

AWARD/CONTRACT		1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 350)	RATING DO C1	PAGE OF 1	PAGE 2
2. CONTRACT (Proc. Inst. Ident.) NO. SPM3S1-06-D-Z118		3. EFFECTIVE DATE 20 DEC 2005	4. REQUISITION/PURCHASE REQUEST/PROJECT NO. Various		
5. ISSUED BY Defense Supply Center Philadelphia 700 Robbins Avenue DSCP-FTRAC Philadelphia, PA 19111-5092 Attn: Sandra Murray (215) 737-7338		CODE SPM3S1	6. ADMINISTERED BY (If other than Item 5) DCMC San Antonio P.O. Box 1040 San Antonio, Tx 78294-1040		CODE S4404A

7. NAME AND ADDRESS OF CONTRACTOR (No. street, city, county, State and ZIP Code) Sterling Foods, Ltd. 1075 Arion Parkway San Antonio, TX 78216		8. DELIVERY <input type="checkbox"/> FOB ORIGIN <input checked="" type="checkbox"/> OTHER (See below)	
CODE 7M712		FACILITY CODE	
11. SHIP TO/MARK FOR CODE		12. PAYMENT WILL BE MADE BY CODE	
SEE SCHEDULE		DFAS -BVDP (SL4701) P.O. BOX 369031 COLUMBUS, OH 43236-9031	
13. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: <input type="checkbox"/> 10 USC 2304(c) <input type="checkbox"/> 41 USC 253(c)		14. ACCOUNTING AND APPROPRIATION DATA BX: 97X4930 5CBX 001 2630 S33189	
15A. ITEM NO.		15B. SUPPLIES/SERVICES	
15C. QUANTITY		15D. UNIT	
15E. UNIT PRICE		15F. AMOUNT	
SEE ATTACHED SCHEDULE			
15G. TOTAL AMOUNT OF CONTRACT			\$ 39,911,331.10

SEE SCHEDULE

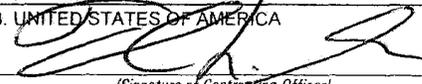
SEE BLOCK 12 SL4701

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CONTRACTING OFFICER WILL COMPLETE ITEM 17 OR 18 AS APPLICABLE

17. <input type="checkbox"/> CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign this document and return copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. (Attachments are listed herein.)	18. <input checked="" type="checkbox"/> AWARD (Contractor is not required to sign this document.) Your offer on Solicitation Number SPM300-05-R-7053 *cont. including the additions or changes made by you which additions or changes are set forth in full above, is hereby accepted as to the items listed above and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) the Government's solicitation and your offer, and (b) this award/contract. No further contractual document is necessary.
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19A. NAME AND TITLE OF SIGNER (Type or print)		20A. NAME OF CONTRACTING OFFICER	
19B. NAME OF CONTRACTOR		THOMAS L. GORDON	
19C. DATE SIGNED		20B. UNITED STATES OF AMERICA	
BY _____ (Signature of person authorized to sign)		BY  (Signature of Contracting Officer)	
		20C. DATE SIGNED 12/20/05	

Contractor: Sterling Foods, Ltd.

Section B – Supplies/Services and Prices

Sterling Foods, Ltd. – Base Year quantities and unit prices

0001 Cake, Shelf Stable, Carrot Pound Cake, Water Activity Stabilized, 2.5 oz., flexibly packaged, Type I, Flavor 10 PCR-C-007C, NSN: 8920-01-512-7624

Wornick	.5242
Ameriqua	.5298
Sopakco	.5338
Minimum Quantity	1,000,000
Maximum Quantity	3,333,333
Estimated maximum dollar value	\$1,764,331.10

0002 Fudge Brownie with Chocolate Drops, Water Activity Stabilized, flexibly packaged, Type II, Flavor 1 PCR-C-007C, NSN: 8920-01-381-5715

Wornick	.5242
Ameriqua	.5298
Sopakco	.5338
Minimum Quantity	1,500,000
Maximum Quantity	5,000,000
Estimated maximum dollar value	\$2,646,500.00

