

<b>SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, &amp; 30</b>				1. REQUISITION NO. 673-14-2-364-0089		PAGE 1 OF 65			
2. CONTRACT NO.		3. AWARD/EFFECTIVE DATE		4. ORDER NO.		5. SOLICITATION NUMBER VA248-14-Q-0759			
6. SOLICITATION ISSUE DATE 04-10-2014		7. FOR SOLICITATION INFORMATION CALL: a. NAME William Hilliard		b. TELEPHONE NO. (No Collect Calls) 813-631-2805		8. OFFER DUE DATE/LOCAL TIME 04-21-2014 1100			
9. ISSUED BY Department of Veterans Affairs Network Contracting Office 8 (NCO 8)  8875 Hidden River Pkwy Suite 525 Tampa FL 33637				10. THIS ACQUISITION IS <input type="checkbox"/> UNRESTRICTED OR <input checked="" type="checkbox"/> SET ASIDE: 100 % FOR: <input checked="" type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> HUBZONE SMALL BUSINESS <input type="checkbox"/> SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS <input type="checkbox"/> WOMEN-OWNED SMALL BUSINESS (WOSB) ELIGIBLE UNDER THE WOMEN-OWNED SMALL BUSINESS PROGRAM <input type="checkbox"/> EDWOSB <input type="checkbox"/> 8(A)				NAICS: 621610  SIZE STANDARD: \$14 Million	
11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED <input type="checkbox"/> SEE SCHEDULE		12. DISCOUNT TERMS		13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)  <input type="checkbox"/> 13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)		13b. RATING N/A  14. METHOD OF SOLICITATION <input checked="" type="checkbox"/> RFQ <input type="checkbox"/> IFB <input type="checkbox"/> RFP			
15. DELIVER TO Department of Veterans Affairs James A. Haley Veterans Hospital (90C) 13000 Bruce B. Downs Blvd  Tampa FL 33612				16. ADMINISTERED BY Department of Veterans Affairs Network Contracting Office 8 (NCO 8)  8875 Hidden River Pkwy Tampa FL 33637					
17a. CONTRACTOR/OFFEROR CODE		FACILITY CODE		18a. PAYMENT WILL BE MADE BY CODE					
				Department of Veterans Affairs Financial Services Center  P.O. Box 149971 Austin TX 78714-9971					
TELEPHONE NO.		DUNS:		DUNS+4:		PHONE: FAX:			
<input type="checkbox"/> 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER		18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED <input type="checkbox"/> SEE ADDENDUM							
19. ITEM NO.	20. See CONTINUATION Page SCHEDULE OF SUPPLIES/SERVICES			21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT		
	Home Oxygen Delivery Services as detailed in the attached Performance Work Statement (PWS).								
(Use Reverse and/or Attach Additional Sheets as Necessary)									
25. ACCOUNTING AND APPROPRIATION DATA See CONTINUATION Page 673-3640160-364-827200-2574 SPRQBP1A5					26. TOTAL AWARD AMOUNT (For Govt. Use Only)				
<input checked="" type="checkbox"/> 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4. FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA <input type="checkbox"/> ARE <input checked="" type="checkbox"/> ARE NOT ATTACHED.					<input type="checkbox"/> 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. FAR 52.212-5 IS ATTACHED. ADDENDA <input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED				
<input type="checkbox"/> 28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED					<input type="checkbox"/> 29. AWARD OF CONTRACT: REF. OFFER DATED YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN IS ACCEPTED AS TO ITEMS:				
30a. SIGNATURE OF OFFEROR/CONTRACTOR				31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)					
30b. NAME AND TITLE OF SIGNER (TYPE OR PRINT)		30c. DATE SIGNED		31b. NAME OF CONTRACTING OFFICER (TYPE OR PRINT)		31c. DATE SIGNED			

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## SECTION B - CONTINUATION OF SF 1449 BLOCKS

### B.1 CONTRACT ADMINISTRATION DATA

(continuation from Standard Form 1449, block 18A.)

1. Contract Administration: All contract administration matters will be handled by the following individuals:

a. CONTRACTOR: TBD

b. GOVERNMENT: Contracting Officer 00248

Department of Veterans Affairs

Network Contracting Office 8 (NCO 8)

8875 Hidden River Pkwy Suite 525

Tampa FL 33637

2. CONTRACTOR REMITTANCE ADDRESS: All payments by the Government to the contractor will be made in accordance with:

- ☒ 52.232-34, Payment by Electronic Funds Transfer -Other than Central Contractor Registration, or  
☐ 52.232-36, Payment by Third Party

3. INVOICES: Invoices shall be submitted in arrears:

- a. Quarterly ☐  
b. Semi-Annually ☐  
c. Other ☒ Monthly

4. GOVERNMENT INVOICE ADDRESS: All Invoices from the contractor shall be submitted electronically in accordance with the guidance in this solicitation/contract.

ACKNOWLEDGMENT OF AMENDMENTS: The offeror acknowledges receipt of amendments to the Solicitation numbered and dated as follows:

AMENDMENT NO	DATE

## B.2 Price/Cost Schedule

### Item Information

ITEM NUMBER	DESCRIPTION OF SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0001	Regular Hours: Initial set-up and monthly rental of two (2) 100 pound liquid oxygen reservoirs and 2-3 portable Helios reservoirs or equal. This is an estimated quantity.	1,200.00	EA		
0002	Regular Hours: Pick-up of two Portables Helios reservoir or equal and two 100 pound liquid oxygen reservoirs. This is an estimated quantity.	240.00	EA		
0003	Liquid Pounds refill for 100 pound reservoir. This is an estimated quantity.	108,000.00	LB		
0004	Regular Hours: Delivery and set-up H tanks including tank stand and regulator (stand and regulator provided by VA). This is an estimated quantity.	900.00	EA		
0005	H Tank Rentals. This is an estimated quantity.	8,400.00	EA		
0006	Regular Hours Pick up: H-Tank. This is an estimated quantity.	600.00	EA		
0007	Average tank refills at VA warehouse. This is an estimated quantity.	12,000.00	EA		
0008	Ultrasonic Examination to include cleaning, testing, and stamping the cylinder with the new retest date. This is an estimated quantity.	8,400.00	EA		
0009	Emergency/After-Hour/Weekend/Holiday Hours: Initial set-up and monthly rental of two (2) 100 pound liquid oxygen reservoirs and 2-3 portable Helios reservoirs or equal. Pick-up of H –Tank. This is an estimated quantity.	144.00	EA		
				<b>GRAND TOTAL</b>	

### B.3 Delivery Schedule

ITEM NUMBER	QUANTITY	DELIVERY DATE
0001	1,200.00	1 Jun 2014 through 31 May 2015
0002	240.00	1 Jun 2014 through 31 May 2015
0003	108,000.00	1 Jun 2014 through 31 May 2015
0004	900.00	1 Jun 2014 through 31 May 2015
0005	8,400.00	1 Jun 2014 through 31 May 2015
0006	600.00	1 Jun 2014 through 31 May 2015
0007	12,000.00	1 Jun 2014 through 31 May 2015
0008	8,400.00	1 Jun 2014 through 31 May 2015
0009	144.00	1 Jun 2014 through 31 May 2015

## **HOME OXYGEN LIQUID DELIVERY PERFORMANCE WORK STATEMENT (PWS)**

### **1. GENERAL:**

1.1. The James A. Haley Veterans' Hospital (JAHVH) requires home oxygen delivery services for veteran patients. The service area will include the following Florida counties: Hillsborough, Pasco, Hernando, Citrus, Polk, Highland, Manatee, and Hardee. The contractor must be able to provide full and complete home oxygen delivery services as detailed in this contract within three weeks after contract award and no interruption of services shall occur when the contractor begins services on the effective date of the contract. Some oxygen equipment will be supplied by the VA to the patients, but the contractor will be required to supply approximately 500 to 550 H Tanks for use by the patients.

1.2. The Contractor will maintain 400 Aluminum E Oxygen Cylinders for VA use during Hurricane season. NOTE: Hurricane Season for this contract is defined as June 1 through November 30.

1.3. Rental of a Liquid Oxygen System; the item must be no more than 6 months old.

- a. Two (2) 100 pounds Companion Liquid Oxygen Reservoirs will be provided for each Veteran receiving Liquid Oxygen.
- b. Examples are Helios, or comparable.
  - 1. Secures 2 portable liquid systems with canellas, carrying bag or portable transport cart.
  - 2. H tanks, regulator, and stand. (VA will supply regulator and stand).

1.4. All oxygen deliveries will be to the homes of the veteran patients. However, besides maintaining sufficient oxygen supplies at the contractor's own facility, the contractor will also use the JAHVH oxygen warehouse to maintain some oxygen supplies. Delivery instructions for refill tanks at the JAHVH oxygen warehouse is Monday through Friday, 7:30 AM to 3:00 PM. A VA employee must be present to monitor all deliveries. The JAHVH oxygen storage facility is located at:

Home Respiratory Care Program

5910-E Breckenridge Park

Tampa, FL. 33610

1.5. The quantities shown in the schedule of services associated with this contract are estimates of the annual requirements. There is no express or implied guarantee that these quantities will be purchased. The contractor will only provide services that are ordered by JAHVH and will only invoice for services actually provided. The contract will be for one year and include an extension clause for an additional six months if required. The labor rate schedule shall include rates during normal and after business hours.

### **2. ACRONYMS:**

This section lists acronyms that are used in the contract.

CCF – 100 cubic feet

CF – Cubic feet

CGA – Compressed Gas Association

CGMP – Current Good Manufacturing Practices

CO – Contracting Officer

COR – Contracting Officer Representative

CPT - Contracting Prosthetics Team

DOT – Department of Transportation

FDA – U.S. Food & Drug Administration

HRCF – Home Respiratory Care Program

JAHVH – James A. Haley Veterans' Hospital

JC – Joint Commission

NFPA – National Fire Protection Association

OSHA – U.S. Department of Labor, Occupational Safety and Health Administration

POC – Point of Contact

PWS – Performance Work Statement

RT – Respiratory Therapy

SCF – Standard Cubic Feet

USP – United States Pharmacopoeia

VA – Department of Veterans Affairs

### **3. CONTRACTOR RESPONSIBILITIES:**

3.1. The contractor shall only utilize its own employees for services provided under this contract – no subcontracting of home oxygen deliveries or management of these services is allowed. The contractor should have approximately three weeks from contract award until the effective date of the contract to prepare to provide full and complete services. Upon the effective date of the contract, the contractor shall ensure there will be no interruption of home oxygen services to veterans. The contractor shall have all employees cleared and equipment ready and in-place to provide all required services on the effective date of the contract.

3.2. The Contractor shall furnish at his/her own expense, all labor, materials, supplies, equipment, supervision, etc., which may be necessary or appropriate in the performance of this contract. The contractor shall be responsible for ensuring all equipment, tools, supplies, etc., utilized in the performance of this contract meet or exceed all applicable Federal, State, County, City, or other appropriate agency safety requirements, and ensure all employees have the proper training and full working knowledge of these requirements.

3.3. The Contractor shall ensure the tanks are in compliance with applicable Federal and State Regulations. Annual tank testing/inspections, i.e., hydrostatic tests or leak pressure test requirements by NFPA, shall be coordinated with the COR. All contractor, Government-owned, and rented oxygen tanks shall be labeled according to any applicable FDA, DOT, OSHA, or other requirements.

3.3. The contractor shall provide all equipment and materials necessary to perform the requirements of the contract. Upon receipt of the consult, the VA will forward the home oxygen order to the contractor for delivery of prescribed equipment and services. Invoices shall be submitted separately on a monthly basis.

#### **4. INSTALLATION OF CONTRACTOR-OWNED EQUIPMENT:**

4.1. All contractor-owned equipment i.e., monitoring devices shall be installed in accordance with NFPA 50: (CGMP) Regulations. The contractor shall comply with all OSHA standards and applicable safety requirements, including proper signage and use of personal protective equipment.

4.2. Contactor will coordinate with the HRCF Operations Manager on all home deliveries and pick ups of oxygen tanks, liquid rentals, etc. The contractor will also coordinate with the HRCF Operation Manager or designee on all deliveries and pick ups of H tanks and liquid oxygen systems.

#### **5. DELIVERY OF MEDICAL GRADE OXYGEN:**

##### **PATIENT HOME DELIVERY**

5.1. The contractor shall deliver medical-grade oxygen. Delivery shall be Monday through Friday. Saturday deliveries will be managed by HRCF. If for any reason the contractor is unable to deliver at the agreed upon day or time, the contractor will provide 12-hour notice to the HRCF. The Contractor may then need to initiate its backup plan to ensure the delivery of oxygen. Contractor will be provided with names and contact information of primary and back-up facility representatives. This applies to all deliveries regardless of time or day of execution.

5.2. Patient Identification: The contractor shall use at least two (2) ways to identify veteran. The veteran should be asked to state full name and date of birth. If this is not possible, the family member or caregiver must give the full name and date of birth.

5.3. At the time of each delivery, the contractor shall provide signed and dated invoices to HRCF. Document will be counter-signed by the facility representative supervising the delivery. Prosthetics will audit monthly invoices against current prescription submitted by the contractor. The monthly invoices must be complete and accurate or the entire invoice will be rejected and the contractor will be required to make corrections and resubmit the invoice.

5.4. The contractor shall have an emergency response plan that provides for emergency deliveries of oxygen within 6 hours after notification, 24 hours a day, 7 days a week, in accordance with the contract. The contractor shall have 24 hour/7day emergency service available for delivery or repair of liquid systems. The contractor shall identify and explain their emergency plan in their proposal. The contractor shall also be prepared to make emergency, weekend, and holiday deliveries due to late discharges from the hospital, veterans running out of liquid at home, or malfunction of equipment. The regular weekday delivery schedule is Monday thru Friday 7:30AM to 3:00PM, weekend and holiday deliveries are required to occur Monday thru Friday 7:30AM to 3:00PM. Emergency deliveries are Monday thru Friday 3:00PM to 10:00PM and on Saturdays, Sundays, and holidays 3:00PM to 10:00PM. The contractor shall have sufficient personnel available to respond to all unscheduled service requests. The required response time of the unscheduled work requests shall not exceed two (2) hours. The Contractor shall identify their 24/7 emergency contact name(s) and telephone number(s).



**VA WAREHOUSE DELIVERY**

5.5. Tanks(s) Es, M9–BA, and M6–AA shall be filled to maximum functional capacity at each refilling procedure unless otherwise specified in the facility requirements or in this contract. HRCP Operations Manager will notify vendor if deliveries of refills are not required.

5.6. Deliveries of refills shall be made Monday-Friday (excluding holidays which are listed below) between the hours of 7:30AM and 3:00PM. Home oxygen deliveries are required to occur during regular business hours, Monday thru Friday, 8:00 AM to 5:00 PM.

