

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT			1. CONTRACT ID CODE K		PAGE OF PAGES 1 6	
2. AMENDMENT/MODIFICATION NO. 0001		3. EFFECTIVE DATE 5 March 03		4. REQUISITION/PURCHASE REQ. NO.		5. PROJECT NO. (If applicable)
6. ISSUED BY DEFENSE ENERGY SUPPORT CENTER 8725 JOHN J KINGMAN RD SUITE 4950 FORT BELVOIR VA 22060-6222 BUYER/SYMBOL – MEGHAN PHILLIPS PHONE - (703) 767-9543			CODE SP0600	7. ADMINISTERED BY (If other than Item 6)		CODE
			FAX 703-767-8506		P.P. 3.23	
8. NAME AND ADDRESS OF CONTRACTOR (NO., street, city, county, State, and ZIP Code)				9a. AMENDMENT OF SOLICITATION NO. SP0600-03-R-0044		
				X 9b. DATED (SEE ITEM 11) JANUARY 30, 2003		
				10b. DATED (SEE ITEM 13)		
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS						
<p>[X] The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers [] is extended, [X] is not extended</p> <p>Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning <u> 1 </u> copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers.</p> <p>FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.</p>						
12. ACCOUNTING AND APPROPRIATION DATA (If required) N/A						
13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.						
A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.						
B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b)						
C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:						
D. OTHER (Specify type of modification and authority)						
E. IMPORTANT: Contractor [] is not, [X] is required to sign this document and return <u> 1 </u> copies to the issuing office.						
14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)						
SEE ATTACHED PAGES						
Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.						
15A. NAME AND TITLE OF SIGNER (Type or print)				16A. NAME OF CONTRACTING OFFICER		
15B. NAME OF CONTRACTOR/OFFEROR		15C. DATE SIGNED		16B. UNITED STATES OF AMERICA		16C. DATE SIGNED
BY _____ (Signature of person authorized to sign)				BY _____ (Signature of Contracting Officer)		

A. ACKNOWLEDGEMENT OF AMENDMENTS: ALL OFFERORS MUST ACKNOWLEDGE RECEIPT AND ACCEPTANCE OF ALL AMENDMENTS TO THE SOLICITATION. YOU MAY DO THIS BY SIGNING (BLOCKS 15 A, B AND C OF STANDARD FORM 30) AND RETURNING THE AMENDMENT OR BY WRITTEN ACKNOWLEDGEMENT OF RECEIPT AND ACCEPTANCE AS PART OF THE PROPOSAL SUBMISSION PACKAGE. ALSO, PLEASE BE CERTAIN TO IDENTIFY ANY EXCEPTIONS TO THE SOLICITATION'S TERMS AND CONDITIONS.

B. REMOVE CLAUSE L2.10-1 IN ITS ENTIRETY. (OFFERS WILL BE ACCEPTED IN THE TERMS OF CANADIAN DOLLARS/LITER)

C. REPLACE THE EXISITING CLAUSE B19.02 (OVERSEAS) (DESC AUG 2000) REPLACE WITH THE FOLLOWING

B19.02 ECONOMIC PRICE ADJUSTMENT (OVERSEAS) (DESC AUG 2000)

(a) **WARRANTIES.** The Contractor warrants that--

- (1) The unit prices set forth in the Schedule do not include allowances for any portion of the contingency covered by this clause; and
- (2) The prices to be invoiced hereunder shall be computed in accordance with the provisions of this contract.

(b) **DEFINITIONS.** As used throughout this clause, the term--

- (1) **Award price** means the unit price set forth opposite the item in the Schedule.
- (2) **Reference price** means the independent index or established price set forth in this clause with which the award price is to fluctuate. The reference price should be a price for the same or similar product(s) as the item being purchased.
- (3) **Independent index** means an index measuring the general rate and direction of price movements for a commodity within a market which is beyond the control of the Contractor. Examples of such indices would include a wholesale price index such as that published by the Bureau of Labor Statistics.
- (4) **Established price** means one that is an established catalog or market price for a commercial item as defined in FAR 2.101, Definitions.

(5) **Date of delivery** means--

(i) **FOR TANKER OR BARGE DELIVERIES.**

- (A) **F.O.B. ORIGIN.** The date and time vessel commences loading;
- (B) **F.O.B. DESTINATION.** The date and time vessel commences discharging;

(ii) **FOR PIPELINE DELIVERIES.** The date and time product commences to move past the specified f.o.b. point; and

(iii) **FOR ALL OTHER TYPES OF DELIVERIES.** The date product is received.

