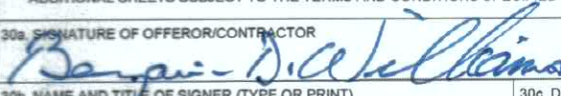


<b>SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, &amp; 30</b>				1. REQUISITION NO. N/A	PAGE 1 OF 34
2. CONTRACT NO. VA119-15-A-0100	3. AWARD/EFFECTIVE DATE September 30, 2015	4. ORDER NO.	5. SOLICITATION NUMBER VA119-15-Q-0213	6. SOLICITATION ISSUE DATE	
7. FOR SOLICITATION INFORMATION CALL: a. NAME Sharon Redman		b. TELEPHONE NO. (No Collect Calls) (202) 664-6480		8. OFFER DUE DATE/LOCAL TIME	
9. ISSUED BY U.S. Department of Veterans Affairs Strategic Acquisition Center 10300 Spotsylvania Ave Fredericksburg VA 22408		CODE 0010G	10. THIS ACQUISITION IS <input checked="" type="checkbox"/> UNRESTRICTED OR <input type="checkbox"/> SET ASIDE: _____ % FOR: <input type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> WOMEN-OWNED SMALL BUSINESS (WOSB) ELIGIBLE UNDER THE WOMEN-OWNED SMALL BUSINESS PROGRAM NAICS: 339112 <input type="checkbox"/> HUBZONE SMALL BUSINESS <input type="checkbox"/> EDWOSB <input type="checkbox"/> SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS <input type="checkbox"/> 8(A) SIZE STANDARD:		
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"/>		13b. RATING N/A	14. METHOD OF SOLICITATION <input checked="" type="checkbox"/> RFQ <input type="checkbox"/> IFB <input type="checkbox"/> RFP
15. DELIVER TO TBD PER BPA ORDERS PLACED BY THE INDIVIDUAL FACILITY		CODE	16. ADMINISTERED BY U.S. Department of Veterans Affairs Strategic Acquisition Center 10300 Spotsylvania Ave Fredericksburg VA 22408 CODE 0010G		
17a. CONTRACTOR/OFFEROR CODE 198227881	FACILITY CODE 05CJ3	18a. PAYMENT WILL BE MADE BY U.S. Department of Veterans Affairs Financial Services Center PO BOX 149971 Austin TX 78714-8917 PHONE: FAX:		CODE	
WELCH ALLYN, INC.  4341 STATE ST SKANEATELES FALLS NY 13153 TELEPHONE NO. DUNS: 198227881 DUNS+4:		18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED <input type="checkbox"/> 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER <input type="checkbox"/> SEE ADDENDUM			
19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES See CONTINUATION Page	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
	ELECTRONIC THERMOMETERS, ORAL/RECTAL AND ACCESSORIES  SEE SECTION B.4 PRICE/COST SCHEDULE FOR REQUIRED ITEMS  THIS AGREEMENT IS FOR A SINGLE-AWARD FIRM FIXED PRICED (FFP) BLANKET PURCHASE AGREEMENT (BPA). THIS BPA IS BEING ISSUED IAW FAR PART 13.303 FOR THE VA OFFICE OF PROCUREMENT AND LOGISTICS, SURGICAL PROGRAM MANAGEMENT OFFICE.  THIS BPA IS FOR A TOTAL OF 60 MONTHS.  CONTRACTOR SHALL PARTICIPATE IN THE MEDICAL SURGICAL PRIME VENDOR (MSPV) PROGRAM.  ALL MSPV CONTRACT TERMS AND CONDITIONS APPLY TO THIS BPA AS THIS BPA IS AN EXTENSION OF THE MSPV CONTRACT.  (Use Reverse and/or Attach Additional Sheets as Necessary)				
25. ACCOUNTING AND APPROPRIATION DATA See CONTINUATION Page			26. TOTAL AWARD AMOUNT (For Govt. Use Only) \$0.00		
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 type="checkbox"/> ARE NOT ATTACHED.		27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. FAR 52.212-5 IS ATTACHED. ADDENDA <input checked="" type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED.			
28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN <u>1</u> 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		29. AWARD OF CONTRACT: REF. <u>VA119-15-Q-0213</u> OFFER DATED <u>06-12-2015</u> . YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN IS ACCEPTED AS TO ITEMS. ALL CONTRACT LINE ITEMS			
30a. SIGNATURE OF OFFEROR/CONTRACTOR 		31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)			
30b. NAME AND TITLE OF SIGNER (TYPE OR PRINT) Benjamin D. Williams, Director Strategic Accounts		30c. DATE SIGNED 09-29-15		31b. NAME OF CONTRACTING OFFICER (TYPE OR PRINT) - MAURICIO VAZQUEZ SAC13L3-4576	
				31c. DATE SIGNED	

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## SECTION B - CONTINUATION

### B.1 CONTRACT ADMINISTRATION DATA

A Blanket Purchase Agreement (BPA) is hereby established between WELCH ALLYN INC. and the Department of Veterans Affairs under the following terms and conditions incorporated in this BPA.

