PAGE 1 OF

1. REQUISITION NO.

2. CONTRACT NO.

3. AWARD/EFFECTIVE DATE

4. ORDER NO.

5. SOLICITATION NUMBER

6. SOLICITATION ISSUE DATE

a. NAME

b. TELEPHONE NO. (No Collect Calls)

8. OFFER DUE DATE/LOCAL

TIME

9. ISSUED BY

CODE

10. THIS ACQUISITION IS

 UNRESTRICTED OR

SET ASIDE:

% FOR:

SMALL BUSINESS

HUBZONE SMALL

BUSINESS

SERVICE-DISABLED

VETERAN-OWNED

SMALL BUSINESS

WOMEN-OWNED SMALL BUSINESS

(WOSB) ELIGIBLE UNDER THE WOMEN-OWNED

SMALL BUSINESS PROGRAM

EDWOSB

8(A)

NAICS:

SIZE STANDARD:

11. DELIVERY FOR FOB DESTINA-

TION UNLESS BLOCK IS

MARKED

SEE SCHEDULE

12. DISCOUNT TERMS

 13a. THIS CONTRACT IS A

RATED ORDER UNDER

DPAS (15 CFR 700)

13b. RATING

14. METHOD OF SOLICITATION

RFQ

IFB

RFP

15. DELIVER TO

CODE

16. ADMINISTERED BY

CODE

17a. CONTRACTOR/OFFEROR

CODE

FACILITY CODE

18a. PAYMENT WILL BE MADE BY

CODE

TELEPHONE NO.

DUNS:

DUNS+4:

PHONE:

FAX:

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

SEE ADDENDUM

19.

20.

21.

22.

23.

24.

ITEM NO.

SCHEDULE OF SUPPLIES/SERVICES

QUANTITY

UNIT

UNIT PRICE

AMOUNT

(Use Reverse and/or Attach Additional Sheets as Necessary)

25. ACCOUNTING AND APPROPRIATION DATA

26. TOTAL AWARD AMOUNT (For Govt. Use Only)

27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4. FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA

ARE

ARE NOT ATTACHED.

27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. FAR 52.212-5 IS ATTACHED. ADDENDA

ARE

ARE NOT ATTACHED

28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

29. AWARD OF CONTRACT: REF. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ OFFER

COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND

DATED \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. YOUR OFFER ON SOLICITATION

DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY

(BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE

ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED

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

AUTHORIZED FOR LOCAL REPRODUCTION

(REV. 2/2012)

PREVIOUS EDITION IS NOT USABLE

Prescribed by GSA - FAR (48 CFR) 53.212

7. FOR SOLICITATION

INFORMATION CALL:

STANDARD FORM 1449

**OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, & 30**

**SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS**

VA797E-17-R-0052

07-26-2017

Khristine Jackson Khristine.Jackson@va.gov

708-786-5184

08-15-2017

2:30 PM CT

Department of Veterans Affairs

OA&L / National Acquisition Center

Building 37, NCS (003A4C4)

1st Avenue, One Block North of Cermak

Hines IL 60141

X

Y

325412

1250 Employees

N/A

N/A

X

VA & DOD Pharmaceutical Prime Vendors

Refer to Attachments A & B, located in

Section D.

Department of Veterans Affairs

OA&L / National Acquisition Center

Building 37, NCS (003A4C4)

1st Avenue, One Block North of Cermak

Hines IL 60141

VA & DOD Pharmaceutical Prime Vendors

Refer to Attachments A & B, located in

Section D.

ALBUTEROL/IPRATROPIUM

One award will be made in the aggregate for line items 1 and 2.

To be considered for award, offerors must submit a price

for the base year and all four one-year options.

Prices offered shall not exceed two decimal places.

Offered prices must include the Cost Recovery Fee of 0.5%,

as outlined in Scope of Contract. Offerors must list an 11

digit NDC number for each offered drug that is unique to the

Offeror's company as outlined in Scope of Contract. If the

offeror is a distributor, the NDC number must be unique

to the distributor.

X

X

1 scan

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| 19.Item No. | 20.Schedule of Supplies/Services | 21. Quantity | 22. Unit | 23. Unit Price | 24. Amount |
| To be considered for award, offerors must submit a price for line items 1 and 2 for the base year and all four option years. One award will be made in the aggregate for line items 1 and 2 for the base years and all four options. Offered prices shall not exceed two decimal places. The Government reserves the right not to award a contract on this solicitation should offered prices match or exceed current Federal Supply Schedule (FSS) prices. This contract is for outpatient use only. |
| Line Item 1ALBUTEROL SO4 3MG/IPRATROPIUM BR 0.5MG/3ML INHL,3ML, 30s NDC # \_\_\_\_\_\_\_\_\_\_\_\_\_\_ Base Year 688,014 Boxes $\_\_\_\_\_\_\_\_ $\_\_\_\_\_\_\_\_\_ Option Year One 688,014 Boxes $\_\_\_\_\_\_\_\_ $\_\_\_\_\_\_\_\_\_ Option Year Two 688,014 Boxes $\_\_\_\_\_\_\_\_ $\_\_\_\_\_\_\_\_\_ |
|  Option Year Three 688,014 Boxes $\_\_\_\_\_\_\_\_ $\_\_\_\_\_\_\_\_\_ Option Year Four 688,014 Boxes $\_\_\_\_\_\_\_\_ $\_\_\_\_\_\_\_\_\_Line Item 2ALBUTEROL SO4 3MG/IPRATROPIUM BR 0.5MG/3ML INHL,3ML, 60s NDC # \_\_\_\_\_\_\_\_\_\_\_\_\_\_ Base Year 165,996 Boxes $\_\_\_\_\_\_\_ $\_\_\_\_\_\_\_ Option Year One 165,996 Boxes $\_\_\_\_\_\_\_ $\_\_\_\_\_\_\_ Option Year Two 165,996 Boxes $\_\_\_\_\_\_\_ $\_\_\_\_\_\_\_ Option Year Three 165,996 Boxes $\_\_\_\_\_\_\_ $\_\_\_\_\_\_\_ Option Year Four 165,996 Boxes $\_\_\_\_\_\_\_ $\_\_\_\_\_\_\_ |
|  |

**Table of Contents**

[**SECTION A 1**](#_Toc481651215)

[A.1 SF 1449 SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS 1](#_Toc481651216)

[CONTINUATION OF STANDARD FORM 1449: SCHEDULE OF SUPPLIES/SERVICES 5](#_Toc481651217)

[**SECTION B - CONTINUATION OF SF 1449 BLOCKS 7**](#_Toc481651218)

[SCOPE OF CONTRACT 7](#_Toc481651219)

[**SECTION C - CONTRACT CLAUSES 20**](#_Toc481651220)

[C.1 52.212-4CONTRACT TERMS AND CONDITIONS—COMMERCIAL ITEMS(JAN 2017) (MAY 5, 2011 DEVIATION) 20](#_Toc481651221)

[ADDENDUM to FAR 52.212-4 CONTRACT TERMS AND CONDITIONS--COMMERCIAL ITEMS 23](#_Toc481651222)

[C.2 52.204-18 COMMERCIAL AND GOVERNMENT ENTITY CODE MAINTENANCE (JUL 2016) 24](#_Toc481651223)

[C.3 52.216-21 REQUIREMENTS (OCT 1995) (MAY 5, 2011 DEVIATION) 25](#_Toc481651224)

[C.4 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000) 25](#_Toc481651225)

[C.5 VAAR 852.203-70 COMMERCIAL ADVERTISING (JAN 2008) 26](#_Toc481651226)

[C.6 VAAR 852.203-71 DISPLAY OF DEPARTMENT OF VETERAN AFFAIRS HOTLINE POSTER (DEC 1992) 26](#_Toc481651227)

[C.7 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998) 26](#_Toc481651228)

[C.8 SUBCONTRACTING PLAN – MONITORING AND COMPLIANCE 26](#_Toc481651229)

[C.9 VAAR 852.219-9 VA SMALL BUSINESS SUBCONTRACTING PLAN MINIMUM REQUIREMENTS (DEC 2009) 27](#_Toc481651230)

[C.11 52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS--COMMERCIAL ITEMS (JAN 2017) 33](#_Toc481651232)

[C.12 MANDATORY WRITTEN DISCLOSURES 41](#_Toc481651233)

[**SECTION D - CONTRACT DOCUMENTS, EXHIBITS, OR ATTACHMENTS 42**](#_Toc481651234)

[D.1 ATTACHMENT “A” 42](#_Toc481651235)

[D.2 ATTACHMENT “B” 43](#_Toc481651236)

[D.3 ATTACHMENT “C” 44](#_Toc481651237)

 D.4 ATTACHMENT "D"……………………………………………………………………......45

[**SECTION E - SOLICITATION PROVISIONS 53**](#_Toc481651245)

[E.1 52.212-1 INSTRUCTIONS TO OFFERORS--COMMERCIAL ITEMS (JAN 2017) 53](#_Toc481651246)

[ADDENDUM to FAR 52.212-1 INSTRUCTIONS TO OFFERORS --COMMERCIAL ITEMS 58](#_Toc481651247)

[E.2 52.204-16 COMMERCIAL AND GOVERNMENT ENTITY CODE REPORTING (JUL 2016) 60](#_Toc481651248)

[E.3 52.209-5 REPRESENTATION BY CORPORATIONS REGARDING AN UNPAID TAX LIABILITY OR A FELONY CONVICTION UNDER ANY FEDERAL LAW (DEVIATION)(OCT 2015) 61](#_Toc481651249)

[E.5 52.214-34 SUBMISSION OF OFFERS IN THE ENGLISH LANGUAGE (APR 1991) 63](#_Toc481651250)

[E.6 52.214-35 SUBMISSION OF OFFERS IN U.S. CURRENCY (APR 1991) 63](#_Toc481651251)

[E.7 52.216-1 TYPE OF CONTRACT (APR 1984) 63](#_Toc481651252)

[E.8 52.233-2 SERVICE OF PROTEST (SEP 2006) 63](#_Toc481651253)

[E.9 VAAR 852.233-70 PROTEST CONTENT/ALTERNATIVE DISPUTE RESOLUTION (JAN 2008) 63](#_Toc481651254)

[E.10 VAAR 852.233-71 ALTERNATE PROTEST PROCEDURE (JAN 1998) 64](#_Toc481651255)

[E.11 52.212-2 EVALUATION—COMMERCIAL ITEMS (OCT 2014) 64](#_Toc481651256)

[E.12 52.212-3 OFFEROR REPRESENTATIONS AND CERTIFICATIONS—COMMERCIAL ITEMS (JAN 2017) 65](#_Toc481651257)

**CONTINUATION OF STANDARD FORM 1449: SCHEDULE OF SUPPLIES/SERVICES**

Please be advised the following are included in the solicitation and are highlighted here.

Proposals may be delivered to Department of Veterans Affairs, National Acquisition Center, National Contract Service (003A4C), 1st Avenue, 1 Block North of Cermak Road, Building 37, Hines, IL 60141. Proposals will also be accepted in Microsoft Word or PDF form via e-mail at Khristine.Jackson@va.gov with a scanned (pdf) copy of the signed SF1449. Offerors are not required to submit an original proposal if an electronic proposal was received. Please note that faxed proposals are not acceptable and will be rejected. Reference FAR 52.212-1(f) regarding timeliness of submission of offers.

If the offeror is not the manufacturer of the offered items, the offeror shall submit either: (1) A letter of commitment from the manufacturer to the offeror which will assure the offeror of a source of supply sufficient to satisfy the Government's requirements for the contract period, **OR** (2) evidence that the offeror will have an uninterrupted source of supply from which to satisfy the Government's requirements for the contract period. The offeror must maintain the same manufacturer for the duration of the contract period. “Manufacturer” is defined as the entity that measures, mixes, weighs, and compounds the active and inactive ingredients into the finish product. This requirement shall be met before contract award. Offers that fail to meet this requirement before contract award shall be rejected and shall receive no further consideration. (See Addendum 52.212-1 – Instruction to Offerors).

One award will be made in the aggregate for line items 1 and 2 for the base year, including all four one-year option years. To be considered for award, offerors must propose a price for line items 1 and 2 for the base year and each option year. Proposals that fail to include a price for the base year and each of the four option years for line items 1 and 2 may be rejected and receive no further consideration.

*(Refer to Schedule of Supplies for package size details and estimates)*

Offered prices shall include a 0.50% Cost Recovery Fee (See Scope of Contract, paragraph 12).

The Government reserves the right not to award a contract on this solicitation should offered prices match or exceed current Federal Supply Schedule prices.

Offers for pharmaceuticals sourced from countries not covered by the Trade Agreement Act (TAA) may be given consideration pursuant to Federal Acquisition Regulation (FAR) Part 25.

Acknowledgement of Amendments. The following amendments are acknowledged as part of this solicitation. *(Please complete if applicable)*

|  |  |
| --- | --- |
| Amendment Number | Date Acknowledged by Offeror |
|  |  |
|  |  |
|  |  |

The System for Award Management (SAM) is an online system that replaces CCR/FedReg, ORCA, and EPLS. Contractors should now go to www.sam.gov to find their information. Training tools are available on the SAM website at [www.sam.gov](http://www.sam.gov) for familiarization with the SAM system. Prospective contractors shall maintain a current and accurate record in the SAM database. SAM updates are required, as necessary, but at least annually. (see 52.212-4(t) and 52.212-1(k)).

Subcontracting Plan Requirements: Pursuant to the requirements of Public Law 95-507, all large business concerns are required to have an approved subcontracting plan for contracts valued over $700,000 before the Government can award a contract (see FAR 52.219-9 for details). Offerors must submit a currently approved commercial plan or a new plan for review and approval. Attachment “D” includes all of the elements required to be addressed and is included to facilitate the submission of a subcontracting plan.

