

AWARD/CONTRACT		1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 350)	RATING DO C1	PAGE OF PAGES 1 17
2. CONTRACT (Proc. Inst. Ident.) NO. SPM3S1-06-D-Z134		3. EFFECTIVE DATE 14 FEB 2006	4. REQUISITION/PURCHASE REQUEST/PROJECT NO. VARIOUS	
5. ISSUED BY Defense Supply Center Philadelphia 700 Robbins Avenue DSCP-FTRAC Philadelphia, PA 19111-5092 Deborah Veneri (215) 737-7346		CODE SPM3S1	6. ADMINISTERED BY (If other than Item 5) DCMA Northern California P.O.Box 232 700 East Roth Road Bldg.330 Lathrop French Camp, CA 95231-0232	

7. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code) ABC Ventures 2411 Old Crow Canyon Rd. #105 San Ramon, CA 94583-3124		8. DELIVERY <input type="checkbox"/> FOB ORIGIN <input checked="" type="checkbox"/> OTHER (See below)
CODE 1VR02		FACILITY CODE
9. DISCOUNT FOR PROMPT PAYMENT IAW Basic		10. SUBMIT INVOICES (4 copies unless otherwise specified) TO THE ADDRESS SHOWN IN ITEM

11. SHIP TO/MARK FOR SEE SCHEDULE	CODE	12. PAYMENT WILL BE MADE BY DFAS-BVDP (SL4701) P.O. BOX 369031 COLUMBUS, OH 43236-9031	CODE SL4701
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13. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: <input type="checkbox"/> 10 U.S.C. 2304(c) () <input type="checkbox"/> 41 U.S.C. 253(c) ()	14. ACCOUNTING AND APPROPRIATION DATA BX 97X4930 5CBX 001 2630 S33189
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15A. ITEM NO.	15B. SUPPLIES/SERVICES	15C. QUANTITY	15D. UNIT	15E. UNIT PRICE	15F. AMOUNT
	SEE ATTACHED SCHEDULE				

15G. TOTAL AMOUNT OF CONTRACT \$ 6,695,420.00

16. TABLE OF CONTENTS

(X)	SEC.	DESCRIPTION	PAGE(S)	(X)	SEC.	DESCRIPTION	PAGE(S)
PART I - THE SCHEDULE				PART II - CONTRACT CLAUSES			
	A	SOLICITATION/CONTRACT FORM			I	CONTRACT CLAUSES	
	B	SUPPLIES OR SERVICES AND PRICES/COSTS		PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.			
	C	DESCRIPTION/SPECS./WORK STATEMENT			J	LIST OF ATTACHMENTS	
	D	PACKAGING AND MARKING		PART IV - REPRESENTATIONS AND INSTRUCTIONS			
	E	INSPECTION AND ACCEPTANCE			K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	
	F	DELIVERIES OR PERFORMANCE			L	INSTRS., CONDS., AND NOTICES TO OFFERORS	
	G	CONTRACT ADMINISTRATION DATA			M	EVALUATION FACTORS FOR AWARD	
	H	SPECIAL CONTRACT REQUIREMENTS					

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 <u>SPM300-05-R-7052* CONT.</u> , 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 condition 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. Amend 0001 thru 0005 Lts. from July 7, 2006
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19A. NAME AND TITLE OF SIGNER (Type or print)	20A. NAME OF CONTRACTING OFFICER THOMAS L. GORDON
19B. NAME OF CONTRACTOR	20B. UNITED STATES OF AMERICA
BY _____ (Signature of person authorized to sign)	BY  (Signature of Contracting Officer)
19C. DATE SIGNED	20C. DATE SIGNED 2/14/06

Section B – Supplies/Services and Prices

The following Product Demonstration Models, submitted by ABC Ventures, will be the standard for this contract: Jalapeno Catsup – Lot 5083; Barbecue Sauce – Lot 5014; Steak Sauce – Lot 5160.