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

- a. CONTRACTOR: WELCH ALLYN INC.  
4341 State Street Road  
Skaneateles Falls, NY 13153-0220 USA  
POC: BENJAMIN WILLIAMS  
Title: Government Affairs  
Email: [ben.williams@welchallyn.com](mailto:ben.williams@welchallyn.com)  
Phone: (503) 568-5670  
DUNS NUMBER: 19822788

- b. GOVERNMENT: Contracting Officer 0010G  
MAURICIO VAZQUEZ  
U.S. Department of Veterans Affairs  
Strategic Acquisition Center (SAC)  
10300 Spotsylvania Ave  
Suite 400  
Fredericksburg VA 22408  
Email: [mauricio.vazquez@va.gov](mailto:mauricio.vazquez@va.gov)  
Phone: (202) 834-7428

Contract Specialist  
SHARON REDMAN  
U.S. Department of Veterans Affairs  
Strategic Acquisition Center (SAC)  
10300 Spotsylvania Ave  
Suite 400  
Fredericksburg VA 22408  
Email: [sharon.redman@va.gov](mailto:sharon.redman@va.gov)  
Phone: (202) 664-6480

Project Manager  
JENNIFER SIMMONS  
U.S. Department of Veterans Affairs  
1100 First Street, NE  
Washington DC 20002  
Email: [jennifer.simmons@va.gov](mailto:jennifer.simmons@va.gov)  
Phone: (202) 632-7353

2. CONTRACTOR REMITTANCE ADDRESS: All payments by the Government to the contractor will be made in accordance with:
  - 52) 52.232-33, Payment by Electronic Funds Transfer System for Award Management, or
  - 52.232-36, Payment by Third Party
  
3. INVOICES: Invoices shall be submitted in arrears:
  - a. Quarterly:
  - b. Semi-Annually:
  - c. Other:  AFTER ACCEPTANCE OF SUPPLIES AND IN ARREARS IAW THE TERMS AND CONDITIONS OF THE MSPV CONTRACT.
  
4. GOVERNMENT INVOICE ADDRESS: TO BE DETERMINED PER BPA ORDERS PLACED BY THE INDIVIDUAL FACILITY. All Invoices from the contractor shall be submitted electronically in accordance with VAAR Clause 852.232-72 Electronic Submission of Payment Requests. Instructions on the submission of payment requests are IAW the MSPV Contract.

In order to comply with the Improper Payment Elimination and Recovery Act of 2010 (IPERA), the VA has mandated electronic invoice submission to the Veterans Affairs Financial Services Center (VAFSC). VAFSC has partnered with OB10 e-Invoicing network, for submissions of all electronic invoices to VA. OB10 electronic invoicing is free to all VA Contractors. In order to submit electronic invoices, all VA Contractors must register with OB10 by submitting an email to VA.Registration@ob10.com or calling 1-877-752-0900 option 2 for Enrollment. (See ATTACHMENT A – SAC OB10 Instructions)

The Contractor shall submit an electronic invoice by the tenth (10th) of the following month services were performed to the Veterans Affairs Financial Services Center (VAFSC) e-Invoice through the website at: <https://portal.ob10.com/Login.aspx>. For questions regarding the submission of VA electronic invoices, OB10 customer service may be contacted at: 1-877-489-6135. All invoices shall reference the VA FSS Vendor's name and address, customer name, contract number, appropriate obligation/funding order number, description of services provided, quantity, unit price, and total invoice amount. Invoices shall also include any payment discount terms. For questions regarding invoice receipt or payment, please call VAFSC directly at 1-877-353-9791 or email [vafscshd@va.gov](mailto:vafscshd@va.gov).

Department of Veterans Affairs (DVA) Veterans Health Administration (VHA)  
**BLANKET PURCHASE AGREEMENT**

Pursuant to Federal Acquisition Regulation (FAR) 13.303, Blanket Purchase Agreements (BPA), WELCH ALLYN INC. agrees to the following terms of a BPA EXCLUSIVELY WITH VA Strategic Acquisition Center (SAC):

ITEM (Model/Part Number or Type of Service) <u>See Section B.4 Price/Cost Schedule</u>	SPECIAL BPA DISCOUNT/PRICE <u>TBD</u>
---	--

(1) Delivery:  
 DESTINATION

(2) The following contract services/products can be ordered under this BPA. All orders placed against this BPA are subject to the terms and conditions of the MSPV contract, except as noted below:

DELIVERY SCHEDULE/DATES

<u>Determined by Individual BPA Orders</u>	<u>Determined by Individual BPA Orders</u>
--	--

(3) The Government does not guarantee the BPA holder will receive BPA Orders. Orders placed under this BPA are to be competed between all successful awardees. The Government estimates, but does not guarantee, that the volume of purchases through this agreement may be 10,400 each year = 52,000 for 60 months.

- (4) This BPA does not obligate any funds.
- (5) This BPA expires on September 29, 2020.
- (6) The following office(s) is hereby authorized to place orders under this BPA:

<u>OFFICE</u>	<u>POINT OF CONTACT</u>
<u>Veterans Health Administration (VHA) facilities</u>	<u>Shall be provided with each order</u>

(7) Orders will be placed against this BPA via Electronic Data Interchange (EDI), FAX, paper, or oral communications.

- (8) Unless otherwise agreed to, all deliveries under this BPA must be accompanied by delivery tickets or sales slips that must contain the following information as a minimum:
  - (a) Name of Contractor;
  - (b) Contract Number;
  - (c) BPA Number;

- (d) BPA Order Number;
- (e) PO# (if applicable);
- (f) Model Number or National Stock Number (NSN);
- (g) Date of Purchase;
- (h) Quantity, Unit Price, and Extension of Each Item (unit prices and extensions need not be shown when incompatible with the use of automated systems; provided, that the invoice is itemized to show the information); and
- (i) Date of Shipment.