**6. FEDERAL HOLIDAYS:**

The following Federal holidays are identified by the Government:

New Year's Day	Labor Day
Martin Luther King Day	Columbus Day
President's Day	Veterans Day
Memorial Day	Thanksgiving Day
Independence Day	Christmas Day

**7. QUALITY ASSURANCE SPECIFICATIONS AND REQUIREMENTS:**

7.1. All medical gas manufacturers and fillers of medical gases shall be registered with FDA as drug manufacturers. All oxygen shall be manufactured, processed, packed, transported, and stored according to FDA's Current Good Manufacturing Practices (CGMP) regulations, and all labeling shall comply with FDA's labeling regulations (21 CFR Part 201).

7.2. All oxygen delivered under the contract shall be medical-grade and shall meet or exceed the standards cited in the current edition of the United States Pharmacopoeia/National Formulary (U.S.P.).

7.3. A valid certificate of analysis shall be provided with each delivery of oxygen. The certificate shall include, at a minimum:

- a) Supplier's name and complete address
- b) Name of the product (i.e. Oxygen U.S.P.)
- c) An air Liquefaction Statement where appropriate
- d) Lot number or other unique identification number
- e) Actual analytical results for full U.S.P. monograph testing. (A statement that only proclaims that the product meets the minimum purity of 99.5%, etc. is not acceptable.)
- f) Test method used to perform the analysis. (A statement such as "Meets U.S.P. specifications" is not acceptable; nor would "Tested via Servomex" be acceptable since the specific model number is not provided.)
- g) Signature of authorized supplier representative and date.

7.4. Material Safety Data Sheets shall be provided to the facility COR, HRCF Operations Manager, or designee at the post-award conference and upon request thereafter.

7.5. A copy of all inspection reports conducted by OSHA, JC, or any other regulatory agency shall be delivered to the facility COR, HRCF Operation Manager, or designee upon the completion of any oxygen system inspections that are required by regulation.

7.6. Contractor shall participate in quarterly Quality Assurance (QA) meetings held at the VA or Contractors location. During the QA meeting the contractor shall provide an inventory of equipment, a detailed list of disposed equipment/supplies processed. Contractor shall provide quarterly patient satisfaction surveys that include thresholds and a plan for improvements if thresholds are not met. The contractor shall have a clear and thorough Quality Assurance (QA) program/plan that includes hand hygiene monitoring, influenza vaccination program and documentation of all employee training/competencies in the performance of servicing Liquid Oxygen. The contractor reports shall also include any accidents, safety hazards and injuries such as patient incidents of death, accident, injury or infection related to equipment. The QA program/plan shall be included in the contractor's proposal.

7.7. Infection Control – The contractor shall have a hand hygiene program in accordance with the CDC. Contractor shall assess its compliance through a comprehensive program that provides hand hygiene policy, fosters a culture of hand hygiene, and monitors compliance and provides feedback. Hand Hygiene program shall include thresholds and a plan for improvements if thresholds are not met. The Contractor shall provide documents of performance of hand hygiene compliance to the COR on a quarterly basis.

7.8. The contractor shall have an Influenza Vaccination Program for staff, set incremental goals for meeting the 90% target, measure and improve influenza rates for the staff and licensed independent practitioners. The Influenza Vaccination program shall include thresholds and a plan for improvements if thresholds are not met. The contractor shall provide documentation of performance of influenza vaccination program compliance to the COR on a quarterly basis.

## **8. APPLICABLE REGULATIONS & STANDARDS:**

8.1. Listed below are some of the regulations and standards that are applicable to this contract. The list is not comprehensive, and the contractor is responsible for ensuring that all products, equipment and services provided under the contract are in compliance with applicable Federal, State, and local regulations. Contractor shall remain compliant with any future revisions that are effective at the time of contract performance. The Contractor shall also meet the applicable standard of the Joint Commission.

Title 21, Code of Federal Regulations.

Parts 210 & 211 – CGMP regulations for supplying medical-grade oxygen. (FDA)

49 CFR – Transportation of Oxygen.

## **9. PERMITS AND LICENSES**

9.1. The contractor shall have all permits and licenses required by Federal, State and local laws, regulations and ordinances demonstrating that they are in fact qualified by training and experience to perform the required work. Copies of all these permits and licenses shall be included in the contractor's proposal and include the following:

Compressed Medical Gas

Medical Oxygen Retail Establishment

## Compressed Medical Gas Wholesale Distributor

## Product Registration Permits

**10. CONTRACTOR TRAINING**

10.1. The contractor shall provide records of training and competency assessment of contractor personnel involved with the performance of this contract. All contractor personnel hired after award of this contract will have completed all required training prior to delivery of oxygen. Documentation will be provided to the VA COR and the HRCF Operations Manager.

10.2. Contractor shall have an established business providing home oxygen delivery services with a full time staff. The staff includes “fully qualified” Service Representatives capable of performing the requirements of this contract. Fully Qualified is based upon training and on experience in the field.

10.3. Contractor Personnel Training – The contractor shall have a clear and thorough training program for its employees with a current record of training and qualifications for each employee. The training program and copies of employee training records and qualifications shall be included in the contractor’s proposal. The contractor’s training program shall describe the training that the Contract Manager and Alternate Contract Manager, oxygen technicians/drivers, and administrative and support personnel are required to complete. It shall address how the training is completed, how often refresher training is completed, and include copies of the training records for all employees providing services under the contract. The following list is an example of training that the VA considers as a thorough contractor training program:

Eye Protection	Gloves for Cryogenics
Protective Clothing	DOT Compliance Training
HIPPA	Ethics
Drivers Trainer Knowledge Test	Inspection
Parking Maintenance	Loading/Securing
Moving Vehicle Safety	Security Vulnerability Assessment
Work Safety Rules	FDA Requirement for Drivers
Emergency Preparedness	Influenza Vaccinations
Hazardous Material Shipping Papers	Driver Discipline Policy
Flammable Gas Storage	

**11. HOME OXYGEN ORDERING AND PAYMENT**

11.1. Only warranted Contracting Officers in Network Contracting Office (NCO) 8 are authorized to place home oxygen orders against this contract. The primary contracting office will be the NCO 8 Contracting Prosthetics Team (CPT) currently located in Tampa, FL.

11.2. The following approximate process will be used to initiate and pay home oxygen delivery orders.

- a. Prescription Consult entered into Prosthetics package from Respiratory Therapy.

- b. HRCF (Home Respiratory Care Program) prints consult and submits it to the Contracting Prosthetics Team (CPT) who will create and forward the home oxygen order to the contractor for delivery of prescribed equipment to include:

Liquid reservoir and all cannula-Contractor

Liquid portables, cannula and portable carrying bags-Contractor

H Tank, for emergency back-up- Contractor

Regulator, h tank base- supplied by VA

NOTE: patient consults are prohibited in eCMS and all patient health information must be redacted from all documents before uploading into the eCMS Planning Module.

- c. Delivery is made by contractor to the veteran's home. A delivery ticket is generated as to what was delivered with serial numbers and number of pounds dispensed in reservoirs.
- d. Delivery ticket returned to contractor's office for entries into their computer data base for invoicing to VA and also submitted to HRCF for confirmation of deliveries.
- e. Previous months invoices are printed and delivered to VA for processing and are submitted every month. It is important the contractor's invoice includes all the company's applicable information. The invoice needs to accurately reflect the services provided during the month in accordance with the schedule of services associated with this contract. A separate invoice shall also be submitted for re-tests of tanks that were conducted during the month. The monthly invoices will usually be paid with one VISTA Purchase Order/1358/credit card payment for the month.
- f. VA personnel receive invoices and proceeds to enter names and items billed for the previous month into the Home Oxygen Module. After all entries are entered, amounts are approved by Prosthetics. CPT will pay the monthly Home Oxygen bill, filling, and maintenance of tanks thru the Home Oxygen Module.
- g. The ordering and payment process used by the HRCF and CPT shall be compliant with all current and applicable procurement and fiscal regulations and guidance. The use of 1358's or Government credit cards will be in accordance with applicable regulations for prosthetic/home oxygen deliveries. Task orders will be awarded in eCMS and contract reporting will be entered into FPDS-NG by the CPT.

## **12. CONTRACTOR EMPLOYEE AND VEHICLE IDENTIFICATION:**

12.1. The Contractor shall provide all employees with a Contractor Identification (ID) badge at their own expense prior to performing work under this contract. Contractor employees are required to display this badge at all times when performing services under this contract. Employees released from service by the Contractor shall have their badge collected by the Contractor. All badges shall contain an expiration date and photograph of the employee. The contractor's on-site supervisor shall ensure that all employees shall display their badges while in the performance of contract duty. The COR shall quarterly verify badges of contract employees.

12.2. Contractor employee(s) shall wear visible identification at all times while on the premises of the VA Hospital, Warehouse, and Patients Home. Contract employees shall be well groomed, in neat appearance and wearing a nametag at all times while on the premises of the VA Hospital, Warehouse and the Patients Home. All Contractor vehicles shall be maintained in an operational condition. Contractor vehicle shall be clearly marked with identification and telephone

number. All equipment delivered to patients home should have the contractor's name and telephone, equipment to include Liquid Reservoirs, portables liquid travel tanks, H-Tanks that are owned by contractor.

12.3. All Contractor-owned vehicles shall be maintained in an operational condition. Contractor vehicles shall be clearly marked with identification. Markings shall include, but not limited to, the Contractor's name and telephone number on all equipment and vehicles used to carry out the requirements of the PWS.

Contractor name.

Telephone.

State license tag.

All required regulatory information.

### **13. CONTRACTOR CODE OF CONDUCT:**

13.1. Hold harmless and indemnification agreement – The contractor shall save and hold harmless and indemnify the government against any and all liability, claims, and cost of whatsoever kind and nature for injury to or death of any person or persons and for loss, or damage to any property occurring in connection with or in any way incident to or arising out of the occupancy, use, service, operations, or performance of work under the terms of this contract, resulting in whole or in part from the negligent acts or omissions of Contractor, any subcontractor, or any employee, agent or representative of contractor or subcontractor.

13.2. Damage to government property from cause other than contractor's negligence – Nothing in the above paragraphs shall be considered to preclude the government from receiving the benefits of any insurance the Contractor may carry which provides for indemnification for any loss or destruction of or damage to property in the custody and care of the contractor where such loss, destruction of, or damage to property in the custody and care of the contractor where such loss, destruction of, or damage is to government right to recover against third parties for any loss, destruction of or damage to government property, and upon the request of the Contracting Officer shall, at the government's expense furnish to the government all reasonable and cooperation including assistance in the prosecution of suit and the execution of instruments of in favor of obtaining recovery.

13.3. Laws and Ordinances – The Contractor shall comply with all laws, ordinances, and regulations (federal, state, country, city or otherwise) covering work of this character and shall include all costs, if any, of such compliance in the price quoted in this offer. The Contractor shall maintain workman's compensation insurance as may be required by law covering its employees who performs the services and shall present a copy of such insurance if requested by the Government.

### **14. PERMITS & RESPONSIBILITIES:**

14.1. Contractor shall obtain and maintain all permits, licenses, and appointments required for the execution of work under this contract, at no additional cost to the Government. Contractor shall obtain these permits, licenses and appointments in compliance with applicable laws. Contractor shall provide evidence of possession or status of application for such permits, licenses, and appointments upon request by the VA. Failure to provide such permits, or evidence of appropriate progress toward receipt of such permits so as to be fully licensed by date planned for the commencement of contract performance may result in contract termination. In addition, contract termination may result if the required documents are subsequently denied or withdrawn by the local authorities. Application, justification, fees, and certifications for any licensure required are entirely the responsibility of the Contractor. Contractor shall ensure that all

employees receive the mandatory training, if applicable to this contract, as required by OSHA, JC, etc., and shall comply with all standards and/or requirements.

#### **15. CONTRACTOR PERSONNEL:**

15.1 The contractor is completely responsible for all actions and conduct of their employees. The contractor shall only utilize its own employees for services provided under this contract – no subcontracting of home oxygen deliveries or management of these services is allowed. Personnel employed by the Contractor in the performance of this contract or any representative of the Contractor entering VA premises shall be subject to inspections by the Government.

15.2. Government rules, regulations, laws, directives, and requirements that are issued during the Contract term relating to law and order, and security shall be applicable to all employees or representatives who enter VA premises. Removal of employee does not relieve the Contractor from the responsibility for the work defined in this contract.

15.3. Contract employees shall be well-groomed, and neat in appearance. Contract employees shall be in appropriate contractor uniforms with clearly seen nametags. Contractor employees shall be professional in appearance and shall not wear any offensive clothing.

15.4. Contractor employees shall conduct their selves in a manner socially acceptable. Loudness, vulgarity, rudeness, or other similar offensive conduct by an employee of the Contractor will be grounds for denying the employee further access to VA premises. Contractor employees shall not consume alcohol or illegal drugs during working hours or at any other time the employees are performing work under this PWS.

#### **16. CONTRACTOR MANAGEMENT:**

16.1. Contractor shall identify a Contract Manager and Alternate Contract Manager to oversee contractor employees and perform continual management of the functional areas contained in this PWS. The Contract Manager and Alternate Contract Manager shall be identified (including full contact information) in the contractor's proposal. Any changes to the working status of these personnel shall be submitted to the COR and Contracting Officer within 2 work days after the change.

#### **17. SERVICE MANUALS:**

17.1. The Contractor shall provide service manuals if applicable. The Contractor shall obtain or have on file, and make available to operational and technical documentation, which are necessary to meet performance requirements of this contract.

#### **18. INSURANCE:**

18.1. The Contractor shall procure and maintain for the entire contract period, Workmen's Compensation and employers Public Liability Insurance in accordance with laws of the State of Florida. The contractor shall certify that they currently meet all applicable Workmen's Compensation and insurance requirements in their proposal. Before commencing work under this contract, the contractor shall provide copies of the required insurance to the COR and Contracting Officer. The contractor will notify the VA immediately of any changes in insurance coverage. Failure to submit documentation regarding the above insurance requirement may be grounds to terminate the contract for cause.

#### **19. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY (HIPPA):**

19.1. To be eligible for contract award, the Contractor shall be in compliance with the Health Insurance Portability and Accountability Act (HIPPA). A Business Associate Agreement (BAA) is attached to this solicitation and shall be completed and signed by the Contractor and VA prior to contract award.

**20. NON-PERSONAL SERVICES STATUS:**

20.1. Award of this contract will result in a contractual arrangement only and shall not be construed as a personnel appointment with the VA. The services shall not constitute an employer/employee relationship. Payments to the Contractor shall be based on the provision of an end product or the accomplishment of a specific task. The Contractor may be subject to Government oversight in accordance with the terms and conditions of this contract, and its efforts will be monitored for quality assurance.