0003 Muffin tops, Shelf Stable Chocolate Banana Nut, Type III, Flavor 1. NSN: 8920-01-527-8069

Wornick	.5232
Ameriqua	.5288
Sopakco	.5328
Minimum Quantity	1,500,000
Maximum Quantity	5,000,000
Estimated maximum dollar value	\$2,641,500.00

0004 Wheat Snack Bread, Shelf Stable, Fortified, min 2 oz. (56.7 g), flexibly packaged, PCR-S-009, NSN: 8920-01-458-7325

Wornick	.3626
Ameriqua	.3661
SOPAKCO	.3686
Minimum Quantity	19,500,000
Maximum Quantity	65,000,000
Estimated maximum dollar value	\$23,777,000.00

Contractor: Sterling Foods, Ltd.

Section B – Supplies/Services and Prices

0005 Cinnamon Scone, Packaged in a flexible pouch, Shelf Stable, PCR-S-014.
NSN: 8920-01-525-3548

Wornick	.4830
Amerigual	.4870
Sopakco	.4898
Minimum Quantity	1,500,000
Maximum Quantity	5,000,000
Estimated maximum dollar value	\$2,433,000.00

.4866
729900

0006 Caramel Apple Ranger Bar, 1.5 oz., packaged in a flexible pouch, Shelf Stable, PCR-R-008, Flavor II (for Meal, Ready to Eat), NSN: 8920-01-523-6354

Wornick	.4515
Amerigual	.4535
Sopakco	.4549
Minimum Quantity	1,500,000
Maximum Quantity	5,000,000
Estimated maximum dollar value	\$ 2,266,500.00

.4533
679,950

0007 Cookie, with pan coated chocolate disks, packaged in a flexible pouch, PCR-C-031. NSN: 8920-01-493-4545.

Wornick	.3630
Amerigual	.3670
Sopakco	.3698
Minimum Quantity	750,000
Maximum Quantity	2,500,000
Estimated maximum dollar value	\$ 916,500.00

.3666
274950

0008 Cookie, Chocolate mint with chocolate chips, CID A-A-20295B, Style J, Flavor 8, NSN: 8920-01-493-4656.

Wornick	.3630
Amerigual	.3670
Sopakco	.3698
Minimum Quantity	750,000
Maximum Quantity	2,500,000
Estimated maximum dollar value	\$ 916,500.00

.3666
274,950

0009 Cookie, Molasses, CID A-A-20295B, Style M. NSN: 8920-01-512-7618

Wornick	.3230
Amerigual	.3270
Sopakco	.3298

.3266
244950

Section B – Supplies/Services and Prices

Minimum Quantity 750,000
Maximum Quantity 2,500,000
Estimated maximum dollar value \$ 816,500.00

0010 Cookie, White Chocolate raspberry, CID A-A-20295B, Style Q. NSN: 8920-01-525-3557.

Wornick .3630
Amerigual .3670
Sopakco .3698
Minimum Quantity 750,000
Maximum Quantity 2,500,000
Estimated maximum dollar value \$ 916,500.00

*.3666
274,950*

0011 Cookie, Oatmeal, CID A-A-20295B, Style I, flavor 1. NSN: 8920-00-149-0794.

Wornick .3230
Amerigual .3270
SOPAKCO .3298
Minimum Quantity 750,000
Maximum Quantity 2,500,000
Estimated maximum dollar value \$ 816,500.00
Estimated maximum dollar value for the base year \$39,911,331.10.
The effective period of the basic contract is from December 20, 2005 through December 19, 2006.

*.3666
274,950*

Option Year One Quantities and unit prices:

0001 Cake, Shelf Stable, Carrot Pound Cake, Water Activity Stabilized, 2.5 oz., flexibly packaged, Type I, Flavor 10 PCR-C-007C, NSN: 8920-01-512-7624

Wornick .5663
Amerigual .5720
Sopakco .5760
Minimum Quantity 833,333
Maximum Quantity 2,800,000
Estimated maximum dollar value \$1,599,920.00

12,003,400

0002 Fudge Brownie with Chocolate Drops, Water Activity Stabilized, flexibly packaged, Type II, Flavor 1 PCR-C-007C, NSN: 8920-01-381-5715

Wornick .5663
Amerigual .5720
Sopakco .5760
Minimum Quantity 1,250,000
Maximum Quantity 4,200,000

Contractor: Sterling Foods, Ltd.