(9) Invoices will be submitted to the address specified within the BPA order transmission issued against this BPA.

(10) The terms and conditions included in this BPA apply to all purchases made pursuant to it. In the event of an inconsistency between the provisions of this BPA and the Contractor's invoice, the provisions of this BPA will take precedence.

## **B.2 BPA INTRODUCTORY LANGUAGE**

In the spirit of the Federal Acquisition Streamlining Act, the Department of Veterans Affairs (VA) and WELCH ALLYN INC. hereby enter into a cooperative agreement, otherwise referred to as a BPA, to further reduce the administrative costs of acquiring supplies/services. The agreement details all supplies with accompanying prices and descriptions, which may be ordered under this BPA.

All orders placed against this BPA are subject to the terms and conditions of all the clauses and provisions in full text or incorporated by reference in this document.

## **B.3 BPA TERMS AND CONDITIONS FOR ELECTRONIC THERMOMETERS**

The following terms and conditions are required:

### **1. DESCRIPTION OF AGREEMENT:**

- a. This BPA is for simple commercial supplies; there are no compatibility concerns. This BPA is being established to standardize the purchase of these items across VA. WELCH ALLYN INC. shall be required to provide the standardized items for distribution through the Medical/Surgical Prime Vendor (MSPV) Program. The MSPV Program, also known as the VA Distribution Program, is a national program that provides a customized distribution system that meets or exceeds facility requirements by providing efficient and cost-effective just-in-time distribution, inventory, electronic, and catalog ordering processes through seven Prime Vendor contracts. The MSPV contracts are Indefinite Delivery, Requirements Contracts from which field offices are required to purchase available items.
- b. Additionally, Prime Vendors are required to provide VA facilities with 100% of the Medical Surgical National Standardization products identified by facilities. In order for the contractor to participate in the VA Distribution Programs, the contractor must

establish a contract with each Prime Vendor in order to add their products to the supply chain. VA Distributors under these programs invoice Federal Government customers at the established BPA price plus the established distribution fee. Therefore, the BPA holder makes the BPA item(s) available through each MSPV. The specific terms and conditions, e.g., chargeback arrangements, payment terms, etc., of the agreement must be finalized between the BPA holder and the applicable Prime Vendor. Purchases by the Government of products established under this BPA will be ordered directly by VA field offices and distributed through VA Distribution Programs. The requirement to participate in VA Distribution Programs is not applicable to Service Disabled Veteran Owned Small Businesses (SDVOSBs).

## 2. REQUIREMENT:

WELCH ALLYN INC. shall provide Electronic Thermometers Oral/Rectal, probes, probe covers, and accessories. The VA has a need for electronic thermometers, oral and rectal probes, probe covers, calibration tool, wall mount, and probe well holder. VHA National Standardization Program identified "Electronic Thermometers, Oral/Rectal Probes and Covers" as candidate items for standardization. This also includes the wall mount, well holder and calibration tool. The objective is to provide electronic thermometers, oral/rectal probes and covers to be used by clinicians throughout the VA medical centers and facilities located in the U.S. and U.S. territories.

(End of Terms and Conditions)

## B.4 PRICE/COST SCHEDULE ITEM INFORMATION

ITEM NUMBER	DESCRIPTION OF SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0001	<b>Oral Electronic Thermometer System</b> Product #: <b>01692-200</b> (includes probe, probe well, and wall mount)	TBD	EACH	\$170.00	TBD
0002	<b>Rectal Electronic Thermometer System</b> Product #: <b>01692-201</b> (includes probe, probe well, and wall mount)	TBD	EACH	\$170.00	TBD
0003	<b>Oral Probe Kit-Blue</b> Product #: <b>02893-000</b> (sold as probe and probe well)	TBD	EACH	\$40.00	TBD
0004	<b>Rectal Probe Kit-Red.</b> Product #: <b>#: 02892-000</b> (sold as probe and probe well)	TBD	EACH	\$40.00	TBD

ITEM NUMBER	DESCRIPTION OF SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0005	<b>Oral Probe Well-Blue</b> Product #: <b>02891-0000</b> (replacement part)	TBD	EACH	\$6.25	TBD
0006	<b>Rectal Probe Well-Red</b> Product #: <b>02891-1000</b> (replacement part)	TBD	EACH	\$6.25	TBD
0007	<b>Wall Mount</b> Product #: <b>21326-0000</b> (replacement part)	TBD	EACH	\$21.25	TBD
0008	<b>Calibration Tool.</b> Product #: <b>06138-000</b>	TBD	EACH	\$16.50	TBD
0009	<b>Probe Covers.</b> Product #: <b>05031-750</b> (7,500 Count)	TBD	PK (7,500 Count)	\$110.85	TBD

## SECTION C - CONTRACT CLAUSES

### C.1 52.212-4 CONTRACT TERMS AND CONDITIONS—COMMERCIAL ITEMS (MAY 2015)

(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 re-performance of nonconforming services at no increase in contract price. If repair/replacement or re-performance 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 Government-wide 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 41 U.S.C. Chapter 71, Contract Disputes. 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 41 U.S.C. 7109, 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. chapter 37, Contract Work Hours and Safety Standards; 41 U.S.C. chapter 87, Kickbacks; 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. chapter 21 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.

(v) *Incorporation by reference.* The Contractor's representations and certifications, including those completed electronically via the System for Award Management (SAM), are incorporated by reference into the contract.

(End of Clause)

**C.2 52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS -- COMMERCIAL ITEMS (JUL 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) (Public Laws 108-77 and 108-78 (19 U.S.C. 3805 note)).

(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

[X] (1) 52.203-6, Restrictions on Subcontractor Sales to the Government (Sept 2006), with Alternate I (Oct 1995) (41 U.S.C. 4704 and 10 U.S.C. 2402).

(2) 52.203-13, Contractor Code of Business Ethics and Conduct (Apr 2010)(41 U.S.C. 3509).

(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 Executive orders applicable to acquisitions of commercial items: U.S.C. 6101 note).

(5) [Reserved]

(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 (May 2014) (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 Representation (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 Veteran (Jul 2014) (38 U.S.C. 4212).
- (33) 52.222-36, Equal Opportunity for Workers with Disabilities (Jul 2014) (29 U.S.C. 793).
- (34) 52.222-37, Employment Reports on Veterans (Jul 2014) (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)(i) 52.223-13, Acquisition of EPEAT®-Registered Imaging Equipment (JUN 2014) (E.O.s 13423 and 13514).
- (ii) Alternate I (Jun 2014) of 52.223-13.
- (39)(i) 52.223-14, Acquisition of EPEAT®-Registered Televisions (Jun 2014) (E.O.s 13423 and 13514).
- (ii) Alternate I (Jun 2014) of 52.223-14.
- (40) 52.223-15, Energy Efficiency in Energy-Consuming Products (Dec 2007) (42 U.S.C. 8259b).
- (41)(i) 52.223-16, Acquisition of EPEAT®-Registered Personal Computer Products (Jun 2014) (E.O.s 13423 and 13514).
- (ii) Alternate I (Jun 2014) of 52.223-16.
- (42) 52.223-18, Encouraging Contractor Policies to Ban Text Messaging While Driving (Aug 2011)
- (43) 52.225-1, Buy American—Supplies (May 2014) (41 U.S.C. chapter 83).
- (44)(i) 52.225-3, Buy American—Free Trade Agreements—Israeli Trade Act (May 2014) (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 (May 2014) of 52.225-3.

(iii) Alternate II (May 2014) of 52.225-3.

(iv) Alternate III (May 2014) of 52.225-3.

(45) 52.225-5, Trade Agreements (Nov 2013) (19 U.S.C. 2501, *et seq.*, 19 U.S.C. 3301 note).

(46) 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).

(47) 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).

(48) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (Nov 2007) (42 U.S.C. 5150).

(49) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov 2007) (42 U.S.C. 5150).

(50) 52.232-29, Terms for Financing of Purchases of Commercial Items (Feb 2002) (41 U.S.C. 4505, 10 U.S.C. 2307(f)).

(51) 52.232-30, Installment Payments for Commercial Items (Oct 1995) (41 U.S.C. 4505, 10 U.S.C. 2307(f)).

(52) 52.232-33, Payment by Electronic Funds Transfer—System for Award Management (Jul 2013) (31 U.S.C. 3332).

(53) 52.232-34, Payment by Electronic Funds Transfer—Other than System for Award Management (Jul 2013) (31 U.S.C. 3332).

(54) 52.232-36, Payment by Third Party (May 2014) (31 U.S.C. 3332).

(55) 52.239-1, Privacy or Security Safeguards (Aug 1996) (5 U.S.C. 552a).

(56)(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 Labor Standards (May 2014) (41 U.S.C. chapter 67).

[] (2) 52.222-42, Statement of Equivalent Rates for Federal Hires (May 2014) (29 U.S.C. 206 and 41 U.S.C. chapter 67).

[] (3) 52.222-43, Fair Labor Standards Act and Service Contract Labor Standards—Price Adjustment (Multiple Year and Option Contracts) (May 2014) (29 U.S.C. 206 and 41 U.S.C. chapter 67).

[] (4) 52.222-44, Fair Labor Standards Act and Service Contract Labor Standards—Price Adjustment (May 2014) (29 U.S.C 206 and 41 U.S.C. chapter 67).

[] (5) 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements (May 2014) (41 U.S.C. chapter 67).

[] (6) 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services—Requirements (May 2014) (41 U.S.C. chapter 67).

[] (7) 52.222-17, Non-displacement of Qualified Workers (May 2014) (E.O. 13495).

[] (8) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (MAY 2014) (42 U.S.C. 1792).

[] (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) (41 U.S.C. 3509).

(ii) 52.219-8, Utilization of Small Business Concerns (May 2014) (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, Non-displacement of Qualified Workers (May 2014) (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 (Jul 2014) (38 U.S.C. 4212).

(vi) 52.222-36, Equal Opportunity for Workers with Disabilities (Jul 2014) (29 U.S.C. 793).

(vii) 52.222-17, Employment Reports on Veterans (Jul 2014) (38 U.S.C. 4212).

(viii) 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.

(ix) 52.222-41, Service Contract Labor Standards (May 2014) (41 U.S.C. chapter 67).

(x) 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)).

(xi) 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements (May 2014) (41 U.S.C. chapter 67).

(xii) 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services—Requirements (May 2014) (41 U.S.C. chapter 67).

