

## **CLASS DOMESTIC NON-AVAILABILITY DETERMINATION FOR FEDERAL SUPPLY CLASS 8915 FRESH FRUIT AND VEGETABLES**

After considering the recommendation of the Defense Logistics Agency (DLA), and in accordance with section 2533a of title 10, United States Code, I make the following findings and determination concerning the non-availability of domestic fresh fruits and vegetables herein after FF&V.

### **FINDINGS**

DLA, through the Defense Supply Center Philadelphia (DSCP), provides FF&V to the Military Services, Military Exchanges and Morale/Welfare/Recreation (MWR) Facilities. DSCP/DLA also provides FF&V to Job Corps Centers, VA Hospitals, Federal Prisons, National School Lunch Program and related Food and Nutrition Services programs, and Native American Reservations in partnership with the United States (U.S.) Department of Agriculture (USDA), in accordance with the Richard Russell National School Lunch Act (42 U.S.C. 1755a).

Traditionally, DSCP/DLA procured FF&V using a decentralized procurement strategy and issued orders in amounts below the simplified acquisition threshold. Therefore, FF&V purchases generally were excepted from the requirements of the Berry Amendment (10 U.S.C. 2533a) to buy only domestic FF&V. Under a new acquisition strategy, which relies on small business set-aside long-term large purchase contracts, compliance with the Berry Amendment is required since the FF&V contracts exceed the simplified acquisition threshold. A major benefit of this new strategy is that items that were purchased in the past from foreign sources are now required to be purchased domestically, and, for the first time, DSCP/DLA is able to monitor FF&V Berry Amendment compliance.

DSCP/DLA is required to meet the USDA nutritional guidelines as part of its responsibilities as the servicing agent to schools and service institutions under the Richard Russell National School Lunch Act and in support of the military Departments and certain other DoD and non-DoD customers. Since the award of its long term contracts, DSCP/DLA has been unable to fulfill its commitments because many FF&V items are no longer grown in the US, are subject to seasonal, regional, or quality limitations, or are available in insufficient quantity to meet customer requirements. In addition, DSCP/DLA has experienced situations where items normally available become unavailable due to unexpected weather conditions or disease. DSCP/DLA provided USDA statistics as part of its market research that demonstrate the historical nonavailability of FF&V by type throughout the year.

In the last few years, DSCP/DLA states that there has been a significant, continuing and accelerating shift in the domestic FF&V commercial marketplace towards a reliance on imported FF&V as the U.S. consumer expects FF&V year-round even though domestically out-of-season. DSCP/DLA does not have the market position to drive the commercial marketplace to satisfy DoD unique requirements for only domestic FF&V and must rely on what is distributed in the US marketplace. For example, from September 2004 through October 2005, DSCP purchased approximately \$145.2 M of FF&V. This total expenditure represents only 1% of the total FF&V consumption in the U.S. based on per capita estimates. More recent DSCP/DLA expenditures from September 2006 through October 2007 continue to represent only 1% of the total U.S. consumption of FF&V.

The commercial FF&V commercial market does not track the country of origin, but instead responds to the world-wide prices, availability and quality from day to day. In most cases, this gives domestic FF&V an advantage within the U.S., because local FF&V normally is superior in quality and cheaper to transport, when available.

Under the new long-term contracts, industry fills an order within 48 hours after receipt, making it impractical to process a specific DNAD for a particular unavailable item. More importantly, since FF&V are perishable items, FF&V would not last long enough to allow for the processing of a DNAD by DLA for each occurrence of unavailability of a particular item. Today, DSCP/DLA's customers are not being provided required FF&V as and when needed.

DSCP/DLA considered meeting its requirements by substituting processed food items, such as bagged salads and pre-cut produce type items that can be procured under the exception in DFARS 225.7002-2(1), but has determined this exception is not adequate to support the entire program. Processed FF&V represents less than 1% of the 10 million pounds of produce delivered monthly under the DSCP/DLA's program (Aug 2007 data). In addition, DSCP/DLA cannot comply with the required USDA nutritional standards of five FF&V per day through the use of processed sources.

## **DETERMINATION**

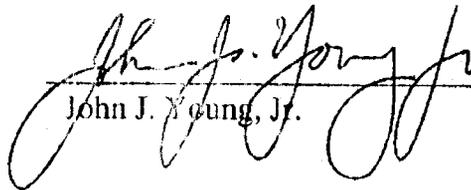
I hereby determine that domestic FF&V of satisfactory quality and sufficient quantity cannot be procured as and when needed at U.S. market prices. This determination applies to the DSCP/DLA Produce Long-Term Contracts.

Annually, DSCP/DLA will report to me the types of FF&V and the percentage of the total buys of those types, by month, bought under the authority of this DNAD made after considering the availability of domestically grown FF&V, to include quantity, quality, and U.S. market prices.

This determination will remain in effect until DLA notifies me that circumstances have changed and domestic FF&V of satisfactory quality and sufficient quantity can be procured as and when needed at U.S. market prices.

MAY 16 2008

DATE: \_\_\_\_\_



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John J. Young, Jr.