**21. POST AWARD CONFERENCE:**

21.1. A Post Award Conference may be held at a time and location designated by the Contracting Officer. The Contractor (Contract Manager and/or Alternate Contract Manager), the Contracting Officer, the COR, and any other official designated by the Contracting Officer shall attend this conference within seven days after contract award.

**22. CONTRACT AWARD AND ADMINISTRATION:**

22.1. The Contracting Officer or COR is authorized to review by on-site survey, review of records, or by any other reasonable manner, the quality of services rendered under this contract. All records will reviewed by the COTR or other designated representative of the VA. Payments will be denied when such service does not support the charges or if the service is deemed not necessary or inappropriate. Such determinations shall be made by the Contracting Officer or COR, whichever is appropriate.

22.2. The Contracting Officer is the only person authorized to approve changes or modify any of the requirements under this contract. In the event the Contractor effects any changes at the direction of any person other than the Contracting Officer, the change shall be considered to have been made without authority and no adjustment will be made in the contract price to cover any increase in costs incurred as a result thereof.

**23. CONTRACTING OFFICER'S REPRESENTATIVE (COR):**

23.1. A trained and qualified Contracting Officer Representatives (COR's) will be designated. The COR's responsible for local contract administration issues. A letter of delegation that outlines the COR's specific responsibilities will be provided to the contractor and COR at the time of contract award. Within seven days after contract award, a post-award conference will be held with the contractor and COR to discuss the ordering process, clarify the details for delivery, and further discuss the home oxygen delivery services provided under this contract. If agreement cannot be reached between the contractor and COR regarding any issue, the matter shall be referred to the Contracting Officer for resolution.

23.2. The offeror will be provided with a copy of the contract and the COR delegation letter upon contract award.

23.3. Performance of work under this contract shall be subject to the technical direction of the COR, or a representative designated in writing. Technical direction **MUST** be within the scope of the PWS. The COR **DOES NOT** have authority to issue technical direction that:

- i. Constitutes a change of assignment or additional work outside the specification(s)/work statement
- ii. Constitutes a change as defined in the clause entitled "Changes";
- iii. In any manner cause an increase or decrease in the contract price, or the time required for contract performance;
- iv. Changes any of the terms, conditions, or specification(s)/work statement of the contract;

v. Interferes with the Contract's right to perform under the terms and conditions of the contract;

vi. Directs, supervises or otherwise controls the actions of the Contractor's employees.

23.4. Technical direction may be oral or in writing. The COR shall confirm oral direction in writing within three (3) workdays, with a copy to the Contracting Officer.

23.5. The Contractor shall proceed promptly with technical direction issued by the COR. If, in the opinion of the Contractor, any direction of the COR, or his/her designee, falls within the limitations in (ii) above, the contractor shall immediately notify the Contracting Officer no later than the beginning of the next work day.

23.6. Failure of the Contractor and the Contracting Officer to agree that technical direction is within the scope of the contract shall be subject to the terms of the clause entitled "Disputes".

## **24. CONFIDENTIALITY:**

24.1. The Contractor's personnel shall agree to comply with the Privacy Act of 1974 (the Act) and other applicable federal laws, rules, regulations and policies issued under the Act during and after the execution of this contract. Because confidential medical record information may be accessible and/or visible to Contractor employees during performance of their daily duties, the Contractor shall obtain a signed "confidentiality certificate" from each employee prior to allowing them to start work under this contract. Any information about an individual that is maintained by the VA, including, but not limited to, education, financial transactions, medical history, and criminal or employment history or any record that contains the person's name, or the identifying number, symbol, or other identifying particular assigned to the individual, shall be kept CONFIDENTIAL. A copy of this certification shall be provided by the contractor to the COR at the post-award conference.

## **25. SECURITY AND PRIVACY REQUIREMENTS:**

25.1. Contractor shall bear the expense of obtaining background investigations. If the investigation is conducted by the Office of Personnel management (OPM), the Contractor shall reimburse the VA within 30 days. VA will be reimbursed for this investigation by deducting the amount for this investigation from the Contractor's first invoice.

25.2. Any contractor personnel with access to confidential patient information shall have an approved background check completed. This includes the Contract Manager, the Alternate Contract Manager, delivery technicians/drivers, and any administrative or support personnel. The contractor shall submit the names of its employees requiring background checks to the COR immediately after notification of contract award to begin the background check process as soon as possible. Any new contractor employees shall have an approved background check completed before performing work under this contract.

25.3. In order to provide home oxygen delivery services, the contractor will receive the veteran patient name, address, and the associated oxygen prescription. The contractor must protect this information at all times from unauthorized release. The contractor will maintain confidential patient information in their own computer/IT system, which must be fully protected from unauthorized access. The contractor shall clearly identify and explain the process it will implement to manage and protect all confidential patient information in its proposal.

## **26. WAGE DETERMINATION:**

26.1. This contract is subject to the wage determination as set forth by the Department of Labor. The following wage determination is applicable to this requirement:

2005-2126, Rev 19, 06/19/2013



## **27. QUALITY ASSURANCE SURVEILLANCE PLAN:**

27.1. The Government will use the Quality Assurance Surveillance Plan (QASP) attached to this solicitation/contract to monitor contractor performance. The contractor is still responsible for creating and maintaining their own QA program/plan.

## **28. PAYMENT:**

28.1. The Contractor will be paid each month, in arrears, upon receipt of a proper invoice. The invoice shall be written to indicate the dollar amount for the firm fixed price for the month. The Contractor's name, contract number, and purchase order number shall appear on each invoice. The 1358 obligation number shall also be on all invoices. It is estimated that two invoices shall be submitted each month: one for deliveries made during the month and one for maintaining the tanks. Veterans Affairs has mandated that all invoices be submitted electronically. Effective April 10, 2013, Veterans Affairs will no longer accept paper, faxed or e-mail invoices. The VA offers the following solutions for electronic invoices:

1. Electronic Data Interchange (EDI) – ANSI X-12 v4010 (minimum required) or v5010 (optional). Further information regarding EDI solution can be obtained by visiting the Department of Veterans Affairs ECD specific site at <http://www.fsc.va.gov/fsc/edi.asp> or email the ECD team directly at [FSCEDIFinancialTeam@va.gov](mailto:FSCEDIFinancialTeam@va.gov) or [sarah.snyder2@va.gov](mailto:sarah.snyder2@va.gov).
2. OB10 – A third party provider contracted by Veterans Affairs (VA) to assist with electronic invoicing. Further information regarding OB10 solution can be obtained by visiting the Department of Veterans Affairs OB10 specific site at <http://www.ob10.com/veteransaffairs>.
3. VISWEB – A Veterans Affairs Web based portal for low volume vendors using the Internet. Go to <https://www.vis.fsc.va.gov> and click on the link that says “Not already a user? Click here to create a new account.”

28.2. If the contractor needs assistance in setting up OB10 or a VISWEB account, or submitting an invoice on VISWEB, or assistance with past due invoices, please contact the VA Customer Service Help Desk at [vafscshd@va.gov](mailto:vafscshd@va.gov) or 1-877-353-9791.

**VA INFORMATION AND INFORMATION SYSTEM SECURITY/PRIVACY LANGUAGE****With Sensitive Data and Training****ACCESS TO VA INFORMATION AND VA INFORMATION SYSTEMS:**

- a. Contractors, contractor personnel, subcontractors, and subcontractor personnel shall be subject to the same Federal laws, regulations, standards, and VA Directives and Handbooks as VA and VA personnel regarding information and information system security.
- b. A contractor/subcontractor shall request logical (technical) or physical access to VA information and VA information systems for their employees, subcontractors, and affiliates only to the extent necessary to perform the services specified in the contract, agreement, or task order.
- c. All contractors, subcontractors, and third-party servicers and associates working with VA information are subject to the same investigative requirements as those of VA appointees or employees who have access to the same types of information. The level and process of background security investigations for contractors must be in accordance with VA Directive and Handbook 0710, *Personnel Suitability and Security Program*. The Office for Operations, Security, and Preparedness is responsible for these policies and procedures.
- d. The contractor or subcontractor must notify the Contracting Officer immediately when an employee working on a VA system or with access to VA information is reassigned or leaves the contractor or subcontractor's employ. The Contracting Officer must also be notified immediately by the contractor or subcontractor prior to an unfriendly termination.

**Contractor Personnel Security Requirements:**

All contractor employees who require access to the Department of Veterans Affairs' computer systems shall be the subject of a background investigation and must receive a favorable adjudication from the VA Office of Security and Law Enforcement prior to contract performance. This requirement is applicable to all subcontractor personnel requiring the same access. If the investigation is not completed prior to the start date of the contract the contractor will be responsible for the actions of those individuals that provide or perform work for the VA.

- 1. **Position Sensitivity** – The position sensitivity has been designated as **LOW risk**.
- 2. **Background Investigation** – The level of background investigation commensurate with the required level of access is National Agency Check (NACI) with written inquiries.
- 3. **Contractor Responsibilities**
  - a. The contractor shall bear the expense of obtaining background investigations. If the investigation is conducted by the Office of Personnel Management (OPM), the contractor shall reimburse the VA within 30 days.

The web site which provides information on the cost of the security investigation is:

[www.opm.gov/extra/investigate](http://www.opm.gov/extra/investigate) – Select Federal Investigations Notices (FIN 01-01)

- b. The contractor shall prescreen all personnel requiring access to the computer systems to ensure they maintain a U.S. citizenship and are able to read, write, speak, and understand the English language.

c. The contractor will provide to the Contracting Officer prior to award the following: (1) List of names of contract personnel. (2) Social security numbers of contractor personnel. (3) Home address of contractor personnel or the contractor address.

The Contracting Officer will submit the above information to the Office of Security and Law Enforcement, Washington, D.C. The Office of Security and Law Enforcement will provide the necessary investigative forms (these forms are indicated in paragraph 3.d. below) to the contractor's personnel, coordinate the background investigations with OPM and notify the Contracting Officer and contractor of the results of the investigation.

d. The contractor shall submit or have their employees submit the following required forms to the VA Office of Security and Law Enforcement within 30 days of receipt:

- (i) Standard Form 85P, Questionnaire for Public Trust Positions
- (ii) Standard Form 85P-S, Supplemental Questionnaire for Selected Positions
- (iii) FD 258, U.S. Department of Justice Fingerprint Applicant Chart
- (iv) VA Form 0710, Authority for Release of Information Form
- (v) Optional Form 306, Declaration for Federal Employment
- (vi) Optional Form 612, Optional Application for Federal Employment

d. The contractor, when notified of an unfavorable determination by the Government, shall withdraw the employee from consideration from working under the contract.

e. Failure to comply with the contractor personnel security requirements may result in termination of the contract for default.

#### **VA INFORMATION CUSTODIAL LANGUAGE:**

a. Information made available to the contractor or subcontractor by VA for the performance or administration of this contract or information developed by the contractor/subcontractor in performance or administration of the contract shall be used only for those purposes and shall not be used in any other way without the prior written agreement of the VA. This clause expressly limits the contractor/subcontractor's rights to use data as described in Rights in Data - General, FAR 52.227-14(d) (1).

b. VA information should not be co-mingled, if possible, with any other data on the contractors/subcontractor's information systems or media storage systems in order to ensure VA requirements related to data protection and media sanitization can be met. If co-mingling must be allowed to meet the requirements of the business need, the contractor must ensure that VA's information is returned to the VA or destroyed in accordance with VA's sanitization requirements. VA reserves the right to conduct on site inspections of contractor and subcontractor IT resources to ensure data security controls, separation of data and job duties, and destruction/media sanitization procedures are in compliance with VA directive requirements.

c. Prior to termination or completion of this contract, contractor/subcontractor must not destroy information received from VA, or gathered/created by the contractor in the course of performing this contract without prior written approval by the VA. Any data destruction done on behalf of VA by a contractor/subcontractor must be done in accordance with National Archives and Records Administration (NARA) requirements as outlined in VA Directive 6300, *Records and Information Management* and its Handbook 6300.1 *Records Management*

*Procedures*, applicable VA Records Control Schedules, and VA Handbook 6500.1, *Electronic Media Sanitization*. Self-certification by the contractor that the data destruction requirements above have been met must be sent to the VA Contracting Officer within 30 days of termination of the contract.

d. The contractor/subcontractor must receive, gather, store, back up, maintain, use, disclose and dispose of VA information only in compliance with the terms of the contract and applicable Federal and VA information confidentiality and security laws, regulations and policies. If Federal or VA information confidentiality and security laws, regulations and policies become applicable to the VA information or information systems after execution of the contract, or if NIST issues or updates applicable FIPS or Special Publications (SP) after execution of this contract, the parties agree to negotiate in good faith to implement the information confidentiality and security laws, regulations and policies in this contract.

e. The contractor/subcontractor shall not make copies of VA information except as authorized and necessary to perform the terms of the agreement or to preserve electronic information stored on contractor/subcontractor electronic storage media for restoration in case any electronic equipment or data used by the contractor/subcontractor needs to be restored to an operating state. If copies are made for restoration purposes, after the restoration is complete, the copies must be appropriately destroyed.

f. If VA determines that the contractor has violated any of the information confidentiality, privacy, and security provisions of the contract, it shall be sufficient grounds for VA to withhold payment to the contractor or third party or terminate the contract for default or terminate for cause under Federal Acquisition Regulation (FAR) part 12.

g. If a VHA contract is terminated for cause, the associated BAA must also be terminated and appropriate actions taken in accordance with VHA Handbook 1600.1, Business Associate Agreements. Absent an agreement to use or disclose protected health information, there is no business associate relationship.

h. The contractor/subcontractor must store, transport, or transmit VA sensitive information in an encrypted form, using VA-approved encryption tools that are, at a minimum, FIPS 140-2 validated.

i. The contractor/subcontractor's firewall and Web services security controls, if applicable, shall meet or exceed VA's minimum requirements. VA Configuration Guidelines are available upon request.

j. Except for uses and disclosures of VA information authorized by this contract for performance of the contract, the contractor/subcontractor may use and disclose VA information only in two other situations: (i) in response to a qualifying order of a court of competent jurisdiction, or (ii) with VA's prior written approval. The contractor/subcontractor must refer all requests for, demands for production of, or inquiries about, VA information and information systems to the VA contracting officer for response.

k. Notwithstanding the provision above, the contractor/subcontractor shall not release VA records protected by Title 38 U.S.C. 5705, confidentiality of medical quality assurance records and/or Title 38 U.S.C. 7332, confidentiality of certain health records pertaining to drug addiction, sickle cell anemia, alcoholism or alcohol abuse, or infection with human immunodeficiency virus. If the contractor/subcontractor is in receipt of a court order or other requests for the above mentioned information, that contractor/subcontractor shall immediately refer such court orders or other requests to the VA contracting officer for response.

l. For service that involves the storage, generating, transmitting, or exchanging of VA sensitive information but does not require C&A or an MOU-ISA for system interconnection, the contractor/subcontractor must complete a Contractor Security Control Assessment (CSCA) on a yearly basis and provide it to the COR.