ABC Ventures – Base Year Quantities and Unit Prices:

0001	Jalapeno Catsup, Flavored, 0.75 oz. flex pg, CID A-A-20346, Flavor V, Style B, NSN: 8959-01-523-7599	
	Wornick	\$0.0996
	Ameriqua	\$0.0986
	Sopackco	\$0.0986
	Average Unit Price:	\$0.0989
	Minimum Quantity: 1,500,000	
	Maximum Quantity: 5,000,000	
	Estimated maximum dollar value:	\$494,500.00
0002	Barbecue Sauce, plain, W/o added fruit purees, 1 oz. pg, CID A-A-20235, flavor 1, type B, NSN: 8950-01-487-1628	
	Wornick	\$0.0995
	Ameriqua	\$0.0984
	Sopackco	\$0.0984
	Average Unit Price:	\$0.0988
	Minimum Quantity: 1,500,000	
	Maximum Quantity: 5,000,000	
	Estimated maximum dollar value:	\$494,000.00
0003	Steak Sauce, 1 oz Pg, CID A-A-20092, Flavor I, NSN: 8950-01-522-0619	
	Wornick	\$0.1067
	Ameriqua	\$0.1056
	Sopackco	\$0.1056
	Average Unit Price:	\$0.1060
	Minimum Quantity: 1,500,000	
	Maximum Quantity: 5,000,000	
	Estimated maximum dollar value:	\$530,000.00

The estimated maximum dollar value for the base year is \$1,518,500.00.
The effective period of the basic contract is from February 13, 2006 through February 12, 2007.

Section B – Supplies/Services and Prices

Option Year One Quantities and Unit prices:

0001	Jalapeno Catsup, Flavored, 0.75 oz. flex pg, CID A-A-20346, Flavor V, Style B, NSN: 8959-01-523-7599	
	Wornick	\$0.1004
	Amerigual	\$0.0994
	Sopackco	\$0.0994
	Average Unit Price:	\$0.0997
	Minimum Quantity: 1,250,000	
	Maximum Quantity: 4,200,000	
	Estimated maximum dollar value:	\$418,740.00
0002	Barbecue Sauce, plain, W/o added fruit purees, 1 oz. pg, CID A-A-20235, flavor 1, type B, NSN: 8950-01-487-1628	
	Wornick	\$0.1004
	Amerigual	\$0.0992
	Sopackco	\$0.0992
	Average Unit Price:	\$0.0996
	Minimum Quantity: 1,250,000	
	Maximum Quantity: 4,200,000	
	Estimated maximum dollar value:	\$418,320.00
0003	Steak Sauce, 1 oz Pg, CID A-A-20092, Flavor I, NSN: 8950-01-522-0619	
	Wornick	\$0.1076
	Amerigual	\$0.1065
	Sopackco	\$0.1065
	Average Unit Price:	\$0.1069
	Minimum Quantity: 1,250,000	
	Maximum Quantity: 4,200,000	
	Estimated maximum dollar value:	\$448,980.00

The estimated maximum dollar value for the base year is \$1,286,040.00.
The effective period of Option Year One is from February 13, 2007 through February 12, 2008.

Section B – Supplies/Services and Prices

Option Year Two Quantities and Unit prices:

0001	Jalapeno Catsup, Flavored, 0.75 oz. flex pg, CID A-A-20346, Flavor V, Style B, NSN: 8959-01-523-7599	
	Wornick	\$0.1013
	Ameriqua	\$0.1003
	Sopackco	\$0.1003
	Average Unit Price:	\$0.1006
	Minimum Quantity: 1,250,000	
	Maximum Quantity: 4,200,000	
	Estimated maximum dollar value:	\$422,520.00
0002	Barbecue Sauce, plain, W/o added fruit purees, 1 oz. pg, CID A-A-20235, flavor 1, type B, NSN: 8950-01-487-1628	
	Wornick	\$0.1012
	Ameriqua	\$0.1000
	Sopackco	\$0.1000
	Average Unit Price:	\$0.1004
	Minimum Quantity: 1,250,000	
	Maximum Quantity: 4,200,000	
	Estimated maximum dollar value:	\$421,680.00
0003	Steak Sauce, 1 oz Pg, CID A-A-20092, Flavor I, NSN: 8950-01-522-0619	
	Wornick	\$0.1086
	Ameriqua	\$0.1074
	Sopackco	\$0.1074
	Average Unit Price:	\$0.1078
	Minimum Quantity: 1,250,000	
	Maximum Quantity: 4,200,000	
	Estimated maximum dollar value:	\$452,760.00

The estimated maximum dollar value for the base year is \$1,296,960.00.
The effective period of Option Year Two is from February 13, 2008 through February 12, 2009.