Section B – Supplies/Services and Prices

Estimated maximum dollar value \$2,399,880.00

0003 Muffin tops, Shelf Stable Chocolate Banana Nut, Type III, Flavor 1. NSN: 8920-01-527-8069

Wornick	.5693
Ameriqua	.5750
Sopakco	.5790

Minimum Quantity 1,250,000

Maximum Quantity 4,200,000

Estimated maximum dollar value \$2,412,480.00

0004 Wheat Snack Bread, Shelf Stable, Fortified, min 2 oz. (56.7 g), flexibly packaged, PCR-S-009, NSN: 8920-01-458-7325

Wornick	.3867
Ameriqua	.3902
Sopakco	.3928

Minimum Quantity 16,250,000

Maximum Quantity 54,000,000

Estimated maximum dollar value \$21,054,600.00

0005 Cinnamon Scone, Packaged in a flexible pouch, Shelf Stable, PCR-S-014. NSN: 8920-01-525-3548

Wornick	.5460
Ameriqua	.5501
Sopakco	.5530

Minimum Quantity 1,250,000

Maximum Quantity 4,200,000

Estimated maximum dollar value \$2,308,740.00

0006 Caramel Apple Ranger Bar, 1.5 oz., packaged in a flexible pouch, Shelf Stable, PCR-R-008, Flavor II (for Meal, Ready to Eat), NSN: 8920-01-523-6354

Wornick	.4755
Ameriqua	.4776
Sopakco	.4790

Minimum Quantity 1,250,000

Maximum Quantity 4,200,000

Estimated maximum dollar value \$2,005,080.00

0007 Cookie, with pan coated chocolate disks, packaged in a flexible pouch, PCR-C-031. NSN: 8920-01-493-4545.

Wornick	.3830
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Contractor: Sterling Foods, Ltd.

Section B – Supplies/Services and Prices

Ameriqua	.3871
Sopakco	.3900
Minimum Quantity	625,000
Maximum Quantity	2,100,000

Estimated maximum dollar value \$ 812,070.00

0008 Cookie, Chocolate mint with chocolate chips, CID A-A-20295B, Style J, Flavor 8, NSN: 8920-01-493-4656.

Wornick	.3830
Ameriqua	.3871
Sopakco	.3900
Minimum Quantity	625,000
Maximum Quantity	2,100,000

Estimated maximum dollar value \$ 812,070.00

0009 Cookie, Molasses, CID A-A-20295B, Style M. NSN: 8920-01-512-7618

Wornick	.3480
Ameriqua	.3521
Sopakco	.3550
Minimum Quantity	625,000
Maximum Quantity	2,100,000

Estimated maximum dollar value \$ 738,570.00

0010 Cookie, White Chocolate raspberry, CID A-A-20295B, Style Q. NSN: 8920-01-525-3557.

Wornick	.3830
Ameriqua	.3671
Sopakco	.3900
Minimum Quantity	625,000
Maximum Quantity	2,100,000

Estimated maximum dollar value \$ 812,070.00

0011 Cookie, Oatmeal, CID A-A-20295B, Style I, flavor 1. NSN: 8920-00-149-0794.

Wornick	.3480
Ameriqua	.3521
Sopakco	.3550
Minimum Quantity	625,000
Maximum Quantity	2,100,000

Estimated maximum dollar value \$ 738,570.00

Estimated maximum dollar value for option year one \$35,694,050.00.

Contractor: Sterling Foods, Ltd.

Section B – Supplies/Services and Prices

The effective period of option year one is from December 20, 2006 through December 19, 2007.