As prescribed in FAR Part 42.15, the VA evaluates contractor performance on all contracts that exceed $150,000, and shares those evaluations with other federal government agencies. The FAR requires that the contractor be provided an opportunity to comment on past performance evaluations prior to each report closing. To fulfill this requirement, VA will be using an online database, the Contractor Performance Assessment Reporting System (CPARS). Annual reporting of past performance will be completed at <http://www.cpars.gov> and uploaded to PPIRS (Past Performance Information Retrieval System).

**SECTION B - CONTINUATION OF SF 1449 BLOCKS**

**SCOPE OF CONTRACT**

**1. INTRODUCTION**

**1.1 Background**. All Ordering Activities under the Department of Veterans Affairs and all Ordering Activities under the Department of Defense (DOD) acquire their pharmaceutical requirements through their respective Pharmaceutical Prime Vendor Programs (PPV), hereafter referred to as the VA PPV Program and DOD PPV Program or jointly as PPV Programs. The PPV Programs are separate contracts which establish the fees for the distribution of pharmaceutical products that are distributed through the PPV Programs on Federal Government (i.e., Federal Supply Schedules, National Standardization) contracts. A contract resulting from this solicitation establishes the VA National Contract prices for the products listed in the schedule of supplies that will be distributed through the PPV Programs. Section 2.1, “Government Participants” lists the PPV Program participants that will be authorized users of the contract resulting from this solicitation. The successful contractor shall be required to be compliant with Drug Chain Supply security Act in any of the 50 United States and territories.

**1.2 Purpose and Objectives**. The purpose of this solicitation is to establish a supply source that will provide the drugs listed in the schedule for purchase through the PPV Programs. The total annual estimated usage for VA, Federal Health Care Center (FHCC), State Veterans Homes - Option 2 (SVH), DOD, Indian Health Service (IHS), and Bureau of Prisons (BOP) appears on the Schedule of Supplies section of this Solicitation. The objective of such a contract is to ensure availability and consistency of product for nationwide usage and to obtain volume-based, committed use pricing.

**1.3 Government Purchase Compliance**. VA, FHCC, SVH (Option 2), DOD, IHS, and BOP will purchase their requirements for the strengths of the drugs listed in the schedule through the PPV Programs except when: (1) the contracted items is/are unavailable to meet the needs of the Government, or (2) an alternate is requested by the prescribing healthcare provider. In the event that either 1 or 2 applies, these instances will be considered exceptions to section C.4 – 52.216-21, Requirements. VA’s PPV contract has ordering lock-out procedures in place to support VA contract compliance and to prevent purchases of non-contract products. Participants of the VA PPV Program include VA, FHCC, SVH (Option 2), IHS, and BOP. DOD manages compliance through individual facility tracking reports.

**1.4 Contract Effective Date**. The contract effective date shall be 60 days (or sooner upon mutual agreement) after the date of contract award. Before the contract effective date, the PPVs will begin placing orders with the contractor for delivery to multiple PPV distribution centers for distribution to the Government participants under this contract. There are approximately 31 VA Pharmaceutical Prime Vendor Distribution Centers and approximately 25 DOD Prime Vendor Distribution Centers located nationwide. The contractor shall ensure that sufficient inventory of contract items awarded under this solicitation is available, and that chargeback agreements with the PPVs have been executed sufficiently in advance of the contract effective date to permit the PPVs to begin timely distribution of Government orders by the contract effective date. The current PPVs are listed as attachments “A” and “B” of this solicitation. The current PPVs may change and the contractor will be notified of any changes in PPV contractors during the term of the contract resulting from this solicitation. Payment terms, time and place of delivery to PPV distribution centers and other business-to-business agreement terms shall be agreed upon between the PPV contractors and the contractor awarded a contract from this solicitation. Within 15 days from receipt of award, the Contracting Officer shall be notified by the contractor awarded a contract from this solicitation if any business-to-business-agreements cannot be reached with the PPVs. It is the offeror’s responsibility for contacting the VA and DOD PPV respectively to obtain information on what these business-to-business agreements consist of.  All offerors should ensure they are able to meet these PPV requirements prior to responding to a solicitation. Failure or refusal to reach agreement with the PPVs shall constitute sufficient cause for terminating the contract under Federal Acquisition Regulation Part 52.212-4(m), Contract Terms and Conditions-Commercial Items, Termination for Cause.

**1.5 Contract Duration**. The contract(s) resulting hereunder will be in effect for one (1) year with four (4) one-year pre-priced option periods that may be exercised unilaterally by the Government in accordance with FAR 17.207 and FAR 52.217-9.

**2. EXTENT OF OBLIGATION**

**2.1 Government Participants**. The contractor shall provide the products specified in the schedule at the prices awarded herein for the facilities/agencies below:

All Department of Veterans Affairs (VA) facilities

All Ordering Activities under the Department of Defense (DOD) Pharmaceutical Prime Vendor Program

Indian Health Service (IHS) facilities

All Bureau of Prisons (BOP) facilities

Federal Health Care Center (FHCC)

All Option 2 State Veteran Homes (See paragraph 2.2 State Veteran Homes)

A database of all facilities authorized to use the VA PPV Program may be downloaded from the National Acquisition Center’s web site at <http://www.va.gov/oal/business/nc/ppv.asp>. The database identifies each state veteran home as option 1 or 2. A database for all facilities authorized to use the DOD PPV Program may be downloaded from the DOD’s website at <https://www.medical.dla.mil/Portal/PrimeVendor/PvPharm/PharmPvOverview.aspx>.

**2.2 State Veteran Homes (SVH’s)**. There are numerous State Veteran Homes (SVHs) that have entered into sharing agreements with VA Medical Centers (VAMCs). The SVHs with sharing agreements that participate in the VA PPV Program are identified as being one of two types: Option 1 or Option 2.

**Option 1:** The SVH orders pharmaceuticals directly from the VA PPV and pays the VA PPV for all items purchased. An Option 1 SVH is not eligible for national contract prices awarded under this solicitation unless it is specifically named in the scope of contract or added after award by mutual agreement.

**Option 2:** The VAMC authorizes the SVH’s order, and the VAMC makes payment to the VA PPV for all pharmaceuticals ordered by the SVH. An Option 2 SVH is eligible for the national contract prices awarded under this solicitation.

**2.3 Consolidated Mail Out Patient Pharmacies (CMOPs) (VA ONLY)**. Many drugs are prescribed and mailed directly to patients’ homes in three-month or 90-day supply and VA CMOPs may place an initial order with the VA PPV contractor for up to 30% of the estimated annual contract quantities immediately upon the contract effective date. An initial order of up to 30% of the estimated annual contract quantities may be placed by the VA PPV contractor with the contractor awarded a contract under this solicitation to fulfill the CMOP 30% initial order requirements.

**2.4 Estimated Quantities**. The quantities in the schedule reflect the combined usage of all VA (inclusive of FHCC and SVH), DOD, IHS, and BOP activities currently participating in the PPV Programs. These estimated annual requirements do not include those of any other Government agency, including those currently participating in the VA PPV Program (e.g. ICE, Option 1 State Veteran’s Homes). The estimated usage cited in the Schedule is the Government’s total estimated usage for the strengths listed. There is no expressed or implied guarantee that the estimated quantity will be purchased under this contract. Actual quantities purchased may exceed or be less than those represented.

**3. PRODUCT REGISTRATION**

Product information pertaining to all items offered under this solicitation, including the offeror’s unique National Drug Code(s) (NDC), must be submitted to First Data Bank, RxNorm, and Medispan prior to the effective date of contract performance. A New Product Submission Form can be obtained by contacting First Data Bank at (800) 633-3453, extension 566, or via email at <http://www.fdbhealth.com/solutions/manufacturer-relations/>. RxNorm information can be obtained at <http://www.nlm.nih.gov/research/umls/rxnorm/>.

**4. NATIONAL CONTRACT ITEM BACKORDERS**

A contract awarded under this solicitation will be the Government’s primary source of supply. (See FAR 52.216-21 Requirements) The Government’s ability to provide quality healthcare to its patient population is severely impaired when a national contract product is not available due to backorders. The purpose of this paragraph is to provide guidance to the awarded contractor regarding a temporary solution to national contract item backorders that may be implemented in lieu of the Government terminating the contract for cause. However, consideration of this paragraph shall not waive any of the Government’s rights to terminate the contract for cause in accordance with FAR 52.212-4(m).

For purposes of this contract, a backorder occurs when the PPVs issue an order with the contractor awarded a contract for the products in this solicitation, and the complete order quantity is not delivered to the PPVs within 15 days after receipt of order. This includes initial CMOP orders. If a national contract item is backordered by the PPVs, the VA National Acquisition Center (VANAC) contracting officer will investigate the backorder to determine if the national contract contractor bears responsibility for the backorder. The awarded contractor shall inform the VANAC contracting officer within 4 calendar days after a backorder occurs. In addition to informing the contracting officer of the backorder, the contractor shall provide an estimated date when the backorder will be shipped, and may propose a solution to satisfy the Government’s needs for the contract items until the backorder is resolved. The Government reserves the right to accept or reject any possible solutions that the contractor may propose to alleviate a national contract backorder situation. If the contracting officer determines that the contractor bears responsibility for the backorder, and the contractor is not able to provide a solution that is acceptable to the Government, (i.e., acceptable solution to the backorder, in lieu of Termination for Cause), the parties agree that the Government may buy against the contractor by acquiring the same or similar items from another source and billing the contractor for any excess procurement costs. In other words, if the government must purchase product from another vendor because of a national contract backorder, the contractor will issue credit or reimburse the Government for the difference between the purchase price and the contract price within 30 calendar days after receipt of notification. The contractor shall also provide written verification to the Contracting Officer when credits or reimbursement have been made within 30 calendar days from date of reimbursement. After a backorder incident occurs for which the Contractor is responsible, the Government’s decision to enter into a buy-against agreement described above will not deprive the Government of its right under Clause 52.212-4 (m) to terminate the contract for a breach of the buy-against agreement, for a subsequent contractor-caused backorder, or for any other sufficient cause.

**5. PACKAGING REQUIREMENTS**

Offerors must state the exact name of the drug being supplied as it will appear on the label. Offerors shall also provide a unique 11-digit NDC number for all items offered; the NDC number must be specific to the offering company and to the drug being supplied. All Inhalers must be individually boxed and must contain the bar code.

**6. BAR CODING**

All pharmaceutical products provided under this contract shall include bar code labeling at the unit-of-use package level. The bar code labeling must be in a linear format that conforms to all GS1-128 (formerly EAN.UCC) or Health Industry Business Communication Council (HIBCC) Health Industry Bar Code (HIBC) supplier labeling standards. The bar code symbology must comply with all GSI or HIBCC parameters including, but not limited to: symbology type or encoded pattern, bar and space dimensions and tolerances, and allowable ratio of wide to narrow elements.

The bar code may be any linear bar code symbology such as GS1-128 (formerly EAN.UCC), GS1 DataBar (formerly RSS), or Universal Product Code (if the UPC contains the National Drug Code or NDC). The bar code must encode the NDC, either alone or within the GS1 data structure (Global Trade Item Number (GTIN)).

The bar code printing must be American National Standards Institute (ANSI)/International Organization for Standardization (ISO)/IEC Quality Grade C or better. Manufacturers and packagers must ensure that production runs include an initial verification check, as well as routine audits to ensure the bar code is printed clearly and consistently to meet the quality standard of Grade C or better. Contractors shall be responsible for ensuring that bar code labels meet the quality requirements specified in this paragraph prior to shipping pharmaceutical products to any Government Prime Vendor under this contract.

The bar code must be on the outside container or wrapper of the medication as well as on the immediate container, unless the bar code is readily visible *and* machine-readable through the outside container or wrapper. When the bar code is not easily machine-readable through the over wrap, the over wrap should contain the bar code.

If applicable, the bar code must go on each cell of a blister pack. Furthermore, the bar code must remain intact under normal conditions of use; thus it should not be printed across the perforations of a blister pack.

When applicable to the symbology used, bar codes shall be surrounded by sufficient quiet zone so that the bar code can be scanned correctly. Bar code placement shall minimize curvature of the bar code. For example, bar codes should be placed in “ladder orientation” on inhalers or bottles to minimize curvature of the bar code. Bar code labeling shall not be placed solely on outer packaging. A human readable number must be placed adjacent (preferably below) the encoded bar code to ensure product is usable with VA Bar Code medication Administration (BCMA) in the event the bar code is in some way damaged.

It is recommended that bar code labeling also include the lot number and expiration date. If two separate distinctive bar codes are used, one for NDC and the other for lot number/expiration date; the lot number and expiration date bar code must not be in close proximity to the NDC barcode or in a format that may be confused with the NDC bar code. When applicable, all Healthcare Distribution Management Association (HDMA) guidelines shall be followed.

**7. THERAPEUTIC EQUIVALENCE**

Only products that have received under the Federal Food, Drug and Cosmetic Act a therapeutic equivalence code of “A” by the Food and Drug Administration will be considered, unless all drugs in the family group are “B” rated.  In that case, no award will be made other than to the innovator unless the non-innovator vendor submits acceptable data demonstrating bioequivalence.

**8. NATIONAL DRUG CODES**

Offerors shall provide a separate and distinct eleven-digit National Drug Code (NDC) Number unique to the offeror (e.g., 00012-3456-78) for each product proposed, in the space provided following each item in block 20 of the SF1449, “Schedule of Supplies and Prices” of the solicitation. The first five numbers of the eleven-digit NDC number for each product proposed shall identify the offeror. Offers that fail to provide the information required by this paragraph by the solicitation closing date may be rejected and receive no further consideration.