(c) **ADJUSTMENTS.** The prices payable under this contract shall be the award price increased or decreased by the amount, determined according to the following formula, that the reference price shall have increased or decreased, to and including the date of delivery.

(1) The amount of increase or decrease in the award price shall be--

(Buyer - Check appropriate box and complete applicable blanks.)

- [] The same number of cents, or fraction thereof, that the reference price increases or decreases per like unit of measure.
- [] The number of cents, or fraction thereof, determined by the ratio of \$_____ per gallon for each \$_____ per barrel that the reference price increases or decreases.
- [] The number of cents, or fraction thereof, at the rate of \$_____ per gallon for each \$_____ per barrel that the reference price increases or decreases.

B19.02 (Cont.)

(2) The reference price with which the award price for the listed item is to fluctuate (and which is more fully defined in the Table below) is--

(i) The low price published in _____.
(name of publication)

(ii) The average of the prices published in **Platt's Oilgram Price Report**. *(The weekly average assessments will be based on the weekly average of the high and low daily assessments as compiled by Platt's Oilgram. This information will be provided through DESC.)*

(name of publication)

(iii) The established price posted by _____.
(name of company)

and published in _____.
(name of publication)

(3) **COMMERCIAL**. For price adjustments utilizing **commercial** publications such as Platt's Oilgram, etc., the reference price in effect on the date of delivery shall be that item's preselected reference price that is published as dated in the Table below. An increase or decrease in any reference price published in a trade price service or in a commercial journal shall apply only to deliveries made on or after the effective date of such trade price service or commercial journal.

(4) **NONCOMMERCIAL (NOTIFICATION)**. For price adjustments utilizing a reference price indicator **other than commercial** publications such as Platt's Oilgram, the Contractor shall notify the **Contracting Officer, DESC-PEA** of any changes in the reference price in writing within 15 calendar days from the date thereof.

(i) **INCREASES**. Any increase in unit price as a result of an increase in reference price shall apply only to deliveries made on or after the date of receipt by the Contracting Officer of a written notification from the Contractor of such increase. However, the prices payable under this contract shall in no event exceed the Contractor's posted or established selling price in effect on the date of delivery for the product supplied in the form of delivery made at the point of delivery. Also, no notification incorporating an increase in a contract unit price shall be executed pursuant to this clause until the increase has been verified by the Contracting Officer.

(ii) **DECREASES**. If the Contractor fails to notify the Contracting Officer of any decrease in the reference price, within the allotted 15 day period, such decrease shall apply to all deliveries made on or after the effective date of such decrease. However, if any overpayment is made to the Contractor as a result of the Contractor's failure to give timely notice to the Contracting Officer of any decrease in the established price, the Contractor shall be charged interest on such overpayment from the date of the overpayment to the date of reimbursement by the Contractor for the overpayment in accordance with the Disputes paragraph of the CONTRACT TERMS AND CONDITIONS – COMMERCIAL ITEMS clause of this contract.

(5) Where the reference price is an established price (see (c)(2)(iii) above), the Contractor warrants that the product selected is one for which, except for modification required by the specifications of this contract, the Contractor has an established price. Such price is the net price after applying any applicable standard trade discounts offered by the Contractor for his catalog, list, or schedule price. The Contractor further warrants that, as of the current date, any differences between the unit prices of the line items identified in the Schedule and the Contractor's established price for like quantities of the nearest commercial equivalents of such contract items are due to compliance with contract specifications and to compliance with any requirements that this contract may contain for preservation, packaging, and packing beyond standard commercial practice.

(d) **MODIFICATIONS**. Any resultant price changes shall be provided via notification through contract modifications and/or postings to the DESC web page under the heading **Doing Business with DESC**.

(e) **FAILURE TO DELIVER**. Notwithstanding any other provisions of this clause, no upward adjustment shall apply to product scheduled under the contract to be delivered before the effective date of the adjustment, unless the Contractor's failure to deliver according to the delivery schedule results from causes beyond the Contractor's control and without its fault or negligence, within the meaning of the Excusable Delays and Termination for Cause paragraphs of the CONTRACT TERMS AND CONDITIONS – COMMERCIAL ITEMS clause of the this contract, or is the result of an allocation made in accordance with the terms of the ALLOCATION clause of this contract, in which case the contract shall be amended to make an equitable extension of the delivery schedule.