**SECURITY INCIDENT INVESTIGATION:**

- a. The term “security incident” means an event that has, or could have, resulted in unauthorized access to, loss or damage to VA assets, or sensitive information, or an action that breaches VA security procedures. The contractor/subcontractor shall immediately notify the COR and simultaneously, the designated ISO and Privacy Officer for the contract of any known or suspected security/privacy incidents, or any unauthorized disclosure of sensitive information, including that contained in system(s) to which the contractor/subcontractor has access.
- b. To the extent known by the contractor/subcontractor, the contractor/subcontractor’s notice to VA shall identify the information involved, the circumstances surrounding the incident (including to whom, how, when, and where the VA information or assets were placed at risk or compromised), and any other information that the contractor/subcontractor considers relevant.
- c. With respect to unsecured protected health information, the business associate is deemed to have discovered a data breach when the business associate knew or should have known of a breach of such information. Upon discovery, the business associate must notify the covered entity of the breach. Notifications need to be made in accordance with the executed business associate agreement.
- d. In instances of theft or break-in or other criminal activity, the contractor/subcontractor must concurrently report the incident to the appropriate law enforcement entity (or entities) of jurisdiction, including the VA OIG and Security and Law Enforcement. The contractor, its employees, and its subcontractors and their employees shall cooperate with VA and any law enforcement authority responsible for the investigation and prosecution of any possible criminal law violation(s) associated with any incident. The contractor/subcontractor shall cooperate with VA in any civil litigation to recover VA information, obtain monetary or other compensation from a third party for damages arising from any incident, or obtain injunctive relief against any third party arising from, or related to, the incident.

**LIQUIDATED DAMAGES FOR DATA BREACH:**

- a. Consistent with the requirements of 38 U.S.C. §5725, a contract may require access to sensitive personal information. If so, the contractor is liable to VA for liquidated damages in the event of a data breach or privacy incident involving any SPI the contractor/subcontractor processes or maintains under this contract.
- b. The contractor/subcontractor shall provide notice to VA of a “security incident” as set forth in the Security Incident Investigation section above. Upon such notification, VA must secure from a non-Department entity or the VA Office of Inspector General an independent risk analysis of the data breach to determine the level of risk associated with the data breach for the potential misuse of any sensitive personal information involved in the data breach. The term 'data breach' means the loss, theft, or other unauthorized access, or any access other than that incidental to the scope of employment, to data containing sensitive personal information, in electronic or printed form, that results in the potential compromise of the confidentiality or integrity of the data. Contractor shall fully cooperate with the entity performing the risk analysis. Failure to cooperate may be deemed a material breach and grounds for contract termination.

**SECURITY CONTROLS COMPLIANCE TESTING :**

On a periodic basis, VA, including the Office of Inspector General, reserves the right to evaluate any or all of the security controls and privacy practices implemented by the contractor under the clauses contained within the contract. With 10 working-day’s notice, at the request of the government, the contractor must fully cooperate

and assist in a government-sponsored security controls assessment at each location wherein VA information is processed or stored, or information systems are developed, operated, maintained, or used on behalf of VA, including those initiated by the Office of Inspector General. The government may conduct a security control assessment on shorter notice (to include unannounced assessments) as determined by VA in the event of a security incident or at any other time.

**TRAINING:**

a. All contractor employees and subcontractor employees requiring access to VA information and VA information systems shall complete VA Privacy and Information Security Awareness and Rules of Behavior Training and Privacy and HIPAA Training and HIPAA Training.

(1) Sign and acknowledge (either manually or electronically) understanding of and responsibilities for compliance with the *Rules of Behavior*.

b. The contractor shall provide to the contracting officer and/or the COR a copy of the training certificates and certification of signing the Rules of Behavior for each applicable employee within 1 week of the initiation of the contract and annually thereafter, as required.

c. Failure to complete the mandatory annual training and sign the Rules of Behavior annually, within the timeframe required, is grounds for suspension or termination of all physical or electronic access privileges and removal from work on the contract until such time as the training and documents are complete.

The Certification and Accreditation (C&A) requirements do not apply and a Security Accreditation Package is not required for this PWS.

## SECTION C - CONTRACT CLAUSES

### C.1 52.212-4 CONTRACT TERMS AND CONDITIONS—COMMERCIAL ITEMS (SEP 2013)

(a) *Inspection/Acceptance.* The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights—

- (1) Within a reasonable time after the defect was discovered or should have been discovered; and
- (2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) *Assignment.* The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727). However, when a third party makes payment (e.g., use of the Governmentwide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

(c) *Changes.* Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) *Disputes.* This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) *Definitions.* The clause at FAR 52.202-1, Definitions, is incorporated herein by reference.

(f) *Excusable delays.* The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) *Invoice.*

(1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include—

- (i) Name and address of the Contractor;
- (ii) Invoice date and number;

- (iii) Contract number, contract line item number and, if applicable, the order number;
- (iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;
- (v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;
- (vi) Terms of any discount for prompt payment offered;
- (vii) Name and address of official to whom payment is to be sent;
- (viii) Name, title, and phone number of person to notify in event of defective invoice; and
- (ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.
- (x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer—System for Award Management, or 52.232-34, Payment by Electronic Funds Transfer—Other Than System for Award Management), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(2) Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR part 1315.

(h) *Patent indemnity.* The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) *Payment.*—

(1) *Items accepted.* Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) *Prompt payment.* The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and prompt payment regulations at 5 CFR part 1315.

(3) *Electronic Funds Transfer (EFT).* If the Government makes payment by EFT, see 52.212-5(b) for the appropriate EFT clause.

(4) *Discount.* In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.



(5) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall—

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—

(A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number, if applicable;

(C) Affected contract line item or subline item, if applicable; and

(D) Contractor point of contact.

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(6) *Interest.*

(i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 611 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in (i)(6)(v) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) *Final decisions.* The Contracting Officer will issue a final decision as required by 33.211 if—

(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days;

(B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see 32.607-2).

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(v) Amounts shall be due at the earliest of the following dates:

(A) The date fixed under this contract.

(B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—

(A) The date on which the designated office receives payment from the Contractor;

(B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(vii) The interest charge made under this clause may be reduced under the procedures prescribed in 32.608-2 of the Federal Acquisition Regulation in effect on the date of this contract.

(j) *Risk of loss.* Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) *Taxes.* The contract price includes all applicable Federal, State, and local taxes and duties.

(l) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) *Title.* Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) *Warranty.* The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) *Limitation of liability.* Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) *Other compliances.* The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) *Compliance with laws unique to Government contracts.* The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to

officials not to benefit; 40 U.S.C. 3701, et seq., Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 4712 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

(s) *Order of precedence.* Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

(1) The schedule of supplies/services.

(2) The Assignments, Disputes, Payments, Invoice, Other Compliances, Compliance with Laws Unique to Government Contracts, and Unauthorized Obligations paragraphs of this clause;

(3) The clause at 52.212-5.

(4) Addenda to this solicitation or contract, including any license agreements for computer software.

(5) Solicitation provisions if this is a solicitation.

(6) Other paragraphs of this clause.

(7) The Standard Form 1449.

(8) Other documents, exhibits, and attachments

(9) The specification.

(t) *System for Award Management (SAM).*

(1) Unless exempted by an addendum to this contract, the Contractor is responsible during performance and through final payment of any contract for the accuracy and completeness of the data within the SAM database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the SAM database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the SAM database to ensure it is current, accurate and complete. Updating information in the SAM does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(2)(i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in FAR subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to (A) change the name in the SAM database; (B) comply with the requirements of subpart 42.12; and (C) agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (t)(2)(i) of this clause, or fails to perform the agreement at paragraph (t)(2)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the SAM information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

(3) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the SAM record to reflect an assignee for the purpose of assignment of claims (see Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the SAM database. Information provided to the Contractor's SAM record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.

(4) Offerors and Contractors may obtain information on registration and annual confirmation requirements via SAM accessed through <https://www.acquisition.gov>.

(u) *Unauthorized Obligations.*

(1) Except as stated in paragraph (u)(2) of this clause, when any supply or service acquired under this contract is subject to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

(i) Any such clause is unenforceable against the Government.

(ii) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an "I agree" click box or other comparable mechanism (e.g., "click-wrap" or "browse-wrap" agreements), execution does not bind the Government or any Government authorized end user to such clause.

(iii) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.

(2) Paragraph (u)(1) of this clause does not apply to indemnification by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

(End of Clause)

## **C.2 52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (JAN 2014)**

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

(1) 52.222-50, Combating Trafficking in Persons (FEB 2009) (22 U.S.C. 7104(g)).

Alternate I (AUG 2007) of 52.222-50 (22 U.S.C. 7104 (g)).

(2) 52.233-3, Protest After Award (Aug 1996) (31 U.S.C. 3553).

(3) 52.233-4, Applicable Law for Breach of Contract Claim (Oct 2004) (Pub. L. 108-77, 108-78).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

☒ (1) 52.203-6, Restrictions on Subcontractor Sales to the Government (Sept 2006), with Alternate I (Oct 1995) (41 U.S.C. 253g and 10 U.S.C. 2402).

☐ (2) 52.203-13, Contractor Code of Business Ethics and Conduct (APR 2010)(Pub. L. 110-252, Title VI, Chapter 1 (41 U.S.C. 251 note)).

☐ (3) 52.203-15, Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (JUN 2010) (Section 1553 of Pub. L. 111-5). (Applies to contracts funded by the American Recovery and Reinvestment Act of 2009.)

☒ (4) 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards (Jul 2013) (Pub. L. 109-282) (31 U.S.C. 6101 note).

☐ (5) 52.204-11, American Recovery and Reinvestment Act-Reporting Requirements (JUL 2010) (Pub. L. 111-5).

☐ (6) 52.204-14, Service Contract Reporting Requirements (JAN 2014) (Pub. L. 111-117, section 743 of Div. C).

☐ (7) 52.204-15, Service Contract Reporting Requirements for Indefinite-Delivery Contracts (JAN 2014) (Pub. L. 111-117, section 743 of Div. C).

☒ (8) 52.209-6, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. (Aug 2013) (31 U.S.C. 6101 note).

☐ (9) 52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters (Jul 2013) (41 U.S.C. 2313).

☐ (10) 52.209-10, Prohibition on Contracting with Inverted Domestic Corporations (MAY 2012) (section 738 of Division C of Pub. L. 112-74, section 740 of Division C of Pub. L. 111-117, section 743 of Division D of Pub. L. 111-8, and section 745 of Division D of Pub. L. 110-161).

☐ (11) 52.219-3, Notice of HUBZone Set-Aside or Sole Source Award (NOV 2011) (15 U.S.C. 657a).

☐ (12) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (JAN 2011) (if the offeror elects to waive the preference, it shall so indicate in its offer) (15 U.S.C. 657a).

☐ (13) [Reserved]

☒ (14)(i) 52.219-6, Notice of Total Small Business Set-Aside (NOV 2011) (15 U.S.C. 644).

☐ (ii) Alternate I (NOV 2011).

☐ (iii) Alternate II (NOV 2011).

☐ (15)(i) 52.219-7, Notice of Partial Small Business Set-Aside (June 2003) (15 U.S.C. 644).

☐ (ii) Alternate I (Oct 1995) of 52.219-7.

☐ (iii) Alternate II (Mar 2004) of 52.219-7.

☒ (16) 52.219-8, Utilization of Small Business Concerns (Jul 2013) (15 U.S.C. 637(d)(2) and (3)).

☐ (17)(i) 52.219-9, Small Business Subcontracting Plan (Jul 2013) (15 U.S.C. 637(d)(4)).

☐ (ii) Alternate I (Oct 2001) of 52.219-9.

- ☐ (iii) Alternate II (Oct 2001) of 52.219-9.
- ☐ (iv) Alternate III (JUL 2010) of 52.219-9.
- ☐ (18) 52.219-13, Notice of Set-Aside of Orders (NOV 2011) (15 U.S.C. 644(r)).
- ☒ (19) 52.219-14, Limitations on Subcontracting (NOV 2011) (15 U.S.C. 637(a)(14)).
- ☐ (20) 52.219-16, Liquidated Damages—Subcontracting Plan (Jan 1999) (15 U.S.C. 637(d)(4)(F)(i)).
- ☐ (21)(i) 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (OCT 2008) (10 U.S.C. 2323) (if the offeror elects to waive the adjustment, it shall so indicate in its offer.)
- ☐ (ii) Alternate I (June 2003) of 52.219-23.
- ☐ (22) 52.219-25, Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting (Jul 2013) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
- ☐ (23) 52.219-26, Small Disadvantaged Business Participation Program—Incentive Subcontracting (Oct 2000) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
- ☐ (24) 52.219-27, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (NOV 2011) (15 U.S.C. 657f).
- ☒ (25) 52.219-28, Post Award Small Business Program Rerepresentation (Jul 2013) (15 U.S.C. 632(a)(2)).
- ☐ (26) 52.219-29, Notice of Set-Aside for Economically Disadvantaged Women-Owned Small Business (EDWOSB) Concerns (Jul 2013) (15 U.S.C. 637(m)).
- ☐ (27) 52.219-30, Notice of Set-Aside for Women-Owned Small Business (WOSB) Concerns Eligible Under the WOSB Program (Jul 2013) (15 U.S.C. 637(m)).
- ☒ (28) 52.222-3, Convict Labor (June 2003) (E.O. 11755).
- ☐ (29) 52.222-19, Child Labor—Cooperation with Authorities and Remedies (JAN 2014) (E.O. 13126).
- ☒ (30) 52.222-21, Prohibition of Segregated Facilities (Feb 1999).
- ☒ (31) 52.222-26, Equal Opportunity (Mar 2007) (E.O. 11246).
- ☒ (32) 52.222-35, Equal Opportunity for Veterans (SEP 2010) (38 U.S.C. 4212).
- ☒ (33) 52.222-36, Affirmative Action for Workers with Disabilities (Oct 2010) (29 U.S.C. 793).
- ☒ (34) 52.222-37, Employment Reports on Veterans (SEP 2010) (38 U.S.C. 4212).
- ☒ (35) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496).
- ☒ (36) 52.222-54, Employment Eligibility Verification (AUG 2013). (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in 22.1803.)

☐ (37)(i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Items (May 2008) (42 U.S.C.6962(c)(3)(A)(ii)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

☐ (ii) Alternate I (MAY 2008) of 52.223-9 (42 U.S.C. 6962(i)(2)(C)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

☐ (38) 52.223-15, Energy Efficiency in Energy-Consuming Products (DEC 2007)(42 U.S.C. 8259b).

☐ (39)(i) 52.223-16, IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products (DEC 2007) (E.O. 13423).

☐ (ii) Alternate I (DEC 2007) of 52.223-16.