**9. DRUG APPLICATION**

By signing this solicitation, the offeror certifies that it has on file (if any of the following are required by FDA for the offered drugs) an FDA approved New Drug Application (NDA), an approved abbreviated NDA (ANDA), or a Biologic License approval, as appropriate for the items offered in response to the solicitation.

**10. RECALLS**

If a drug recall is initiated for any drug provided under this contract, regardless of whether it is a voluntary recall by the manufacturer or a recall required by the U.S. Food and Drug Administration (FDA); or, if FDA withdraws their approval to manufacture any drug that is included on this contract, the following action shall immediately be taken by the contractor:

Forward two copies of the recall notification along with any pertinent information to:

Chief, Pharmaceutical Division (003A4C4)

VA National Acquisition Center

National Contract Service

1st Ave., 1 Block North of Cermak Rd., Bldg. 37

P.O. Box 76, Hines, IL 60141

Fax Number (708) 786-5256

Deputy Chief Consultant (M/S119D)

VHA Pharmacy Benefits Management Services

1st Ave., 1 Block North of Cermak Rd., Bldg. 37, Rm 139

Hines, IL 60141

Fax Number (708) 786-7894

Manager, Product Recall Office

National Center for Patient Safety

Veterans Health Administration

24 Frank Lloyd Wright Drive, Lobby M

Ann Arbor, MI 48106

VHANCPSRecallsNotification@va.gov

Phone Number: (734) 930-5865

All Government Prime Vendors that were sent shipments of the affected product(s).

**11. COVERED DRUGS**

Should a covered drug be proposed and awarded as a result of this solicitation, the awarded prices shall meet the requirements of Public Law 102-585, Section 603, the Veterans Healthcare Act of 1992, (38 U.S.C. 8126) and shall apply to all Government participants listed in section 2.1 of the Scope of Contract, regardless of whether the participant is covered under the law. Therefore, prices for the base year and all option years shall not exceed the annually established Federal Ceiling Price (FCP) plus the 0.5% Cost Recovery Fee (CRF).

Attention is directed to the fact that although Public Law 102-585, Section 603 applies to covered drugs, competitively negotiated and awarded prices for the base year and any option years exercised by the government will govern *unless the annually established FCP results in a price lower than competitively awarded contract prices*. In this instance, the contract will be modified bilaterally to reflect the lower annually established FCP plus the 0.5% CRF.

Both parties understand the VA National Contract Service will obtain FCPs from the VA Pharmacy Benefits Management (PBM). The parties agree the FCP will be calculated pursuant to the requirements of Public Law 102-585, Section 603, which includes the contractor’s Master Agreement, and Pharmaceutical Pricing Agreement, and any relevant VA Dear Manufacturer Letters.

Contractors submitting a proposal for a covered drug are required to complete the following paragraph:

**MASTER AGREEMENTS AND PHARMACEUTICAL PRICING AGREEMENTS**

In compliance with Public Law 102-585, Section 603, The Veterans Healthcare Act of 1992, offerors of covered drug products (including biologics) must state below whether they currently have a Master Agreement (MA) and a Pharmaceutical Pricing Agreement (PPA) in place with the Department of Veterans Affairs (VA).

 \_\_\_\_\_ YES, Offeror has a MA and PPA in place with the VA \_\_\_\_\_ NO, Offeror does not have a MA and PPA in place with the VA.

If the answer to the above is "No" and if the prospective contractor is offering covered drug products (including biologics that fall within 21 CFR 600.3), contractor must submit and execute a MA and PPA with its offer. No offer of covered drugs submitted by a manufacturer will be considered for award unless and until the manufacturer has on file with VA's National Acquisition Center an executed MA and PPA.

**12. COST RECOVERY FEE AND SUBMISSION OF QUARTERLY SALES REPORTS**

(a) Quarterly Sales Reports. The Contractor shall report all contract sales under this contract and submit collected Cost Recovery Fees as follows:

(1) The Contractor shall accurately report the dollar value, in U.S. dollars and rounded to the nearest whole dollar, of all sales made under this contract by calendar quarter (January 1–March 31, April 1–June 30, July 1–September 30, and October 1–December 31). Reported sales must include all sales made to all authorized contract users, whether shipped directly to the users or through Prime Vendor contractors. The report shall reflect sales by contract line item and shall segment sales by the Department of Veterans Affairs (VA) and Other Government Agencies (OGA). A Cost Recovery Fee equivalent to 0.5 % of the current contract price shall be collected from all contract users.  The 0.5 % Cost Recovery Fee shall be imbedded in the awarded contract prices, and offers submitted in response to this solicitation shall include the Cost Recovery Fee in every line item price offered.  The reported contract sales shall include the cost recovery fee and each quarterly report shall show the total cost recovery fee amount collected on the reported sales. The Contractor shall maintain a consistent accounting method of sales reporting, based on the Contractor’s established commercial accounting practice.

(2) Contract sales reports are due to the VA contracting officer within 60 calendar days following the completion of each reporting quarter or completion of the contract, whichever occurs first. A report is required even when no billings or invoices are issued or no orders are received during the contract period.

(3) The sales report signed by an authorized representative of the contractor shall be sent by mail to the address listed below, to the Contracting Officer’s email, or facsimile to the contracting officer. Facsimile transmissions may be made to: (708) 786-5256.

Department of Veterans Affairs

National Acquisition Center (049A1N2)

P.O. Box 76

First Avenue, 1 Block North of Cermak, Bldg. 37

Hines, IL 60141

(4) In addition to the submission of quarterly sales reports due to the contracting officer within 60 days after the end of each reporting quarter, contractors shall provide copies of sales reports simultaneously with contractor’s cost recovery fee payment submissions via facsimile, to the attention of C.R. Agent Cashier, fax: (708) 786-7525.

(b) Cost Recovery Fee. The 0.5 % Cost Recovery Fee amount collected and due shall be paid either electronically or by check, and shall be addressed to the “Department of Veterans Affairs”. When the Contractor has multiple national contracts, the fee may be consolidated into one check. Consolidated payments for multiple contracts shall identify each contract number included, dollar amount remitted for each contract number, and reporting quarter.

To ensure that the payment is credited properly, the contractor shall identify the check or electronic transmission as a “Cost Recovery Fee” and include a copy of the applicable Sales Report. The Cost Recovery Fee payment is due to the Fiscal Division at the same time the sales report is due to the contracting officer, i.e., within 60 calendar days following the completion of each reporting quarter or completion of the contract.

Cost Recovery Fee payments shall not be combined with any Industrial Fund Fee payments. Contractors shall remit separately any Industrial Fund Fee payments in support of any of the Contractor’s Federal Supply Schedule contracts.

Cost recovery fee payments made electronically shall include the following information:

 Receiving Bank Name: Department of Treasury

 Receiving Bank Contact: Cash Link ACH Receiver

 Contact Phone: 301/887-6600

 Receiving Bank City, State: Richmond, Virginia

 Receiving Bank Routing/Transit Number: 051036706

 Receiving Bank Capability: CCD+

 Receiving Account Number: 220020

 820 ACH Format used by Receiving Bank: Standard

Contract Number(s): (*Contractor shall insert the contract number, which will be assigned by the VA contracting officer at time of award.*)

Cost recovery fee payments made in check form shall be made to the attention of “Department of Veterans Affairs” and mailed to the following address:

 Fiscal Division (901A)

 Attn: C.R. Agent Cashier

 P.O. Box 7005

 Hines, IL 60141

(c) The Government reserves the right to inspect without further notice, such records of the Contractor as pertain to sales under any contract resulting from this solicitation. Willful failure or refusal to furnish the required reports, or falsification thereof, shall constitute sufficient cause for terminating the contract under FAR 52.212-4(m), Contract Terms and Conditions - Commercial Items, Termination for Cause.

(d) Failure to remit the full amount of the Cost Recovery Fee within 60 calendar days after the end of the applicable reporting period constitutes a contract debt to the United States Government under the terms of Federal Acquisition Regulation (FAR) Subpart 32.6. The Government may exercise all rights under the Debt Collection Improvement Act of 1996, including withholding or setting off payments and interest on the debt (see FAR clause 52.232-17, Interest). Should the Contractor fail to submit the required sales reports, falsify them, or fail to timely pay the Cost Recovery Fee, the Government shall have, in addition to the rights and remedies described in this paragraph, all other rights and remedies permitted by Federal law and statutes.

**13. MANUFACTURING FACILITIES/PLACE OF PERFORMANCE**

1. The U.S. Food and Drug Administration (FDA) is the Government agency responsible for providing and enforcing pharmaceutical current Good Manufacturing Practices (GMP) standards for human drugs, pharmaceutical products, biologicals, medical devices, chemical products, medical cylinder oxygen, reagents, diagnostics, test kits and sets included in this solicitation. Only offers from companies that have an acceptable GMP status on record with the FDA for the facilities identified by the offeror in Paragraph 8 below will be considered for award. The FDA will evaluate a prospective offeror for VA procurements only if the offeror has had a qualifying GMP inspection within the previous two years. Before a contract can be awarded, any successful offeror’s manufacturing facilities shall have a current acceptable GMP status with FDA, or shall have had an acceptable report from the last FDA facility inspection on record. In the absence of a current GMP evaluation, an offeror is required to include with its proposal documentation on the acceptable outcome of a FDA facility inspection that occurred within two years prior to submission of the offer.

2. For any Nutritional/Dietary Supplements offered, documentation of clinical studies that were performed on the offered products pertaining to the therapeutic treatment of patients may be required by the Department of Veterans Affairs National Acquisition Center (VANAC) as a quality assurance measurement. Offerors of Nutritional/Dietary Supplements will be required to adhere to published FDA GMP standards after January 1, 2008.

3. If at any time during the life of the contract, the contractor’s facility or the source from which the contractor obtains any of the products offered on this contract is informed in a FDA “warning letter” that it fails to meet FDA current Good Manufacturing Practices (GMPs) (21 CFR Part 210 and 211), and/or a facility’s unacceptable FDA GMP status is communicated to the VANAC, the Contracting Officer will apply the procedures outlined in Paragraph 4 below.

4. The VANAC Contracting officer will review the contractor’s (or its source’s) unacceptable GMP status with appropriate VHA clinical staff and will either: 1) instruct the contractor to stop the shipment of products listed on this contract that were manufactured and/or packaged in a facility with unacceptable GMP status, or 2) authorize the contractor to continue to supply such contract products for 90 days from the date when unacceptable GMP status was communicated to VANAC, provided that the products have not been subjected to a consumer-level recall. An additional 90 days may be authorized at the discretion of the VANAC Contracting Officer. Contractors are cautioned that products that were manufactured and /or packaged in a facility with unacceptable GMP status and then shipped without written authorization from the VANAC Contracting Officer shall be returned to the contractor at the contractor’s risk and expense. The contractor shall have corrected all significant GMP deficiencies or have an acceptable plan with the FDA for the correction of such deficiencies which led to unacceptable status by the end of the 90-day authorization period and any extensions of such period granted by the VANAC Contracting Officer. Additionally, the contractor is responsible for keeping the VANAC Contracting Officer informed of all corrections made and shall provide the VANAC Contracting Officer with: 1) written documentation of the correction plan, 2) Notification from FDA of acceptance of plan, and 3) a copy of any reinspection requests and subsequent reinspection reports, when they are available. If FDA’s evaluation of contractor’s (or its source’s) compliance efforts and/or re-inspection of the non-compliant facility does not result in an acceptable rating by FDA within 90 days from the date when unacceptable GMP status was communicated to VANAC, or by the end of a VANAC Contracting Officer’s authorization period (whichever is the greater period of time), the contract may be terminated for cause in accordance with FAR Clause 52.212-4(m). The contractor’s (or its source’s) failure to correct the GMP deficiencies in a timely manner shall not constitute or give rise to any “excusable delays” pursuant to FAR Clause 52.212-4(f). (Nothing in this paragraph shall be read as limiting the recognized grounds upon which a Contracting Officer may terminate this contract or delete products pursuant to the applicable paragraphs contained in the contract.)

5. The contractor shall use only the FDA-inspected manufacturing facilities provided in Paragraph 8, below, for the duration of the contract, unless substitution of manufacturing facilities is approved by the VANAC Contracting Officer. In case of any manufacturing facility relocation or substitution of manufacturing facilities, the contractor shall notify the VANAC

Contracting Officer of the change, and the contractor shall request approval from the VANAC Contracting Officer to supply the contracted products from the new location. If the change is approved by the VANAC Contracting Officer after an inquiry to FDA for GMP status of the new location, approval will be provided by means of a formal contract modification.

6. If the products are to be manufactured at more than one location, each manufacturing facility and each facility address shall be listed along with the products manufactured at the facility. Subcontractors (i.e., packagers, labelers, etc.) that participate in the production of the products

offered on this solicitation shall also be listed along with their addresses. All facilities described in this paragraph and listed below shall be substantially in compliance with applicable FDA GMP standards prior to contract award.

7. Offeror shall identify below or by attachment (if additional space is needed), the products offered on this solicitation (products shall be identified by product name and by solicitation item number); whether the offeror manufactures the products; and/or whether the offeror is a distributor of the products offered. “Manufacturer” is defined as the entity that measures, mixes, weighs, and compounds the active and inactive ingredients into a final product.

8. If the finished products to be offered are of foreign manufacture, the complete name and address of the manufacturer shall be provided below. The offeror is also required to check the box below that is applicable to its offer. Please note that the information required below must be the name and address of the manufacturing facility, rather than the address of the foreign headquarters, distributor or agent.

( ) OFFEROR IS THE MANUFACTURER (AT THE FOLLOWING LOCATIONS) OF THE PRODUCTS OFFERED ON THIS SOLICITATION.

( ) OFFEROR IS A DISTRIBUTOR OF THE PRODUCTS OFFERED ON THIS SOLICITATION. THE OFFEROR MUST MAINTAIN AN AGREEMENT WITH THE MANUFACTURER OF THE PRODUCT FOR THE DURATION OF THE CONTRACT PERIOD.

**THE PRODUCTS WILL BE MANUFACTURED BY THE FOLLOWING COMPANY AT THE FOLLOWING LOCATIONS:**

|  |
| --- |
|  |

 (Name of Manufacturing Company)

|  |
| --- |
|   |

 (Street Address) (Post Office Address Not Acceptable)

|  |
| --- |
|  |

 (U.S.A. Point of Contact, e-Mail Address and U.S.A Telephone Number)

**PHARMACEUTICALS – PARENTERALS**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Solicitation Item # & Product Name |  | Location and Owner of Facility where ingredients are measured, weighed, mixed and compounded(Facility Owner Name, Address, City, County, State and Zip Code) |  | Point of Contact including Phone # |
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**PHARMACEUTICALS – PARENTERALS, STERILIZATION**

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| --- | --- | --- | --- | --- |
| Solicitation Item # & Product Name |  | Sterilization and Owner Location (Facility Owner Name, Address, City, County, State and Zip Code) |  | Point of Contact Including Phone # |
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**Inhalers**

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| --- | --- | --- | --- | --- |
| Solicitation Item # & Product Name |  | Location and Owner of Facility where Ingredients are measured, weighed, mixed and compounded (Facility Owner Name, Address, City, County, State and Zip Code) |  | Point of Contact including Phone # |
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**OTHER PHARMACEUTICAL PRODUCTS**

*(Solutions, syrups, mixtures, powders, ointments, pastes, creams, etc.)*

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Solicitation Item # & Product Name |  | Location and Owner of Facility where Ingredients are measured, weighed, mixed and compounded (Facility Owner Name, Address, City, County, State and Zip Code |  | Point of Contact including Phone # |
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**PACKAGING**

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| --- | --- | --- | --- | --- |
| Solicitation Item # & Product Name |  | Location of Facilities where Intermediate containers will be filled and labeled (Facility Name, Location, City, County, State and Zip Code) |  | Point of Contact including Phone # |
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**PACKING**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Solicitation Item # & Product Name |  | Location of Facilities where products will be packed and prepared for shipment (Facility Name, Location, City, County, State and Zip Code) |  | Point of Contact including Phone # |
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**14. INCORPORATION OF DOCUMENTS**

The following documents are hereby incorporated by reference and made a part of this solicitation. The designation "USP" and "NF" shall be considered interchangeable when monographs for ingredients or preparations are transferred from one official compendium to the other. For ingredients or preparations which no longer appear in the latest revision of the USP or NF, the previous volume shall apply. Ingredients or preparations for which monographs appear for the first time in the Official Compendia shall comply with the applicable monographs unless the word "modified" appears as part of the item name. The requirements that an item or ingredient comply with test standards and requirements of the USP or the NF does not delete any other applicable portions of the compendia, such as, but not limited to, General Notices. Thus, for USP/NF items, alternative test methods are permitted.

AMERICAN CHEMICAL SOCIETY (ACS), Reagent Chemicals, American Chemical Society Specifications. (Copies are available from Applies Publications, American Chemical Society, Washington, DC 20036.

U. S. DEPARTMENT OF HEALTH, EDUCATION AND WELFARE, FOOD AND DRUG ADMINISTRATION (FDA). Federal Food, Drug, and Cosmetic Act and Regulations promulgated thereunder. (Copies are available from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20204).

U. S. PHARMACOPOEIAL CONVENTION, INC. (USP/NF). Pharmacopoeia of the United States. (Copies are available from Mack Publishing Company, Easton, PA 18042).

**SECTION C - CONTRACT CLAUSES**

**C.1 52.212-4CONTRACT TERMS AND CONDITIONS—COMMERCIAL ITEMS(JAN 2017) (MAY 5, 2011 DEVIATION)**

 **(a) Inspection/Acceptance *(TAILORED).*** Products will be ordered by the Government through Government Prime Vendor contracts. The Government’s inspection rights become effective upon receipt at the Government ordering facility. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance, at the Government’s discretion. The contractor shall tender for acceptance only those items that conform to the requirements of this contract. 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) *(DEVIATION) Reserved.***

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

 **(d) Disputes *(DEVIATION).*** 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. The Civilian Board of Contract Appeals has jurisdiction over any disputes arising under this contract. Also, a dispute arising between a Contractor and any authorized Government Prime Vendor(s) does not give rise to a “claim” under the Disputes Clause, FAR 52.233-1.

 **(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) *(DEVIATION) Reserved.***

**(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 *(DEVIATION****).*  Payment for the items awarded on this contract will be made by the Government at the awarded prices directly to the Government prime Vendor Contractors upon delivery by the Prime Vendor Contractors to Government ordering facilities.

 **(j) Risk of loss *(TAILORED).*** 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 delivery of supplies to the Government facility. Risk of loss does not pass to the Government upon delivery by the contractor to any Government contracted VA Prime Vendor contractor.

 **(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 (*TAILORED*).** Except as otherwise provided by an express or implied warranty, the Contractor will not be liable in a breach of warranty action 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, and Compliance with Laws Unique to Government Contracts 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](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.

**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:

**1. Ordering.** This solicitation provides for award(s) of contract(s) in support of VA’s standardization program. Products awarded on the resultant contract(s) will be distributed through Government Prime Vendor contract(s). Order placement for supplies awarded will be made by Government Prime Vendor contractor(s) to the awarded contractor(s) and, any supplies to be furnished under this contract shall be ordered by issuance of delivery orders by the individuals or facilities directly to Prime Vendor contractor(s). Government Prime Vendor contractor(s) will accept orders and payment for the contracted item(s) on behalf of the contractor. Such orders may be issued from the effective date of the contract through the expiration date of the final option period exercised. All delivery 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.

**2. Delivery.** Delivery order requirements such as product quantities, time and place of delivery, and method of delivery for product(s) awarded on resultant contract(s) will be determined between the awarded contractor(s) and Government Prime Vendor contractors.

**3. Chargeback Arrangements.** Chargeback arrangements/agreements shall be coordinated between the Government Prime Vendor contractors and the successful contractor(s). The government will not become involved in this area nor will the Government assume any responsibility for any monies involved with such arrangements.

**C.2 52.204-18 COMMERCIAL AND GOVERNMENT ENTITY CODE MAINTENANCE (JUL 2016)**

 ((a) Definition. As used in this clause–“Commercial and Government Entity (CAGE) code” means–

 (1) An identifier assigned to entities located in the United States or its outlying areas by the Defense Logistics Agency (DLA) Commercial and Government Entity (CAGE) Branch to identify a commercial or government entity; or

(2) An identifier assigned by a member of the North Atlantic Treaty Organization (NATO) or by the NATO Support and Procurement Agency (NSPA) to entities located outside the United States and its outlying areas that the DLA Commercial and Government Entity (CAGE) Branch records and maintains in the CAGE master file. This type of code is known as a NATO CAGE (NCAGE) code.

(b) Contractors shall ensure that the CAGE code is maintained throughout the life of the contract. For contractors registered in the System for Award Management (SAM), the DLA Commercial and Government Entity (CAGE) Branch shall only modify data received from SAM in the CAGE master file if the contractor initiates those changes via update of its SAM registration. Contractors undergoing a novation or change-of-name agreement shall notify the contracting officer in accordance with subpart 42.12. The contractor shall communicate any change to the CAGE code to the contracting officer within 30 days after the change, so that a modification can be issued to update the CAGE code on the contract.

(c) Contractors located in the United States or its outlying areas that are not registered in SAM shall submit written change requests to the DLA Commercial and Government Entity (CAGE) Branch. Requests for changes shall be provided at https://cage.dla.mil. Change requests to the CAGE master file are accepted from the entity identified by the code.

(d) Contractors located outside the United States and its outlying areas that are not registered in SAM shall contact the appropriate National Codification Bureau (points of contact available at http://www.nato.int/structur/AC/135/main/links/contacts.htm) or NSPA at https://eportal.nspa.nato.int/AC135Public/scage/CageList.aspx to request CAGE changes.

(e) Additional guidance for maintaining CAGE codes is available at <https://cage.dla.mil>.

**C.3 52.216-21 REQUIREMENTS (OCT 1995) (MAY 5, 2011 DEVIATION)**

(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 through Prime Vendor contract(s) in accordance with the Ordering clause. Subject to any limitations specified in this contract, the Contractor shall deliver to the Prime Vendor contractors (s) the supplies specified in the Schedule and called for by orders issued by the Prime Vendor(s) in accordance with the Ordering clause. Prime Vendor contractor(s) may issue orders requiring delivery to multiple Prime Vendor contractor distribution centers.

(c) Except as this contract otherwise provides, the Government shall order from the Contractor through the Prime Vendor contractor(s) all the supplies or services specified in the Schedule that are required to be purchased by the Department of Veterans Affairs and other Government agencies as 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 that the Prime Vendor contractors(s) do not have available for delivery as required by the Prime Vendor contract terms, the Government may acquire the urgently required item(s) from any other available source.

(f) Any order(s) issued by the Prime Vendor contractor(s) during the effective period of this contract and not completed within the effective period shall be completed by the Contractor within the time specified in the Prime Vendor contractor issued order. This contract shall govern the rights and obligations between the Contractor(s) of this contract, the Prime Vendor contractor(s) and the Government with respect to the order(s) to the same extent as if the order(s) were completed during the contract period, provided that, the Contractor shall not be required to make any deliveries under this contract after 15 days from the expiration date of the contract.

**C.4 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)**

 (a) The Government may extend the term of this contract by written notice to the Contractor within 30 days; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the Government to an extension.

 (b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed five (5) years.

**C.5 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.

**C.6 VAAR 852.203-71 DISPLAY OF DEPARTMENT OF VETERAN AFFAIRS HOTLINE POSTER (DEC 1992)**

 (a) Except as provided in paragraph (c) below, the Contractor shall display prominently, in common work areas within business segments performing work under VA contracts, Department of Veterans Affairs Hotline posters prepared by the VA Office of Inspector General.

(b) Department of Veterans Affairs Hotline posters may be obtained from the VA Office of Inspector General (53E), P.O. Box 34647, Washington, DC 20043-4647.

(c) The Contractor need not comply with paragraph (a) above if the Contractor has established a mechanism, such as a hotline, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.

**C.7 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/

FAR Number Title Date

|  |  |  |
| --- | --- | --- |
| 52.203-17 |  CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF  WHISTLEBLOWER RIGHTS |  APR 2014 |

52.232-17 INTEREST MAY 2014

**C.8 SUBCONTRACTING PLAN – MONITORING AND COMPLIANCE**

This solicitation includes FAR 52.219-9, Small Business Subcontracting Plan, and VAAR 852.219-9, VA Small Business Subcontracting Plan Minimum Requirement. Accordingly, any contract resulting from this solicitation will include these clauses. The contractor is advised in performing contract administration functions, the CO may use the services of a support contractor(s) to assist in assessing the contractor's compliance with the plan, including reviewing the contractor's accomplishments in achieving the subcontracting goals in the plan. To that end, the support contractor(s) may require access to the contractor's business records or other proprietary data to review such business records regarding the contractor's compliance with this requirement. All support contractors conducting this review on behalf of VA will be required to sign an “Information Protection and Non-Disclosure and Disclosure of Conflicts of Interest Agreement” to ensure the contractor's business records or other proprietary data reviewed or obtained in the course of assisting the CO in assessing the contractor for compliance are protected to ensure information or data is not improperly disclosed or other impropriety occurs. Furthermore, if VA determines any services the support contractor(s) will perform in assessing compliance are advisory and assistance services as defined in FAR 2.101, Definitions, the support contractor(s) must also enter into an agreement with the contractor to protect proprietary information as required by FAR 9.505-4, Obtaining access to proprietary information, paragraph (b). The contractor is required to cooperate fully and make available any records as may be required to enable the CO to assess the contractor compliance with the subcontracting plan.

**C.9 VAAR 852.219-9 VA SMALL BUSINESS SUBCONTRACTING PLAN MINIMUM REQUIREMENTS (DEC 2009)**

(a) This clause does not apply to small business concerns.

(b) If the offeror is required to submit an individual subcontracting plan, the minimum goals for award of subcontracts to service-disabled veteran-owned small business concerns and veteran-owned small business concerns shall be at least commensurate with the Department's annual service-disabled veteran-owned small business and veteran-owned small business prime contracting goals for the total dollars planned to be subcontracted.

(c) For a commercial plan, the minimum goals for award of subcontracts to service-disabled veteran-owned small business concerns and veteran-owned small businesses shall be at least commensurate with the Department's annual service-disabled veteran-owned small business and veteran-owned small business prime contracting goals for the total value of projected subcontracts to support the sales for the commercial plan.

(d) To be credited toward goal achievements, businesses must be verified as eligible in the Vendor Information Pages database. The contractor shall annually submit a listing of service-disabled veteran-owned small businesses and veteran-owned small businesses for which credit toward goal achievement is to be applied for the review of personnel in the Office of Small and Disadvantaged Business Utilization.

(e) The contractor may appeal any businesses determined not eligible for crediting toward goal achievements by following the procedures contained in 819.407.

**C.11 52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS--COMMERCIAL ITEMS (JAN 2017)**

(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) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).

(2) 52.209-10, Prohibition on Contracting with Inverted Domestic Corporations (NOV 2015).

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

(4) 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 Executive orders applicable to acquisitions of commercial items:

\_X\_ (1) 52.203-6, Restrictions on Subcontractor Sales to the Government (SEP 2006), with Alternate I (OCT 1995) (41 U.S.C. 4704 and 10 U.S.C. 2402).

\_X\_ (2) 52.203-13, Contractor Code of Business Ethics and Conduct (OCT 2015) (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.)

\_X\_ (4) 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards (OCT 2016) (Pub. L. 109-282) (31 U.S.C. 6101 note).

\_\_ (5) [Reserved].

\_\_ (6) 52.204-14, Service Contract Reporting Requirements (OCT 2016) (Pub. L. 111-117, section 743 of Div. C).

\_\_ (7) 52.204-15, Service Contract Reporting Requirements for Indefinite-Delivery Contracts (OCT 2016) (Pub. L. 111-117, section 743 of Div. C).

\_X\_ (8) 52.209-6, Protecting the Government’s Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. (OCT 2015) (31 U.S.C. 6101 note).

\_X\_ (9) 52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters (JUL 2013) (41 U.S.C. 2313).

\_\_ (10) [Reserved].

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

\_\_ (ii) Alternate I (NOV 2011) of 52.219-3.

\_X\_ (12)(i) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (OCT 2014) (if the offeror elects to waive the preference, it shall so indicate in its offer) (15 U.S.C. 657a).

\_\_ (ii) Alternate I (JAN 2011) of 52.219-4.

\_\_ (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 (JUN 2003) (15 U.S.C. 644).

\_\_ (ii) Alternate I (OCT 1995) of 52.219-7.

\_\_ (iii) Alternate II (MAR 2004) of 52.219-7.

\_X\_ (16) 52.219-8, Utilization of Small Business Concerns (NOV 2016) (15 U.S.C. 637(d)(2) and (3)).

\_\_ (17) (i) 52.219-9, Small Business Subcontracting Plan (JAN 2017) (15 U.S.C. 637(d)(4)).

\_\_ (ii) Alternate I (NOV 2016) of 52.219-9.

\_X (iii) Alternate II (NOV 2016) of 52.219-9.

\_\_ (iv) Alternate III (NOV 2016) of 52.219-9.

\_\_ (v) Alternate IV (NOV 2016) 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 (JAN 2017) (15 U.S.C. 637(a)(14)).

\_X\_ (20) 52.219-16, Liquidated Damages—Subcontracting Plan (JAN 1999) (15 U.S.C. 637(d)(4)(F)(i)).

\_\_ (21) 52.219-27, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (NOV 2011) (15 U.S.C. 657 f).

\_X\_ (22) 52.219-28, Post Award Small Business Program Re-representation (JUL 2013) (15 U.S.C. 632(a)(2)).

\_\_ (23) 52.219-29, Notice of Set-Aside for, or Sole Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns (DEC 2015) (15 U.S.C. 637(m)).

\_\_ (24) 52.219-30, Notice of Set-Aside for, or Sole Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (DEC 2015) (15 U.S.C. 637(m)).

\_X\_ (25) 52.222-3, Convict Labor (JUN 2003) (E.O. 11755).

\_X\_ (26) 52.222-19, Child Labor—Cooperation with Authorities and Remedies (OCT 2016) (E.O. 13126).

\_X\_ (27) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).

\_X\_ (28) 52.222-26, Equal Opportunity (SEP 2016) (E.O. 11246).

\_X\_ (29) 52.222-35, Equal Opportunity for Veterans (OCT 2015)(38 U.S.C. 4212).

\_X\_ (30) 52.222-36, Equal Opportunity for Workers with Disabilities (JUL 2014) (29 U.S.C. 793).

\_X\_ (31) 52.222-37, Employment Reports on Veterans (FEB 2016) (38 U.S.C. 4212).

\_X\_ (32) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496).

\_X\_ (33)(i) 52.222-50, Combating Trafficking in Persons (MAR 2015) (22 U.S.C. chapter 78 and E.O. 13627).

\_\_ (ii) Alternate I (Mar 2015) of 52.222-50 (22 U.S.C. chapter 78 and E.O. 13627).

\_\_ (34) 52.222-54, Employment Eligibility Verification (OCT 2015). (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.)

\_\_ (35) 52.222-59, Compliance with Labor Laws (Executive Order 13673) (OCT 2016). (Applies at $50 million for solicitations and resultant contracts issued from October 25, 2016 through April 24, 2017; applies at $500,000 for solicitations and resultant contracts issued after April 24, 2017).

Note to paragraph (b)(35): By a court order issued on October 24, 2016, 52.222-59 is enjoined indefinitely as of the date of the order. The enjoined paragraph will become effective immediately if the court terminates the injunction. At that time, GSA, DoD and NASA will publish a document in the Federal Register advising the public of the termination of the injunction.

\_\_ (36) 52.222-60, Paycheck Transparency (Executive Order 13673) (OCT 2016).

\_\_ (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) 52.223-11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (JUN 2016) (E.O. 13693).

\_\_ (39) 52.223-12, Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (JUN 2016) (E.O. 13693).

\_\_ (40)(i) 52.223-13, Acquisition of EPEAT®-Registered Imaging Equipment (JUN 2014) (E.O.s 13423 and 13514).

\_\_ (ii) Alternate I (OCT 2015) of 52.223-13.

\_\_ (41)(i) 52.223-14, Acquisition of EPEAT®-Registered Televisions (JUN 2014) (E.O.s 13423 and 13514).

\_\_ (ii) Alternate I (OCT 2014) of 52.223-14.

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

\_\_ (43)(i) 52.223-16, Acquisition of EPEAT®-Registered Personal Computer Products (OCT 2015) (E.O.s 13423 and 13514).

\_\_ (ii) Alternate I (Jun 2014) of 52.223-16.

\_X\_ (44) 52.223-18, Encouraging Contractor Policies to Ban Text Messaging While Driving (AUG 2011) (E.O. 13513).

\_\_ (45) 52.223-20, Aerosols (JUN 2016) (E.O. 13693).

\_\_ (46) 52.223-21, Foams (JUN 2016) (E.O. 13693).

\_\_ (47)(i) 52.224-3, Privacy Training (JAN 2017) (5U.S.C. 552a).

\_\_ (ii) Alternate I (JAN 2017) of 52.224-3.52.225-1, Buy American—Supplies (MAY 2014) (41 U.S.C. chapter 83).

\_\_ (48) (48) 52.225-1, Buy American—Supplies (MAY 2014) (41 U.S.C. chapter 83).

\_\_\_(49)(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.

\_X\_ (50) 52.225-5, Trade Agreements (OCT 2016) (19 U.S.C. 2501, et seq., 19 U.S.C. 3301 note).

\_X\_ (51) 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).

\_\_ (52) 52.225-26, Contractors Performing Private Security Functions Outside the United States (OCT 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).

\_\_ (53) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (NOV 2007) (42 U.S.C. 5150).

\_\_ (54) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area (NOV 2007) (42 U.S.C. 5150).

\_\_ (55) 52.232-29, Terms for Financing of Purchases of Commercial Items (FEB 2002) (41 U.S.C. 4505, 10 U.S.C. 2307(f)).

\_\_ (56) 52.232-30 Installment Payments for Commercial Items (JAN 2017) (41 U.S.C. 4505, 10 U.S.C. 2307(f)).

\_\_ (57) 52.232-33, Payment by Electronic Funds Transfer—System for Award Management (JUL 2013) (31 U.S.C. 3332).

\_\_ (58) 52.232-34, Payment by Electronic Funds Transfer—Other than System for Award Management (JUL 2013) (31 U.S.C. 3332).

\_\_ (59) 52.232-36, Payment by Third Party (MAY 2014) (31 U.S.C. 3332).

\_\_ (60) 52.239-1, Privacy or Security Safeguards (AUG 1996) (5 U.S.C. 552a).

\_X\_ (61) 52.242-5, Payments to Small Business Subcontractors (JAN 2017)(15 U.S.C. 637(d)(12)).

\_\_ (62)(i) 52.247-64, Preference for Privately (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) 52.222-17, Nondisplacement of Qualified Workers (MAY 2014)(E.O. 13495).

\_\_ (2) 52.222-41, Service Contract Labor Standards (MAY 2014) (41 U.S.C. chapter 67).

\_\_ (3) 52.222-42, Statement of Equivalent Rates for Federal Hires (MAY 2014) (29 U.S.C. 206 and 41 U.S.C. chapter 67).

\_\_ (4) 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).

\_\_ (5) 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).

\_\_ (6) 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).

\_\_ (7) 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).

\_\_ (8) 52.222-55, Minimum Wages Under Executive Order 13658 (DEC 2015).

\_\_ (9) 52.222-62, Paid Sick Leave Under Executive Order 13706 (JAN 2017) (E.O. 13706).

\_\_ (10) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (MAY 2014) (42 U.S.C. 1792).

\_\_ (11) 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 (0CT 2015) (41 U.S.C. 3509).

(ii) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (JAN 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).

(iii) 52.219-8, Utilization of Small Business Concerns (NOV 2016) (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 $700,000 ($1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(iv) 52.222-17, Nondisplacement of Qualified Workers (MAY 2014) (E.O. 13495). Flow down required in accordance with paragraph (l) of FAR clause 52.222-17.

(v) 52.222-21, Prohibition of Segregated Facilities (APR 2015)

(vi) 52.222-26, Equal Opportunity (SEP 2016) (E.O. 11246).

(vii) 52.222-35, Equal Opportunity for Veterans (OCT 2015) (38 U.S.C. 4212).

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

(ix) 52.222-37, Employment Reports on Veterans (FEB 2016) (38 U.S.C. 4212)

(x) 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.

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

(xii) 52.222-50, (A) Combating Trafficking in Persons (MAR 2015) (22 U.S.C. chapter 78 and E.O 13627). (B) Alternate I (MAR 2015) of 52.222-50 (22 U.S.C. chapter 78 and E.O 13627).

(xiii) 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).

(xiv) 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).

(xv) 52.222-54, Employment Eligibility Verification (OCT 2015) (E.O. 12989).

(xvi) 52.222-55, Minimum Wages Under Executive Order 13658 (DEC 2015).

(xvii) 52.222-59, Compliance with Labor Laws (Executive Order 13673) (OCT 2016) (Applies at $50 million for solicitations and resultant contracts issued from October 25, 2016 through April 24, 2017; applies at $500,000 for solicitations and resultant contracts issued after April 24, 2017).

Note to paragraph (e)(1)(xvi): By a court order issued on October 24, 2016, 52.222-59 is enjoined indefinitely as of the date of the order. The enjoined paragraph will become effective immediately if the court terminates the injunction. At that time, GSA, DoD and NASA will publish a document in the Federal Register advising the public of the termination of the injunction.

(xviii) 52.222-60, Paycheck Transparency (Executive Order 13673) (OCT 2016)).

(xix) 52.222-62, Paid Sick Leave Under Executive Order 13706 (JAN 2017) (E.O. 13706).

(xx) (A) 52.224-3, Privacy Training (JAN 2017) (5U.S.C. 552a).

 (B) Alternate I (JAN 2017) of 52.224-3.

(xxi) 52.225-26, Contractors Performing Private Security Functions Outside the United States (OCT 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).

(xxii) 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.

(xxii) 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.

**C.12 MANDATORY WRITTEN DISCLOSURES**

Mandatory written disclosures required by FAR clause 52.203-13 to the Department of Veterans Affairs, Office of Inspector General (OIG) must be made electronically through the VA OIG Hotline at <http://www.va.gov/oig/contacts/hotline.asp> and clicking on “FAR clause 52.203-13 Reporting”. If you experience difficulty accessing the website, call the Hotline at 1-800-488-8244 for further instructions.

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

**D.1 ATTACHMENT “A”**

**VA PHARMACEUTICAL PRIME VENDOR CONTRACTOR**

McKesson Corporation

One Postal Street, 29th Floor

San Francisco, CA 94101

POC: Mrs. Lori White

Vice President Government & National Accounts

Phone: (972) 446-5758

**D.2 ATTACHMENT “B”**

**DOD PHARMACEUTICAL PRIME VENDOR (PPV) CONTRACTORS**

|  |  |
| --- | --- |
| McKesson Drug CompanyAttn: Lori White1220 Senlac DriveCarrollton, TX 75006Phone: (972) 446-5758Fax: (972) 267-5795Tricare Mail Order Pharmacy ProgramNational Prime VendorEmail: Lori.White@McKesson.com | AmeriSource-Bergen CompanyAttn: Dina Barton100 Friars Blvd.Thorofare, NJ 08086Phone: (856) 384-6111 or (856) 384-3860Fax: (856) 384-2230Email: dbarton@amerisourcebergen.com  |
| Dakota Drug CompanyAttn: Jan McCann / Becky Gilstad28–32 N. Main StreetMinot, ND 58701Phone: (701) 852-2141 ext. 103Fax: (701) 857-1134Email: jmccann@dakdrug.com or bgilstad@dakdrug.com | DMS Pharmaceutical Group, Inc.Attn: Jean Hawkins810 Busee HighwayPark Ridge, IL 60068Phone: (847) 518-1100 ext. 226Fax: (847) 518-1105Email: jh@dmspharma.com  |
| Cardinal Health, Inc.Attn: Lisa Parsley5555 Glendon CourtDublin, OH 43016Phone: (614) 757-5543 or (614) 797-7093Fax: (614) 717-6911Email: Lisa.Parsley@Cardinal.com |

**D.3 ATTACHMENT “C”**

|  |
| --- |
| **ESTIMATED ANNUAL REQUIREMENTS BY AGENCY** |
| **ITEM** | **DESCRIPTION** | **PKG SIZE (AMP)** | **VA EST. ANNUAL USAGE (BX)** | **DOD EST. ANNUAL USAGE (BX)** | **BOP EST. ANNUAL USAGE (BX)** | **IHS EST. ANNUAL USAGE (BX)** | **TOTAL EST. ANNUAL USAGE (BX)** |
| 1 | ALBUTEROL SO4 3MG/IPRATROPIUM BR 0.5MG/3ML INHL,3ML  | 30 | 405,072 | 256,773 | 1,849 | 24,320 | 688,014 |
| 2 | ALBUTEROL SO4 3MG/IPRATROPIUM BR 0.5MG/3ML INHL,3ML  | 60 | 155,886 | 5,516 | 414 | 4,180 | 165,996 |

**D.4 ATTACHMENT “D”**

**SMALL BUSINESS SUBCONTRACTING PLAN**

**(Model Outline\* – Template Revised 1/26/2017)**

**SUBCONTRACTING PLAN PERIOD:**

Individual plans should cover the entire period of performance, and commercial plans should coincide with the company’s fiscal year. In the event your company's fiscal year is for a period that will end before the contract periods of any federal contracts you hold which include the requirement to have a small business subcontracting plan, **you will be required to submit a new subcontracting plan for approval thirty (30) days prior to expiration of the existing subcontracting plan**. In the event an acceptable plan cannot be negotiated prior to expiration of the existing subcontracting plan, your contract(s) may be terminated.