B19.02 (Cont.)

(f) **UPWARD CEILING ON ECONOMIC PRICE ADJUSTMENT.** The Contractor agrees that the total increase in any contract unit price pursuant to these economic price adjustment provisions shall not exceed **60 percent** of the award price during the first program year or of the unit price in effect as of the start of any subsequent program year (if this is a long-term or multiyear program), except as provided hereafter:

(1) If at any time the Contractor has reason to believe that within the near future a price adjustment under the provisions of this clause will be required that will exceed the current contract ceiling price for any item, the Contractor shall promptly notify the Contracting Officer in writing of the expected increase. The notification shall include a revised ceiling the Contractor believes is sufficient to permit completion of remaining contract performance, along with appropriate explanation and documentation as required by the Contracting Officer.

(2) If an actual increase in the reference price would raise a contract unit price for an item above the current ceiling, the Contractor shall have no obligation under this contract to fill pending or future orders for such item, as of the effective date of the increase, unless the Contracting Officer issues a contract modification to raise the ceiling. If the contract ceiling will not be raised, the Contracting Officer shall so promptly notify the Contractor in writing.

(g) **REVISION OF REFERENCE PRICE INDICATOR.** In the event—

(1) Any applicable reference price is discontinued or its method of derivation is altered substantially;

(2) The reference price is an average of published or posted prices, and any one price ceases to be published or posted;

(3) The reference price is published in a trade price service or commercial journal and such publication ceases to publish said reference price or changes its method of quoting prices; *or*

(4) The Contracting Officer determines that the reference price consistently and substantially failed to reflect market conditions—the parties shall mutually agree upon an appropriate and comparable substitute for determining the price adjustment described hereunder. The contract shall be modified to reflect such substitute effective on the date the indicator was discontinued, altered, or began to consistently and substantially fail to reflect market conditions. If the parties fail to agree on an appropriate substitute, the matter shall be resolved in accordance with the Disputes paragraph of the CONTRACT TERMS AND CONDITIONS – COMMERCIAL ITEMS clause of this contract.

(h) **CONVERSION FACTORS.** If this clause requires quantity conversion for economic price adjustment purposes, the conversion factors for applicable products, as specified in the CONVERSION FACTORS clause, apply unless otherwise specified in the Schedule.

(i) **EXAMINATION OF RECORDS.** The Contractor agrees that the Contracting Officer or designated representatives shall have the right to examine the Contractor’s books, records, documents, or other data the Contracting Officer deems necessary to verify Contractor adherence to the provisions of this clause.

(j) **FINAL INVOICE.** The Contractor shall include a statement on the final invoice that the amounts invoiced hereunder have applied all decreases required by this clause.

(k) TABLE.

I	II	III	IV	V	VI	VII
Item No. (listed items)	Name of company/publication (identify by number from (c)(2) above)	If company - name of product; If publication - heading under which reference price is published and name of product	Location where reference price is applicable	Method of delivery applicable to the reference price	Reference price as of: <i>see Note Below</i> (exclude all taxes)	Maximum price payable under this contract (includes any tax included in the award price)
100-03	Platt’s	New York Harbor, Cargo, Jet	Eastern Portion of NWS		US \$0.8960	US GAL
100-031	Platt’s	US Gulf Coast Pipeline Jet-54 (USGC)	Western Portion of NWS		US \$0.8758	US GAL

Note 1: Reference Price is based on the high and low daily averages of the five days prior ending 17 Jan 03 as published in Platt’s Oilgram.

All offer prices shall be submitted in Canadian Dollars/Liter

B19.02 (Cont.)

Escalation Procedures

1. The contractor shall provide a copy of the ship manifest, or other acceptable document per the CCC/PWGSC, as proof of the vessel loading date
2. Invoiced amounts shall be converted from U. S. funds to Canadian funds using the week average of the Bank of Canada official exchange rate for the corresponding week; and invoiced quantities shall be converted from U. S. gallon to liters using 3.785412 as the conversion factor.
3. The Reference Marker price converted to Canadian dollars per liter will be rounded to four decimal places to the nearest hundredth of a cent per liter (\$0.0001/litre). Not considering any resultant value in the sixth decimal place, the fifth decimal place will be rounded as follows: less than or equal to \$0.00004 rounded down, \$0.00005 - \$0.00009 rounded up.