(xiii) 52.222-54, Employment Eligibility Verification (Aug 2013).

(xiv) 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).

(xv) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (May 2014) (42 U.S.C. 1792). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6.

(xvi) 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 52.232-40 PROVIDING ACCELERATED PAYMENT TO SMALL BUSINESS SUBCONTRACTORS (DEVIATION) (DEC 2013)**

Pursuant to the policy provided by OMB Policy Memorandum M-12-16, Providing Prompt Payment to Small Business Subcontractors (and as extended by OMB Memoranda M-13-15 and M-14-10, both titled Extension of Policy to Provide Accelerated Payment to Small Business Subcontractors), dated July 11, 2012.

(a) Upon receipt of accelerated payments from the Government, the Contractor shall make accelerated payments to its small business subcontractors under this contract, to the maximum extent practicable and prior to when such payment is otherwise required under the applicable contract or subcontract, after receipt of a proper invoice and all other required documentation from the small business subcontractor.

(b) The acceleration of payments under this clause does not provide any new rights under the Prompt Payment Act.

(c) Include the substance of this clause, including this paragraph (c), in all subcontracts with small business concerns, including subcontracts with small business concerns for the acquisition of commercial items.

(End of Clause)

**C.4 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/>  
<http://farsite.hill.af.mil/>

(End of Clause)

<u>FAR Number</u>	<u>Title</u>	<u>Date</u>
52.232-40	PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS	(Dec 2013)
52.239-1	PRIVACY OR SECURITY SAFEGUARDS	(Aug. 1996)
52.244-6	SUBCONTRACTS FOR COMMERCIAL ITEMS	(Jul 2014)
52.247-34	F.O.B. DESTINATION	(NOV 1991)

### **C.5 VAAR 852.246-70 GUARANTEE (JAN 2008)**

The contractor guarantees the equipment against defective material, workmanship, and performance for a period of 365 Days, said guarantee to run from date of acceptance of the equipment by the Government. The contractor agrees to furnish, without cost to the Government, replacement of all parts and material that are found to be defective during the guarantee period. Replacement of material and parts will be furnished to the Government at the point of installation, if installation is within the continental United States, or f.o.b. the continental U.S. port to be designated by the contracting officer if installation is outside of the continental United States. Cost of installation of replacement material and parts shall be borne by the contractor.

(End of Clause)

### **C.6 NOTICE LISTING CLAUSES INCORPORATED BY REFERENCE**

The following clauses are hereby incorporated by reference (by Citation Number, Title, and Date) in accordance with the clause at FAR "52.252-2 CLAUSES INCORPORATED BY REFERENCE" contained in this document. See FAR 52.252-2 for an internet address (if specified) for electronic access to the full text of a clause.

#### FEDERAL ACQUISITION REGULATION (48 CFR Chapter 1)

#### ADDENDUM to FAR 52.212-4 CONTRACT TERMS AND CONDITIONS— COMMERCIAL ITEMS

Clauses that are incorporated by reference (by Citation Number, Title, and Date), have the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available.

The following clauses are incorporated into 52.212-4 as an addendum to this contract:

(End of Addendum to 52.212-4)

<u>FAR Number</u>	<u>Title</u>	<u>Date</u>
52.202-1	DEFINITIONS	NOV 2013
52.203-3	GRATUITIES	APR 1984
52.203-17	CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS	SEP 2013

<u>FAR Number</u>	<u>Title</u>	<u>Date</u>
52.204-4	PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER	MAY 2011
52.203-12	LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS	OCT 2010
52.212-4	CONTRACT TERMS AND CONDITIONS—COMMERCIAL ITEMS	SEP 2013
52.229-3	FEDERAL, STATE, AND LOCAL TAXES	FEB 2013
52.232-1	PAYMENTS	APR 1984
52.232-11	DISCOUNTS FOR PROMPT PAYMENT	FEB 2002
52.232-17	EXTRAS	APR 1984
52.232-39	UNENFORCEABILITY OF UNAUTHORIZED OBLIGATIONS	JUN 2013
52.242-13	INTEREST	OCT 2010
52.243-1	BANKRUPTCY	JUL 1995
52.246-4	CHANGES--FIXED-PRICE	AUG 1987
52.246-16	INSPECTION OF SERVICES--FIXED-PRICE	AUG 1996
52.246-23	RESPONSIBILITY FOR SUPPLIES	APR 1984
52.247-34	LIMITATION OF LIABILITY	FEB 1997
52.249-8	F.O.B. DESTINATION	NOV 1991

#### **C.7 52.233-2 SERVICE OF PROTEST (SEP 2006)**

(a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the Government Accountability Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from:

Hand-Carried Address:  
U.S. Department of Veterans Affairs  
Strategic Acquisition Center  
10300 Spotsylvania Ave  
Fredericksburg VA 22408

Mailing Address:  
U.S. Department of Veterans Affairs  
Strategic Acquisition Center  
10300 Spotsylvania Ave  
Fredericksburg VA 22408

(b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.

(End of Clause)



**C.8 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)

**C.9 VAAR 852.233-71 ALTERNATE PROTEST PROCEDURE (JAN 1998)**

As an alternative to filing a protest with the contracting officer, an interested party may file a protest with the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Administration Team, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, or for solicitations issued by the Office of Construction and Facilities Management, the Director, Office of Construction and Facilities Management, 810 Vermont Avenue, NW., Washington, DC 20420. The protest will not be considered if the interested party has a protest on the same or similar issues pending with the contracting officer.

(End of Provision)

PLEASE NOTE: The correct mailing information for filing alternate protests is as follows:

Deputy Assistant Secretary for Acquisition and Logistics,  
Risk Management Team, Department of Veterans Affairs  
810 Vermont Avenue, N.W.  
Washington, DC 20420

Or for solicitations issued by the Office of Construction and Facilities Management:

Director, Office of Construction and Facilities Management  
811 Vermont Avenue, N.W.  
Washington, DC 20420

**C.10 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)

**C.11 VAAR 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.12 VAAR 852.246-71 INSPECTION (JAN 2008)**

Rejected goods will be held subject to contractor's order for not more than 15 days, after which the rejected merchandise will be returned to the contractor's address at his/her risk and expense. Expenses incident to the examination and testing of materials or supplies that have been rejected will be charged to the contractor's account.

(End of Clause)

#### **C.13 EXTENT OF OBLIGATION**

- a. The Government is obligated only to the extent of authorized orders actually made under the resultant BPA. This BPA does not obligate any funds, nor is the Government obligated to make any orders under this BPA. The Government does not guarantee any volume of orders through this BPA.
- b. The terms and conditions included in this BPA apply to all orders made pursuant to it. In the event of an inconsistency between the provisions of this BPA and the BPA Holder's invoice, the provisions of this BPA will take precedence.
- c. The BPA Holder shall provide delivery of Electronic Thermometers, Oral/Rectal Probes, Covers and Accessories as specified in this BPA. Individual VA Medical Centers shall issue Orders which shall indicate the specific items, item quantities, and all necessary delivery and payment procedures.
- d. The BPA is a Firm-Fixed-Price (FFP) single award, with an ordering period for 60 months from date of award. The Vendor (BPA holder) must immediately notify in writing the responsible VA Strategic Acquisition Center (SAC) Contracting Officer of any issues with the inability to supply the items or if any items is to be discontinued or replaced with a proposed substitute. The Government is not required to accept any discontinued or substitute item.
- e. Delivery Requirements: Delivery shall be made Free On Board, (FOB) destination to any VAMC facility (which may include outpatient facilities) within the United States,

which includes Alaska, Hawaiian Islands, Philippines Islands, Guam, American Samoa, Puerto Rico, and U.S. Virgin Islands.

- f. **Inspection and Acceptance:** The acceptance paragraph in FAR 52.212-4 is based upon the assumption that the Government will rely on the contractor's assurances that the commercial item tendered for acceptance conforms to the contract requirements. The Government inspection of commercial items will not prejudice its other rights under the acceptance paragraph.
- g. **Warranty:** The Government's post award rights contained in FAR 52.212-4 are the implied warranty of merchantability, the implied warranty of fitness for particular purpose and the remedies contained in the acceptance paragraph. The provisions of FAR 52.212-4 are incorporated by reference.

(End of Clause)

#### **C.14 ORDERING LIMITATIONS**

Orders placed against this agreement are limited to the Simplified Acquisition Threshold (SAT). Only warranted Contracting Officers or authorized Government ordering officials within the VA who have ordering/contracting authority, on behalf of VA are authorized to place BPA call orders. Orders can be placed orally or in writing. The Government Purchase Card (GPC) may be used for orders \$3,500.00 and under by authorized officials. Any orders above \$3,500.00 shall be placed by the facility Contracting Officers or authorized Government ordering official. For any orders above \$150K the SAC Contracting Officer must be notified for authorization prior to placing any such orders above this dollar threshold.

(End of Clause)

#### **C.15 OFFICES AUTHORIZED TO PURCHASE UNDER THIS BPA**

VHA facilities are authorized to place orders under this BPA. The Contracting Officer (CO) or Point of Contact (POC) at the VA Medical Center shall be identified with each order. Authorized users may place the order directly under the established BPA when the need for the supply arises. Orders shall be placed in accordance with FAR 13-303(a)(4) *Individuals authorized to purchase under the BPA* in conjunction with the following requirements of MSPV:

- a. If the selected Vendor (BPA holder) is a SDVOSB and the SDVOSB elects not to participate in the MSPV Program: Any individual who has authorized ordering/contracting authority, on behalf of the Veterans Healthcare Administration field offices, may place delivery orders against this BPA.
- b. If the selected Vendor is not a SDVOSB or is an SDVOSB that elects to participate in the MSPV Program:
  - i. The Vendor agrees to make this BPA available through the Department of Veterans Affairs Medical/Surgical Distribution Programs (VA Distribution Programs).

- ii. Any individual who has authorized ordering/contracting authority, on behalf of the Veterans Healthcare Administration field offices, may place delivery orders against this BPA through the MSPV program.
- c. Authorized users may place the order directly under the established BPA when the need for the supply arises.

(End of Clause)

#### **C.16 DELIVERY AND ORDERING REQUIREMENTS**

The delivery time offered for all orders placed against the resultant BPA shall not exceed 30 calendar days after receipt of order (ARO). Deliveries of the Electronic Thermometers, Oral/Rectal Probes, Covers and Accessories shall be in accordance with MSPV. Unless the vendor is an SDVOSB not participating in the program and therefore shipments shall be shipped directly to U.S. facilities and U.S. territories and shall be consistent with the BPA holder's existing shipping/FOB (freight on board) terms. The contractor will indicate if there is an additional cost for delivery outside the Contiguous US (48 states) or for expedited deliveries.