Option Year Two Quantities and unit prices:**0001 Cake, Shelf Stable, Carrot Pound Cake, Water Activity Stabilized, 2.5 oz., flexibly packaged, Type I, Flavor 10 PCR-C-007C, NSN: 8920-01-512-7624**

Wornick	.5774
Amerigual	.5832
Sopakco	.5873
Minimum Quantity	833,333
Maximum Quantity	2,800,000
Estimated maximum dollar value \$1,631,280.00	

0002 Fudge Brownie with Chocolate Drops, Water Activity Stabilized, flexibly packaged, Type II, Flavor 1 PCR-C-007C, NSN: 8920-01-381-5715

Wornick	.5774
Amerigual	.5832
Sopakco	.5873
Minimum Quantity	1,250,000
Maximum Quantity	4,200,000
Estimated maximum dollar value \$2,446,920.00	

0003 Muffin tops, Shelf Stable Chocolate Banana Nut, Type III, Flavor 1. NSN: 8920-01-527-8069

Wornick	.5804
Amerigual	.5862
Sopakco	.5903
Minimum Quantity	1,250,000
Maximum Quantity	4,200,000
Estimated maximum dollar value \$2,459,520.00	

0004 Wheat Snack Bread, Shelf Stable, Fortified, min 2 oz. (56.7 g), flexibly packaged, PCR-S-009, NSN: 8920-01-458-7325

Wornick	.3947
Amerigual	.3983
Sopakco	.4009
Minimum Quantity	16,250,000
Maximum Quantity	54,000,000
Estimated maximum dollar value \$21,492,000.00	

Contractor: Sterling Foods, Ltd.

Section B – Supplies/Services and Prices

**0005 Cinnamon Scone, Packaged in a flexible pouch, Shelf Stable, PCR-S-014.
NSN: 8920-01-525-3548**

Wornick	.5571
Ameriqua	.5612
Sopakco	.5642
Minimum Quantity	1,250,000
Maximum Quantity	4,200,000
Estimated maximum dollar value \$2,355,360.00.	

0006 Caramel Apple Ranger Bar, 1.5 oz., packaged in a flexible pouch, Shelf Stable, PCR-R-008, Flavor II (for Meal, Ready to Eat), NSN: 8920-01-523-6354

Wornick	.4846
Ameriqua	.4866
Sopakco	.4881
Minimum Quantity	1,250,000
Maximum Quantity	4,200,000
Estimated maximum dollar value \$2,042,880.00.	

0007 Cookie, with pan coated chocolate disks, packaged in a flexible pouch, PCR-C-031. NSN: 8920-01-493-4545.

Wornick	.3911
Ameriqua	.3952
Sopakco	.3982
Minimum Quantity	625,000
Maximum Quantity	2,100,000
Estimated maximum dollar value \$ 829,080.00.	

0008 Cookie, Chocolate mint with chocolate chips, CID A-A-20295B, Style J, Flavor 8, NSN: 8920-01-493-4656.

Wornick	.3911
Ameriqua	.3952
Sopakco	.3982
Minimum Quantity	625,000
Maximum Quantity	2,100,000
Estimated maximum dollar value \$ 829,080.00.	

0009 Cookie, Molasses, CID A-A-20295B, Style M. NSN: 8920-01-512-7618

Wornick	.3551
Ameriqua	.3592
Sopakco	.3622
Minimum Quantity	625,000

Contractor: Sterling Foods, Ltd.

Section B – Supplies/Services and Prices

Maximum Quantity 2,100,000
 Estimated maximum dollar value \$ 753,480.00.

0010 Cookie, White Chocolate raspberry, CID A-A-20295B, Style Q. NSN: 8920-01-525-3557.

Wornick .3911
 Ameriqua .3952
 Sopakco .3982
 Minimum Quantity 625,000
 Maximum Quantity 2,100,000
 Estimated maximum dollar value \$ 829,080.00.

0011 Cookie, Oatmeal, CID A-A-20295B, Style I, flavor 1. NSN: 8920-00-149-0794.

Wornick .3551
 Ameriqua .3592
 Sopakco .3622
 Minimum Quantity 625,000
 Maximum Quantity 2,100,000
 Estimated maximum dollar value \$ 753,480.00
 Estimated dollar value for option year two \$36,422,160.00
 The effective period of option year two is from December 20, 2007 through December 19, 2008.

Option Year three Quantities and unit prices:**0001 Cake, Shelf Stable, Carrot Pound Cake, Water Activity Stabilized, 2.5 oz., flexibly packaged, Type I, Flavor 10 PCR-C-007C, NSN: 8920-01-512-7624**

Wornick .5895
 Ameriqua .5954
 Sopakco .5996
 Minimum Quantity 833,333
 Maximum Quantity 2,800,000
 Estimated maximum dollar value \$1,665,440.00

0002 Fudge Brownie with Chocolate Drops, Water Activity Stabilized, flexibly packaged, Type II, Flavor 1 PCR-C-007C, NSN: 8920-01-381-5715

Wornick .5895
 Ameriqua .5954
 Sopakco .5996
 Minimum Quantity 1,250,000
 Maximum Quantity 4,200,000
 Estimated maximum dollar value \$2,498,160.00

Contractor: Sterling Foods, Ltd.

Section B – Supplies/Services and Prices

0003 Muffin tops, Shelf Stable Chocolate Banana Nut, Type III, Flavor 1. NSN: 8920-01-527-8069

Wornick	.5925
Ameriqua	.5984
Sopakco	.6026
Minimum Quantity	1,250,000
Maximum Quantity	4,200,000
Estimated maximum dollar value	\$2,510,760.00

0004 Wheat Snack Bread, Shelf Stable, Fortified, min 2 oz. (56.7 g), flexibly packaged, PCR-S-009, NSN: 8920-01-458-7325

Wornick	.4028
Ameriqua	.4065
Sopakco	.4091
Minimum Quantity	16,250,000
Maximum Quantity	54,000,000
Estimated maximum dollar value	\$21,929,400.00

0005 Cinnamon Scone, Packaged in a flexible pouch, Shelf Stable, PCR-S-014. NSN: 8920-01-525-3548

Wornick	.5682
Ameriqua	.5724
Sopakco	.5754
Minimum Quantity	1,250,000
Maximum Quantity	4,200,000
Estimated maximum dollar value	\$2,402,400.00

0006 Caramel Apple Ranger Bar, 1.5 oz., packaged in a flexible pouch, Shelf Stable, PCR-R-008, Flavor II (for Meal, Ready to Eat), NSN: 8920-01-523-6354

Wornick	.4946
Ameriqua	.4967
Sopakco	.4982
Minimum Quantity	1,250,000
Maximum Quantity	4,200,000
Estimated maximum dollar value	\$2,085,300.00

0007 Cookie, with pan coated chocolate disks, packaged in a flexible pouch, PCR-C-031. NSN: 8920-01-493-4545.

Wornick	.3982
Ameriqua	.4024
Sopakco	.4054

Contractor: Sterling Foods, Ltd.

Section B – Supplies/Services and Prices

Minimum Quantity 625,000
 Maximum Quantity 2,100,000
 Estimated maximum dollar value \$ 844,200.00

0008 Cookie, Chocolate mint with chocolate chips, CID A-A-20295B, Style J, Flavor 8, NSN: 8920-01-493-4656.

Wornick .3982
 Ameriqua .4024
 Sopakco .4054
 Minimum Quantity 625,000
 Maximum Quantity 2,100,000
 Estimated maximum dollar value \$ 844,200.00

0009 Cookie, Molasses, CID A-A-20295B, Style M. NSN: 8920-01-512-7618

Wornick .3622
 Ameriqua .3664
 Sopakco .3694
 Minimum Quantity 625,000
 Maximum Quantity 2,100,000
 Estimated maximum dollar value \$ 768,600.00

0010 Cookie, White Chocolate raspberry, CID A-A-20295B, Style Q. NSN: 8920-01-525-3557.

Wornick .3982
 Ameriqua .4024
 Sopakco .4054
 Minimum Quantity 625,000
 Maximum Quantity 2,100,000
 Estimated maximum dollar value \$ 844,200.00

0011 Cookie, Oatmeal, CID A-A-20295B, Style I, flavor 1. NSN: 8920-00-149-0794.

Wornick .3622
 Ameriqua .3664
 Sopakco .3694
 Minimum Quantity 625,000
 Maximum Quantity 2,100,000
 Estimated maximum dollar value \$ 768,600.00

Estimated dollar value for option year three \$37,161,260.00.

The effective period of option year three is from December 20, 2008 through December 19, 2009.

Contractor: Sterling Foods, Ltd.

