

AMENDMENT NO. 1

SUPPLY CONTRACT No. S060DOET20 (ESF)

THIS AMENDMENT (the "Amendment") made as of the 27 day of November, 2020 in the Territory of the Virgin Islands, by and between the Government of the Virgin Islands and ES Foods Inc., whose address is 20 Crossways Park North, Suite 100, Woodbury, NY 11797 (hereinafter referred to as "Contractor").

WITNESSETH

WHEREAS, pursuant to the Original Contract No. S060DOET20 (ESF) executed by the Commissioner of Property and Procurement on October 1, 2020, which constitute and are hereinafter referred to as the "Contract", the Government contracted with Contractor for the Purchase and Delivery of Milk to the Virgin Islands Department of Education the St. Thomas/ St. John District; and.

WHEREAS, the Contract will expire pursuant to its terms on September 30, 2021; and

WHEREAS, the parties desire to amend the Contract by adding additional clauses in the contract

NOW THEREFORE, for mutual and valuable consideration, the undersigned contracting parties agree to amend the contract as follows

TERMS AND CONDITIONS

1. The Contract is hereby amended by adding the following clauses:

SECTION 13:

Debarment Clause - A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

SECTION 14:

Clean Air Act - (42 U.S.C. 7401-7671q.) and the **Federal Water Pollution Control Act** (33 U.S.C. 1251-1387), as amended---Contracts and subgrants of amounts in excess of \$150,000 requires the non-Federal award to agree to comply with all applicable standards, orders or

regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

SECTION 15:

Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

2. This Amendment is subject to the approval of the Commissioner of the Department of Property and Procurement of the Virgin Islands and to the appropriation and availability of funds.

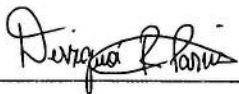
3. Except as expressly amended in this Amendment No.1, all terms and conditions of the Contract shall remain in full force and effect.

4. A facsimile, electronic and digital signature on this Amendment shall be deemed an original and binding upon the Parties hereto.

IN WITNESS WHEREOF, the Parties have hereunto set their hands on the day and year first above written.

WITNESSES:

GOVERNMENT OF THE VIRGIN ISLANDS



11/27/2020

Date

Honorable Anthony D. Thomas
Commissioner
Department of Property and Procurement



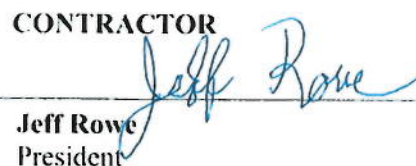
11/24/2020

Date

Honorable Racquel Berry-Benjamin
Commissioner
Virgin Islands Department of Education

WITNESSES

CONTRACTOR



11/15/20

Date

Jeff Rowe
President
ES Foods Inc.

GOVERNMENT OF
THE VIRGIN ISLANDS OF THE UNITED STATES
---- 0 ----
DEPARTMENT OF PROPERTY AND PROCUREMENT

SUPPLY CONTRACT

No. S060DOET20 (ESF)

This AGREEMENT, made this 1st day of October 2020,
for the **Purchase and Delivery of Milk to the Virgin Islands Department of Education in the St. Thomas/ St. John District** by and between the Government of the Virgin Islands, hereinafter called the "GOVERNMENT", and ES Foods, Inc., whose address is 20 Crossways Park North, Suite 100, Woodbury, NY 11797 hereinafter called the "CONTRACTOR",

WITNESSETH:

For, and in consideration of the acceptance of the Contractor's proposal, under Invitation for Bids No. IFB052DOET20 (S) opened on August 11, 2020, and the award of this contract to the Contractor, notification hereof having been made to the Contractor on August 21 2020, and in further consideration of the covenants and agreements of the Parties herein contained, to be well and truly observed and faithfully kept by them, and each of them, it is mutually agreed between the Parties as follows:

SECTION 1. That for and in consideration of the price or prices and agreement in this proposal hereto attached and made a part of this Contract, the said Contractor agrees to furnish and deliver any or all of the commodities described in the said Invitation for Bids No IFB052DOET20 (S) and the Scope of Work (Addendum I) at the price or prices stated therein and in strict accordance with the conditions of said accepted proposal. The Advertisement, Invitation for Bids, General Provisions (Addendum II), Termination of Contracts (Addendum III), any Supplemental Provisions and Specifications and the Purchase Order, including any change thereof, are all part and parcel of this Contract and are by this reference, incorporated in this Contract as fully and effectively as if set forth in detail herein.

SECTION 2. The Government, for and in consideration of the full and true performance of the work by the Contractor, agrees to pay the price or prices set forth in the attached Invitation for Bids and the line items as indicated in Addendum I Scope of Work, in lawful money of the United States, and the payment shall be made at the time and in the manner set forth in the Invitation for Bids and the General Provisions.