**DATE SUBMITTED:**

**NAME OF PLANHOLDER:**

**SUBSIDIARIES INCLUDED:**

**ADDRESS:**

**ITEM/SERVICE TYPE**:

1. **TYPE OF PLAN**

Select only one of the following (a, b, or c), listing the total estimated dollar value of all planned subcontracting (to all types of business concerns, both **large and small**). Per 13 CFR 125.3(a)(1)(iii), **the following categories should not be included in the total subcontracting spend base in #1, the proposed goals in #2, nor in the categories of spend listed in #3:** internally generated costs such as salaries and wages; employee insurance; other employee benefits; payments for petty cash; depreciation; interest; income taxes; property taxes; lease payments; bank fees; fines, claims, and dues; Original Equipment Manufacturer relationships during warranty periods (negotiated up front with product); utilities such as electricity, water, sewer, and other services purchased from a municipality or solely authorized by the municipality to provide those services in a particular geographical region; and philanthropic contributions. Utility companies may be eligible for additional exclusions unique to their industry, which may be approved by the contracting officer on a case-by-case basis.

1. **Individual Plan** (This Contract Only) Contract #/Solicitation #

Total value of projected subcontracts (both **large and small** businesses**)**

Base Period $       5-Year Option $

Total Contract Value (including options) $

\*Separate goals **must** be included for each option period (see #2 and chart on last page)

1. **Commercial Division-wide Plan**

 Total value of projected subcontracts (both **large and small** businesses**)** $

Total projected sales $       (Subcontracts Represent      % of Total Annual Sales)

1. **Commercial Company-wide Plan**

 Total value of projected subcontracts (both **large and small** businesses**)** $

Total projected sales $       (Subcontracts Represent      % of Total Annual Sales)

**\*** *This template is a* ***suggested*** *model for use when formulating a subcontracting plan pursuant to the requirements at FAR 52.219-9(d). While this model plan has been designed to be consistent with FAR 52.219-9, other formats may be acceptable. However, failure to include the essential information as set forth in this model may be cause for either a delay in acceptance or the rejection of an offer where the clause is applicable. Further, the use of this model is not intended to waive other requirements that may be applicable under FAR 52.219-9 or that may appear in the Government’s solicitation. "SUBCONTRACT," as used in 52.219-9,* ***refers to your external company spend****, meaning any agreement (other than one involving an employer-employee relationship) entered into by a federal government prime contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract****.***

State separate dollar and percentage goals, expressed in terms of **percentages of the total available subcontracting dollars** listed in the previous section in #1. ***Commercial plans must complete 2a below with 1-year goals, and individual plans must complete 2b below, proposing two, separate 5-year goals.***

***Complete only 2a OR 2b, as applicable. Percentage goals should be rounded to one decimal place (X.x%).***

**2a. GOALS FOR COMMERCIAL PLANS (1-Year Goals)**

1. Total estimated dollar value and percent of planned subcontracting with **small businesses (SB)** (including ANCs and Indian tribes), veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged (including ANCs and Indian tribes), and women-owned small business concerns: $      and      %
2. Total estimated dollar value and percent of planned subcontracting with **veteran-owned small businesses (VO)**: $      and      %
3. Total estimated dollar value and percent of planned subcontracting with **service-disabled veteran-owned small businesses (SDVO)** (Note: This is a subset of veteran-owned): $      and      %
4. Total estimated dollar value and percent of planned subcontracting with **small disadvantaged businesses (SDB)** (including ANCs and Indian tribes): $      and      %
5. Total estimated dollar value and percent of planned subcontracting with **women-owned small businesses (WO)**: $      and      %
6. Total estimated dollar value and percent of planned subcontracting **with HUBZone small businesses (HUB)**: $      and      %

**2b. GOALS FOR INDIVIDUAL PLANS (Two, Five-Year Goals)**

1. Total estimated dollar value and percent of planned subcontracting with **small businesses (SB)** (including ANCs and Indian tribes), veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged (including ANCs and Indian tribes), and women-owned small business concerns:

Base (5-years): $      &      % & 5-Year Option: $      &      %

1. Total estimated dollar value and percent of planned subcontracting with **veteran-owned small businesses (VO)**:

Base (5-years): $      &      % & 5-Year Option: $      &      %

1. Total estimated dollar value and percent of planned subcontracting with **service-disabled veteran-owned small businesses (SDVO)** (Note: This is a subset of veteran-owned):

Base (5-years): $      &      % & 5-Year Option: $      &      %

1. Total estimated dollar value and percent of planned subcontracting with **small disadvantaged businesses (SDB)** (including ANCs and Indian tribes):

Base (5-years): $      &      % & 5-Year Option: $      &      %

1. Total estimated dollar value and percent of planned subcontracting with **women-owned small businesses (WO)**:

Base (5-years): $      &      % & 5-Year Option: $      &      %

1. Total estimated dollar value and percent of planned subcontracting **with HUBZone small businesses (HUB)**:

Base (5-years): $      &      % & 5-Year Option: $      &      %

**3. PRODUCTS AND/OR SERVICES**

The types of products and/or services to be subcontracted are:

**LB:**

**SB:**

**VO:**

**SDVO:**

**SDB:**

**WO:**

**HUB:**

**4. GOAL DEVELOPMENT**

The following method was used in developing the subcontracting goals:

**5. IDENTIFYING POTENTIAL SOURCES**

The following methods were used to identify potential sources for solicitation purposes (See FAR 52.219-9(d)(5) for examples of methods that may be used.):

**6. INDIRECT COSTS**

Indirect costs [ ]  have [ ]  have not been included in the dollar and percentage subcontracting goals stated above. (Check one.)

If "have been" is checked (and you are proposing an individual plan), explain the method used in determining the proportionate share of indirect costs to be incurred with small business (including Alaska Native Corporations and Indian tribes), veteran-owned small business, service-disabled veteran-owned small business, small disadvantaged business (including ANCs and Indian tribes), women-owned small business, and HUBZone small business concerns. *Note: Commercial planholders who choose to include indirect costs will not need to provide the aforementioned explanation because the costs will be applied at 100%.*

**7. PROGRAM ADMINISTRATOR**

The following individual will administer the subcontracting program:

NAME:

TITLE:

ADDRESS:

TELEPHONE:

E-MAIL:

This individual's specific duties, as they relate to the firm's subcontracting program, are as follows:

**8. EQUITABLE OPPORTUNITY**

The following good faith efforts (internal and external) will be taken to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, small disadvantaged business, women-owned small business, and HUBZone small business concerns will have an equitable opportunity to compete for subcontracts:

**9. FLOW-DOWN CLAUSE**

The offeror agrees that the FAR clause of this contract entitled “Utilization of Small Business Concerns” (52.219-8) will be included in all subcontracts that offer further subcontracting opportunities, and that the Offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of $700,000 ($1.5 million for construction of any public facility) with further subcontracting possibilities to adopt a subcontracting plan that complies with the requirements of this clause.

***NOTE: See exceptions listed in FAR 52.219-9(j).***

**10. REPORTING & COOPERATION**

The offeror agrees to

(i) Cooperate in any studies or surveys as may be required;

(ii) Submit periodic reports so thatthe Government can determine the extent of compliance by the offeror with the subcontracting plan;

(iii) After November 30, 2017, include subcontracting data for each order when reporting subcontracting achievements for indefinite-delivery, indefinite-quantity contracts intended for use by multiple agencies;

(iv) Submit the Individual Subcontract Report (ISR) and/or the Summary Subcontract Report (SSR), in accordance with paragraph (l) of this clause using the Electronic Subcontracting Reporting System (eSRS) at [http://www.esrs.gov](http://www.esrs.gov/). The reports shall provide information on subcontract awards to small business concerns (including ANCs and Indian tribes that are not small businesses), veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns (including ANCs and Indian tribes that have not been certified by SBA as small disadvantaged businesses), women-owned small business concerns, and for NASA only, Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with this clause, or as provided in agency regulations;

(v) Ensure that its subcontractors with subcontracting plans agree to submit the ISR and/or the SSR using eSRS;

(vi) Provide its prime contract number, its DUNS number, and the e-mail address of the Offeror’s official responsible for acknowledging receipt of or rejecting the ISRs, to all first-tier subcontractors with subcontracting plans so they can enter this information into the eSRS when submitting their ISRs; and

(vii) Require that each subcontractor with a subcontracting plan provide the prime contract number, its own DUNS number, and the e-mail address of the subcontractor’s official responsible for acknowledging receipt of or rejecting the ISRs, to its subcontractors with subcontracting plans.

**11. RECORDKEEPING**

The following is a description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror’s efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists (e.g., SAM), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than $150,000, indicating—

(A) Whether small business concerns were solicited and, if not, why not;

(B) Whether veteran-owned small business concerns were solicited and, if not, why not;

(C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;

(D) Whether HUBZone small business concerns were solicited and, if not, why not;

(E) Whether small disadvantaged business concerns were solicited and, if not, why not;

(F) Whether women-owned small business concerns were solicited and, if not, why not; and

(G) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact—

(A) Trade associations;

(B) Business development organizations;

(C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, service-disabled veteran-owned, and women-owned small business sources; and

(D) Veterans service organizations.

(v) Records of internal guidance and encouragement provided to buyers through–

(A) Workshops, seminars, training, etc.; and

(B) Monitoring performance to evaluate compliance with the program’s requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

**12 & 13. UTILIZATION OF SMALL BUSINESS CONCERNS USED IN BID/PROPOSAL**

**12.** The offeror agrees to make a good faith effort to acquire articles, equipment, supplies, services, or materials, or obtain the performance of construction work from the small business concerns that it used in preparing the bid or proposal, in the same or greater scope, amount, and quality used in preparing and submitting the bid or proposal. Responding to a request for a quote does not constitute use in preparing a bid or proposal. The Offeror used a small business concern in preparing the bid or proposal if–

(i) The Offeror identifies the small business concern as a subcontractor in the bid or proposal or associated small business subcontracting plan, to furnish certain supplies or perform a portion of the subcontract; or

(ii) The Offeror used the small business concern’s pricing or cost information or technical expertise in preparing the bid or proposal, where there is written evidence of an intent or understanding that the small business concern will be awarded a subcontract for the related work if the Offeror is awarded the contract.

**13.** The Contractor agrees to provide the Contracting Officer with a written explanation if the Contractor fails to acquire articles, equipment, supplies, services or materials or obtain the performance of construction work as described in (12) above. This written explanation must be submitted to the Contracting Officer within 30 days of contract completion.

**14. SUBCONTRACTOR DISCUSSIONS WITH CO**

The Contractor agrees not to prohibit a subcontractor from discussing with the Contracting Officer any material matter pertaining to payment to or utilization of a subcontractor.

**15. PROMPT PAYMENT OF SMALL BUSINESS SUBCONTRACTORS**

The Contractor agrees to pay its small business subcontractors on time and in accordance with the terms and conditions of the underlying subcontract, and notify the contracting officer when the prime contractor makes either a reduced or an untimely payment to a small business subcontractor (see FAR 52.242-5).

**\*Signed:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **Date Signed:** \_\_\_\_\_\_\_\_\_\_\_

**Typed Name:**       **Title:**

**\**Please note that at this time we cannot accept any form of electronic or digital signatures. We require that your e-mailed plan submission be a scanned copy of a wet signature.***

|  |  |
| --- | --- |
| **Plan Approval Signature (Government Official)**  |       |
| **Typed Name of Government Approver** |       |
| **Date Approved** |       |

**COMMERCIAL PLANS: SUMMARY OF GOALS**

This page is for ***commercial plans ONLY.***

Entries below should match your responses in #1 and #2a at the beginning of the template.

**Round percentages to one decimal place (X.x%) and dollar figures to the nearest whole dollar**.

**Prior Year Goals Prior Year Current Goals**

 **Achievements\***

**1. Total Subcontracting Dollars** $       $       $

(both large & small businesses)

**2a. Small Business** Dollars $       $       $

**SB** Percent of Line 1      %      %      %

**2b. Small Veteran-owned** Dollars $       $       $

**VO** Percent of Line 1     %      %      %

**2c. Service-Disabled Veteran-**

**Owned** Dollars$       $       $

**SDVO** Percent of Line 1     %      %      %

 **2d. Small Disadvantaged** Dollars $       $       $

 **SDB** Percent of Line 1      %      %      %

**2e. Small Women-owned** Dollars $       $       $

**WO** Percent of Line 1      %      %      %

**2f. HUBZone** Small Business Dollars $       $       $

**HUB** Percent of Line 1      %      %      %

*\* If total prior year contract achievements are not available, use actual figures and estimate/prorate balance. Achievements based on Government’s Fiscal Year while Goals are based on Company’s Fiscal Year.*

**SECTION E - SOLICITATION PROVISIONS**

**E.1 52.212-1 INSTRUCTIONS TO OFFERORS--COMMERCIAL ITEMS (JAN 2017)**

 (a) North American Industry Classification System (NAICS) code and small business size standard. The NAICS code and small business size standard for this acquisition appear in Block 10 of the solicitation cover sheet (SF 1449). However, the small business size standard for a concern which submits an offer in its own name, but which proposes to furnish an item which it did not itself manufacture, is 500 employees.

