN - CONTRACT PAID USDA FOR ALL LINES  
USDA ADDRESS: USDA AMS FV, PPB  
Officer-in-charge: Tony Chartrand  
4318 North Technology Drive  
South Bend, Indiana 46628

ACCEPTANCE POINT: DESTINATION  
FOB: DESTINATION

## DELIVERY SCHEDULE:

Shipment request	Nsn	Units	\$Value	Date	Assembler	Unit Price
SH0001	01-525-3622	255,150	\$ [REDACTED]	03/15/11	Ameriqua	\$ [REDACTED]
SH0002	01-525-3622	255,150	\$ [REDACTED]	04/15/11	Ameriqua	\$ [REDACTED]
SH0003	01-525-3622	255,150	\$ [REDACTED]	05/13/11	Ameriqua	\$ [REDACTED]
SH0004	01-525-3622	255,150	\$ [REDACTED]	06/15/11	Ameriqua	\$ [REDACTED]
SH0005	01-525-3622	255,150	\$ [REDACTED]	07/15/11	Ameriqua	\$ [REDACTED]
SH0006	01-525-3622	255,150	\$ [REDACTED]	08/15/11	Ameriqua	\$ [REDACTED]
SH0007	01-525-3622	255,150	\$ [REDACTED]	09/15/11	Ameriqua	\$ [REDACTED]
SH0008	01-525-3622	255,150	\$ [REDACTED]	10/14/11	Ameriqua	\$ [REDACTED]
SH0009	01-525-3622	255,150	\$ [REDACTED]	11/15/11	Ameriqua	\$ [REDACTED]
SH0010Z	01-525-3622	255,150	\$ [REDACTED]	12/15/11	Ameriqua	\$ [REDACTED]
Total Ameriqua		2,551,500	\$ [REDACTED]			

## SHIP TO:

UY1005  
Ameriqua Packaging  
225 Morgan Avenue  
Evansville, IN 47710-2515

**CONTRACT CLAUSES****52.212-4 CONTRACT TERMS AND CONDITIONS — COMMERCIAL ITEMS (JUNE 2010).**

(a) **Inspection/Acceptance.** The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights—

(1) Within a reasonable time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) **Assignment.** The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727). However, when a third party makes payment (e.g., use of the Governmentwide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

(c) **Changes.** Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) **Disputes.** This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) **Definitions.** The clause at FAR 52.202-1, Definitions, is incorporated herein by reference.

(f) **Excusable delays.** The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) **Invoice.**

(1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include—

(i) Name and address of the Contractor;

(ii) Invoice date and number;

(iii) Contract number, contract line item number and, if applicable, the order number;

(iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;

(v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;

(vi) Terms of any discount for prompt payment offered;

(vii) Name and address of official to whom payment is to be sent;

(viii) Name, title, and phone number of person to notify in event of defective invoice; and

(ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

## 52.212-4 (continued)

(x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer—Other Than Central Contractor Registration), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(2) Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR Part 1315.

(h) Patent indemnity. The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) Payment.—

(1) Items accepted. Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) Prompt payment. The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and prompt payment regulations at 5 CFR Part 1315.

(3) Electronic Funds Transfer (EFT). If the Government makes payment by EFT, see 52.212-5(b) for the appropriate EFT clause.

(4) Discount. In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(5) Overpayments. If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall—

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—

(A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number, if applicable;

(C) Affected contract line item or subline item, if applicable; and

(D) Contractor point of contact.

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(6) Interest.

(i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 611 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in (i)(6)(v) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) Final decisions. The Contracting Officer will issue a final decision as required by 33.211 if—

## 52.212-4 (continued)

(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days;

(B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see 32.607-2).

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(v) Amounts shall be due at the earliest of the following dates:

(A) The date fixed under this contract.

(B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—

(A) The date on which the designated office receives payment from the Contractor;

(B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(vii) The interest charge made under this clause may be reduced under the procedures prescribed in 32.608-2 of the Federal Acquisition Regulation in effect on the date of this contract.

(j) Risk of loss. Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) Taxes. The contract price includes all applicable Federal, State, and local taxes and duties.

(l) Termination for the Government's convenience. The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) Termination for cause. The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) Title. Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

## 52.212-4 (continued)

(o) Warranty. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) Limitation of liability. Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) Other compliances. The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) Compliance with laws unique to Government contracts. The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 3701, et seq., Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

(s) Order of precedence. Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

(1) The schedule of supplies/services.

(2) The Assignments, Disputes, Payments, Invoice, Other Compliances, and Compliance with Laws Unique to Government Contracts paragraphs of this clause.

(3) The clause at 52.212-5.

(4) Addenda to this solicitation or contract, including any license agreements for computer software.

(5) Solicitation provisions if this is a solicitation.

(6) Other paragraphs of this clause.

(7) The Standard Form 1449.

(8) Other documents, exhibits, and attachments.

(9) The specification.

(t) Central Contractor Registration (CCR).

(1) Unless exempted by an addendum to this contract, the Contractor is responsible during performance and through final payment of any contract for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(2)(i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in FAR Subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to (A) change the name in the CCR database; (B) comply with the requirements of Subpart 42.12; and (C) agree in writing to the timeline and procedures specified by the responsible Contracting Officer.

The Contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (t)(2)(i) of this clause, or fails to perform the agreement at paragraph (t)(2)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

## 52.212-4 (continued)

(3) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.

(4) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the internet at <http://www.ccr.gov> or by calling 1-888-227-2423 or 269-961-5757.

## ADDENDUM TO 52.212-4 CONTRACT TERMS AND CONDITIONS—COMMERCIAL ITEMS

The following paragraph(s) of 52.212-4 are amended as indicated below

### *Paragraph (a) Inspection/Acceptance.*

For all Operational Rations food components (FSR, MRE, MCW/LRP, Tray Pack, UGR, Unitized B, etc.), inspection shall be contractor paid USDA,AMS,FV,PPB inspection in accordance with DLAD Clause 52.246-9023, General Inspection Requirements, unless otherwise specified by this solicitation/contract. The regulations, file codes, etc. of the respective inspection agency are applicable to the contract in conjunction with the quality assurance requirements of the contract. Optional contractor testing provided by DLAD Clause 52.246-9024, Alternative Inspection Requirements for Selected Items, is applicable unless otherwise specified by this solicitation/contract. When permitted by the applicable food component specification, a Certificate of Conformance (COC) for ingredients shall be provided in accordance with FAR Clause 52.246-15, Certificate of Conformance. FAR Clauses 52.246-02 and 52.246-11 are applicable to this solicitation/contract and shall be cited to properly enforce the Higher Level Contract Quality requirements.