☒ (40) 52.223-18, Encouraging Contractor Policies to Ban Text Messaging While Driving (AUG 2011)

☐ (41) 52.225-1, Buy American Act—Supplies (FEB 2009) (41 U.S.C. 10a-10d).

☐ (42)(i) 52.225-3, Buy American Act—Free Trade Agreements—Israeli Trade Act (NOV 2012) (41 U.S.C. chapter 83, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, 19 U.S.C. 3805 note, 19 U.S.C. 4001 note, Pub. L. 103-182, 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, 110-138, 112-41, 112-42, and 112-43).

☐ (ii) Alternate I (MAR 2012) of 52.225-3.

☐ (iii) Alternate II (MAR 2012) of 52.225-3.

☐ (iv) Alternate III (NOV 2012) of 52.225-3.

☐ (43) 52.225-5, Trade Agreements (NOV 2013) (19 U.S.C. 2501, *et seq.*, 19 U.S.C. 3301 note).

☒ (44) 52.225-13, Restrictions on Certain Foreign Purchases (JUN 2008) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

☐ (45) 52.225-26, Contractors Performing Private Security Functions Outside the United States (Jul 2013) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).

☐ (46) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (Nov 2007) (42 U.S.C. 5150).

☐ (47) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov 2007) (42 U.S.C. 5150).

☐ (48) 52.232-29, Terms for Financing of Purchases of Commercial Items (Feb 2002) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).

☐ (49) 52.232-30, Installment Payments for Commercial Items (Oct 1995) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).

☐ (50) 52.232-33, Payment by Electronic Funds Transfer—System for Award Management (Jul 2013) (31 U.S.C. 3332).

☒ (51) 52.232-34, Payment by Electronic Funds Transfer—Other than System for Award Management (Jul 2013) (31 U.S.C. 3332).

☐ (52) 52.232-36, Payment by Third Party (Jul 2013) (31 U.S.C. 3332).

☐ (53) 52.239-1, Privacy or Security Safeguards (Aug 1996) (5 U.S.C. 552a).

☐ (54)(i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx. 1241(b) and 10 U.S.C. 2631).

☐ (ii) Alternate I (Apr 2003) of 52.247-64.

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

☒ (1) 52.222-41, Service Contract Act of 1965 (Nov 2007) (41 U.S.C. 351, et seq.).

☐ (2) 52.222-42, Statement of Equivalent Rates for Federal Hires (May 1989) (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).

Employee Class

Monetary Wage-Fringe Benefits

☐ (3) 52.222-43, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts) (Sep 2009) (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).

☒ (4) 52.222-44, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Sep 2009) (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).

☐ (5) 52.222-51, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements (Nov 2007) (41 U.S.C. 351, et seq.).

☐ (6) 52.222-53, Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements (FEB 2009) (41 U.S.C. 351, et seq.).

☒ (7) 52.222-17, Nondisplacement of Qualified Workers (JAN 2013) (E.O.13495).

☐ (8) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations. (MAR 2009)(Pub. L. 110-247)

☐ (9) 52.237-11, Accepting and Dispensing of \$1 Coin (SEP 2008) (31 U.S.C. 5112(p)(1)).

(d) Comptroller General Examination of Record. The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, Audit and Records—Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.



(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e)(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in this paragraph (e)(1) in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (APR 2010) (Pub. L. 110-252, Title VI, Chapter 1 (41 U.S.C. 251 note)).

(ii) 52.219-8, Utilization of Small Business Concerns (Jul 2013) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$650,000 (\$1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(iii) 52.222-17, Nondisplacement of Qualified Workers (JAN 2013) (E.O. 13495). Flow down required in accordance with paragraph (l) of FAR clause 52.222-17.

(iv) 52.222-26, Equal Opportunity (Mar 2007) (E.O. 11246).

(v) 52.222-35, Equal Opportunity for Veterans (SEP 2010) (38 U.S.C. 4212).

(vi) 52.222-36, Affirmative Action for Workers with Disabilities (Oct 2010) (29 U.S.C. 793).

(vii) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause 52.222-40.

(viii) 52.222-41, Service Contract Act of 1965 (Nov 2007) (41 U.S.C. 351, et seq.).

(ix) 52.222-50, Combating Trafficking in Persons (FEB 2009) (22 U.S.C. 7104(g)).

Alternate I (AUG 2007) of 52.222-50 (22 U.S.C. 7104(g)).

(x) 52.222-51, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements "(Nov 2007)" (41 U.S.C. 351, et seq.).

(xi) 52.222-53, Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements (FEB 2009)(41 U.S.C. 351, et seq.).

(xii) 52.222-54, Employment Eligibility Verification (AUG 2013).

(xiii) 52.225-26, Contractors Performing Private Security Functions Outside the United States (Jul 2013) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).

(xiv) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations. (MAR 2009)(Pub. L. 110-247). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6.

(xv) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx. 1241(b) and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the contractor may include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of Clause)

### **C.3 52.216-18 ORDERING (OCT 1995)**

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule. Such orders may be issued from the effective date of the contract through the end date of the contract.

(b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.

(c) If mailed, a delivery order or task order is considered "issued" when the Government deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic commerce methods only if authorized in the Schedule.

(End of Clause)

### **C.4 52.216-19 ORDER LIMITATIONS (OCT 1995)**

(a) *Minimum order.* When the Government requires supplies or services covered by this contract in an amount of less than \$10, the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.

(b) *Maximum order.* The Contractor is not obligated to honor—

(1) Any order for a single item in excess of \$50,000;

(2) Any order for a combination of items in excess of \$150,000; or

(3) A series of orders from the same ordering office within 30 days that together call for quantities exceeding the limitation in paragraph (b)(1) or (2) of this section.

(c) If this is a requirements contract (i.e., includes the Requirements clause at subsection 52.216-21 of the Federal Acquisition Regulation (FAR)), the Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitations in paragraph (b) of this section.

(d) Notwithstanding paragraphs (b) and (c) of this section, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within 2 days after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

(End of Clause)

### **C.5 52.216-21 REQUIREMENTS (OCT 1995)**

(a) This is a requirements contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies or services specified in the Schedule are estimates only and are not purchased by this contract. Except as this contract may otherwise provide, if the Government's requirements do not result in orders in the quantities described as "estimated" or "maximum" in the Schedule, that fact shall not constitute the basis for an equitable price adjustment.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. Subject to any limitations in the Order Limitations clause or elsewhere in this contract, the Contractor shall furnish to the Government all supplies or services specified in the Schedule and called for by orders issued in accordance with the Ordering clause. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(c) Except as this contract otherwise provides, the Government shall order from the Contractor all the supplies or services specified in the Schedule that are required to be purchased by the Government activity or activities specified in the Schedule.

(d) The Government is not required to purchase from the Contractor requirements in excess of any limit on total orders under this contract.

(e) If the Government urgently requires delivery of any quantity of an item before the earliest date that delivery may be specified under this contract, and if the Contractor will not accept an order providing for the accelerated delivery, the Government may acquire the urgently required goods or services from another source.

(f) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after the end date of the contract.

(End of Clause)

## **C.6 52.217-8 OPTION TO EXTEND SERVICES (NOV 1999)**

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within 60 days.

(End of Clause)

## **C.7 SUPPLEMENTAL INSURANCE REQUIREMENTS**

In accordance with FAR 28.307-2 and FAR 52.228-5, the following minimum coverage shall apply to this contract:

(a) Workers' compensation and employers liability: Contractors are required to comply with applicable Federal and State workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the employer's liability section of the insurance policy, except when contract operations are so commingled with a Contractor's commercial operations that it would not be practical to require this coverage. Employer's liability coverage of at least \$100,000 is required, except in States with exclusive or monopolistic funds that do not permit workers' compensation to be written by private carriers.

(b) General Liability: \$500,000.00 per occurrences.

(c) Automobile liability: \$200,000.00 per person; \$500,000.00 per occurrence and \$20,000.00 property damage.

(d) The successful bidder must present to the Contracting Officer, prior to award, evidence of general liability insurance without any exclusionary clauses for asbestos that would void the general liability coverage.

(End of Clause)

## **C.8 VAAR 852.203-70 COMMERCIAL ADVERTISING (JAN 2008)**

The bidder or offeror agrees that if a contract is awarded to him/her, as a result of this solicitation, he/she will not advertise the award of the contract in his/her commercial advertising in such a manner as to state or imply that the Department of Veterans Affairs endorses a product, project or commercial line of endeavor.

(End of Clause)

## **C.9 852.232-72 ELECTRONIC SUBMISSION OF PAYMENT REQUESTS (NOV 2012)**

(a) *Definitions.* As used in this clause—

(1) *Contract financing payment* has the meaning given in FAR 32.001.

(2) *Designated agency office* has the meaning given in 5 CFR 1315.2(m).

(3) *Electronic form* means an automated system transmitting information electronically according to the

Accepted electronic data transmission methods and formats identified in paragraph (c) of this clause. Facsimile, email, and scanned documents are not acceptable electronic forms for submission of payment requests.

(4) *Invoice payment* has the meaning given in FAR 32.001.

(5) *Payment request* means any request for contract financing payment or invoice payment submitted by the contractor under this contract.

(b) *Electronic payment requests.* Except as provided in paragraph (e) of this clause, the contractor shall submit payment requests in electronic form. Purchases paid with a Government-wide commercial purchase card are considered to be an electronic transaction for purposes of this rule, and therefore no additional electronic invoice submission is required.

(c) *Data transmission.* A contractor must ensure that the data transmission method and format are through one of the following:

(1) VA's Electronic Invoice Presentment and Payment System. (See Web site at <http://www.fsc.va.gov/einvoice.asp>.)

(2) Any system that conforms to the X12 electronic data interchange (EDI) formats established by the Accredited Standards Center (ASC) and chartered by the American National Standards Institute (ANSI). The X12 EDI Web site (<http://www.x12.org>) includes additional information on EDI 810 and 811 formats.

(d) *Invoice requirements.* Invoices shall comply with FAR 32.905.

(e) *Exceptions.* If, based on one of the circumstances below, the contracting officer directs that payment requests be made by mail, the contractor shall submit payment requests by mail through the United States Postal Service to the designated agency office. Submission of payment requests by mail may be required for:

(1) Awards made to foreign vendors for work performed outside the United States;

(2) Classified contracts or purchases when electronic submission and processing of payment requests could compromise the safeguarding of classified or privacy information;

(3) Contracts awarded by contracting officers in the conduct of emergency operations, such as responses to national emergencies;

(4) Solicitations or contracts in which the designated agency office is a VA entity other than the VA Financial Services Center in Austin, Texas; or

(5) Solicitations or contracts in which the VA designated agency office does not have electronic invoicing capability as described above.

(End of Clause)

#### **C.10 VAAR 852.237-70 CONTRACTOR RESPONSIBILITIES (APR 1984)**

The contractor shall obtain all necessary licenses and/or permits required to perform this work. He/she shall take all reasonable precautions necessary to protect persons and property from injury or damage during the performance of this contract. He/she shall be responsible for any injury to himself/herself, his/her employees, as well as for any damage to personal or public property that occurs during the performance of this contract that is caused by his/her employees fault or negligence, and shall maintain personal liability and property damage insurance having coverage for a limit as required by the laws of the State of Florida. Further, it is agreed that any negligence of the Government, its officers, agents, servants and employees, shall not be the responsibility of the contractor hereunder with the regard to any claims, loss, damage, injury, and liability resulting there from.

(End of Clause)

#### **C.11 VAAR 852.271-70 NONDISCRIMINATION IN SERVICES PROVIDED TO BENEFICIARIES (JAN 2008)**

The contractor agrees to provide all services specified in this contract for any person determined eligible by the Department of Veterans Affairs, regardless of the race, color, religion, sex, or national origin of the person for whom such services are ordered. The contractor further warrants that he/she will not resort to subcontracting as a means of circumventing this provision.

(End of Provision)

#### **C.12 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)**

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

<http://www.acquisition.gov/far/index.html>

<http://www.va.gov/oal/library/vaar/>

(End of Clause)

<b><u>FAR Number</u></b>	<b><u>Title</u></b>	<b><u>Date</u></b>
52.203-17	CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS	SEP 2013
52.224-1	PRIVACY ACT NOTIFICATION	APR 1984
52.224-2	PRIVACY ACT	APR 1984
52.232-37	MULTIPLE PAYMENT ARRANGEMENTS	MAY 1999
52.232-39	UNENFORCEABILITY OF UNAUTHORIZED OBLIGATIONS	JUN 2013
52.232-40	PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS	DEC 2013

## SECTION D - CONTRACT DOCUMENTS, EXHIBITS, OR ATTACHMENTS

### BUSINESS ASSOCIATE AGREEMENT BETWEEN THE DEPARTMENT OF VETERANS AFFAIRS VETERANS HEALTH ADMINISTRATION AND

Purpose. The purpose of this Business Associate Agreement (Agreement) is to establish requirements for the Department of Veterans Affairs (VA) Veterans Health Administration (VHA) and in accordance with the Health Insurance Portability and Accountability Act (HIPAA), the Health Information Technology for Economic and Clinical Health Act (HITECH) Act, and the HIPAA Privacy, Security, Breach Notification, and Enforcement Rules (“HIPAA Rules”), 45 C.F.R. Parts 160 and 164, for the Use and Disclosure of Protected Health Information (PHI) under the terms and conditions specified below.

Scope. Under this Agreement and other applicable contracts or agreements, will provide services to, for, or on behalf of VHA.

In order for to provide such services, VHA will disclose Protected Health Information to and will use or disclose Protected Health Information in accordance with this Agreement.

Definitions. Unless otherwise provided, the following terms used in this Agreement have the same meaning as defined by the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information (PHI), Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

“Business Associate” shall have the same meaning as described at 45 C.F.R. § 160.103. For the purposes of this Agreement, Business Associate shall refer to , including its employees, officers, or any other agents that create, receive, maintain, or transmit PHI as described below.

“Covered Entity” shall have the same meaning as the term is defined at 45 C.F.R. § 160.103. For the purposes of this Agreement, Covered Entity shall refer to VHA.

“Protected Health Information” or “PHI” shall have the same meaning as described at 45 C.F.R. § 160.103. “Protected Health Information” and “PHI” as used in this Agreement include “Electronic Protected Health Information” and “EPHI.” For the purposes of this Agreement and unless otherwise provided, the term shall also refer to PHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity or receives from Covered Entity or another Business Associate.

“Subcontractor” shall have the same meaning as the term is defined at 45 C.F.R. § 160.103. For the purposes of this Agreement, Subcontractor shall refer to a contractor of any person or entity, other than Covered Entity, that creates, receives, maintains, or transmits PHI under the terms of this Agreement.

Terms and Conditions. Covered Entity and Business Associate agree as follows:

1. Ownership of PHI. PHI is and remains the property of Covered Entity as long as Business Associate creates, receives, maintains, or transmits PHI, regardless of whether a compliant Business Associate agreement is in place.

2. Use and Disclosure of PHI by Business Associate. Unless otherwise provided, Business Associate:

A. May not use or disclose PHI other than as permitted or required by this Agreement, or in a manner that would violate the HIPAA Privacy Rule if done by Covered Entity, except that it may use or disclose PHI:

- (1) As required by law or to carry out its legal responsibilities;
- (2) For the proper management and administration of Business Associate; or
- (3) To provide Data Aggregation services relating to the health care operations of Covered Entity.

B. Must use or disclose PHI in a manner that complies with Covered Entity's minimum necessary policies and procedures.

C. May de-identify PHI created or received by Business Associate under this Agreement at the request of the Covered Entity, provided that the de-identification conforms to the requirements of the HIPAA Privacy Rule.

3. Obligations of Business Associate. In connection with any Use or Disclosure of PHI, Business Associate must:

A. Consult with Covered Entity before using or disclosing PHI whenever Business Associate is uncertain whether the Use or Disclosure is authorized under this Agreement.

B. Implement appropriate administrative, physical, and technical safeguards and controls to protect PHI and document applicable policies and procedures to prevent any Use or Disclosure of PHI other than as provided by this Agreement.

C. Provide satisfactory assurances that PHI created or received by Business Associate under this Agreement is protected to the greatest extent feasible.

D. Notify Covered Entity within twenty-four (24) hours of Business Associate's discovery of any potential access, acquisition, use, disclosure, modification, or destruction of either secured or unsecured PHI in violation of this Agreement, including any Breach of PHI.

(1) Any incident as described above will be treated as discovered as of the first day on which such event is known to Business Associate or, by exercising reasonable diligence, would have been known to Business Associate.

(2) Notification shall be sent to the Director, Health Information Governance, by email to [VHABAAIssues@va.gov](mailto:VHABAAIssues@va.gov).

(3) Business Associate shall not notify individuals or HHS directly unless Business Associate is not acting as an agent of Covered Entity but in its capacity as a Covered Entity itself.

E. Provide a written report to Covered Entity of any potential access, acquisition, use, disclosure, modification, or destruction of either secured or unsecured PHI in violation of this Agreement, including any Breach of PHI, within ten (10) business days of the initial notification.

(1) The written report of an incident as described above will document the following:

(a) The identity of each Individual whose PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used, disclosed, modified, or destroyed;

(b) A description of what occurred, including the date of the incident and the date of the discovery of the incident (if known);

(c) A description of the types of secured or unsecured PHI that was involved;



(d) A description of what is being done to investigate the incident, to mitigate further harm to Individuals, and to protect against future incidents; and

(e) Any other information as required by 45 C.F.R. §§ 164.404(c) and 164.410.

(2) The written report shall be addressed to:

Director, Health Information Governance

Department of Veterans Affairs – Veterans Health Administration

Office of Informatics and Analytics (10P)

810 Vermont Avenue NW

Washington, DC 20420

and submitted by email at [VHABAAIssues@va.gov](mailto:VHABAAIssues@va.gov)

F. To the greatest extent feasible, mitigate any harm due to a Use or Disclosure of PHI by Business Associate in violation of this Agreement that is known or, by exercising reasonable diligence, should have been known to Business Associate.

G. Use only contractors and Subcontractors that are physically located within a jurisdiction subject to the laws of the United States, and ensure that no contractor or Subcontractor maintains, processes, uses, or discloses PHI in any way that will remove the information from such jurisdiction. Any modification to this provision must be approved by Covered Entity in advance and in writing.

H. Enter into Business Associate Agreements with contractors and Subcontractors as appropriate under the HIPAA Rules and this Agreement. Business Associate:

(1) Must ensure that the terms of any Agreement between Business Associate and a contractor or Subcontractor are at least as restrictive as Business Associate Agreement between Business Associate and Covered Entity.

(2) Must ensure that contractors and Subcontractors agree to the same restrictions and conditions that apply to Business Associate and obtain satisfactory written assurances from them that they agree to those restrictions and conditions.

(3) May not amend any terms of such Agreement without Covered Entity's prior written approval.

I. Within five (5) business days of a written request from Covered Entity:

(1) Make available information for Covered Entity to respond to an Individual's request for access to PHI about him/her.

(2) Make available information for Covered Entity to respond to an Individual's request for amendment of PHI about him/her and, as determined by and under the direction of Covered Entity, incorporate any amendment to the PHI.

(3) Make available PHI for Covered Entity to respond to an Individual's request for an accounting of Disclosures of PHI about him/her.

J. Business Associate may not take any action concerning an individual's request for access, amendment, or accounting other than as instructed by Covered Entity.

K. To the extent Business Associate is required to carry out Covered Entity's obligations under Subpart E of 45 CFR Part 164, comply with the provisions that apply to Covered Entity in the performance of such obligations.



L. Provide to the Secretary of Health and Human Services and to Covered Entity records related to Use or Disclosure of PHI, including its policies, procedures, and practices, for the purpose of determining Covered Entity's, Business Associate's, or a Subcontractor's compliance with the HIPAA Rules.

M. Upon completion or termination of the applicable contract(s) or agreement(s), return or destroy, as determined by and under the direction of Covered Entity, all PHI and other VA data created or received by Business Associate during the performance of the contract(s) or agreement(s). No such information will be retained by Business Associate unless retention is required by law or specifically permitted by Covered Entity. If return or destruction is not feasible, Business Associate shall continue to protect the PHI in accordance with the Agreement and use or disclose the information only for the purpose of making the return or destruction feasible, or as required by law or specifically permitted by Covered Entity. Business Associate shall provide written assurance that either all PHI has been returned or destroyed, or any information retained will be safeguarded and used and disclosed only as permitted under this paragraph.

N. Be liable to Covered Entity for civil or criminal penalties imposed on Covered Entity, in accordance with 45 C.F.R. §§ 164.402 and 164.410, and with the HITECH Act, 42 U.S.C. §§ 17931(b), 17934(c), for any violation of the HIPAA Rules or this Agreement by Business Associate.

4. Obligations of Covered Entity. Covered Entity agrees that it:

A. Will not request Business Associate to make any Use or Disclosure of PHI in a manner that would not be permissible under Subpart E of 45 C.F.R. Part 164 if made by Covered Entity, except as permitted under Section 2 of this Agreement.

B. Will promptly notify Business Associate in writing of any restrictions on Covered Entity's authority to use or disclose PHI that may limit Business Associate's Use or Disclosure of PHI or otherwise affect its ability to fulfill its obligations under this Agreement.

C. Has obtained or will obtain from Individuals any authorization necessary for Business Associate to fulfill its obligations under this Agreement.

D. Will promptly notify Business Associate in writing of any change in Covered Entity's Notice of Privacy Practices, or any modification or revocation of an Individual's authorization to use or disclose PHI, if such change or revocation may limit Business Associate's Use and Disclosure of PHI or otherwise affect its ability to perform its obligations under this Agreement.

5. Amendment. Business Associate and Covered Entity will take such action as is necessary to amend this Agreement for Covered Entity to comply with the requirements of the HIPAA Rules or other applicable law.

6. Termination.

A. Automatic Termination. This Agreement will automatically terminate upon completion of Business Associate's duties under all underlying Agreements or by termination of such underlying Agreements.

B. Termination Upon Review. This Agreement may be terminated by Covered Entity, at its discretion, upon review as provided by Section 9 of this Agreement.

C. Termination for Cause. In the event of a material breach by Business Associate, Covered Entity:

(1) Will provide an opportunity for Business Associate to cure the breach or end the violation within the time specified by Covered Entity;

(2) May terminate this Agreement and underlying contract(s) if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity.

D. Effect of Termination. Termination of this Agreement will result in cessation of activities by Business Associate involving PHI under this Agreement.

E. Survival. The obligations of Business Associate under this Section shall survive the termination of this Agreement as long as Business Associate creates, receives, maintains, or transmits PHI, regardless of whether a compliant Business Associate Agreement is in place.

7. No Third Party Beneficiaries. Nothing expressed or implied in this Agreement confers any rights, remedies, obligations, or liabilities whatsoever upon any person or entity other than Covered Entity and Business Associate, including their respective successors or assigns.

8. Other Applicable Law. This Agreement does not abrogate any responsibilities of the parties under any other applicable law.

9. Review Date. The provisions of this Agreement will be reviewed by Covered Entity every two years from Effective Date to determine the applicability and accuracy of the Agreement based on the circumstances that exist at the time of review.

10. Effective Date. This Agreement shall be effective on the last signature date below.

**Department of Veterans Affairs  
Veterans Health Administration**

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_  
**Date:** \_\_\_\_\_

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_  
**Date:** \_\_\_\_\_

## QUALITY ASSURANCE SURVEILLANCE PLAN (QASP)

**Project Title:** Home Oxygen Delivery Services

**Contract Number:** TBD

**Contract Description:** The contractor shall provide all resources necessary to meet the requirements as described in the Performance Work Statement (PWS). The Contractor shall provide all labor, material, supervision, equipment, supplies, and services required to provide home oxygen delivery services.

### 1. PURPOSE

This Quality Assurance Surveillance Plan (QASP) provides a systematic method to evaluate performance for the stated contract. This QASP explains the following:

What will be monitored.

How monitoring will take place.

Who will conduct the monitoring.

How monitoring efforts and results will be documented.

This QASP does not detail how the contractor accomplishes the work. Rather, the QASP is created with the premise that the contractor is responsible for management and quality control actions to meet the terms of the contract. It is the Government's responsibility to be objective, fair, and consistent in evaluating performance.

This QASP is a "living document" and the Government may review and revise it on a regular basis. However, the Government shall coordinate changes with the contractor. Copies of the original QASP and revisions shall be provided to the contractor and Government officials implementing surveillance activities.

### 2. GOVERNMENT ROLES AND RESPONSIBILITIES

The following personnel shall oversee and coordinate surveillance activities.

- a. Contracting Officer (CO) – The CO shall ensure performance of all necessary actions for effective contracting, ensure compliance with the contract terms, and shall safeguard the interests of the United States in the contractual relationship. The CO shall also assure that the contractor receives impartial, fair, and equitable treatment under this contract. The CO is ultimately responsible for the final determination of the adequacy of the contractor's performance.
- b. Contracting Officer's Representative (COR) – The COR is responsible for technical administration of the contract and shall assure proper Government surveillance of the contractor's performance. The COR shall keep a quality assurance file. The COR is not empowered to make any contractual commitments or to authorize any contractual changes on the Government's behalf.

### 3. CONTRACTOR REPRESENTATIVES

The contractor shall clearly identify employees to serve as the contractor's program manager/point of contact (POC) for this contract. This manager/POC will continually keep the Government informed of work status and any potential issues that may affect quality of performance.

#### 4. PERFORMANCE STANDARDS

Performance standards define desired services. The Government performs surveillance to determine if the contractor exceeds, meets, or does not meet these standards.

The SOW includes clear requirement the contractor must provide. The Government shall use these requirements to determine contractor performance and shall compare contractor performance to the Acceptable Quality Level (AQL).

Performance Indicators	Performance Measure	Acceptable Quality Level (AQL)	Method of Assessment	Incentive	Dis-incentive
Provide comprehensive home oxygen delivery services	Contractor will provide comprehensive home oxygen delivery services and all associated support	Minimum Rating of Satisfactory	As Appropriate	Positive Past Performance	Negative Past Performance

#### 5. METHODS OF QA SURVEILLANCE

Various methods exist to monitor performance. The COR shall use the surveillance methods listed below in the administration of this QASP.

- a. **DIRECT OBSERVATION.** (Can be performed periodically or through 100% surveillance.)
- b. **PERIODIC INSPECTION.** (Evaluates outcomes on a periodic basis. Inspections may be scheduled [Daily, Weekly, Monthly, Quarterly, or annually] or unscheduled, as required.)
- c. **USER SURVEY.** (Combines elements of validated user complaints and random sampling. Random survey is conducted to solicit user satisfaction. May also generate inspections and sampling.)
- d. **VALIDATED USER/CUSTOMER COMPLAINTS.** (Relies on the patient to identify deficiencies. Complaints are then investigated and validated.)
- e. **100% INSPECTION.** (Evaluates all outcomes.)

- f. **PERIODIC SAMPLING.** (Variation of random sampling. However, sample is only taken when a problem/deficiency is suspected. Sample results are applicable only for the specific work inspected. Since sample is not entirely random, it cannot be applied to total activity performance.)
- g. **RANDOM SAMPLING.** (Designed to evaluate performance by randomly selecting and inspecting a sample of cases.
- h. Progress or status meetings.
- i. Analysis of contractor's progress. (Evaluate cost, schedule, etc.)

## 6. RATINGS

Metrics and methods are designed to determine if performance exceeds, meets, or does not meet a given standard and acceptable quality level. A rating scale shall be used to determine a positive, neutral, or negative outcome. The following ratings shall be used:

EXCEPTIONAL:	Performance significantly exceeds contract requirements to the Government's benefit.
SATISFACTORY:	Performance meets contractual requirements.
UNSATISFACTORY:	Performance does not meet contractual requirements.

## 7. DOCUMENTING PERFORMANCE

### a. ACCEPTABLE PERFORMANCE

The Government shall document positive performance. Any report may become a part of the supporting documentation for any contractual action.

### b. UNACCEPTABLE PERFORMANCE

When unacceptable performance occurs, the COR shall inform the contractor. This will normally be in writing unless circumstances necessitate verbal communication. In any case the COR shall document the discussion and place it in the COR file.

When the COR determines formal written communication is required, the COR shall prepare a Contract Discrepancy Report (CDR), and present it to the contractor's program manager.

The contractor shall acknowledge receipt of the CDR in writing. The CDR will specify if the contractor is required to prepare a corrective action plan to document how the contractor shall correct the unacceptable performance and avoid a recurrence. The CDR will also state how long after receipt the contractor has to present this corrective action plan to the COR. The Government shall review the contractor's corrective action plan to determine acceptability.

Any CDRs may become a part of the supporting documentation for any contractual action deemed necessary by the CO.

**8. FREQUENCY OF MEASUREMENT**

a. Frequency of Measurement.

During contract performance, the COR will yearly analyze whether the negotiated frequency of surveillance is appropriate for the work being performed.

b. Frequency of Performance Assessment Meetings will be yearly.

The COR shall meet with the contractor as required to assess performance and shall provide a written assessment.