(b) Submission of offers. Submit signed and dated offers to the office specified in this solicitation at or before the exact time specified in this solicitation. Offers may be submitted on the SF 1449, letterhead stationery, or as otherwise specified in the solicitation. As a minimum, offers must show—

 (1) The solicitation number;

(2) The time specified in the solicitation for receipt of offers;

(3) The name, address, and telephone number of the offeror;

(4) A technical description of the items being offered in sufficient detail to evaluate compliance with the requirements in the solicitation. This may include product literature, or other documents, if necessary;

(5) Terms of any express warranty;

(6) Price and any discount terms;

(7) “Remit to” address, if different than mailing address;

(8) A completed copy of the representations and certifications at FAR 52.212-3 (see FAR 52.212-3(b) for those representations and certifications that the offeror shall complete electronically);

(9) Acknowledgment of Solicitation Amendments;

(10) Past performance information, when included as an evaluation factor, to include recent and relevant contracts for the same or similar items and other references (including contract numbers, points of contact with telephone numbers and other relevant information); and

(11) If the offer is not submitted on the SF 1449, include a statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation. Offers that fail to furnish required representations or information, or reject the terms and conditions of the solicitation may be excluded from consideration.

(c) Period for acceptance of offers **(TAILORED)**. The offeror agrees to hold the prices in its offer firm for **120 calendar days** from the date specified for receipt of offers, unless another time period is specified in an addendum to the solicitation.

(d) Product samples. When required by the solicitation, product samples shall be submitted at or prior to the time specified for receipt of offers. Unless otherwise specified in this solicitation, these samples shall be submitted at no expense to the Government, and returned at the sender’s request and expense, unless they are destroyed during preaward testing.

(e) Multiple offers. Offerors are encouraged to submit multiple offers presenting alternative terms and conditions, including alternative line items (provided that the alternative line items are consistent with subpart 4.10 of the Federal Acquisition Regulation), or alternative commercial items for satisfying the requirements of this solicitation. Each offer submitted will be evaluated separately.

(f) Late submissions, modifications, revisions, and withdrawals of offers.

(1) Offerors are responsible for submitting offers, and any modifications, revisions, or withdrawals, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that offers or revisions are due.

(2)(i) Any offer, modification, revision, or withdrawal of an offer received at the Government office designated in the solicitation after the exact time specified for receipt of offers is “late” and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and—

 (A) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of offers; or

(B) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government’s control prior to the time set for receipt of offers; or

(C) If this solicitation is a request for proposals, it was the only proposal received.

(ii) However, a late modification of an otherwise successful offer, that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(3) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the offer wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(4) If an emergency or unanticipated event interrupts normal Government processes so that offers cannot be received at the Government office designated for receipt of offers by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation or other notice of an extension of the closing date, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(5) Offers may be withdrawn by written notice received at any time before the exact time set for receipt of offers. Oral offers in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before the exact time set for receipt of offers, subject to the conditions specified in the solicitation concerning facsimile offers. An offer may be withdrawn in person by an offeror or its authorized representative if, before the exact time set for receipt of offers, the identity of the person requesting withdrawal is established and the person signs a receipt for the offer.

(g) Contract award (not applicable to Invitation for Bids). The Government intends to evaluate offers and award a contract without discussions with offerors. Therefore, the offeror’s initial offer should contain the offeror’s best terms from a price and technical standpoint. However, the Government reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary. The Government may reject any or all offers if such action is in the public interest; accept other than the lowest offer; and waive informalities and minor irregularities in offers received.

(h) Multiple awards. The Government may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in the Schedule, offers may not be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the offeror specifies otherwise in the offer.

(i) Availability of requirements documents cited in the solicitation.

(1)(i) The GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101-29, and copies of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained for a fee by submitting a request to—

 GSA Federal Supply Service Specifications Section

 Suite 8100

 470 East L’Enfant Plaza, SW

 Washington, DC 20407

Telephone (202) 619-8925

 Facsimile (202) 619-8978.

(ii) If the General Services Administration, Department of Agriculture, or Department of Veterans Affairs issued this solicitation, a single copy of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained free of charge by submitting a request to the addressee in paragraph (i)(1)(i) of this provision. Additional copies will be issued for a fee.

(2) Most unclassified Defense specifications and standards may be downloaded from the following ASSIST websites:

(i) ASSIST (https://assist.dla.mil/online/start/).

(ii) Quick Search (http://quicksearch.dla.mil/).

(iii) ASSISTdocs.com (http://assistdocs.com).

(3) Documents not available from ASSIST may be ordered from the Department of Defense Single Stock Point (DoDSSP) by—

 (i) Using the ASSIST Shopping Wizard (https://assist.dla.mil/wizard/index.cfm);

(ii) Phoning the DoDSSP Customer Service Desk (215) 697-2179, Mon-Fri, 0730 to 1600 EST; or

(iii) Ordering from DoDSSP, Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 19111-5094, Telephone (215) 697-2667/2179, Facsimile (215) 697-1462.

(4) Nongovernment (voluntary) standards must be obtained from the organization responsible for their preparation, publication, or maintenance.

(j) Unique entity identifier. (Applies to all offers exceeding $3,500, and offers of $3,500 or less if the solicitation requires the Contractor to be registered in the System for Award Management (SAM) database.) The Offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation “Unique Entity Identifier” followed by the unique entity identifier that identifies the Offeror’s name and address. The Offeror also shall enter its Electronic Funds Transfer (EFT) indicator, if applicable. The EFT indicator is a four-character suffix to the unique entity identifier. The suffix is assigned at the discretion of the Offeror to establish additional SAM records for identifying alternative EFT accounts (see subpart 32.11) for the same entity. If the Offeror does not have a unique entity identifier, it should contact the entity designated at www.sam.gov for unique entity identifier establishment directly to obtain one. The Offeror should indicate that it is an offeror for a Government contract when contacting the entity designated at www.sam.gov for establishing the unique entity identifier.

(k) System for Award Management. Unless exempted by an addendum to this solicitation, by submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the SAM database prior to award, during performance and through final payment of any contract resulting from this solicitation. If the Offeror does not become registered in the SAM database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror. Offerors may obtain information on registration and annual confirmation requirements via the SAM database accessed through https://www.acquisition.gov.

(l) Debriefing. If a post-award debriefing is given to requesting offerors, the Government shall disclose the following information, if applicable:

(1) The agency’s evaluation of the significant weak or deficient factors in the debriefed offeror’s offer.

(2) The overall evaluated cost or price and technical rating of the successful and the debriefed offeror and past performance information on the debriefed offeror.

(3) The overall ranking of all offerors, when any ranking was developed by the agency during source selection.

(4) A summary of the rationale for award;

(5) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror.

(6) Reasonable responses to relevant questions posed by the debriefed offeror as to whether source-selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.

**ADDENDUM to FAR 52.212-1 INSTRUCTIONS TO OFFERORS --COMMERCIAL ITEMS**

Provisions 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 provisions are incorporated into 52.212-1 as an addendum to this solicitation:

**Instructions for Proposal Submission**

1) Proposals may be delivered to Department of Veterans Affairs, National Acquisition Center, National Contract Service (003A4C), 1st Avenue, 1 Block North of Cermak Road, Building 37, Hines, IL 60141.  Proposals will also be accepted in Microsoft Word or PDF form via e-mail to Khristine Jackson at Khristine.Jackson@va.gov with a scanned (pdf) copy of the signed SF1449.  Please note that faxed proposals are not acceptable and will be rejected.  Reference FAR 52.212-1(f) regarding timeliness of submission of offers.

2) Offerors shall include its Unique Entity Identifier number and CAGE code in block 17a of the Standard Form 1449.

3)  Offerors shall provide a separate and distinct eleven-digit National Drug Code (NDC) Number unique to the offeror as outlined in the Scope of Contract (paragraph 8).

4) Offerors shall meet the packaging requirements as outlined in Scope of Contract (paragraph 5)

5)  Offerors shall submit a price for all line items offered, inclusive of the base year and all option years. Offered prices must include .50% Cost Recovery Fee as outlined in the Scope of Contract (paragraph 12).

6) Offers shall complete the solicitation representations at 52.209-5 and 52.209-7 as provided in Section E of the solicitation.

7) The System for Award Management (SAM) is an online system that replaces CCR/FedReg, ORCA, and EPLS.   Contractors should now go to [www.sam.gov](http://www.sam.gov) to find their information. Training tools are available on the SAM website at [www.sam.gov](http://www.sam.gov) for familiarization with the SAM system.  Prospective contractors shall maintain a current and accurate record in the SAM database.  SAM updates are required as necessary, but at least annually. (see 52.212-4(t) and 52.212-1(k)).   In addition, offerors shall review and complete paragraph (b)(2) of 52.212-3.

8) Subcontracting Plan Requirements: Pursuant to the requirements of Public Law 95-507, all large business concerns are required to have an approved subcontracting plan for contracts valued over $700,000 before the Government can award a contract (see FAR 52.219-9 for details).  Offerors must submit a currently approved commercial plan or a new plan for review and approval.  Attachment “D” includes all of the elements required to be addressed and is included to facilitate the submission of a subcontracting plan.

**9) CONTACT FOR CONTRACT ADMINISTRATION**

Offerors are requested to designate a person to be contacted for prompt contract administration.

|  |  |
| --- | --- |
| **NAME** |  |
| **TITLE** |  |
| **ADDRESS** |  |
|  |  |
| **CITY, STATE, ZIP CODE** |  |
| **E-MAIL ADDRESS** |  |
| **PHONE NO.** |  |
| **800 NO.** |  |
| **FAX NO.** |  |

**SALES REPORTS POC**

|  |  |
| --- | --- |
| **NAME & TITLE** |  |
| **Email Address** |  |
| **Phone Number** |  |

**10) AUTHORIZED NEGOTIATORS**

The offeror or quoter represents that the following persons are authorized to negotiate on its behalf with the Government in connection with this request for proposals or quotations: (list names, titles, e-mail addresses, and telephone numbers of the authorized negotiators)

|  |
| --- |
|  |
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|  |

**11) NOTICE TO DEALERS AND SUPPLIERS**

(a) If the offeror is not the manufacturer of the offered items, the offeror shall submit either: (1) A letter of commitment from the manufacturer to the offeror which will assure the offeror of a source of supply sufficient to satisfy the Government's requirements for the contract period, **OR** (2) evidence that the offeror will have an uninterrupted source of supply from which to satisfy the Government's requirements for the contract period. The offeror must maintain the same manufacturer for the duration of the contract period. “Manufacturer” is defined as the entity that measures, mixes, weighs, and compounds the active and inactive ingredients into a final product. If the offeror and its manufacturer are affiliates, the letter of commitment or evidence as required herein is required of the manufacturing facility, regardless of the relationship with the offeror. **Offers that fail to meet this requirement before contract award shall be rejected and shall receive no further consideration.**

(b) To be considered acceptable, the letter of commitment:

1. Shall be on the manufacturer’s letterhead.
2. Shall be dated.
3. Shall reference the solicitation number and the product committed to the manufacture.
4. Shall state that the manufacturer assures the offeror of an uninterrupted source of supply sufficient to satisfy the Government’s requirements for the contract period, and that the manufacturer is currently manufacturing the product.
5. Shall be signed by an officer of the manufacturer’s company (include printed name, title and telephone number).

**E.2 52.204-16 COMMERCIAL AND GOVERNMENT ENTITY CODE REPORTING (JUL 2016)**

 (a) Definition. As used in this provision –

Commercial and Government Entity (CAGE) code” means–

(1) An identifier assigned to entities located in the United States or its outlying areas by the Defense Logistics Agency (DLA) Commercial and Government Entity (CAGE) Branch to identify a commercial or government entity; or

(2) An identifier assigned by a member of the North Atlantic Treaty Organization (NATO) or by the NATO Support and Procurement Agency (NSPA) to entities located outside the United States and its outlying areas that the DLA Commercial and Government Entity (CAGE) Branch records and maintains in the CAGE master file. This type of code is known as a NATO CAGE (NCAGE) code.

(b) The Offeror shall enter its CAGE code in its offer with its name and address or otherwise include it prominently in its proposal. The CAGE code entered must be for that name and address. Enter “CAGE” before the number. The CAGE code is required prior to award.

(c) CAGE codes may be obtained via–

 (1) Registration in the System for Award Management (SAM) at www.sam.gov. If the Offeror is located in the United States or its outlying areas and does not already have a CAGE code assigned, the DLA Commercial and Government Entity (CAGE) Branch will assign a CAGE code as a part of the SAM registration process. SAM registrants located outside the United States and its outlying areas shall obtain a NCAGE code prior to registration in SAM (see paragraph (c)(3) of this provision).

(2) The DLA Contractor and Government Entity (CAGE) Branch. If registration in SAM is not required for the subject procurement, and the offeror does not otherwise register in SAM, an offeror located in the United States or its outlying areas may request that a CAGE code be assigned by submitting a request at https://cage.dla.mil.

(3) The appropriate country codification bureau. Entities located outside the United States and its outlying areas may obtain an NCAGE code by contacting the Codification Bureau in the foreign entity’s country if that country is a member of NATO or a sponsored nation. NCAGE codes may be obtained from the NSPA at https://eportal.nspa.nato.int/AC135Public/scage/CageList.aspx if the foreign entity’s country is not a member of NATO or a sponsored nation. Points of contact for codification bureaus, as well as additional information on obtaining NCAGE codes, are available at http://www.nato.int/structur/AC/135/main/links/contacts.htm.