The Quality Assurance Provisions found in this solicitation and Quality Assurance Provisions and Packaging Requirements for component Prime Documents cited in this solicitation are required for contractor, Army Veterinary, and USDA inspection, unless otherwise specified by this solicitation/contract. The Analytical Requirements found in Commercial Item Descriptions cited as Prime Documents by this solicitation are required for contractor, Army Veterinary, and USDA inspection, unless otherwise specified by this solicitation/contract. When Quality Assurance Provisions and Packaging Requirements cite analytical content levels different from those cited in the Commercial Item Description, use those analytical content levels cited in the Quality Assurance Provisions and Packaging Requirements.

**Saving and reserving all rights under the general inspection requirements of DLAD Clause 52.246-9023, the procedures for inspection and acceptance will be as follows:**

### **1. Quality Assurance Requirements for Ration Component Production Plants and Ration Sub Assembly and Assembly Plants.**

#### **E-1-A. Higher Level Quality Requirements - Documented Quality Systems Plan (QSP)**

The contractor shall model the documented QSP after ISO/ANSI/ASQC Q9001, a system that meets other recognized industry quality standards, or a process control system that is equivalent to or better than ISO/ANSI/ASQC Q9001. The contractor shall identify the quality standard used to model their QSP. If the contractor proposes an alternate (i.e., non-standard) process control system, this shall be clearly stated in the QSP. Some contractors may have third party certification of their quality system, which the private sector devised to administer the ISO series standards. However, third party certification by any third parties, to include Government certifications, is not required. Whether or not contractors want to use third party certification is completely optional on their part. Although certification information may be provided as documentation and evidence to support the system proposed by the contractor, third party certification/ registration documentation is not a substitute for government quality assurance with regard to components used in the operational ration programs. Regardless of the standard or non-standard document used to model the documented QSP, the documented QSP shall address, at a minimum, the following elements (within each section of the element the contractor shall provide the information and address the questions, as applicable, listed in Supplier Support Quality Systems Audit Workbook I: Documented QSP Evaluation Guideline:

**Addendum to 52.212-4 (continued)**

QSP GENERAL OUTLINE

- I. MANAGEMENT RESPONSIBILITY AND QUALITY SYSTEM DESIGN
- II. TRAINING
- III. DOCUMENT AND DATA CONTROL AND CONTROL OF QUALITY RECORDS
- IV. CONTROL OF INSPECTION, MEASURING, AND TEST EQUIPMENT  
(IAW ANSI/NCCL Z540-1 or ISO 10012-1)
- V. CONTROL AND PROTECTION OF PRODUCT
  - 1. Handling, Storage, Packaging, Preservation, and Delivery Program
  - 2. Product Identification and Traceability Program
  - 3. Inspection and Test Status and Records
  - 4. Control of Nonconforming Product
- VI. CONTRACT REVIEW, PURCHASING AND CONTROL OF CUSTOMER-SUPPLIED PRODUCT (Government-furnished material)
- VII. RECEIPT INSPECTION AND TESTING
- VIII. IN-PROCESS AND PROCESS INSPECTION AND TESTING:
  - 1. Manufacturing Process Controls Techniques (DLAD MPC Clause)
  - 2. Statistical Process Control Techniques (SPC QAP)
- IX. REGULATORY CONTROLS
  - 1. General Regulatory Requirements (as applicable to the plant USDA-FSIS, FDA, GMP, HACCP, SSOP, USDA-Dairy, etc.).
  - 2. Integrated Pest Management and Sanitation Programs
- X. END ITEM INSPECTION AND TESTING (IAW product/material specifications/documents and ANSI/ASQC Z1.4)
- XI. INTERNAL AUDITS
- XII. CORRECTIVE AND PREVENTIVE ACTION PROGRAM
- XIII. IMPROVEMENT

**NOTE:** Integrated Pest Management Plan: The IPM Plan is not required to be submitted but the questions concerning the facility's IPM in Section IX Regulatory Controls, Area 2, of the QSP must be addressed.

The documented QSP will be evaluated by the Quality System Audit Team (composed of FTSB, USDA-AMS, and VETCOM's Quality Systems Auditors), USDA-AMS/VETCOM Operational Rations Program Coordinators, and the Government In-Plant Quality Assurance Representatives (QAR) assigned to perform Government QA functions at contractors' facilities. Government personnel will use the Supplier Support Quality Systems Audit Workbook I: Documented QSP Evaluation Guideline (in conjunction with

**Addendum to 52.212-4 (continued)**

the standard or other document identified in the contractor's QSP) as the basic framework against which they will evaluate QSPs. Workbook I was developed to standardize the evaluations of documented QSPs (developed using ISO/ANSI/ASQC Q9001, other recognized industry quality standards, or a non-standard contractor's specific process control system) submitted by contractors for the purpose of demonstrating their capability to meet the higher-level contract quality requirements using any of the aforementioned documents and for the contracting officer to assess a contractor's capability to meet the contract requirements.

**NOTE:** Although Government inspection personnel (USDA-AMS/U.S. Army Veterinary Services) are required to evaluate the contractors' QSPs, the QSP rating will be determined and assigned by FTSB's Quality Systems Auditors.

Offerors/Contractors may request a copy of Workbook I by contacting the applicable contracting officer or FTSB. Workbook I is also available online in PDF format at the following website <http://www.dsep.dla.mil/subs/support/quality/QSP.pdf>. DLA Troop Support will recognize a contractor's quality system whenever it meets the contract requirements, whether the quality system is modeled on military, commercial, national or international quality systems standards. The design and implementation of a QSP will be influenced by the varying needs of a company, its particular goals and objectives, the products produced, and the processes and specific practices employed in the operation. The intent of the requirement is for contractors to improve process capability, process control which, when used effectively, can result in a prevention-oriented approach rather than a detection approach that will improve product quality and lower cost through the use of a single quality system in any contractor facility.