Section B – Supplies/Services and Prices

Option Year four Quantities and unit prices:

0001 Cake, Shelf Stable, Carrot Pound Cake, Water Activity Stabilized, 2.5 oz., flexibly packaged, Type I, Flavor 10 PCR-C-007C, NSN: 8920-01-512-7624

Wornick	.6005
Ameriqua	.6066
Sopakco	.6109
Minimum Quantity	833,333
Maximum Quantity	2,800,000
Estimated maximum dollar value	\$1,696,800.00

0002 Fudge Brownie with Chocolate Drops, Water Activity Stabilized, flexibly packaged, Type II, Flavor 1 PCR-C-007C, NSN: 8920-01-381-5715

Wornick	.6005
Ameriqua	.6066
Sopakco	.6109
Minimum Quantity	1,250,000
Maximum Quantity	4,200,000
Estimated maximum dollar value	\$2,545,200.00

0003 Muffin tops, Shelf Stable Chocolate Banana Nut, Type III, Flavor 1. NSN: 8920-01-527-8069

Wornick	.6045
Ameriqua	.6106
Sopakco	.6149
Minimum Quantity	1,250,000
Maximum Quantity	4,200,000
Estimated maximum dollar value	\$2,562,000.00

0004 Wheat Snack Bread, Shelf Stable, Fortified, min 2 oz. (56.7 g), flexibly packaged, PCR-S-009, NSN: 8920-01-458-7325

Wornick	.4108
Ameriqua	.4146
Sopakco	.4173
Minimum Quantity	16,250,000
Maximum Quantity	54,000,000
Estimated maximum dollar value	\$22,366,800.00

0005 Cinnamon Scone, Packaged in a flexible pouch, Shelf Stable, PCR-S-014. NSN: 8920-01-525-3548

Wornick	.5792
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Contractor: Sterling Foods, Ltd.

Section B – Supplies/Services and Prices

Amerigual .5835
 Sopakco .5866
 Minimum Quantity 1,250,000
 Maximum Quantity 4,200,000
 Estimated maximum dollar value \$2,463,720.00

0006 Caramel Apple Ranger Bar, 1.5 oz., packaged in a flexible pouch, Shelf Stable, PCR-R-008, Flavor II (for Meal, Ready to Eat), NSN: 8920-01-523-6354

Wornick .5046
 Amerigual .5068
 Sopakco .5083
 Minimum Quantity 1,250,000
 Maximum Quantity 4,200,000
 Estimated maximum dollar value \$2,127,720.00

0007 Cookie, with pan coated chocolate disks, packaged in a flexible pouch, PCR-C-031. NSN: 8920-01-493-4545.

Wornick .4062
 Amerigual .4105
 Sopakco .4136
 Minimum Quantity 625,000
 Maximum Quantity 2,100,000
 Estimated maximum dollar value \$ 861,210.00

0008 Cookie, Chocolate mint with chocolate chips, CID A-A-20295B, Style J, Flavor 8, NSN: 8920-01-493-4656.

Wornick .4062
 Amerigual .4105
 Sopakco .4136
 Minimum Quantity 625,000
 Maximum Quantity 2,100,000
 Estimated maximum dollar value \$ 861,210.00

0009 Cookie, Molasses, CID A-A-20295B, Style M. NSN: 8920-01-512-7618

Wornick .3692
 Amerigual .3735
 Sopakco .3766
 Minimum Quantity 625,000
 Maximum Quantity 2,100,000
 Estimated maximum dollar value \$ 783,510.00.

Contractor: Sterling Foods, Ltd.

Section B – Supplies/Services and Prices**0010 Cookie, White Chocolate raspberry, CID A-A-20295B, Style Q. NSN: 8920-01-525-3557.**

Wornick	.4062
Ameriqua	.4105
Sopakco	.4136
Minimum Quantity	625,000
Maximum Quantity	2,100,000
Estimated maximum dollar value	\$ 861,210.00.

0011 Cookie, Oatmeal, CID A-A-20295B, Style I, flavor 1. NSN: 8920-00-149-0794.

Wornick	.3692
Ameriqua	.3735
SOPAKCO	.3766
Minimum Quantity	625,000
Maximum Quantity	2,100,000
Estimated maximum dollar value	\$ 783,510.00.
Estimated dollar value for option year four	is \$37,912,890.00.
The effective period of option year four	is from December 20, 2009 through December 19, 2010.

The contractor is alerted to the fact that delivery order SPM3S1-06-D-Z118 0001 will be issued under separate cover, at a later date.

The following inspection responsibilities apply:

FOB: Destination

Inspection: Origin – contractor paid USDA for all lines.

The following is the responsible USDA Inspection Office

USDA, AMS FV PPB
3622 Moreland Drive
Weslaco, TX 78596-9131
Dwain Parrish, OIC
Phone: (956) 514-5562

Remit to:
Sterling Foods, LTD.
1075 Arion Parkway
San Antonio, TX 78216

52.212-4 CONTRACT TERMS AND CONDITIONS -- COMMERCIAL ITEMS (OCT 2003)

(a) Inspection/Acceptance. (See addendum)

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. 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 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 Government wide 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

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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. (see addendum for additional requirements)

(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.

(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.

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(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 immediately notify the Contracting Officer and request instructions for disposition of the overpayment.

(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

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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.

(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. (See addendum)

(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. 327, 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; and
- (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.

(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.

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

1. Paragraph (a) delete in its entirety and insert pages 22 through 40 (of solicitation) and all clauses in this solicitation that pertain to inspection and acceptance.
2. Paragraph (g) see page 40 (of solicitation) for additional requirements.
3. Paragraph (i), Payment.

[] Delete the 1st sentence and substitute the following: **Fast Payment** procedures apply. The Government will pay invoices based on the Contractor's delivery of supplies to a post office or common carrier (or, in shipments by other means), to the point of first receipt by the Government.

4. Paragraph (o) Add warranty clause pages 99, 100 and 101.

5. Paragraph (t), Central Contractor Registration (CCR).

Add the following:

(5) Definitions.

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

"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 and has marked the records "Active".

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52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS--COMMERCIAL ITEMS (JAN 2005)

(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) **52.233-3**, Protest after Award (AUG 1996) (31 U.S.C. 3553).

(2) **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:

(1) **52.203-6**, Restrictions on Subcontractor Sales to the Government (JUL 1995), with Alternate I (OCT 1995) (41 U.S.C. 253g and 10 U.S.C. 2402).

(2) **52.219-3**, Notice of Total HUBZone Set-Aside (Jan 1999) (15 U.S.C. 2402).

(3) **52.219-4**, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Jan 1999) (if the offeror elects to waive the preference, it shall so indicate in its offer) (15 U.S.C. 657a).

(4)(i) **52.219-5**, Very Small Business Set-Aside (JUN 2003) (Pub. L. 103-403, section 304, Small Business Reauthorization and Amendments Act of 1994).

(4)(ii) **Alternate I** (MAR 1999) of 52.219-5.

(4)(iii) **Alternate II** (JUN 2003) of 52.219-5.

(5)(i) **52.219-6**, Notice of Total Small Business Set-Aside (JUN 2003) (15 U.S.C. 644).

(5)(ii) **Alternate I** (OCT 1995) of 52.219-6.

(5)(iii) **Alternate II** (MAR 2004) of 52.219-6

(6)(i) **52.219-7**, Notice of Partial Small Business Set-Aside (JUN 2003)

