

Bob Ballew & Associates, L.L.C.

Monday, June 02, 2003

Defense Supply Center Phila G & I
700 Robbins Ave.
Philadelphia, PA 19111-5092
Local Administrator: PFFBC12 (215) 737-4703 / FAX: (215) 737-5191
Email: sabrina.morgan@dla.mil

Attention: Sabrina Morgan

Subject: Required Modification to Contract /Purchase Order No. SP0560-03-M-R063, dated April 26, 2003.

Reference: 1. Letter, RCB to Sabrina Morgan, dated Monday, April 28, 2003 and titled "Contract /Purchase Order No. SP0560-03-M-R063, dated April 26, 2003 Requisition / Purchase Request No. YPI03070000156, DPAS Priority: D0A1
2. Telecom, Robert Pezick, DSC/P to RCB.
3. Telecom, Steven Derry, DSC/P to RCB.
4. Telecom, RCB to Robert Pezick, DSC/P.
5. Telecom, Steve Desanto, DSC/P to RCB.

After our conversations and my Reference 1 letter to you, Mr. Piezack and Mr. Derry confirmed their acceptance of our regularly established terms and conditions in References 2 and 3 above. We were asked to deliver a request for modification and the sample wording to expedite this and other outstanding orders and RFQ's.

The following information is submitted to meet that requirement. Attachment 1 list our regularly established "Standard Terms and Conditions" and Attachment 2 recaps all of the notes defined in the body of this letter and can be copied and pasted into the body of the above referenced Contract / Purchase Order No. SP0560-03-M-R063, as a Contract Modification.

HISTORY OF PROBLEM: "Block 5 of your purchase order SP0560-03-M-R063 indicates a Defense Priorities and Allocations System ("DPAS") rating of D0-A1. Anyone who receives rated orders issued in accordance with 15 CFR 700.12 (Elements of a rated order) must accept or reject these orders in accordance with the procedures set forth in 15 CFR 700.13 (Acceptance and rejection of rated orders.) Violators of this regulation may be subject to the penalties set forth under 15 CFR 700.74. (Enclosure E)

Bob Ballew & Associates, L.L.C. ("BBA") and Applied Innovative Technologies, Inc. ("AIT") rejected this order, in writing, based on 15 CFR § 700.13¹, **but offered to accept this order based on our companys' regularly established terms of sale and payment.**" Source: Reference 1.

PROPOSED SOLUTION AND TEXT: Respectfully, we require the following modifications:

1. I identified a missing "required element" of all DPAS orders that must be included in all DLA issued DPAS orders in the future.² I believe that Mr. Derry can help everyone understand this. It

¹ 15 CFR § 700.13 - Acceptance and rejection of rated orders. (c) Optional rejection. Unless otherwise directed by Commerce, rated orders may be rejected in any of the following cases as long as a supplier does not discriminate among customers: (1) If the person placing the order is unwilling or unable to meet regularly established terms of sale or payment;

² 15 CFR § 700.12 Elements of a rated order. Each rated order must include: (d) A statement that reads in substance: "This is a rated order certified for national defense use, and you are required to follow all the provisions of the Defense Priorities and Allocations System regulation (15 CFR part 700)."

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is my understanding that this has never been done but should be done in the future, as required by law. The following statement (or one similar to it) must be included within the body of every issued DPAS DO-A1 rated order:

NOTE 1: "This is a rated order certified for national defense use, and you are required to follow all the provisions of the Defense Priorities and Allocations System regulation (15 CFR part 700)."

2. I recommend that the order be placed under the manufacturer's cage code which is 3E3E7. I am listed as the contact in this CAGE code also:

"NOTE 2: Order is to be placed direct with the manufacturer and patent holder, Applied Innovative Technologies, Inc., CAGE Code # 3E3E7. All orders will be FAXED to 817-244-3647."

3. All other modifications can be accomplished either within the notes of the purchase order or as a letter agreement which shall be added to the permanent notes of the three NSN's involved (see below) and for the CAGE Codes 1V5Z4 and 3E3E7. They are as follows:

NOTE 3: "**ALL GOVERNMENT STANDARD TERMS AND CONDITIONS ARE HEREBY PERMANENTLY WAIVED** AND THIS ORDER IS PLACED IN STRICT ACCORDANCE WITH THE VENDORS' (CAGE CODES NUMBER 1V5Z4 AND 3E3E7) REGULARLY ESTABLISHED COMMERCIAL TERMS AND CONDITIONS. This order was (1) awarded to this vendor, (2) legally rejected by the vendor in accordance with 15 CFR § 700.13 - Acceptance and rejection of rated orders. (c) Optional rejection, and (3) is now placed as a standard, commercial, off-the-shelf order in accordance with the vendor's regularly established terms and conditions. All other government requirements are now specifically waived, non-binding and null and void. This clause is applicable to and includes all hardware, software, and services provided to the government by Bob Ballew & Associates, L.L.C. (CAGE # 1V5Z4) and Applied Innovative Technologies, Inc (CAGE # 3E3E7) and, specifically, the following NSN's:

6230-01494-0286 Flashlight, NightStar II, Stealth Black Body, Clear LED.

6230-01494-0585 Flashlight, NightStar II, Marine Yellow Body, Clear LED.

6230-01494-0603 Flashlight, NightStar II, High-Tech Clear Body, Clear LED."

4. A statement that reads:

NOTE 4: "PACKAGING: The buyer hereby specifically waives all Government barcoding, packaging and shipping requirements and accepts the Manufacturer's regularly established terms, conditions, and practices, including payment in advance of shipment.