Example calculation using "NYH" Marker:

Unit Price Adjustment - Vessel loading Date May 27, 2002

Related NYH marker price for week of February 25, 2002 = \$0.5556/U. S. Gal

Related NYH marker price for week of May 20, 2002 = \$0.5710/U. S. gal

Bank of Canada official exchange rate for U. S. dollar for week of February 25, 2002 = \$1.5924

Bank of Canada official exchange rate for U. S. dollar for week of May 20, 2002 = \$1.5967

Liters in a U. S. gallon = 3.785412

A) $\$0.5556 \times \$1.5924 \div 3.785412 = \$0.233723$ rounded to \$0.2337/liter

B) $\$0.5710 \times \$1.5967 \div 3.785412 = \$0.240850$ rounded to \$0.2409/litre

C) $\$0.2409 - \0.2337 (B -A) = increase of \$0.0072/litre

(DESC 52.216-9FAA)

D. ADD THE FOLLOWING CLAUSES

E18.01 INSPECTION SYSTEM (DESC DEC 1993)

- (a) Records on product supplied to the U.S. Government by the Contractor or subcontractor (including supplier) shall be kept complete and available to the Government during the performance of this contract and for such longer period as may be specified elsewhere in this contract. The Government reserves the right to perform Quality Inspection at all times and places. The Federal Acquisition Regulation requires that such records be maintained for a period of four years if this contract contains any of the following clauses: AUDIT - SEALED BIDDING; AUDIT - NEGOTIATION; or EXAMINATION OF RECORDS BY THE COMPTROLLER GENERAL.
- (b) The Contractor shall furnish hereunder, from time to time, samples of each product or grade of product to be furnished under this contract at the request of, and in the manner and to the place designated by, the Quality Representative; PROVIDED, however, that in no event shall the Contractor be required to furnish during the period of this contract more than five 1-gallon samples of each product or grade of product from each facility from which such product is shipped to the Government. Such samples shall be furnished without charge to the Government and shall be packed, marked, and shipped by the Contractor, shipping expense prepaid, in containers and shipping boxes furnished by the Contractor.

(DESC 52.246-9F95)

E37 SOURCE RESTRICTION AND SOURCE INSPECTION (PC&S) (DESC JAN 1992)

(a) SOURCE RESTRICTION.

- (1) If the Contractor delivers any product that is determined to be off-specification, the Contracting Officer (CO) shall thereafter have the right, upon giving 10 days' written notice, to require the Contractor to designate a single source of supply for each destination set forth in the contract.
- (2) In addition to the name of a single source of supply, the Contractor must provide the address of the terminal or loading point to be used in drawing the requirements for each item in the contract.
- (3) The Contractor may change suppliers only after requesting and receiving the express written approval of the CO.

E37 (Cont.)**(b) SOURCE INSPECTION.**

- (1) If serious quality problems arise or if a quality problem recurs, for which the Contractor was supposed to have taken corrective action, the CO shall, in addition to Source Restriction, have the right to change the inspection point from destination to origin by advising the Contractor in writing of the change.
- (2) At the time the change becomes effective—
 - (i) All appropriate clauses relating to origin inspection shall be incorporated into the contract for the items(s) involved;
 - (ii) Source Restriction, if not already in force, will be invoked for all items involved, in accordance with (a) above; and
 - (iii) The cognizant DCMC office, upon written notification by the CO, will become the office responsible for inspection at the origin loading or filling point and for providing necessary field assistance.
- (3) Failure to provide the information requested or to take prompt corrective action may result in the item(s) and/or contract being terminated for default. (DESC 52.246-9F55)

**E. UNDER CONTRACT CLAUSE B1.05.100 SUPPLIES TO BE FURNISHED (OVERSEAS CCC)
(DESC JAN 2003)**

**(a) CORRECT THE ESTIMATED QUANTITY FOR LINE ITEM 100-03 FROM
975,855USG/3,694,000L TO 990,220USG/3,748,000L**

**(b) CORRECT THE ESTIMATED QUANTITY FOR LINE ITEM 100-031 FROM
689,068USG/2,608,400L TO 701,088USG/2,653,900L**

F. ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED