

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT			1. CONTRACT ID CODE	PAGE OF PAGES 1 of 4
2. AMENDMENT/MODIFICATION NO. 0007	3. EFFECTIVE DATE 18 August 2004	4. REQUISITION/PURCHASE REQ. NO.		5. PROJECT NO. (If applicable) Overseas Into-Plane 1.2W
6. ISSUED BY DEFENSE ENERGY SUPPORT CENTER 8725 JOHN J. KINGMAN ROAD, SUITE 3821 FT. BELVOIR, VA 22060-6222 BUYER/SYMBOL - Beverly Brown/Pam Metzger, DESC-PHA/C PHONE - (703) 767-8472/8481 FAX 703-767-8506	CODE SP0600	7. ADMINISTERED BY (If other than Item 6)		CODE SP0600
8. NAME AND ADDRESS OF CONTRACTOR (NO., street, city, county, State, and ZIP Code)		X	9a. AMENDMENT OF SOLICITATION NO. SP0600-04-R-0012	
BIDDER CODE: CAGE CODE:			9b. DATED (SEE ITEM 11) 01/02/2004	
			10a. MODIFICATION OF CONTRACT/ORDER NO.	
			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 [X] is extended, [] is not extended. 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. 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)				
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 THE FOLLOWING PAGES				
15A. NAME AND TITLE OF SIGNER (Type or print)			16A. NAME OF CONTRACTING OFFICER	
			J. ANN WILSON	
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)		

E. The following clause has been revised from the initial solicitation.

B19.38 ECONOMIC PRICE ADJUSTMENT (OVERSEAS INTO-PLANE) (DESC AUG 2004)

(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 clause.

(b) **DEFINITIONS.** As used throughout this clause—

- (1) The term **award price** means the unit price set forth opposite the item in the Schedule.
- (2) The term **market place** means the price or average of prices for the same or similar commodity within a market which is beyond the control of the Contractor, set forth in the publication(s) listed in the Table in paragraph (j) below, from which the award price is to fluctuate.
- (3) The term **date of delivery** means the date and time product under this contract is delivered into-plane.
- (4) The term **week** means a consecutive seven-day period beginning on a Monday.
- (5) The term **published** means issued either in print or electronic format by the service designated to be employed as an escalator, unless otherwise specifically stated. In the event of a conflict between the prices set forth in the print version and those set forth in the electronic version for the same date, the electronic version shall prevail.

(c) **ADJUSTMENTS.**

- (1) The prices payable under this contract shall be adjusted upward or downward through issuance of contract price change modifications or web price changes during the period of performance.
- (2) The prices payable hereunder shall be determined by changing the award price by the same number of cents, or fraction thereof, that the market price increases or decreases, as measured in U.S. dollars, per like unit of measure. The frequency of adjustments will be noted in paragraph (j) for each applicable item.
- (3) An increase or decrease in the market price shall apply, provided the notification requirements in paragraph (4) below have been met, only to deliveries made on or after the effective date of the price change as stated in the publication.
- (4) **NOTIFICATION.** If required in paragraph (j), the Contractor shall notify the Contracting Officer, Defense Energy Support Center, of any change in the market price within 15 days from the date thereof. Increases received after the 15-day notification period shall be effective on the date they are received by the Contracting Officer. Decreases shall be effective the date of the decrease in the price notification to the Contracting Officer and prices shall be adjusted retroactively.
 - (i) **INCREASES.** Any increase in the unit price as a result of an increase in the market 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 same product. No modification 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.** Price decreases shall apply to deliveries made on or after the effective date of such decrease. If the Contractor fails to notify the Contracting Officer of any decrease in the market price within the allotted 15-day period, and an overpayment is made to the Contractor as a result of the Contractor's failure to give timely notice to the Contracting Officer, 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 paragraph (d), Disputes, of the CONTRACT TERMS AND CONDITIONS – COMMERCIAL ITEMS clause of this contract.

(5) **DAY OF PUBLICATION.** Will be specified for each item in paragraph (j).

(6) **PRICE ADJUSTMENT NOTIFICATIONS/MODIFICATIONS.** The Contracting Officer will issue a contract price change modification or web price adjustment notification to reflect any change pursuant to this provision. However, no modification incorporating an increase in a contract unit price shall be executed pursuant to this provision until the increase in the applicable published market price has been verified by the Contracting Officer. Contract price adjustments shall be provided via notification through contract modifications and/or posting to the DESC web page at <http://www.desc.dla.mil> under the heading **Doing Business with DESC**.

(7) **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 in any applicable program year (whether a single year or a multiyear program), except as provided hereafter.

- (i) 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 sufficient to permit completion of remaining contract performance, along with appropriate explanation and documentation as required by the Contracting Officer.

- (ii) 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, until the Contracting Officer issues either a contract modification to raise the ceiling or written notification that the ceiling will not be raised.

(8) **REVISION OF MARKET PRICE INDICATOR.** In the event—

(i) Any applicable market price is discontinued or its method of derivation is altered substantially; or

(ii) The Contracting Officer determines that the market price indicator consistently and substantially failed to reflect market conditions—

The parties shall agree upon an appropriate and comparable substitute for determining the price adjustments 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 paragraph (d), Disputes, of the CONTRACT TERMS AND CONDITIONS – COMMERCIAL ITEMS clause of this contract.

(9) **CORRECTIONS.** Platts issues corrections to its published prices on a regular basis. Platts posts corrections to its website (www.platts.com for its subscribers). If a correction to a reference price is found on Platts website, all of the items that use that reference price will be corrected. DESC will correct any other reference prices as notice of the correction is received. DESC will work with the pricing services to determine the appropriate price, whenever an offeror or contractor can show that the price referenced should be reviewed.

(d) **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 paragraphs (f), Excusable Delays, and (m), Termination for Cause, of the CONTRACT TERMS AND CONDITIONS – COMMERCIAL ITEMS clause of this contract, in which case the contract shall be amended to make an equitable extension of the delivery schedule.

(e) **IMPORTANT:** All of the proposed market prices listed in the Table below must meet the provisions set forth under the EVALUATION OF OFFERS SUBJECT TO ECONOMIC PRICE ADJUSTMENT provision.

(f) **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 provision, apply unless otherwise specified in the Schedule. For quantity conversion factors not listed in the CONVERSION FACTORS provision, the Contractor should contact the DESC Contracting Officer.

(g) **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.

(h) **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.

(i) All market prices must be stated in U.S. dollars per U.S. gallon. Conversion for exchange rates are in accordance with the EXCHANGE RATES – ADJUSTMENT FOR FLUCTUATION (INTO-PLANE) clause.

(j) **TABLE.**

I	II	III	IV	V	VI
Item No. <u>(listed items)</u>	Name of <u>publication</u>	Heading under which reference price is published and <u>name of product</u>	Location where reference price is applicable	Method of delivery applicable to the <u>market price</u>	Market price as of _____ (date) <u>(excludes all taxes)</u>