(End of Clause)

#### **C.17 ORDERING PROCEDURES**

Orders will be placed against this BPA in accordance with FAR Part 13.302-2(c) via Electronic Data Interchange (EDI), via facsimile, in writing, or by phone in conjunction with the following applicable MSPV requirements:

- a. If the selected Vendor (BPA holder) is not an SDVOSB or if the selected Vendor is an SDVOSB participating in the MSPV Program: Ordering and invoicing procedures for orders under the Prime Vendor program will be in accordance with the Prime Vendor contract.
- b. If an SDVOSB Vendor is selected and the SDVOSB elects not to participate in the MSPV Program:
  - i. BPA ordering will be decentralized.
  - ii. Orders will be placed by field offices directly under the BPA.
  - iii. Invoicing, acceptance, and payment shall be in accordance with the instructions provided in each individual delivery order.
- c. Frequency of ordering: Orders are placed based on the needs of VA field offices throughout the life of the BPA.
- d. In order to expedite delivery and quickly resolve issues, the ordering office will indicate on each order the POC for the Ordering Office (name, telephone, and email), POC for the Receiving Office (name, telephone, and email) and method of payment.
- e. Purchase Order Numbers (PO#) or Government Purchase Cards may be used as a payment method.

- f. Prior to shipping, the contractor shall notify Receiving Office POC by telephone and email, of all incoming deliveries including line-by-line details for review of requirements. The contractor shall coordinate deliveries with POCs before each shipment of Electronic Thermometers, Oral/Rectal Probes, Covers and Accessories. All shipments, either single or multiple container deliveries, will bear the PO# number on external shipping labels and associated manifests or packing lists/delivery tickets. In the case of multiple container deliveries, a statement readable near the PO# will indicate total number of containers for the complete shipment (ex. "Package 1 of 2"), clearly readable on manifests and external shipping labels.

Packing Slips/Labels and Lists shall include the following:

PO#: (i.e., 166-E11234)

Total number of Containers: Package \_\_\_ of \_\_\_. (i.e., Package 1 of 3)

- g. Invoicing shall be addressed in the individual order; payment will be made after receipt and acceptance of goods by the ordering office or receiving office identified in the order.

(End of Clause)

## C.18 SCHEDULE FOR DELIVERABLES

The following provisions apply to all shipments:

**Inspection:** Destination

**Acceptance:** Destination

**Shipping :** Free on Board (FOB) – Destination

**Ship To and Mark For:** Deliveries shall be marked and shipped to various VHA locations identified in each order placed against the BPA.

**Special Shipping Instructions:**

Prior to shipping, the contractor shall notify site point of contact by telephone and email, of all incoming deliveries including line-by-line details for review of requirements. The contractor shall coordinate deliveries with Site POCs before each shipment of **Oral / Rectal Thermometers** to ensure sites have adequate storage space. All shipments, either single or multiple container deliveries, shall bear and contain on the delivery tickets or sales slips (external shipping labels and associated manifests or packing lists) the following at a minimum:

1. Name of the contractor:
2. BPA Number:
3. Order Number:
4. Model Number or National Stock Number (NSN):
5. Date of purchase:
6. Quantity, unit price, and extension of each item less applicable discounts (unit prices and extensions need not be shown when incompatible with the use of automated systems, provided that the invoice is itemized to show the information)
7. Date of shipment:

In the case of multiple container deliveries, a statement readable near the VA Order number will indicate total number of containers for the complete shipment (ex. "Package 1 of 2"), clearly readable on manifests and external shipping labels.

**Packing Slips/Labels and Lists shall include the following:**

IFCAP PO # \_\_\_\_\_ (i.e., 166-E11234)

Total number of Containers: Package \_\_\_\_ of \_\_\_\_\_. (i.e., Package 1 of 3)

(End of Clause)

**C.19 ORDER OF PRECEDENCE**

- a. All MSPV contract terms and conditions apply to this BPA as this BPA is an extension of the MSPV contract.
- b. Any unique terms and conditions of this BPA that are not a part of the applicable MSPV contract will govern. In the event of an inconsistency between the terms and conditions of this BPA, other than those identified above, and the Contractor's terms, the MSPV contract will take precedence.
- c. All MSPV contract terms apply to the resulting MSPV contracts.

(End of Clause)

**C.20 DELIVERY TICKETS**

At a minimum, delivery tickets or sales slips must contain the following information and must accompany all deliveries under this BPA, unless otherwise agreed to:

1. Name of the contractor:
2. BPA Number:
3. BPA Order Number:
4. PO#(if applicable):
5. Model Number or National Stock Number (NSN):
6. Date of purchase:
7. Quantity, unit price, and extension of each item less applicable discounts (unit prices and extensions need not be shown when incompatible with the use of automated systems, provided that the invoice is itemized to show the information)
8. Date of shipment:

(End of Clause)

**C.21 PURCHASE CARD**

- a. Definitions.  
"Government wide commercial purchase card" means a uniquely numbered credit card issued by a contractor under GSA's Government wide Contract for Fleet, Travel, and Purchase Card Services to named individual Government employees or entities to pay for official Government purchases. "Oral order" means an order placed orally either in person or by telephone, which is paid for by Government wide commercial purchase card.
- b. The Contractor shall accept payments for oral or written BPA Orders made using the Government wide commercial purchase card in the amount of \$3,500.00 or less.
- c. The Contractor shall not process a transaction for payment through the purchase card until the purchased supplies have been shipped or services performed. Unless the cardholder requests correction or replacement of a defective or faulty item in

accordance with other BPA requirements, the Contractor shall immediately credit a cardholder's account for items returned as defective or faulty.