5. Please change the required order delivery date to read as follows:

NOTE 5. DELIVERY: Delivery is due (for individual shipment quantities of less than 500 pieces) not later than four weeks after Vendor's receipt of acceptable payment. Buyer shall identify requirements and make arrangements for payment to be made to vendor by EFT within two days of the award of contracts. Shipping method shall be by vendor's regularly established ground transportation.

6. Please change the price per Mr. Piezak. Price was quoted as FOB: Fort Lupton, CO. Please change the quoted price to read:

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“NOTE 6: PRICE: Government’s accepted price is \$35.50 per unit delivered within the continental United States.

The presence of the above listed notes on the face of the Modified Order should cure our problems and allow us to deliver product to you.

Attached is an abbreviated list of the Manufacturer’s standard terms and conditions for Wholesale Distributors. You are considered an end-user but they have been copied and attached for your general information and use.

Please make any entries that you feel necessary in the permanent notes section of your system to help accelerate and prevent delays in the future.

I cannot say enough about the professionalism, cooperation, and help provided by each and every person involved in this transaction. Please accept my compliments and thanks. We sincerely want to do business with our Government, and to my great surprise, I have been helped at every point. It truly seems that you are very willing to help a small business. Thank you for your help.

Finally, please share this information with Eileen Hui, Robert Pezick, and Steven Derry.

Respectfully,



Robert C. Ballew

Copy: Todd Brown, President, AIT, Inc.

ATTACHMENTS (2)

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ATTACHMENT 1

WHOLESALE DISTRIBUTOR TERMS AND CONDITIONS:

1. Orders shall be secured through submission of company letterhead Purchase Order faxed to 303-857-8079. Supplier does not utilize Electronic Data Interchange (EDI) system.
2. Minimum Purchase - one case (20 units). Case weight is approximately 21 pounds (11.35 kg). Case Dimensions are approximately 16.25 x 13.25 x 12.25 inches.
3. Purchase Order shall reflect whole case quantities.³
4. Purchase Order shall specifically identify Buyer's "Ship To" location information.
5. Attached to Purchase Order shall be instructions identifying Buyer's specific marking and/or labeling requirements that must appear on shipping carton.
6. Price includes Freight Prepaid to Continental United States locations non-palletized. Product ships by ground transportation utilizing freight forwarder of Supplier's choosing.
7. Price for shipping to International locations is Freight Collect - FOB Fort Lupton, CO. A handling charge of US\$2 per case is assessed for Product management. Buyer shall designate preferred freight forwarder.
8. A 50 percent deposit is required on orders exceeding 500 units.
9. Product releases are based upon customer payment status with Supplier.
10. Customized product (customer specific labels) requires 50% deposit with submission of Purchase Order and full acceptance of order upon completion of Product manufacturing.
11. Until credit terms are established with Supplier, company check or wire transfer shall secure purchases (U.S. Currency only). Expenses associated with submission of funds are the responsibility of Buyer.
12. Allow lead times of 4 weeks on orders up to 500 units. Without submission of order projections by Buyer, longer lead times may be experienced.
13. To neutralize the effects of the strong magnetic field created by NightStar, product is packed so that the polarities of the individual units oppose one another. In this configuration NightStar can be safely shipped by aircraft without special labeling or handling requirements.
14. A.I.T., at its sole discretion, reserves the right to modify wholesale prices.
15. This price list incorporates Applied Innovative Technologies, Inc. Standard Terms and Conditions of Sale.

NOTE: CHANGE ALL RECORDS TO REFLECT MANUFACTURER'S PART NUMBER.

	CHANGE FROM: 1V5Z4	CHANGE TO: 3E3E7
NightStar II, Black body.	BLACK, Stealth Black, White LED P/N N-03 NSN # 6230-01494-0286	BLACK, Stealth Black, White LED P/N 8-103460001-1 NSN # 6230-01494-0286
NightStar II, Yellow body.	YELLOW, Marine Yellow, White LED P/N N-02 NSN # 6230-01494-0585	YELLOW, Marine Yellow, White LED P/N 8-103460002-8 NSN # 6230-01494-0585
NightStar II, Clear body.	CLEAR, High-Tech Clear, White LED P/N N-01 NSN # 6230-01494-0603	CLEAR, High-Tech Clear, White LED P/N 8-103460003-5 NSN # 6230-01494-0603

³ Vendor has agreed to ship broken case quantities to government end-users.

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ATTACHMENT 2

NOTES:

1. This is a rated order certified for national defense use, and you are required to follow all the provisions of the Defense Priorities and Allocations System regulation (15 CFR part 700).

2. This order is to be placed direct with the manufacturer and patent holder, Applied Innovative Technologies, Inc., CAGE Code # 3E3E7. All orders will be FAXED to (303) 857-8079.

3. ALL GOVERNMENT IMPOSED TERMS AND CONDITIONS ARE HEREBY PERMANENTLY WAIVED AND THIS ORDER IS PLACED IN STRICT ACCORDANCE WITH THE VENDORS' (CAGE CODES NUMBER 1V5Z4 AND 3E3E7) REGULARLY ESTABLISHED COMMERCIAL TERMS AND CONDITIONS. This order was (1) awarded to this vendor, (2) legally rejected by the vendor in accordance with *15 CFR § 700.13 - Acceptance and rejection of rated orders. (c) Optional rejection*, and (3) is now placed as a standard, commercial, off-the-shelf order in accordance with the vendor's regularly established terms and conditions. All other government requirements are now specifically waived, non-binding and null and void. This clause is applicable to and includes all hardware, software, and services provided to the government by Bob Ballew & Associates, L.L.C. (CAGE # 1V5Z4) and Applied Innovative Technologies, Inc (CAGE # 3E3E7) and, specifically, the following NSN's:

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