**QASP ATTACHMENTS:**

Contract Performance Report

Contract Discrepancy Report

**QASP Attachment 1**

**Contract Performance Report**

1. Contract Number:
2. Prepared by: (Name of COR)
3. Date and time of observation:
4. Observation:
  
5. Performance Rating (in accordance with QASP, paragraph 6):

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Signature – Contracting Officer’s Representative

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Date

**QASP Attachment 2**

**Contract Discrepancy Report (CDR)**

TO: (Contractor Program Manager or Point of Contact)

FROM: (Name of COR)

1. Contract Number:

2. Date and time observed discrepancy:

3. Discrepancy/Problem/Issue:

4. Corrective action plan:

5. A written corrective action plan [is/is not] required. [If a written corrective action plan is required include the following.] The written Corrective Action Plan will be provided to the undersigned not later than [# days] after receipt of this CDR.

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Signature – Contracting Officer’s Representative

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Date

Received by:

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Signature – Contracting Program Manager or Point of Contact

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Date

Distribution:

Contracting Officer



## SECTION E - SOLICITATION PROVISIONS

### E.1 52.212-2 EVALUATION—COMMERCIAL ITEMS (JAN 1999)

(a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered. The following factors shall be used to evaluate offers:

Lowest Price, Technically Acceptable (LPTA) evaluation.  
See Submission of Offers, Basis of Award, and Evaluation  
Factors below for details.

Technical and past performance, when combined, are not applicable - this will be a LPTA evaluation.

(b) *Options.* The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are significantly unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(c) A written notice of award or acceptance of an offer, mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

(End of Provision)

## SUBMISSION OF OFFERS

Offerors shall submit a clear and logical technical and price proposal that fully demonstrates their understanding and ability to meet the requirements listed in the Performance Work Statement (PWS) of this solicitation. The offeror shall provide specific details of their technical approach, capabilities, and experience and avoid broad generalized statements. Simply restating the requirements from this solicitation into the offeror's proposal is not demonstration of understanding and ability. It is very important that the offeror's technical proposal also clearly addresses all the evaluation factors listed separately under the Basis for Award and Evaluation Factors in this solicitation. The total page limit for the technical proposal shall not exceed 10 pages (not including a cover page, table of contents, the SF 1449, copies of permits/licenses, employee training records, and any associated amendments). Offerors are reminded that the burden of providing sufficient information and details rests with them.

Offerors shall include with their technical proposal at least one reference of recent work that substantiates applicable experience and favorable past performance. The referenced work shall be similar in size and scope to the requirements listed in the SOW of this solicitation. The VA will contact the listed reference to verify the quality of service performed. The VA reserves the right to contact any other known references of recent work not provided by the offeror to further evaluate applicable experience and favorable past performance. The listed reference must include the following information:

Agency Name:  
 Contract Number:  
 Contract Amount:  
 Period of Performance  
 Agency POC (name, email, phone):  
 Brief Description of Services Provided:

Proposed pricing shall be fully burdened to include all applicable management, labor, and equipment costs for the contract period. The offeror agrees to hold the prices in their offer firm for 90 calendar days from the due date specified in the solicitation. This solicitation is set-aside 100% for small businesses. All offerors must be identified as a small business in their Representations and Certifications (or ORCA) upon the closing date of this solicitation in order to be evaluated for any resulting contract award. This solicitation does not commit the Government to pay any costs incurred in the submission of an offer.

Offerors shall review the solicitation carefully and submit any questions in writing by 1100 EST, 15 Apr 2014. No phone inquiries will be accepted and late questions may not be answered. If timely questions are received, an amendment to this solicitation will be posted publically with answers and clarification. Questions shall be sent electronically to [william.hilliard@va.gov](mailto:william.hilliard@va.gov).

Offers are due by the date and time indicated in block 8 of the SF1449. Offers shall be sent electronically to [william.hilliard@va.gov](mailto:william.hilliard@va.gov).

### **BASIS FOR AWARD – LOWEST PRICE, TECHNICALLY ACCEPTABLE**

The Government will award one contract to the responsible offeror who submits the lowest priced, technically acceptable offer conforming to the requirements of this solicitation. Each offer will be rated as either “acceptable” or “unacceptable” for each evaluation factor listed below. All factors must be rated as “acceptable” in order for the offer to be evaluated further for price. If any factor is determined to be “unacceptable”, the entire offer will not be considered further for award. Evaluation of price will be made on the total proposed price and must also be determined to be fair and reasonable. Offerors are cautioned that an unrealistically low price or materially unbalanced pricing may be grounds for eliminating a proposal on the basis that the offeror does not fully understand the requirement.

Information not contained in an offeror’s proposal will not be considered during the evaluation. The Government intends to make award selection without discussions, but may determine after evaluating proposals submitted that discussions are necessary and conduct them as appropriate. The Government reserves the right to make no award if no offers meet the requirements of this solicitation.

### **EVALUATION FACTORS**

1	<p><b>Technical Approach</b> – The contractor clearly understands the Government’s requirements as described in the PWS and has created a valid and effective approach to provide home oxygen delivery services. This includes, but is not limited to, a clear demonstration of the following elements:</p> <ul style="list-style-type: none"> <li>• Ability to provide full and complete services three weeks after contract award with no interruption of services.</li> <li>• Emergency plan to provide 24/7 services.</li> <li>• Quality Assurance program/plan.</li> <li>• Clear process to manage and protect confidential patient information.</li> </ul>
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2	<p><b>Capabilities and Resources</b> – The contractor has the necessary trained/experienced staff and all equipment to fully meet the requirements as described in the PWS. This includes, but is not limited to, a clear demonstration of the following elements:</p> <ul style="list-style-type: none"> <li>• The contractor will <u>not</u> subcontract any work performed under this contract.</li> <li>• Designated Contract Manager and Alternate Contract Manager.</li> <li>• Thorough training program with copies of employee training records and qualifications.</li> </ul>
3	<p><b>Permits, Licenses, and Insurance</b> – The contractor has the required permits, licenses, insurance, and certifications needed to fully meet the requirements as described in the PWS. This includes, but is not limited to, a clear demonstration of the following elements:</p> <ul style="list-style-type: none"> <li>• Copies of the four permits/licenses identified in the PWS, paragraph 9.0.</li> <li>• Certification contractor meets all applicable Workmen’s Compensations and Public Liability Insurance requirements.</li> </ul>
4	<p><b>Experience and Past Performance</b> – The contractor has performed at least one other relevant home oxygen delivery service in the past three years similar in size and scope to the requirements as described in the PWS. The services provided must have been performed in a favorable manner. The VA reserves the right to contact any other known reference of recent work, whether or not provided by the offeror, to evaluate applicable experience and favorable past performance.</p>

## **E.2 52.212-3 OFFEROR REPRESENTATIONS AND CERTIFICATIONS—COMMERCIAL ITEMS (NOV 2013)**

An offeror shall complete only paragraph (b) of this provision if the offeror has completed the annual representations and certifications electronically via <http://www.acquisition.gov>. If an offeror has not completed the annual representations and certifications electronically at the System for Award Management (SAM) website, the offeror shall complete only paragraphs (c) through (o) of this provision.

(a) *Definitions.* As used in this provision—

"Economically disadvantaged women-owned small business (EDWOSB) concern" means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States and who are economically disadvantaged in accordance with 13 CFR part 127. It automatically qualifies as a women-owned small business eligible under the WOSB Program.

"Forced or indentured child labor" means all work or service—

(1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or

(2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

"Inverted domestic corporation", as used in this section, means a foreign incorporated entity which is treated as an inverted domestic corporation under 6 U.S.C. 395(b), i.e., a corporation that used to be incorporated in the United States, or used to be a partnership in the United States, but now is incorporated in a foreign country, or is a subsidiary whose parent corporation is incorporated in a foreign country, that meets the criteria specified in 6 U.S.C. 395(b), applied in accordance with the rules and definitions of 6 U.S.C. 395(c). An inverted domestic corporation as herein defined does not meet the definition of an inverted domestic corporation as defined by the Internal Revenue Code at 26 U.S.C. 7874.

"Manufactured end product" means any end product in Federal Supply Classes (FSC) 1000-9999, except—

- (1) FSC 5510, Lumber and Related Basic Wood Materials;
- (2) Federal Supply Group (FSG) 87, Agricultural Supplies;
- (3) FSG 88, Live Animals;
- (4) FSG 89, Food and Related Consumables;
- (5) FSC 9410, Crude Grades of Plant Materials;
- (6) FSC 9430, Miscellaneous Crude Animal Products, Inedible;
- (7) FSC 9440, Miscellaneous Crude Agricultural and Forestry Products;
- (8) FSC 9610, Ores;
- (9) FSC 9620, Minerals, Natural and Synthetic; and

(10) FSC 9630, Additive Metal Materials.

"Place of manufacture" means the place where an end product is assembled out of components, or otherwise made or processed from raw materials into the finished product that is to be provided to the Government. If a product is disassembled and reassembled, the place of reassembly is not the place of manufacture.

"Restricted business operations" means business operations in Sudan that include power production activities, mineral extraction activities, oil-related activities, or the production of military equipment, as those terms are defined in the Sudan Accountability and Divestment Act of 2007 (Pub. L. 110-174). Restricted business operations do not include business operations that the person (as that term is defined in Section 2 of the Sudan Accountability and Divestment Act of 2007) conducting the business can demonstrate—

- (1) Are conducted under contract directly and exclusively with the regional government of southern Sudan;
- (2) Are conducted pursuant to specific authorization from the Office of Foreign Assets Control in the Department of the Treasury, or are expressly exempted under Federal law from the requirement to be conducted under such authorization;
- (3) Consist of providing goods or services to marginalized populations of Sudan;
- (4) Consist of providing goods or services to an internationally recognized peacekeeping force or humanitarian organization;
- (5) Consist of providing goods or services that are used only to promote health or education; or
- (6) Have been voluntarily suspended.

"Sensitive technology"—

- (1) Means hardware, software, telecommunications equipment, or any other technology that is to be used specifically—
  - (i) To restrict the free flow of unbiased information in Iran; or
  - (ii) To disrupt, monitor, or otherwise restrict speech of the people of Iran; and
- (2) Does not include information or informational materials the export of which the President does not have the authority to regulate or prohibit pursuant to section 203(b)(3) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)(3)).

"Service-disabled veteran-owned small business concern"—

- (1) Means a small business concern—
  - (i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and
  - (ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.
- (2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

"Small business concern" means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR Part 121 and size standards in this solicitation.

"Subsidiary" means an entity in which more than 50 percent of the entity is owned—

- (1) Directly by a parent corporation; or
- (2) Through another subsidiary of a parent corporation.

"Veteran-owned small business concern" means a small business concern—

- (1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and
- (2) The management and daily business operations of which are controlled by one or more veterans.

"Women-owned business concern" means a concern which is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of its stock is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

"Women-owned small business concern" means a small business concern—

- (1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
- (2) Whose management and daily business operations are controlled by one or more women.

"Women-owned small business (WOSB) concern eligible under the WOSB Program" (in accordance with 13 CFR part 127), means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States.

(b)(1) *Annual Representations and Certifications.* Any changes provided by the offeror in paragraph (b)(2) of this provision do not automatically change the representations and certifications posted on the SAM website.

(2) The offeror has completed the annual representations and certifications electronically via the SAM website access through <http://www.acquisition.gov>. After reviewing the SAM database information, the offeror verifies by submission of this offer that the representations and certifications currently posted electronically at FAR 52.212-3, Offeror Representations and Certifications—Commercial Items, have been entered or updated in the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer and are incorporated in this offer by reference (see FAR 4.1201), except for paragraphs .

(c) Offerors must complete the following representations when the resulting contract will be performed in the United States or its outlying areas. Check all that apply.

(1) *Small business concern.* The offeror represents as part of its offer that it ☐ is, ☐ is not a small business concern.

(2) *Veteran-owned small business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents as part of its offer that it ☐ is, ☐ is not a veteran-owned small business concern.

(3) *Service-disabled veteran-owned small business concern.* [Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (c)(2) of this provision.] The offeror represents as part of its offer that it ☐ is, ☐ is not a service-disabled veteran-owned small business concern.

(4) *Small disadvantaged business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents, for general statistical purposes, that it ☐ is, ☐ is not a small disadvantaged business concern as defined in 13 CFR 124.1002.

(5) *Women-owned small business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it ☐ is, ☐ is not a women-owned small business concern.

(6) WOSB concern eligible under the WOSB Program. [Complete only if the offeror represented itself as a women-owned small business concern in paragraph (c)(5) of this provision.] The offeror represents that—

(i) It ☐ is, ☐ is not a WOSB concern eligible under the WOSB Program, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and

(ii) It ☐ is, ☐ is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (c)(6)(i) of this provision is accurate for each WOSB concern eligible under the WOSB Program participating in the joint venture. [The offeror shall enter the name or names of the WOSB concern eligible under the WOSB Program and other small businesses that are participating in the joint venture: \_\_\_\_\_.] Each WOSB concern eligible under the WOSB Program participating in the joint venture shall submit a separate signed copy of the WOSB representation.

(7) Economically disadvantaged women-owned small business (EDWOSB) concern. [Complete only if the offeror represented itself as a WOSB concern eligible under the WOSB Program in (c)(6) of this provision.] The offeror represents that—

(i) It ☐ is, ☐ is not an EDWOSB concern, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and

(ii) It ☐ is, ☐ is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (c)(7)(i) of this provision is accurate for each EDWOSB concern participating in the joint venture. [The offeror shall enter the name or names of the EDWOSB concern and other small businesses that are participating in the joint venture: \_\_\_\_\_.] Each EDWOSB concern participating in the joint venture shall submit a separate signed copy of the EDWOSB representation.

**Note:** Complete paragraphs (c)(8) and (c)(9) only if this solicitation is expected to exceed the simplified acquisition threshold.

(8) *Women-owned business concern (other than small business concern).* [Complete only if the offeror is a women-owned business concern and did not represent itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it ☐ is a women-owned business concern.

(9) *Tie bid priority for labor surplus area concerns.* If this is an invitation for bid, small business offerors may identify the labor surplus areas in which costs to be incurred on account of manufacturing or production (by offeror or first-tier subcontractors) amount to more than 50 percent of the contract price:

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(10) *[Complete only if the solicitation contains the clause at FAR 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns, or FAR 52.219-25, Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting, and the offeror desires a benefit based on its disadvantaged status.]*

(i) *General.* The offeror represents that either—

(A) It ☐ is, ☐ is not certified by the Small Business Administration as a small disadvantaged business concern and identified, on the date of this representation, as a certified small disadvantaged business concern in the SAM Dynamic Small Business Search database maintained by the Small Business Administration, and that no material change in disadvantaged ownership and control has occurred since its certification, and, where the concern is owned by one or more individuals claiming disadvantaged status, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); or

(B) It ☐ has, ☐ has not submitted a completed application to the Small Business Administration or a Private Certifier to be certified as a small disadvantaged business concern in accordance with 13 CFR 124, Subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since its application was submitted.