Section B – Supplies/Services and Prices

Option Year Three Quantities and Unit prices:

0001	Jalapeno Catsup, Flavored, 0.75 oz. flex pg, CID A-A-20346, Flavor V, Style B, NSN: 8959-01-523-7599	
	Wornick	\$0.1013
	Ameriqua	\$0.1003
	Sopackco	\$0.1003
	Average Unit Price:	\$0.1006
	Minimum Quantity: 1,250,000	
	Maximum Quantity: 4,200,000	
	Estimated maximum dollar value:	\$422,520.00
0002	Barbecue Sauce, plain, W/o added fruit purees, 1 oz. pg, CID A-A-20235, flavor 1, type B, NSN: 8950-01-487-1628	
	Wornick	\$0.1012
	Ameriqua	\$0.1000
	Sopackco	\$0.1000
	Average Unit Price:	\$0.1004
	Minimum Quantity: 1,250,000	
	Maximum Quantity: 4,200,000	
	Estimated maximum dollar value:	\$421,680.00
0003	Steak Sauce, 1 oz Pg, CID A-A-20092, Flavor I, NSN: 8950-01-522-0619	
	Wornick	\$0.1086
	Ameriqua	\$0.1074
	Sopackco	\$0.1074
	Average Unit Price:	\$0.1078
	Minimum Quantity: 1,250,000	
	Maximum Quantity: 4,200,000	
	Estimated maximum dollar value:	\$452,760.00

The estimated maximum dollar value for the base year is \$1,296,960.00.
The effective period of Option Year Three is from February 13, 2009 through February 12, 2010.

Section B – Supplies/Services and Prices

Option Year Four Quantities and Unit prices:

0001	Jalapeno Catsup, Flavored, 0.75 oz. flex pg, CID A-A-20346, Flavor V, Style B, NSN: 8959-01-523-7599	
	Wornick	\$0.1013
	Ameriqua	\$0.1003
	Sopackco	\$0.1003
	Average Unit Price:	\$0.1006
	Minimum Quantity:	1,250,000
	Maximum Quantity:	4,200,000
	Estimated maximum dollar value:	\$422,520.00
0002	Barbecue Sauce, plain, W/o added fruit purees, 1 oz. pg, CID A-A-20235, flavor 1, type B, NSN: 8950-01-487-1628	
	Wornick	\$0.1012
	Ameriqua	\$0.1000
	Sopackco	\$0.1000
	Average Unit Price:	\$0.1004
	Minimum Quantity:	1,250,000
	Maximum Quantity:	4,200,000
	Estimated maximum dollar value:	\$421,680.00
0003	Steak Sauce, 1 oz Pg, CID A-A-20092, Flavor I, NSN: 8950-01-522-0619	
	Wornick	\$0.1086
	Ameriqua	\$0.1074
	Sopackco	\$0.1074
	Average Unit Price:	\$0.1078
	Minimum Quantity:	1,250,000
	Maximum Quantity:	4,200,000
	Estimated maximum dollar value:	\$452,760.00

The estimated maximum dollar value for the base year is \$1,296,960.00.
The effective period of Option Year Four is from February 13, 2010 through February 12, 2011.

Contractor: ABC Ventures

Section B – Supplies/Services and Prices

The contractor is alerted to the fact that delivery order SPM3S1-06-D-Z134 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.

Acceptance: Destination

Inspection Office:

USD-AMS-FV-PPB
1555 St. Joseph Avenue
East Point, GA 30344-2591

Place of Performance:

Boca Grande Foods, Inc.
3245 N. Berkeley Lake Road
Duluth, GA 30096

Production Lot Standard: Jalapeno Catsup – Lot 5083
Barbecue Sauce – Lot 5014
Steak Sauce – Lot 5160

Remittance Address:

ABC Ventures Inc.
2411 Old Crow Canyon Rd.
Suite 105
San Ramon, CA 94583

**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

Contractor: ABC Ventures

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. (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.

(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 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.

Contractor: ABC Ventures

(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;

Contractor: ABC Ventures

- (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.

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

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

1. **Paragraph (a)** delete in its entirety and insert pages 33 through 52 and all clauses in this solicitation that pertain to inspection and acceptance.

2. **Paragraph (g)** see page 53 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 82 and 83.

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".

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) (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) (15U.S.C. 637 (d)(2) and (3)).
- (8)(i) **52.219-9**, Small Business Subcontracting Plan (JAN 2002) (15U.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).
- (15) **52.222-19**, Child Labor—Cooperation with Authorities and
Remedies (JUN 2004) (E.O. 13126).
- (16) **52.222-21**, Prohibition of Segregated Facilities (Feb 1999).
- (17) **52.222-26**, Equal Opportunity (APR 2002) (E.O. 11246).
- (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).
- (19) **52.222-36**, Affirmative Action for Workers with Disabilities (JUN
1998) (29 U.S.C. 793).
- (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.
- (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)).
- (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 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 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.