A documented QSP is required when a contract references or requires a contractor to perform under the higher-level contract quality requirements. Contractors are responsible for complying with the quality system requirements set forth in their documented QSP in addition to all detailed requirements cited in the contract and for furnishing products that meet all requirements of the contract. Contractors are required to establish, document, submit for Government review, and maintain a quality system as a means of ensuring that product conforms to the requirements of the contract. The documented QSP shall include the quality system procedures and outline the structure of the documentation used in the quality system. When the requirements of the Statistical Process Control Quality Assurances Provision (SPC QAP) and/or the DLAD MPC Clause 52.246-9001 Manufacturing Process Controls and In-Process Inspection are applicable, these requirements must be addressed under the In-Process and Process Inspection and Testing section of the documented QSP. Redundant areas/requirements (cited in the MPC Clause or the SPC QAP) need only be addressed once in the QSP. The calibration of measuring and testing equipment shall, as a minimum, adhere to the requirements of ANSI/NCCL Z540-1 or ISO 10012-1.

**52.246-9001 MANUFACTURING PROCESS CONTROLS AND IN-PROCESS INSPECTIONS****(JUN 1998)-DLAD**

This clause supplements paragraph 4.9 (Process Controls) of ANSI/ASQC Q9001, or equivalent standards with process controls, and is applicable when the contract requires a higher-level quality system in accordance with FAR 46.202-4. The contractor shall:

- (A) Ensure that all manufacturing operations are carried out under controlled conditions that will adequately assure that product characteristics and criteria specified by contract are achieved and maintained in the produced item. Controlled conditions include documented process

## Addendum to 52.212-4 (continued)

control and in-process inspection procedures, adequate methods for identifying and handling material, adequate production equipment and working environments.

(B) As a minimum, perform inspections (examinations and/or tests) during manufacturing on those product characteristics which cannot be inspected at a later stage, and ensure process controls are implemented and effective.

(1) Manufacturing processes shall be evaluated to determine which process characteristics have an effect on the quality of the produced item. These manufacturing processes shall be identified and requirements for their control shall be specified in written process control procedures.

(2) When in-process inspection of material is not practical, control by monitoring processing methods, equipment and personnel shall be provided. Both in-process inspection and process monitoring shall be provided when control is inadequate without both.

(3) Prompt corrective action shall be taken when noncompliance or out of control conditions occur. In the event appropriate corrective and preventive action fails to rectify the product noncompliance; correct the out of control conditions; and/or if these actions are not documented to ensure, to the satisfaction of the Government, that the production lot offered to the Government does not contain nonconforming product, then end item acceptance inspection, and/or acceptance of the end item by the Government may be denied IAW FAR 46.102 and 46.407.

(C) Clearly identify each in-process inspection and process control point at appropriate locations in the manufacturing operation.

(D) Prepare clear, complete and current written procedures for:

(1) Each in-process inspection. Identify: the type, frequency and amount (sampling plan/100 percent) of inspection; product characteristics to be inspected; criteria for approving and rejecting product; the record for documenting inspection results, and the method for identifying the inspection status of approved and rejected product.

(2) Each process control. Identify: the criteria, frequency, and records used for verifying control of the process.

(3) Assessing the adequacy of in-process inspections and process controls. The contractor's Quality organization shall assure by periodic surveillance that procedures are followed and are effective. Records of this surveillance will be maintained.

(E) Make the documented inspection system available for review by the Government Quality Assurance Representative prior to the initiation of production and throughout the life of the contract. The Government is under no legal obligation to perform verification inspection or to accept product produced under the contract until the Government has received acceptable written procedures, and has been afforded an opportunity to evaluate the inspection system. Acceptance of the contractor's inspection system by the Government does not bind the Government to accept any nonconforming supplies that may be produced by the contractor. Periodic evaluations of the documented QSP and implemented system compliance and effectiveness will be made through the use of yearly on-site compliance systems audits conducted by the Quality Systems Audit Team and In-Plant GQARs throughout the life of the contract.

Addendum to 52.212-4 (continued)

*Paragraph (d) Disputes*

Add the following:

**52.233-9001 DISPUTES: AGREEMENT TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR) (JUN 2001) DLAD**

- (a) The parties agree to negotiate with each other to try to resolve any disputes that may arise. If unassisted negotiations are unsuccessful, the parties will use alternative dispute resolution (ADR) techniques to try to resolve the dispute. Litigation will only be considered as a last resort when ADR is unsuccessful or has been documented by the party rejecting ADR to be inappropriate for resolving the dispute.
- (b) Before either party determines ADR inappropriate, that party must discuss the use of ADR with the other party. The documentation rejecting ADR must be signed by an official authorized to bind the contractor (see FAR 52.233-1), or, for the Agency, by the contracting officer, and approved at a level above the contracting officer after consultation with the ADR Specialist and with legal counsel (see DLA Directive 5145.1). Contractor personnel are also encouraged to include the ADR Specialist in their discussions with the contracting officer before determining ADR to be inappropriate.
- (c) If you wish to opt out of this clause, check here [ ]. Alternate wording may be negotiated with the contracting officer.

*Paragraph (m), Termination for Cause.*

Delete paragraph (m) in its entirety and substitute the following:

(m) Termination for Cause. The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If this contract is terminated in whole or in part for cause, and the supplies or services covered by the contract so terminated are repurchased by the Government, the Government will incur administrative costs in such repurchases. The Contractor and the Government expressly agree that, in addition to any excess costs of repurchase, or any other damages resulting from such default, the Contractor shall pay, and the Government shall accept, the sum of \$1155.00 as payment in full for the administrative costs of such repurchase. This assessment of damages for administrative costs shall apply for any termination for cause following which the Government repurchases the terminated supplies or services together with any incidental or consequential damages incurred because of the termination. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

*Paragraph (o) Warranty: The following clause will supersede FAR 52.212-4(o) referenced in this solicitation.*

## Addendum to 52.212-4 (continued)

## 52.246-9060 WARRANTY OF SUPPLIES (COMMERCIAL ITEMS) (SEP 2008) – DLAD

## (a) Definitions.

"Acceptance," as used in this clause, means the act of an authorized representative of the Government by which the Government assumes for itself, or as an agent of another, ownership of existing supplies, or approves specific services as partial or complete performance of the contract.

"Correction," as used in this clause, means the elimination of a defect.

"Supplies," as used in this clause, means the end item furnished by the Contractor and related services required under the contract. The word does not include "data".

## (b) Contractor's obligations.

(1) Notwithstanding inspection and acceptance by the Government of supplies furnished under this contract, or any condition of this contract concerning the conclusiveness thereof, the Contractor warrants that for 6 months after receipt of supplies at destination or, in the case of supplies required to bear an expiration date, for the expiration date indicated in the labeling thereof, all supplies furnished

- (i) Are of a quality to pass without objection in the trade under the contract description;
- (ii) Are fit for the ordinary purposes for which the supplies are used;
- (iii) Are within the variations permitted by the contract, and are of an even kind, quality and quantity within each unit and among all units;
- (iv) Are adequately contained, packaged, and marked as the contract may require; and
- (v) Conform to the promises or affirmations of fact made on the container.