SECTION 3. This Contract shall commence on October 1, 2020 and shall terminate on September 30, 2021, unless mutually extended or terminated by the parties. The commodities under this contract shall be for a period of one (1) year with a renewal option for a period of one (1) year. No alterations or variations of the terms of the proposal shall be valid or binding upon the Government unless made in writing and approved by the Government.

SECTION 4. This Contract will remain in force for the full period specified and the commodities of termination shall be satisfactorily delivered and accepted and/or until all terms and conditions have been met, unless:

- (a) terminated prior to expiration by satisfactory delivery against orders of entire quantities contracted for; or
- (b) extended upon written authorization of the Government and accepted by the Contractor, to permit ordering of unordered balances or additional quantities at contract price or prices and in accordance with the contract terms.

SECTION 5. Failure of the Contractor to deliver within the time specified, or within a reasonable time as interpreted by the Government, or failure to make replacement of rejected commodities when so requested, immediately or as directed by the Government, will constitute authority for the Government to purchase in the open market to replace the commodities rejected or not delivered. The Government reserves the right to authorize immediate purchases in the open market against rejections on this contract when necessary. On all such purchases, the Contractor agrees promptly to reimburse the Government for excess costs occasioned by such purchases. Such purchases will be deducted from contract quantities. However, should public necessity demand it, the Government reserves the right to use or consume commodities delivered which are substandard in quality, subject to an adjustment in price to be determined by the Government.

SECTION 6. By execution of this contract, the Contractor certifies that it is eligible to receive contracts awarded using federally appropriated funds and that it has not been suspended or debarred from entering into contracts with any federal agency. The Contractor shall include this provision in each of its subcontracts hereunder and shall furnish its subcontractors with the current "LIST OF PARTIES EXCLUDED FROM FEDERAL PROCUREMENT OR NON-PROCUREMENT." In the event the Contractor or any subcontractor misrepresents its eligibility to receive contract awards using federal funds, the Contractor or subcontractor agrees that it shall not be entitled to payment for any work performed under this contract or any subcontract and that the Contractor or subcontractor shall promptly reimburse the Government of the Virgin Islands for any progress payments heretofore made.

SECTION 7. Contractor warrants that it shall not, with respect to this Contract, make or present any claim upon or against the Government of the Virgin Islands, or any officer, department, board, commission, or other agency thereof, knowing such claim to be false, fictitious, or fraudulent. Contractor acknowledges that making such a false, fictitious, or fraudulent claim is an offense under Virgin Islands law.

SECTION 8. Contractor acknowledges that this Contract is funded, in whole or in part, by federal funds. Contractor warrants that it shall not, with respect to this Contract, make or present any claim knowing such claim to be false, fictitious, or fraudulent. Contractor acknowledges that making such a false, fictitious, or fraudulent claim is a federal offense.

SECTION 9. The Contractor shall only provide commodities in accordance with the schedule outlined in Addendum I (Scope of Work) attached hereto and made a part hereof.

SECTION 10. This Contract is subject to the appropriation and availability of funds and to the approval of the Commissioner of the Department of Property and Procurement.

SECTION 11. The following insurance coverages are required by Contract and Contractor shall maintain these insurance coverages during the term of this Contract.

Initial 

(a) **COMMERCIAL GENERAL LIABILITY:** Commercial general liability insurance, in a form acceptable to the Government, on a "per occurrence" basis with a minimum limit of not less than one hundred thousand dollars (\$100,000.00) for any one person per occurrence for death or personal injury and one hundred thousand dollars (\$100,000.00) for any one occurrence for property damage. Insurance policy(ies) shall name the Government of the Virgin Islands as the certificate holder and additional insured via an endorsement.

(b) **WORKERS' COMPENSATION:** Contractor shall supply current coverage under the Government Insurance Fund or other form of coverage

SECTION 12. A facsimile, electronic or digital signature on this Contract shall be deemed an original and binding upon the Parties hereto.

This Contract shall become effective immediately upon and as of the day of signature by the Commissioner of the Department of Property and Procurement.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands on the day and year first above written.

Witnesses:

GOVERNMENT OF THE VIRGIN ISLANDS


.....

By: Anthony D. Thomas 10/11/2020
Date
Commissioner
Department of Property and Procurement


.....

By: Racquel Berry-Benjamin 10/06/2020
Date
Commissioner
Virgin Islands Department of Education

Witnesses:

CONTRACTOR


.....

By: Jeff Rowe 9/30/20
Date
President
ES Foods, Inc.

(Corporate seal, if Contractor is a corporation)