(End of Clause)

**C.22 AUTHORIZED REPRESENTATIVES**

The primary Contracting Officer (CO) for this Agreement is:

MAURICIO VAZQUEZ

U.S. Department of Veterans Affairs

Strategic Acquisition Center

10300 Spotsylvania Ave

Fredericksburg, VA 22408

mauricio.vaquez@va.gov

The Primary Contracting Officer's Representative (COR) for projects under this Agreement is:

JENNIFER SIMMONS

(202) 632-7353

jennifer.simmons@va.gov

The Secondary Contracting Officer's Representative (COR) for projects under this Agreement is:

STEVIE DUNK

202-632-7163

stevie.dunk@va.gov

The Primary and/or Secondary COR will be responsible for technical monitoring of the contractor's performance and deliveries. The COR and the Contractor's Representative shall work together to ensure that all contractual requirements are being met. The COR will interpret specifications or technical portions of the work. The COR is not authorized to perform, formally or informally, any of the following actions:

- (1) Promise, award, agree to award, or execute any contract, contract modification, or notice of intent that changes or may change this contract;
- (2) Waive or agree to modification of the delivery schedule;
- (3) Make any final decision on any contract matter subject to the Disputes Clause;
- (4) Terminate, for any reason, the contractor's right to proceed;
- (5) Obligate in any way, the payment of money by the Government. Only a warranted Contracting Officer is authorized to obligate funds on this or any other contract action.

The contractor shall immediately notify the Contracting Officer in writing if the COR has taken an action (or fails to take action) or issues directions (written or oral) that the contractor considers to exceed the above limitations.

The contractor shall provide the Contracting Officer information copies of all correspondence to the COR.

(End of Clause)



### **C.23 REPORTS**

- a. WELCH ALLYN INC. agrees to provide, on a quarterly basis, to the BPA Project Manager one electronic version of the ATTACHMENT A – BPA Quarterly Reporting Tool. This quarterly cost savings report shall provide the VA FSS price and the BPA price to determine savings. The report is due within 15 calendar days after the close of each quarter's business:
  - i. 1st Quarter: October 1 – December 31
  - ii. 2nd Quarter: January 1 – March 31
  - iii. 3rd Quarter: April 1 – June 30
  - iv. 4th Quarter: July 1 – September 30
- b. This report shall be provided to the Project Manager and Contracting Officer as indicated in Section B.1, Contract Administration Data. Final inspection and acceptance of documentation required herein shall be by letter of approval and acceptance by BPA Project Manager.
- c. The format for this report will be provided to WELCH ALLYN INC. upon award.

(End of Clause)

### **C.24 CANCELLATION**

Either party may terminate this agreement at any time upon 30 days prior written notice to the other party. The cancellation will take effect on the 30th calendar day. Discontinuing or modifying this BPA shall not affect any prior order within the 30 day period.

All items supplied by the BPA Holder shall be compliant with the Trade Agreements Act (TAA). If it is confirmed an item is not TAA compliant it shall be rejected and a replacement (TAA compliant item) or refund shall be provided. The Ordering Activity Contracting Officer reserves the right to terminate this agreement with a BPA Holder that is no longer TAA compliant. The SAC Contracting Officer will be notified regarding the termination.

### **C.25 INVOICES**

An itemized invoice shall be submitted in accordance with ATTACHMENT A, SAC OB10 Instructions for each BPA Order placed. The requirements of a proper invoice for BPA Orders are as specified per order. The itemized invoice shall include the delivery ticket or packing list, ship-to-address of supplies, the BPA number, and the BPA order number assigned by the individual facility at the time of ordering.

(End of Clause)

### **C.26 UNIVERSAL PRODUCT NUMBERS (UPNs)**

The BPA Holder shall utilize Universal Product Numbers (UPN) as product identifiers and UPN bar code compliant labels on all packaging sizes down to the unit of measure, as they become available from manufacturers of medical and surgical supplies.

A UPN uniquely identifies healthcare products. It is derived from either the HIBCC-LIC or UCC/EAN bar code labeling data structures. The HIBCC-LIIC format is variable in length, alpha-numeric and consists of manufacturer LIC assigned by HIBCC, the labeler's products or catalog number, and the package level (or inventory unit) indicator.

The UCC/EAN format is fixed length, all numeric and consists of the UCC/EAN assigned manufacturer number (company prefix), numeric item number, a package level (or inventory unit) indicator, and a calculated check character.

When available, the contractor shall use UPNs as the key product unit identifier in its electronic product catalogs, order-processing systems, all product reorders, business documents, and reports called for under the terms of the contract.

(End of Clauses)

## **ATTACHMENTS**

Compliance with the following attachments is required per the BPA:

ATTACHMENT A - SAC OB10 INSTRUCTIONS

ATTACHMENT B - BPA QUARTERLY REPORTING TOOL

**////////////////////////////////////LAST LINE AND END OF DOCUMENT////////////////////////////////////**