(2) When return of the supplies to the contractor and redelivery, if applicable, is required, transportation charges and responsibility for the supplies while in transit shall be borne by the contractor. Contractor shall also be liable for:

- (i) Handling costs and incidental charges incurred by the Government in the preparation of the above described supplies for return to the contractor and in return of said supplies to storage, after redelivery by the contractor; and
- (ii) For cost of Government examination of the corrected or replaced supplies computed and charged at the flat rate of \$49.28 per hour.

(3) Any supplies or parts thereof, corrected or furnished in replacement under this clause, shall also be subject to the terms of this clause to the same extent as supplies initially delivered. The warranty, with

**Addendum to 52.212-4 (continued)**

respect to supplies or parts thereof, shall be equal in duration to that in paragraph (b)(1) of this clause and shall run from the date of receipt of the corrected or replaced supplies at destination.

(c) Remedies available to the government.

(1) Notice Requirement: The contracting officer shall give written notice to the contractor of any breach of warranties in paragraph (b)(1) of this clause within 7 days from receipt of supplies at destination or, in the case of supplies required to bear an expiration date, no later than one month following the expiration date indicated in the labeling.

(2) Conformance of supplies or parts thereof subject to warranty action shall be determined in accordance with the inspection and acceptance procedures contained in the contract except as provided herein. If the contract provides for sampling, the contracting officer may group any supplies delivered under this contract. The size of the sample shall be that required by the sampling procedure specified in the contract for the quantity of supplies on which warranty action is proposed, except when projecting sampling results. Warranty sampling results may be projected over supplies in the same shipment or other supplies contained in other shipments even though all of such supplies are not present at the point of reinspection and regardless of whether such supplies have been issued or consumed, provided (1) the supplies from which the samples were drawn are reasonably representative of the quantity on which warranty action is proposed, and (2) the defects found in the sample size are sufficient to reject the quantity of supplies on which warranty action is proposed, even though the sample size may be less than that required for such quantity. The original inspection lots need not be reconstituted, nor shall the contracting officer be required to use the same lot size as on original inspection. Within a reasonable time after the notice, the contracting officer may exercise one or more of the following options; and also, following the exercise of any option, may unilaterally change it to one or more of the other options set forth below:

(i) Require an equitable adjustment in the contract price for any supplies or group of supplies;

(ii) Screen the supplies grouped under this clause at contractor's expense and return all nonconforming supplies to the contractor for correction or replacement;

(iii) Require the contractor to screen the supplies at depots designated by the Government within the continental United States and to correct or replace all nonconforming supplies;

(iv) Return any supplies or group of supplies under this clause to the contractor (irrespective of the f.o.b. point or the point of acceptance) for screening and correction or replacement;

(v) Return or hold for contractor's account any supplies or group of supplies delivered hereunder, whereupon the contractor shall repay the contract price paid therefore. In such event, the Government may reprocure similar supplies upon such terms and in such manner as the contracting officer may deem appropriate, and charge to the contractor the additional cost occasioned the Government thereby.

(3) When remedy (c) (2) (iii) or (c) (2) (iv) of this clause is exercised, the contractor is required to submit in writing and within 30 days after receipt of notice of such invocation a schedule for either:

(i) Correction and/or replacement of all defective supplies and subsequent redelivery of the returned supplies; or,

## Addendum to 52.212-4 (continued)

(ii) Screening defective supplies at each depot involved and subsequent redelivery of all corrected and/or replaced supplies.

Such schedule will become a part of the contract delivery schedule upon agreement thereto by the Government. If the contractor fails to provide an agreeable schedule within the specified period, or any extension agreed to by the Government, the Government may correct the items and charge the contractor's account; or, issue a contract for correction of the items and charge the contractor's account; or, exercise one or more of the remedies specified in paragraph (4) below.

(4) If the contractor fails to accept return of the nonconforming supplies; or, fails to make redelivery of the corrected or replaced supplies to the Government within the time established; or, fails to make progress after their return to correct or replace them so as to endanger performance within the time established for redelivery and does not cure such failure within a period of 10 days (or such longer period as the contracting officer may authorize in writing) after receipt of notice from the contracting officer specifying such failure, the contracting officer may exercise one or more of the following remedies:

(i) Retain or have the contractor return the nonconforming supplies and require an equitable adjustment in the contract price.

(ii) Return or hold the nonconforming supplies for contractor's account, or require the return of the nonconforming supplies and then hold for contractor's account, whereupon the contractor shall repay the contract price therefore. In such event, the Government may reprocur similar supplies upon such terms and in such manner as the contracting officer may deem appropriate, and charge to the contractor the additional costs occasioned the Government thereby.

(iii) If the contractor fails to furnish timely disposition instructions, dispose of the nonconforming supplies for the contractor's account in a reasonable manner, in which case the Government is entitled to reimbursement from the contractor or from the proceeds for the reasonable expenses of the care and disposition of the nonconforming supplies, as well as for any other costs incurred or to be incurred.

(5) The rights and remedies of the Government provided in this clause are in addition to and do not limit any rights afforded to the Government by any other clause of this contract.

(d) Failure to agree upon any determination to be made under this clause shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(e) When the contract specifies ultimate delivery of supplies to a location outside the contiguous United States, such location shall be deemed the destination for purposes of this clause.

*Paragraph (f), Central Contractor Registration (CCR).*

Add the following paragraph:

(5) Definitions.

“Central Contractor Registration (CCR) Database” means the primary Government repository for contractor information required for the conduct of business with the Government.

Addendum to 52.212-4 (continued)

“Commercial and Government Entity (CAGE) Code” means—

(a) A code assigned by the Defense Logistics Information Service (DLIS) to identify a commercial or Government entity; or

(b) A code assigned by a member of the North Atlantic Treaty Organization that DLIS records and maintains in the CAGE master file. This type of code is known as an “NCAGE code”.

“Data Universal Number System (DUNS) Number” means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities.

“Data Universal Numbering System +4 (DUNS+4) Number” means the DUNS number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion of the business concern to establish additional CCR records for identifying alternative

Electronic Funds Transfer (EFT) accounts (see Subpart 32.11 of the Federal Acquisition Regulation) for the same parent concern.

“Registered in the CCR Database” means that—

(a) The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database;

(b) The Contractor’s CAGE code is in the CCR database; and

(c) The Government has validated all mandatory data fields to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service, and has marked the records “Active”. The Contractor will be required to provide consent for TIN validation to the Government as part of the CCR registration process.

**52.246-11 HIGHER-LEVEL CONTRACT QUALITY REQUIREMENT (FEB 1999)  
(GOVERNMENT SPECIFICATION)**

The Contractor shall comply with the higher-level quality standard selected below. [If more than one standard is listed, the offeror shall indicate its selection by checking the appropriate block.]

Title	Number	Date	Tailoring

[Contracting Officer insert the title, number (if any), date, and tailoring (if any) of the higher-level quality standards.]

Addendum to 52.212-4 (continued)

**52.246-15 CERTIFICATE OF CONFORMANCE (APR 1984) FAR**

(a) When authorized in writing by the cognizant Contract Administration Office (CAO), the Contractor shall ship with a Certificate of Conformance any supplies for which the contract would otherwise require inspection at source. In no case shall the Government's right to inspect supplies under the inspection provisions of this contract be prejudiced. Shipments of such supplies will not be made under this contract until use of the Certificate of Conformance has been authorized in writing by the CAO, or inspection and acceptance have occurred.

(b) The Contractor's signed certificate shall be attached to or included on the top copy of the inspection or receiving report distributed to the payment office or attached to the CAO copy when contract administration (Block 10 of the DD Form 250) is performed by the Defense Contract Administration Services. In addition, a copy of the signed certificate shall also be attached to or entered on copies of the inspection or receiving report accompanying the shipment.

(c) The Government has the right to reject defective supplies or services within a reasonable time after delivery by written notification to the Contractor. The Contractor shall in such event promptly replace, correct, or repair the rejected supplies or services at the Contractor's expense.

(d) The certificate shall read as follows:

I certify that on \_\_\_\_\_ [insert date], the \_\_\_\_\_ [insert Contractor's name] furnished the supplies or services called for by Contract No. \_\_\_\_\_ via \_\_\_\_\_ [Carrier] on \_\_\_\_\_ [identify the bill of lading or shipping document] in accordance with all applicable requirements. I further certify that the supplies or services are of the quality specified and conform in all respects with the contract requirements, including specifications, drawings, preservation, packaging, packing, marking requirements, and physical item identification (part number), and are in the quantity shown on this or on the attached acceptance document.

Date of Execution: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

**52.211-9046 FDA COMPLIANCE (APR 2008) DLAD**

If any supplies acquired hereunder are recalled under the provisions of the Federal Food, Drug and Cosmetic Act, and regulations there under, the contractor shall, at the Government's option, either reimburse the Government or repair/replace the recalled supplies. Additionally, the contractor shall notify the contracting officer immediately when a firm decides to voluntarily recall or withdraw any product from the marketplace. Upon notification by the contracting officer that supplies acquired hereunder have been recalled, the contractor shall either (a) accept Certificates of Destruction from the Government after the supplies have been properly disposed of, (b) request return of the supplies, or (c) if supplies may be repaired on site without transporting them from their location, furnish all materials necessary to effect repairs. Replacement or reimbursement will be accomplished by the contractor immediately on receipt of Certificates of Destruction or returned supplies. The costs of replacement or repair of supplies, and transportation and handling costs for movement of returned, replaced or repaired supplies within the continental United States shall be paid by the contractor. The provisions of this clause are applicable only when the value of the recalled supplies in the possession of the Government amounts

**Addendum to 52.212-4 (continued)**

to \$100 or more. The rights and remedies of the Government provided in this clause are in addition to, and do not limit, any rights afforded to the Government by any other clause in the contract.

**52.246-9013 CONTRACTOR AND GOVERNMENT SAMPLES AT ORIGIN (SEP 2007) DLAD**

When required, the contractor will select samples of end items or components or both for contractor examination or testing as required by the item specification or other contract provisions. In addition, the government may select samples of end items or components or both at origin for the purpose of conducting required inspection. The government may use, consume, destroy or retain said samples at its option. Notwithstanding any other provision of the contract, the contractor shall bear the cost of contractor and government samples selected at origin, whether the supplies are accepted or rejected. Furthermore, unless otherwise specified, any sample unit which is altered as a result of the performance of any required examination or test so as to no longer meet the required characteristic of the component or end item, shall not be included as part of the supplies delivered under the contract. Examples of such alteration include, but are not limited to, cutting an item to remove a slice or observe internal surface characteristics, procedures requiring re-canning/re-cooking of the product, thawing and refreezing.

**52.246-9023 GENERAL INSPECTION REQUIREMENTS (APR 2008) – DLAD****(a) Inspection.**

(1) The Contractor shall employ the services of the U.S. Department of Agriculture (USDA), Grain Inspection, Packers and Stockyard Administration (GIPSA) or Agricultural Marketing Service (AMS) or U.S. Department of Commerce (USDC), National Marine Fisheries Service (NMFS) to accomplish origin inspection (examination and testing) and sampling as required herein and in the applicable commodity specifications. The Contractor shall bear all expenses incident thereto, including costs of samples and all associated costs for preparation and mailing. Costs shall be assessed in accordance with the Government laboratory testing charges for individual test characteristics and number of tests required by the specification or contract. A list of fees may be obtained from the appropriate inspection activity. The Contractor shall furnish the Government grader/inspector a copy of the complete contract and supporting contractual documents (i.e., individual solicitation, contract modifications, waivers, and referenced specifications). Offerors may contact the appropriate Government office to discuss inspection procedures prior to submitting offers; however, nothing provided thereby shall be construed to alter the applicable specification in any manner or to reduce the responsibility of Contractor to comply with such specifications.

(2) The Contractor shall take action to correct or replace nonconforming supplies.

(3) The Government will perform an inspection at destination for identity, condition and quantity. If there is evidence that the supplies do not conform with contract requirements, the inspector shall report the findings of his inspection to the appropriate DLA Troop Support office (Operational Rations Business Unit, Food Services Business Unit, Produce Business Unit, Product Services Office, etc.). The applicable DLA Troop Support office shall report the findings to the Contracting Officer or the Ordering Officer, who shall in turn notify the Contractor.

(4) Supplies will be rejected when any evidence of insect activity (live or dead in any stage of development) or rodent activity/contamination is found in or on product, packaging, packing or unitization.

(5) Nonconforming supplies rejected at origin will not normally be accepted by the Government. However, the Contractor may elect to petition the Contracting Officer in writing to grant a waiver of the

**Addendum to 52.212-4 (continued)**

contract requirements for which supplies have been found nonconforming, and to accept the supplies "as is" with appropriate price consideration.

(6) The Contractor shall furnish all inspection gauges, instruments, scales, tools or other material required by the designated Government inspection activity to complete the necessary inspection. The Government inspector will insure that the Contractor has had such gauges, instruments, scales, tools, or other material required to complete inspection properly calibrated and, if necessary, certified. When required by the contract/solicitation the Government inspector will collect insect specimens from plant production and storage areas and submit the specimens to the nearest military entomological laboratory for identification. When the collection of insects is required, the Contractor shall be responsible for supplying and installing specified insect monitoring devices required to accomplish this task.

**(b) Standby Test Samples.**

The Government reserves the right to withdraw and hold standby samples of components or finished products or both (the quantity of which shall be not more than twice that required by the specification) for inspection purposes. Samples not used will be returned to the Contractor.

**(c) USDA and USDC Certificates.**

(1) Inspection by USDA, AMS, Fruit and Vegetable Division, Poultry Division or Dairy Division: When DD Form 250, Material Inspection Receiving Report (MIRR), is not used, the Contractor shall obtain official USDA inspection certificate, which shall:

(i) Contain the following statement in the grade section of the certificate:

(A) Supplies listed hereon conform to all quality requirements of the contract.

(B) Container condition meets all requirements of the contract.

(C) Visual examination indicates conformance to packaging, packing, unitization, labeling and marking requirements of the contract.

(ii) Indicate that supplies shipped are those inspected. This may be satisfied by means of one of the following:

(A) Each primary container must be embossed, stamped or stenciled with a code mark prior to inspection, which corresponds with the code marks listed on the USDA grade certificate.

(B) The USDA grade certificate bears a statement that all of the shipping containers comprising the inspection lot have been stamped with the official USDA stamp impression.

(C) The USDA certificate of loading, if issued, bears a cross-reference to the applicable USDA inspection document.

(iii) Indicate that the contractor has furnished a certificate of conformance for packaging, packing, labeling, marking and unitization materials.

(iv) Indicate the random samples of packaging, packing, labeling, marking and unitization materials, where applicable, have been selected by the inspector for forwarding to DLA Analytical

**Addendum to 52.212-4 (continued)**

Laboratory, 700 Robbins Avenue, Philadelphia, PA 19111 in accordance with DLA Troop Support clause 52.246-9P20.

(v) Indicate the applicable contract or order number.

(2) Inspection by USDA, AMS, Livestock, Meat, Grain and Seed Division: For all shipments, whether DD Form 250 (MIRR) is required or not, the Contractor shall obtain a USDA agricultural products acceptance certificate (Form LS 5-3), which shall contain the information specified in paragraph (c)(1). The Contractor shall also include the applicable lot number(s).

(3) Inspection by USDA, GIPSA, Field Management Division: When DD Form 250 (MIRR) is not required, the Contractor shall obtain an official USDA inspection or examination certificate, as appropriate. In addition to the entries required by the GIPSA, the certificate shall contain the following certification: "Supplies listed hereon conform to all quality and condition requirements of the contract".

(d) Distribution of Certificates.

Copying machine duplicates of USDC certificates and USDA certificates other than USDA Form LS 5-3 are not acceptable. Copying machine duplicates of USDA Form LS 5-3 are acceptable only as provided in paragraph (2) and (3) below. Copying machine duplicates of the original signed DD Form 250 are acceptable. In addition to the prohibited use of copying machine duplicates, USDC certificates must also be embossed with the official seal of the USDC. The contractor shall distribute certificates as follows:

(1) When DD Form 250 (MIRR) signed by the inspector is provided, a copy of the USDA/USDC inspection certificate need not be furnished to the designated paying office. (Exception: When the contract or specification provides for acceptance of product with a price adjustment to the contractor" invoice, e.g., excess fat in ground beef, the original signed USDA/USDC inspection certificate must be attached to the top of the commercial invoice which is submitted to the designated paying office.)

(2) When DD Form 250 (MIRR) is not required, the original signed USDC inspection certificate or USDA inspection certificate other than USDA Form LS 5-3 must be attached to the top of the commercial invoice, which is submitted to the designated paying office. When the services of the USDA, AMS, Livestock, Meat, Grain and Seed Division are employed, the original signed USDA Form LS 5-3 or a copying machine duplicate of the original form LS 5-3 with an original signature must be attached to the top of the commercial invoice which is submitted to the designated paying office.

(3) As appropriate for any shipment, one blue or green signed copy of the original USDA Fruit and Vegetable Division certificate; one green or yellow carbon copy of the original signed USDA, AMS Dairy Division or Poultry Division certificate; one copy of the original signed USDA, GIPSA or USDC certificate; one copy of the original signed USDA Form LS 5-3 or a copying machine duplicate of the original USDA Form LS 5-3 with an original signature shall accompany each shipment to each destination and be marked ATTN: Subsistence Inspector.

(4) In the event the Contractor does not include appropriate certificate(s) with each shipment to each destination as required, the Government reserves the right to arrange for government grading/inspection and certification at destination at the Contractor's expense.

(e) Lot Identification.

The Contractor shall code or distinctively mark by embossing, stamping, printing or stenciling each shipping container for every lot of supplies offered for acceptance so as to identify the lot from any other

**Addendum to 52.212-4 (continued)**

lot produced by the Contractor. Under both in-process (on line) and stationary lot inspections, the maximum lot size, unless otherwise specified in the contract, shall be defined by the assigned inspection agency.

**(f) Particular Inspection Requirements.**

(1) Primary Containers: Examination of primary containers for external condition and labeling shall be in accordance with the U.S. standards for condition of food containers, except that when requirements are contained in the specification, examination shall be performed in accordance with that specification. When additional requirements are specified in the specification, examination for these requirements shall be in accordance with the specification.

(2) Unit Loads: Examination of unit loads shall be in accordance with MIL-L-35078.

(3) All Other: Examination shall be in accordance with the specification.

**52.246-9024 ALTERNATIVE INSPECTION REQUIREMENTS FOR SELECTED ITEMS (APR 2008) DLAD****(a) Optional Contractor Testing of Contractor-Furnished Materials.**

To expedite shipment, the Contractor has the option to perform, or have performed by an independent laboratory, contractually-required tests of end items or component material not specified by the U.S. Standards of Grade. The inspector for the Government agency having jurisdiction over ascertaining compliance may permit shipment, provided all other requirements of the contract are met. The designated Government inspector will select random samples of each lot of end items or component material for verification testing until the Contractor's testing system is determined reliable in accordance with paragraph (c) of this clause. It is the intent of the Government to rely on Contractor test results to the maximum extent practicable and minimize Government verification testing.

**(b) Compliance of Product.**

Acceptance of material as complying with required characteristics shall be based on the Contractor's test results; provided that Government verification indicates the Contractor's testing system is reliable, in accordance with paragraph (c) of this clause, as to each of the required characteristics. If the Contractor's test system is determined to be unreliable, product compliance will be determined based solely on Government test results. In the event the Government detects any irregularities in the Contractor's testing system, the designated Government inspector may withhold approval until Government test results indicate products conform to contract requirements. (For Meal, Ready-to-Eat (MRE) items, if Government laboratory test results show that product is nonconforming, the product shall be withheld from final assembly and subject to return and replacement by the component Contractor, even if previously approved by the Government inspector.)

**(c) Reliability Conditions.**

(1) To be considered reliable, the Contractor's testing system shall produce results comparable to the Government test results; unless the Government agency having jurisdiction has inspected the item produced at the Contractor's plant within the previous 120 days. Unless otherwise specified in this contract, the Government inspector will select samples randomly from the first three lots of end items

**Addendum to 52.212-4 (continued)**

presented for inspection and will conduct verification testing on a skip-lot basis. Skip-lot verification is done by random selection of samples from not less than one lot in six consecutive lots presented for inspection. The sampling procedure under skip-lot places the succeeding lots not chosen for inspection back into the universe available for subsequent inspection. (For instance, starting with a group of six lots (i.e., 1-6), one lot is randomly selected for inspection. If lot 4 is selected, the next samples will be selected from lots 5, 6, 7, 8, 9, or 10. If lot 8 is selected, the next samples will be selected from lots 9, 10, 11, 12, 13, or 14; and so on.)

(2) Contractor's testing system shall be considered unreliable when (i) the Government verification results indicate product nonconformance to contract requirements; and (ii) a significant disparity exists between Government laboratory results and Contractor test results. When a Contractor's testing system is determined to be unreliable, compliance testing will revert to the Government, and all items shall be inspected by the Government prior to shipment.

(3) Contractor's testing system will be considered doubtful when (i) a significant disparity exists between Government laboratory results and Contractor test results; (ii) the Government test results indicate significantly poorer quality than the Contractor's; and (iii) the Government laboratory test results do not indicate product nonconformance to a statistically significant degree. When the Contractor's testing system is considered doubtful, verification testing will be performed on each lot produced; however, the Government will continue to permit the Contractor to ship based on its own test results.

(4) Contractor testing system reliability will be determined by applying recognized statistical tests to the Contractor's and Government's test results. These determinations shall be accomplished by the DLA Troop Support (formerly DSCP ), Directorate of Subsistence, Product Services Office, 700 Robbins Avenue, Philadelphia, PA 19111-5092.

(5) The Contracting Officer will notify the Contractor of any change in reliability status. Notification will include details of the statistical determinations and test results used in reliability studies. Telephonic notification and copies of these determinations will be provided to the Government by DSCP-FTRE.

(d) Procedures.

When the Contractor elects to perform testing, the following shall apply:

(1) Reporting of Contractor's Results. Test reports for each lot of end item and components shall be submitted in the format contained in this clause by the Contractor in an original and one copy to the designated Government inspector. The inspector will forward one completed copy to DSCP-FTRE.

(2) Verification Actions. The Government will perform verification testing for food items and component material required by the contract to assure that the Contractor's testing results are reliable. Verification samples will be accompanied by a DD Form 1222, Request for and Results of Tests. The Government laboratory that performs the tests will provide copies of the test results to the Government inspector and to DSCP-FTRE. The Government laboratory will telephone the results to DSCP-HS (215-737-4259) when testing identifies nonconformance. The Government reserves the right to (i) increase the rate or amount of verification testing up to and including full lot-by-lot testing, in the event the Contractor does not furnish reliable test results or certificates; or (ii) obtain additional data when significant disparities exist between the Contractor's results and the results of the Government laboratory testing. When any element of the Contractor testing system is determined unreliable, the Government may consider the

**Addendum to 52.212-4 (continued)**

testing system as a whole unreliable and return to full lot-by-lot verification for every test. Testing by the Government will continue until such time as the Contractor's reliability is again established.

(3) Standby Test Samples. The Government reserves the right to withdraw and hold standby test samples of component or finished product or both (the quantity of which shall be the next larger available sample size required for unit testing and the same sample size required for composite testing) for inspection purposes. Unused samples will be returned to the Contractor.

**(e) Charges Applicable to Unreliable Test Status.**

The prime Contractor shall be charged the costs of lot-by-lot inspection during the period that its testing system is considered unreliable. These charges will be processed and approved by the Contracting Officer.

**(f) Format for Contractor/Subcontractor Test Report.**

Name & Address of Contractor:

Name & Address of Subcontractor: (if applicable)

Received for Testing: (date)

Contract Number:

Sample Tested: (end item or component, indicate by name)

Quantity Tested:

Applicable Specification:

Identification of Lot: (end item or component lot number, as applicable)

Quantity in Lot: (units)

Testing Completed: (date)

Test Report

(Report test results for each sample unit tested and the sample average, if required by the specification, and identify results obtained from composite samples.)

(Typed name and title of laboratory official and signature)

The following certification shall be affixed to the test report when testing was performed on component items by supplier's laboratory or by subcontractor's laboratory.

Certification

I certify that the above test results were furnished to this firm to cover the testing of samples which are representative of the lot, and to the best of my knowledge and belief, have been found to comply with the analytical requirements of the specification, contract no. \_\_\_\_\_

Signature: \_\_\_\_\_

(typed name and title of Contractor's representative who is authorized to sign the certificate, and the date)

The following certification shall be affixed to the test report when testing was performed on component and/or end item by Contractor's laboratory or an independent laboratory.

**Certification**

I certify that the item presented for acceptance under terms of above referenced contract has been tested, as required by the contract, through the testing of samples that were representative of the lot, and to the best of my knowledge and belief, were found to comply with the analytical requirements of the specification and the contract.

Signature:

\_\_\_\_\_

(typed name and title of Contractor's representative who is authorized to sign the certificate, and the date)

**Distribution:**

(Original and one (1) copy to Government inspector, who will forward one (1) copy to DSCP-FTRE; and hard copy with each shipment, when DD Form 250 (MIRR) reports are not provided.)

**52.246-9025 REINSPECTION OF NONCONFORMING SUPPLIES (APR 2008) DLAD**

(a) When origin inspection is performed by the U.S. Department of Agriculture or U.S. Department of Commerce and supplies are found to be nonconforming at origin, the contractor may request USDA/USDC reinspection/formal review in accordance with the regulations of the respective agency. In such instances, the next larger available sample size will be used. The decision of the USDA/USDC representative as to conformance or nonconformance shall be final. It will be within the discretion of USDA/USDC whether to assess reinspection costs against the contractor.

(b) When origin inspection is performed by the USDA or USDC and supplies are found to be nonconforming at destination, the contractor may petition the contracting officer to obtain permission for a single reinspection, provided such petition provides valid technical reasons to believe the destination inspection findings were erroneous. The reinspection shall be performed in accordance with the original destination inspection criteria unless otherwise specified by the contracting officer.

(1) Reinspection of nonconforming supplies for grading factors, suspicion of fraud or substitution shall be conducted by the applicable origin inspection agency (USDA for meats and poultry, or USDC for waterfoods). All costs associated with USDA/USDC reinspection shall be borne by the contractor unless the reinspection results establish compliance with contractual requirements, in which case costs shall be borne by the government.

**Addendum to 52.212-4 (continued)**

(2) Reinspection for all other criteria shall be accomplished by the Military Medical/Veterinary Services, as coordinated by the contracting officer with the applicable Military Medical/Veterinary Service Headquarters. The Military Medical/Veterinary Service Headquarters will designate the activity assigned to perform the reinspection and advise the contracting officer and the designated activity of the reinspection schedule. Reinspection shall be performed by personnel other than those involved in the original destination inspection. Reinspection costs shall be borne by the contractor when reinspection results substantiate the nonconformance. The government shall bear the costs of reinspection if the products are in compliance with contractual requirements.

(c) When inspection by the USDA or USDC is not a contract requirement and supplies are found nonconforming at destination, the contractor may petition the contracting officer one time only to obtain permission for a single reinspection provided such petition provides valid technical reasons to believe the original inspection findings were erroneous. If the contracting officer authorizes a reinspection, the reinspection results shall be final if they differ from the original inspection to such a statistically significant degree that error in the original results is probable. Otherwise, the original inspection results shall prevail. The reinspection/formal review shall be performed in accordance with the original inspection criteria, unless otherwise specified. All costs associated with the reinspection shall be borne by the contractor unless the reinspection results establish compliance with the contract requirements in which case costs shall be assumed by the government. Reinspection shall not be authorized when original inspection findings show that the supplies are unwholesome or contain a deleterious substance.

(d) The contractor may elect to petition the contracting officer to grant a waiver of those contract requirements for which supplies have been found nonconforming and accept the supplies "as is" with appropriate price consideration. However, if the contractor intends to exercise any option under (a), (b) or (c) above, the contractor must do so prior to requesting a waiver. The denial of a waiver by the contracting officer will result in final rejection of the nonconforming supplies without recourse to reinspection.

*NOTE: If there is any discrepancy between this clause, 52.246-9025 Reinspection of Nonconforming Supplies (APR 2008) DLAD, and the Section E clauses entitled "General Inspection (Examination/Testing) Requirements", "Request for Rework, Request for Waiver, Request for Deviation, or Reinspection of Nonconforming Supplies", and "Rework of Nonconforming Product Pre or Post Acceptance", the requirements of "General Inspection (Examination/Testing) Requirements", "Request for Rework, Request for Waiver, Request for Deviation, or Reinspection of Nonconforming Supplies", and "Rework of Nonconforming Product Pre or Post Acceptance" shall take precedence. After any lot's failure or rework, if the lot is reinspected, it will be both Contractor and Government inspected at the next higher sample size.*

**52.246-9039 REMOVAL OF GOVERNMENT IDENTIFICATION FROM NON-ACCEPTED SUPPLIES (APR 2008) DLAD**

(a) The contractor shall remove or obliterate from a rejected end item and its packing and packaging, any marking, symbol, or other representation that the end item or any part of it has been produced or manufactured for the United States Government. Removal or obliteration shall be accomplished prior to any donation, sale, or disposal in commercial channels. The Contractor, in making disposition in commercial channels of rejected supplies, is responsible for compliance with requirements of the Federal Trade Commission Act (15 USC 45 et seq) and the Federal Food, Drug and Cosmetic Act (21 USC 301 et seq), as well as other Federal or State laws and regulations promulgated pursuant thereto.

**Addendum to 52.212-4 (continued)**

(b) Unless otherwise authorized by the contracting officer, the contractor is responsible for removal or obliteration of government identifications within 72 hours of rejection of nonconforming supplies including supplies manufactured for the Government but not offered or supplies transferred from the Government's account to the cold storage contractor's account at origin or destination. (For product rejected at destination and returned to the contractor's plant, the 72 hour period starts with the time of contractor receipt of returned product). After removal or obliteration is accomplished and prior to disposition, the contractor must notify the Government inspector.

**NOTICE:** The following Federal Acquisition Regulation clauses are incorporated by reference:

- 52.209-6        **PROTECTING THE GOVERNMENT'S INTEREST WHEN  
SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR  
PROPOSED FOR DEBARMENT (SEP 2006)**
- 52.-242-13    **BANKRUPTCY (JUL 1995)**
- 52.242-15    **STOP-WORK ORDER (AUG. 1989)**
- 52.246-2     **INSPECTION OF SUPPLIES - FIXED PRICE (AUG 1996)**
- 252.209-7001 **DISCLOSURE OF OWNERSHIP OR CONTROL BY THE GOVERNMENT OF A  
TERRORIST COUNTRY (JAN 2009)**
- 252.209-7004 **SUBCONTRACTING WITH FIRMS THAT ARE OWNED OR CONTROLLED  
BY THE GOVERNMENT OF A TERRORIST COUNTRY (DEC 2006)**
- 252.225-7002 **QUALIFYING COUNTRY SOURCES AS SUBCONTRACTORS (APR 2003)**
- 52.233-9000 **AGENCY PROTESTS (SEP 1999) - DLAD**
- 52.247-9012 **REQUIREMENTS FOR TREATMENT OF WOOD PACKAGING MATERIAL  
(WPM) - (FEB 2007) - DLAD**

**ADDENDUM TO FAR CLAUSE 52.212-4  
(ENDS)**

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