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- (15 U.S.C. 644).
- ___ (6)(ii) **Alternate I** (OCT 1995) of 52.219-7
- ___ (6)(iii) **Alternate II** (MAR 2004) of 52.219-7
- ___ (7) **52.219-8, Utilization of Small Business Concerns** (MAY 2004) (15 U.S.C. 637 (d)(2) and (3)).
- ___ (8)(i) **52.219-9, Small Business Subcontracting Plan** (JAN 2002) U.S.C. 637 (d)(4)).
- ___ (8)(ii) **Alternate I** (OCT 2001) of 52.219-9
- ___ (8)(iii) **Alternate II** (OCT 2001) of 52.219-9
- ___ (9) **52.219-14, Limitations on Subcontracting** (DEC 1996) (15 U.S.C. 637(a)(14)).
- ___ (10)(i) **52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns** (JUN 2003) (Pub L. 103-355, section 7102, and 10 U.S.C. 2323) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).
- ___ (10)(ii) **Alternate I** (JUN 2003) of 52.219-23.
- ___ (11) **52.219-25, Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting** (OCT 1999) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
- ___ (12) **52.219-26, Small Disadvantaged Business Participation Program—Incentive Subcontracting** (OCT 2000) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
- ___ (13) **52.219-27, Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside** (MAY 2004)
- ___ (14) **52.222-3, Convict Labor** (JUN 2003) (E.O. 11755).
- X (15) **52.222-19, Child Labor—Cooperation with Authorities and Remedies** (JUN 2004) (E.O. 13126).
- X (16) **52.222-21, Prohibition of Segregated Facilities** (Feb 1999).
- X (17) **52.222-26, Equal Opportunity** (APR 2002) (E.O. 11246).
- X (18) **52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans** (DEC 2001) (38 U.S.C. 4212).

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- X (19) **52.222-36**, Affirmative Action for Workers with Disabilities (JUN 1998) (29 U.S.C. 793).
- X (20) **52.222-37**, Employment Reports on Special Disabled Veterans,
Veterans of the Vietnam Era, and Other Eligible Veterans
(DEC 2001) (38 U.S.C. 4212).
- ___ (21) **52.222-39**, Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004) (E.O. 13201).
- ___ (22)(i) **52.223-9**, Estimate of Percentage of Recovered Material Content for EPA- Designated Products (AUG 2000) (42 U.S.C. 6962(c)(3)(A)(ii)).
- ___ (22)(ii) **Alternate I** (AUG 2000) of 52.223-9 (42 U.S.C. 6962(i)(2)(C)).
- Paragraphs (23) through (25) are not applicable and have been deleted.*
- X (26) **52.225-13**, Restrictions on Certain Foreign Purchases (DEC 2003) (E.o.s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).
Paragraphs (27) and (28) are not applicable to DoD acquisitions and have been deleted.
- ___ (29) **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)).
- ___ (30) **52.232-30**, Installment Payments for Commercial Items (OCT 1995) (41 U.S.C. 225(f), 10 U.S.C. 2307(f)).
- X (31) **52.232-33**, Payment by Electronic Funds Transfer—Central Contractor Registration (OCT 2003) (31 U.S.C. 3332).
- ___ (32) **52.232-34**, Payment by Electronic Funds Transfer--Other than Central Contractor Registration (MAY 1999) (31 U.S.C. 3332).
- ___ (33) **52.232-36**, Payment by Third Party (MAY 1999) (31 U.S.C. 3332).
- ___ (34) **52.239-1**, Privacy or Security Safeguards (AUG 1996) (5 U.S.C. 552a)
- ___ (35)(i) **52.247-64**, Preference for Privately Owned U.S.-Flag Commercial

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Vessels (APR 2003) (46 U.S.C. Appx 1241 and 10 U.S.C. 2631).

____ (35)(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, as amended (MAY 1989)

(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)

(MAY 1989) 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 (FEB 2002) (29 U.S.C. 206 and 41

U.S.C. 351, et seq.).

____ (5) **52.222-47**, SCA Minimum Wages and Fringe Benefits Applicable to

Successor Contract Pursuant to Predecessor Contractor Collective

Bargaining Agreements (CBA) (MAY 1989) (41 U.S.C. 351, et seq.).

(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

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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) or (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in paragraphs (i) through (vii) of this paragraph in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—

(i) **52.219-8, Utilization of Small Business Concerns (MAY 2004)** (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 \$500,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(ii) **52.222-26, Equal Opportunity (APR 2002)** (E.O. 11246);

(iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001) (38 U.S.C. 4212);

(iv) **52.222-36, Affirmative Action for Workers with Disabilities (JUN 1998)** (29 U.S.C. 793);

(v) **52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004)** (E.O. 13201).

(vi) **52.222-41, Service Contract Act of 1965, as amended (MAY 1989)**, flow down required for all subcontracts subject to the Service Contract Act of 1965 (41 U.S.C. 351, et seq.).

(vii) **52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (APR 2003)** (46 U.S.C. Appx 1241 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.