(ii) ☐ *Joint Ventures under the Price Evaluation Adjustment for Small Disadvantaged Business Concerns.* The offeror represents, as part of its offer, that it is a joint venture that complies with the requirements in 13 CFR 124.1002(f) and that the representation in paragraph (c)(10)(i) of this provision is accurate for the small disadvantaged business concern that is participating in the joint venture. *[The offeror shall enter the name of the small disadvantaged business concern that is participating in the joint venture: \_\_\_\_\_.]*

(11) *HUBZone small business concern.* *[Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.]* The offeror represents, as part of its offer, that—

(i) It ☐ is, ☐ is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal office, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR Part 126; and

(ii) It ☐ is, ☐ is not a joint venture that complies with the requirements of 13 CFR Part 126, and the representation in paragraph (c)(11)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. *[The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture: \_\_\_\_\_.]* Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

(d) Representations required to implement provisions of Executive Order 11246—

(1) *Previous contracts and compliance.* The offeror represents that—

(i) It ☐ has, ☐ has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation; and

(ii) It ☐ has, ☐ has not filed all required compliance reports.

(2) *Affirmative Action Compliance.* The offeror represents that—

(i) It ☐ has developed and has on file, ☐ has not developed and does not have on file, at each establishment, affirmative action programs required by rules and regulations of the Secretary of Labor (41 CFR parts 60-1 and 60-2), or



(ii) It [ ] has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

(e) *Certification Regarding Payments to Influence Federal Transactions* (31 U.S.C. 1352). (Applies only if the contract is expected to exceed \$150,000.) By submission of its offer, the offeror certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress on his or her behalf in connection with the award of any resultant contract. If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this contract, the offeror shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. The offeror need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

(f) *Buy American Act Certificate*. (Applies only if the clause at Federal Acquisition Regulation (FAR) 52.225-1, Buy American Act—Supplies, is included in this solicitation.)

(1) The offeror certifies that each end product, except those listed in paragraph (f)(2) of this provision, is a domestic end product and that for other than COTS items, the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products, i.e., an end product that is not a COTS item and does not meet the component test in paragraph (2) of the definition of "domestic end product." The terms "commercially available off-the-shelf (COTS) item," "component," "domestic end product," "end product," "foreign end product," and "United States" are defined in the clause of this solicitation entitled "Buy American Act—Supplies."

(2) Foreign End Products:

Line Item No	Country of Origin
_____	_____
_____	_____
_____	_____

[List as necessary]

(3) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25.

(g)(1) *Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate*. (Applies only if the clause at FAR 52.225-3, Buy American Act—Free Trade Agreements—Israeli Trade Act, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (g)(1)(ii) or (g)(1)(iii) of this provision, is a domestic end product and that for other than COTS items, the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The terms "Bahrainian, Moroccan, Omani, Panamanian, or Peruvian end product," "commercially available off-the-shelf (COTS) item," "component," "domestic end product," "end product," "foreign end product," "Free Trade Agreement country," "Free Trade Agreement country end product," "Israeli end product," and "United States" are defined in the clause of this solicitation entitled "Buy American Act—Free Trade Agreements—Israeli Trade Act."

(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products (other than Bahrainian, Moroccan, Omani, Panamanian, or Peruvian end products) or Israeli end products as defined in the clause of this solicitation entitled "Buy American Act—Free Trade Agreements—Israeli Trade Act":

Free Trade Agreement Country End Products (Other than Bahrainian, Moroccan, Omani, Panamanian, or Peruvian End Products) or Israeli End Products:

Line Item No.	Country of Origin
_____	_____
_____	_____
_____	_____

*[List as necessary]*

(iii) The offeror shall list those supplies that are foreign end products (other than those listed in paragraph (g)(1)(ii) of this provision) as defined in the clause of this solicitation entitled "Buy American Act—Free Trade Agreements—Israeli Trade Act." The offeror shall list as other foreign end products those end products manufactured in the United States that do not qualify as domestic end products, i.e., an end product that is not a COTS item and does not meet the component test in paragraph (2) of the definition of "domestic end product."

Other Foreign End Products:

Line Item No.	Country of Origin
_____	_____
_____	_____
_____	_____

*[List as necessary]*

(iv) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25.

(2) *Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate, Alternate I.* If Alternate I to the clause at FAR 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products as defined in the clause of this solicitation entitled "Buy American Act—Free Trade Agreements—Israeli Trade Act":

Canadian End Products:

Line Item No.
_____
_____
_____

*[List as necessary]*

(3) *Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate, Alternate II.* If Alternate II to the clause at FAR 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products or Israeli end products as defined in the clause of this solicitation entitled "Buy American Act—Free Trade Agreements—Israeli Trade Act":

Canadian or Israeli End Products:

Line Item No.	Country of Origin
_____	_____
_____	_____
_____	_____

*[List as necessary]*

(4) *Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate, Alternate III.* If Alternate III to the clause at FAR 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products (other than Bahrainian, Korean, Moroccan, Omani, Panamanian, or Peruvian end products) or Israeli end products as defined in the clause of this solicitation entitled "Buy American Act—Free Trade Agreements—Israeli Trade Act":

Free Trade Agreement Country End Products (Other than Bahrainian, Korean, Moroccan, Omani, Panamanian, or Peruvian End Products) or Israeli End Products:

Line Item No.	Country of Origin
_____	_____
_____	_____
_____	_____

*[List as necessary]*

(5) *Trade Agreements Certificate.* (Applies only if the clause at FAR 52.225-5, Trade Agreements, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (g)(5)(ii) of this provision, is a U.S.-made or designated country end product, as defined in the clause of this solicitation entitled "Trade Agreements".

(ii) The offeror shall list as other end products those end products that are not U.S.-made or designated country end products.

Other End Products:

Line Item No.	Country of Origin
_____	_____
_____	_____
_____	_____

[List as necessary]

(iii) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25. For line items covered by the WTO GPA, the Government will evaluate offers of U.S.-made or designated country end products without regard to the restrictions of the Buy American Act. The Government will consider for award only offers of U.S.-made or designated country end products unless the Contracting Officer determines that there are no offers for such products or that the offers for such products are insufficient to fulfill the requirements of the solicitation.

(h) *Certification Regarding Responsibility Matters* (Executive Order 12689). (Applies only if the contract value is expected to exceed the simplified acquisition threshold.) The offeror certifies, to the best of its knowledge and belief, that the offeror and/or any of its principals—

(1) ☐ Are, ☐ are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(2) ☐ Have, ☐ have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, state or local government contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;

(3) ☐ Are, ☐ are not presently indicted for, or otherwise criminally or civilly charged by a Government entity with, commission of any of these offenses enumerated in paragraph (h)(2) of this clause; and

(4) ☐ Have, ☐ have not, within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied.

(i) Taxes are considered delinquent if both of the following criteria apply:

(A) *The tax liability is finally determined.* The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(B) *The taxpayer is delinquent in making payment.* A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(ii) *Examples.*

(A) The taxpayer has received a statutory notice of deficiency, under I.R.C. Sec. 6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(B) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. Sec. 6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(C) The taxpayer has entered into an installment agreement pursuant to I.R.C. Sec. 6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.

(D) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. 362 (the Bankruptcy Code).

(i) *Certification Regarding Knowledge of Child Labor for Listed End Products (Executive Order 13126).*

(1) *Listed end products.*

Listed End Product	Listed Countries of Origin
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(2) *Certification. [If the Contracting Officer has identified end products and countries of origin in paragraph (i)(1) of this provision, then the offeror must certify to either (i)(2)(i) or (i)(2)(ii) by checking the appropriate block.]*

☐ (i) The offeror will not supply any end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product.

☐ (ii) The offeror may supply an end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. The offeror certifies that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any such end product furnished under this contract. On the basis of those efforts, the offeror certifies that it is not aware of any such use of child labor.

(j) *Place of manufacture.* (Does not apply unless the solicitation is predominantly for the acquisition of manufactured end products.) For statistical purposes only, the offeror shall indicate whether the place of manufacture of the end products it expects to provide in response to this solicitation is predominantly—

(1) ☐ In the United States (Check this box if the total anticipated price of offered end products manufactured in the United States exceeds the total anticipated price of offered end products manufactured outside the United States); or

(2) ☐ Outside the United States.

(k) *Certificates regarding exemptions from the application of the Service Contract Act.* (Certification by the offeror as to its compliance with respect to the contract also constitutes its certification as to compliance by its subcontractor if it subcontracts out the exempt services.)

☐ (1) Maintenance, calibration, or repair of certain equipment as described in FAR 22.1003-4(c)(1). The offeror ☐ does ☐ does not certify that—

(i) The items of equipment to be serviced under this contract are used regularly for other than Governmental purposes and are sold or traded by the offeror (or subcontractor in the case of an exempt subcontract) in substantial quantities to the general public in the course of normal business operations;

(ii) The services will be furnished at prices which are, or are based on, established catalog or market prices (see FAR 22.1003- 4(c)(2)(ii)) for the maintenance, calibration, or repair of such equipment; and

(iii) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract will be the same as that used for these employees and equivalent employees servicing the same equipment of commercial customers.

☐ (2) Certain services as described in FAR 22.1003- 4(d)(1). The offeror ☐ does ☐ does not certify that—

(i) The services under the contract are offered and sold regularly to non-Governmental customers, and are provided by the offeror (or subcontractor in the case of an exempt subcontract) to the general public in substantial quantities in the course of normal business operations;

(ii) The contract services will be furnished at prices that are, or are based on, established catalog or market prices (see FAR 22.1003-4(d)(2)(iii));

(iii) Each service employee who will perform the services under the contract will spend only a small portion of his or her time (a monthly average of less than 20 percent of the available hours on an annualized basis, or less than 20 percent of available hours during the contract period if the contract period is less than a month) servicing the Government contract; and

(iv) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract is the same as that used for these employees and equivalent employees servicing commercial customers.

(3) If paragraph (k)(1) or (k)(2) of this clause applies—

(i) If the offeror does not certify to the conditions in paragraph (k)(1) or (k)(2) and the Contracting Officer did not attach a Service Contract Act wage determination to the solicitation, the offeror shall notify the Contracting Officer as soon as possible; and

(ii) The Contracting Officer may not make an award to the offeror if the offeror fails to execute the certification in paragraph (k)(1) or (k)(2) of this clause or to contact the Contracting Officer as required in paragraph (k)(3)(i) of this clause.

(l) *Taxpayer Identification Number (TIN)* (26 U.S.C. 6109, 31 U.S.C. 7701). (Not applicable if the offeror is required to provide this information to the SAM database to be eligible for award.)

(1) All offerors must submit the information required in paragraphs (l)(3) through (l)(5) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the Internal Revenue Service (IRS).

(2) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting

requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

(3) *Taxpayer Identification Number (TIN).*

☐ TIN: \_\_\_\_\_.

☐ TIN has been applied for.

☐ TIN is not required because:

☐ Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;

☐ Offeror is an agency or instrumentality of a foreign government;

☐ Offeror is an agency or instrumentality of the Federal Government.

(4) *Type of organization.*

☐ Sole proprietorship;

☐ Partnership;

☐ Corporate entity (not tax-exempt);

☐ Corporate entity (tax-exempt);

☐ Government entity (Federal, State, or local);

☐ Foreign government;

☐ International organization per 26 CFR 1.6049-4;

☐ Other \_\_\_\_\_.

(5) *Common parent.*

☐ Offeror is not owned or controlled by a common parent;

☐ Name and TIN of common parent:

Name \_\_\_\_\_.

TIN \_\_\_\_\_.

(m) *Restricted business operations in Sudan.* By submission of its offer, the offeror certifies that the offeror does not conduct any restricted business operations in Sudan.

(n) *Prohibition on Contracting with Inverted Domestic Corporations*

(1) *Relation to Internal Revenue Code.* An inverted domestic corporation as herein defined does not meet the definition of an inverted domestic corporation as defined by the Internal Revenue Code 25 U.S.C. 7874.

(2) *Representation.* By submission of its offer, the offeror represents that—

- (i) It is not an inverted domestic corporation; and
- (ii) It is not a subsidiary of an inverted domestic corporation.

(o) *Prohibition on contracting with entities engaging in certain activities or transactions relating to Iran.* (1) The offeror shall email questions concerning sensitive technology to the Department of State at [CISADA106@state.gov](mailto:CISADA106@state.gov).

(2) *Representation and certifications.* Unless a waiver is granted or an exception applies as provided in paragraph (o)(3) of this provision, by submission of its offer, the offeror—

(i) Represents, to the best of its knowledge and belief, that the offeror does not export any sensitive technology to the government of Iran or any entities or individuals owned or controlled by, or acting on behalf or at the direction of, the government of Iran;

(ii) Certifies that the offeror, or any person owned or controlled by the offeror, does not engage in any activities for which sanctions may be imposed under section 5 of the Iran Sanctions Act; and

(iii) Certifies that the offeror, and any person owned or controlled by the offeror, does not knowingly engage in any transaction that exceeds \$3,000 with Iran's Revolutionary Guard Corps or any of its officials, agents, or affiliates, the property and interests in property of which are blocked pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (see OFAC's Specially Designated Nationals and Blocked Persons List at <http://www.treasury.gov/ofac/downloads/t11sdn.pdf>).

(3) The representation and certification requirements of paragraph (o)(2) of this provision do not apply if—

(i) This solicitation includes a trade agreements certification (*e.g.*, 52.212–3(g) or a comparable agency provision); and

(ii) The offeror has certified that all the offered products to be supplied are designated country end products.

(End of Provision)

### **E.3 VAAR 852.233-70 PROTEST CONTENT/ALTERNATIVE DISPUTE RESOLUTION (JAN 2008)**

(a) Any protest filed by an interested party shall:

- (1) Include the name, address, fax number, and telephone number of the protester;
- (2) Identify the solicitation and/or contract number;
- (3) Include an original signed by the protester or the protester's representative and at least one copy;
- (4) Set forth a detailed statement of the legal and factual grounds of the protest, including a description of resulting prejudice to the protester, and provide copies of relevant documents;
- (5) Specifically request a ruling of the individual upon whom the protest is served;
- (6) State the form of relief requested; and
- (7) Provide all information establishing the timeliness of the protest.



(b) Failure to comply with the above may result in dismissal of the protest without further consideration.

(c) Bidders/offerors and contracting officers are encouraged to use alternative dispute resolution (ADR) procedures to resolve protests at any stage in the protest process. If ADR is used, the Department of Veterans Affairs will not furnish any documentation in an ADR proceeding beyond what is allowed by the Federal Acquisition Regulation.

(End of Provision)

#### **E.4 VAAR 852.270-1 REPRESENTATIVES OF CONTRACTING OFFICERS (JAN 2008)**

The contracting officer reserves the right to designate representatives to act for him/her in furnishing technical guidance and advice or generally monitor the work to be performed under this contract. Such designation will be in writing and will define the scope and limitation of the designee's authority. A copy of the designation shall be furnished to the contractor.

(End of Provision)