(d) Additional guidance for establishing and maintaining CAGE codes is available at https://cage.dla.mil.

(e) When a CAGE Code is required for the immediate owner and/or the highest-level owner by 52.204-17 or 52.212-3(p), the Offeror shall obtain the respective CAGE Code from that entity to supply the CAGE Code to the Government.

(f) Do not delay submission of the offer pending receipt of a CAGE code.

**E.3 52.209-5 REPRESENTATION BY CORPORATIONS REGARDING AN UNPAID TAX LIABILITY OR A FELONY CONVICTION UNDER ANY FEDERAL LAW (DEVIATION)(OCT 2015)**

 (a) In accordance with Division H, sections 8124 and 8125 of P.L. 112-74 and sections 738 and 739 of P.L. 112-55 none of the funds made available by either Act may be used to enter into a contract with any corporation that—

(1) Has an unpaid federal tax liability, unless the agency has considered suspension or debarment of the corporation and the Suspension and Debarment Official has made a determination that this action is not necessary to protect the interests of the Government.

(2) Has a felony criminal violation under any Federal or State law within the preceding 24 months, unless the agency has considered suspension or debarment of the corporation and Suspension and Debarment Official has made a determination that this action is not necessary to protect the interests of the Government.

(b) The Offeror represents that—

(1) The offeror **does** [ ] **does not** [ ] have any unpaid Federal tax liability that has been assessed and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

(2) The offeror, its officers or agents acting on its behalf have [ ] have not [ ] been convicted of a felony criminal violation under a Federal or State law within the preceding 24 months.

**E.4 52.209-7 INFORMATION REGARDING RESPONSIBILITY MATTERS (JUL 2013)**

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

 "Administrative proceeding" means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative Proceedings, Civilian Board of Contract Appeals Proceedings, and Armed Services Board of Contract Appeals Proceedings). This includes administrative proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include agency actions such as contract audits, site visits, corrective plans, or inspection of deliverables.

 "Federal contracts and grants with total value greater than $10,000,000" means--

(1) The total value of all current, active contracts and grants, including all priced options; and

(2) The total value of all current, active orders including all priced options under indefinite-delivery, indefinite-quantity, 8(a), or requirements contracts (including task and delivery and multiple-award Schedules).

 "Principal" means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division or business segment; and similar positions).

(b) The offeror [ ] **has** [ ] **does not have** current active Federal contracts and grants with total value greater than $10,000,000.

(c) If the offeror checked "has" in paragraph (b) of this provision, the offeror represents, by submission of this offer, that the information it has entered in the Federal Awardee Performance and Integrity Information System (FAPIIS) is current, accurate, and complete as of the date of submission of this offer with regard to the following information:

(1) Whether the offeror, and/or any of its principals, has or has not, within the last five years, in connection with the award to or performance by the offeror of a Federal contract or grant, been the subject of a proceeding, at the Federal or State level that resulted in any of the following dispositions:

 (i) In a criminal proceeding, a conviction.

 (ii) In a civil proceeding, a finding of fault and liability that results in the payment of a monetary fine, penalty, reimbursement, restitution, or damages of $5,000 or more.

 (iii) In an administrative proceeding, a finding of fault and liability that results in--

 (A) The payment of a monetary fine or penalty of $5,000 or more; or

 (B) The payment of a reimbursement, restitution, or damages in excess of $100,000.

 (iv) In a criminal, civil, or administrative proceeding, a disposition of the matter by consent or compromise with an acknowledgment of fault by the Contractor if the proceeding could have led to any of the outcomes specified in paragraphs (c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this provision.

 (2) If the offeror has been involved in the last five years in any of the occurrences listed in (c)(1) of this provision, whether the offeror has provided the requested information with regard to each occurrence.

(d) The offeror shall post the information in paragraphs (c)(1)(i) through (c)(1)(iv) of this provision in FAPIIS as required through maintaining an active registration in the Central Contractor Registration database via [https://www.acquisition.gov](https://www.acquisition.gov/) (see 52.204-7).

**E.5 52.214-34 SUBMISSION OF OFFERS IN THE ENGLISH LANGUAGE (APR 1991)**

Offers submitted in response to this solicitation shall be in the English language. Offers received in other than English shall be rejected.

**E.6 52.214-35 SUBMISSION OF OFFERS IN U.S. CURRENCY (APR 1991)**

Offers submitted in response to this solicitation shall be in terms of U.S. dollars. Offers received in other

than U.S. dollars shall be rejected.

**E.7 52.216-1 TYPE OF CONTRACT (APR 1984)**

The Government contemplates award of a Firm Fixed Price, Requirements contract resulting from this solicitation.

**E.8 52.233-2 SERVICE OF PROTEST (SEP 2006)**

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:

Mailing Address:

Department of Veterans Affairs

OA&L / National Acquisition Center (003A4C4)

National Contract Service

Pharmaceutical Division

Bldg. 37

1st Avenue, One Block North of Cermak Road

Hines, IL 60141

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

**E.9 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.

**E.10 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.

**E.11 52.212-2 EVALUATION—COMMERCIAL ITEMS (OCT 2014)**

A contract will be awarded to the responsible offeror that submits an offer meeting the solicitation requirements, and is the lowest price technically acceptable offer. An offer will be considered to be technically acceptable if it meets the following criteria:

1. The offered items must fully meet the product description, to include, the drug name, strength(s), and package size(s), as stated in the Schedule of Supplies.
2. The National Drug Code (NDC) number of each offered product must be unique to the offeror.
3. All offered pharmaceuticals must be Food and Drug Administration (FDA) approved and will be verified on the FDA website.
4. The Manufacturing Facility/Place of Performance must be FDA cGMP acceptable.

One award will be made in the aggregate for line items 1 and 2 including the base year and all four option years. In order to be considered for award, the offeror shall submit a price for line items 1 and 2 for the base year and all four option years. Proposals that fail to include a price for the base year and each of the four option years for line items 1 and 2 may be rejected and receive no further consideration. Offered prices shall include the 0.5% Cost Recovery Fee (see Scope of Contract, paragraph 12).

The price evaluation will be computed by multiplying the estimated quantity of the line items by the unit prices offered for the base year and option years and adding the results of all line item. Unit prices offered shall not exceed two decimal places. The Government intends to evaluate offers and award a contract without discussions with offerors. However, the Government reserves the right to conduct discussions if determined by the Contracting Officer to be necessary. The Government reserves the right not to award a contract on this solicitation should offered prices match or exceed the current Federal Supply Schedule prices. Offers for pharmaceuticals sourced from countries not covered by the Trade Agreement Act (TAA) may be given consideration pursuant to Federal Acquisition Regulation (FAR) Part 25.

Options. The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the base 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).

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, whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

**E.12 52.212-3 OFFEROR REPRESENTATIONS AND CERTIFICATIONS—COMMERCIAL ITEMS (JAN 2017)**

 The Offeror shall complete only paragraph (b) of this provision if the Offeror has completed the annual representations and certification electronically via the System for Award Management (SAM) website located at <https://www.sam.gov/portal>. If the Offeror has not completed the annual representations and certifications electronically, the Offeror shall complete only paragraphs (c) through (u) of this provision.

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

“Administrative merits determination” means certain notices or findings of labor law violations issued by an enforcement agency following an investigation. An administrative merits determination may be final or be subject to appeal or further review. To determine whether a particular notice or finding is covered by this definition, it is necessary to consult section II.B. in the DOL Guidance.

“Arbitral award or decision” means an arbitrator or arbitral panel determination that a labor law violation occurred, or that enjoined or restrained a violation of labor law. It includes an award or decision that is not final or is subject to being confirmed, modified, or vacated by a court, and includes an award or decision resulting from private or confidential proceedings. To determine whether a particular award or decision is covered by this definition, it is necessary to consult section II.B. in the DOL Guidance.

“Civil judgment” means–

(1) In paragraph (h) of this provision: A judgment or finding of a civil offense by any court of competent jurisdiction.

(2) In paragraph (s) of this provision: Any judgment or order entered by any Federal or State court in which the court determined that a labor law violation occurred, or enjoined or restrained a violation of labor law. It includes a judgment or order that is not final or is subject to appeal. To determine whether a particular judgment or order is covered by this definition, it is necessary to consult section II.B. in the DOL Guidance.

“DOL Guidance” means the Department of Labor (DOL) Guidance entitled: “Guidance for Executive Order 13673, ‘Fair Pay and Safe Workplaces’”. The DOL Guidance was initially published in the Federal Register on August 25, 2016, and significant revisions will be published for public comment in the *Federal Register*. The DOL Guidance and subsequent versions can be obtained from [www.dol.gov/fairpayandsafeworkplaces](https://www.acquisition.gov/sites/default/files/current/far/html/www.dol.gov/fairpayandsafeworkplaces).

“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.

“Enforcement agency” means any agency granted authority to enforce the Federal labor laws. It includes the enforcement components of DOL (Wage and Hour Division, Office of Federal Contract Compliance Programs, and Occupational Safety and Health Administration), the Equal Employment Opportunity Commission, the Occupational Safety and Health Review Commission, and the National Labor Relations Board. It also means a State agency designated to administer an OSHA-approved State Plan, but only to the extent that the State agency is acting in its capacity as administrator of such plan. It does not include other Federal agencies which, in their capacity as contracting agencies, conduct investigations of potential labor law violations. The enforcement agencies associated with each labor law under E.O. 13673 are–

(1) Department of Labor Wage and Hour Division (WHD) for–

(i) The Fair Labor Standards Act;

(ii) The Migrant and Seasonal Agricultural Worker Protection Act;

(iii) [40 U.S.C. chapter 31](http://uscode.house.gov/), subchapter IV, formerly known as the Davis-Bacon Act;

(iv) [41 U.S.C. chapter 67](http://uscode.house.gov/), formerly known as the Service Contract Act;

(v) The Family and Medical Leave Act; and

(vi) E.O. 13658 of February 12, 2014 (Establishing a Minimum Wage for Contractors);

(2) Department of Labor Occupational Safety and Health Administration (OSHA) for–

(i) The Occupational Safety and Health Act of 1970; and

(ii) OSHA-approved State Plans;

(3) Department of Labor Office of Federal Contract Compliance Programs (OFCCP) for–

(i) Section 503 of the Rehabilitation Act of 1973;

(ii) The Vietnam Era Veterans’ Readjustment Assistance Act of 1972 and the Vietnam Era Veterans’ Readjustment Assistance Act of 1974; and

(iii) E.O. 11246 of September 24, 1965 (Equal Employment Opportunity);

(4) National Labor Relations Board (NLRB) for the National Labor Relations Act; and

(5) Equal Employment Opportunity Commission (EEOC) for–

(i) Title VII of the Civil Rights Act of 1964;

(ii) The Americans with Disabilities Act of 1990;

(iii) The Age Discrimination in Employment Act of 1967; and

(iv) Section 6(d) of the Fair Labor Standards Act (Equal Pay Act).

“Forced or indentured child labor” means all work or service—

(6) 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

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

“Highest-level owner” means the entity that owns or controls an immediate owner of the offeror, or that owns or controls one or more entities that control an immediate owner of the offeror. No entity owns or exercises control of the highest level owner.

“Immediate owner” means an entity, other than the offeror, that has direct control of the offeror. Indicators of control include, but are not limited to, one or more of the following: ownership or interlocking management, identity of interests among family members, shared facilities and equipment, and the common use of employees.

“Inverted domestic corporation”, means a foreign incorporated entity that meets the definition of an inverted domestic corporation under [6 U.S.C. 395(b)](http://uscode.house.gov/), applied in accordance with the rules and definitions of [6 U.S.C. 395(c)](http://uscode.house.gov/).

“Labor compliance agreement” means an agreement entered into between a contractor or subcontractor and an enforcement agency to address appropriate remedial measures, compliance assistance, steps to resolve issues to increase compliance with the labor laws, or other related matters.

“Labor laws” means the following labor laws and E.O.s:

(1) The Fair Labor Standards Act.

(2) The Occupational Safety and Health Act (OSHA) of 1970.

(3) The Migrant and Seasonal Agricultural Worker Protection Act.

(4) The National Labor Relations Act.

(5) [40 U.S.C. chapter 31](http://uscode.house.gov/), subchapter IV, formerly known as the Davis-Bacon Act.

(6) [41 U.S.C. chapter 67](http://uscode.house.gov/), formerly known as the Service Contract Act.

(7) E.O. 11246 of September 24, 1965 (Equal Employment Opportunity).

(8) Section 503 of the Rehabilitation Act of 1973.

(9) The Vietnam Era Veterans’ Readjustment Assistance Act of 1972 and the Vietnam Era Veterans' Readjustment Assistance Act of 1974.

(10) The Family and Medical Leave Act.

(11) Title VII of the Civil Rights Act of 1964.

(12) The Americans with Disabilities Act of 1990.

(13) The Age Discrimination in Employment Act of 1967.

(14) E.O. 13658 of February 12, 2014 (Establishing a Minimum Wage for Contractors).

(15) Equivalent State laws as defined in the DOL Guidance. (The only equivalent State laws implemented in the FAR are OSHA-approved State Plans, which can be found at [www.osha.gov/dcsp/osp/approved\_state\_plans.html](https://www.acquisition.gov/sites/default/files/current/far/html/www.osha.gov/dcsp/osp/approved_state_plans.html)).

“Labor law decision” means an administrative merits determination, arbitral award or decision, or civil judgment, which resulted from a violation of one or more of the laws listed in the definition of “labor laws”.

“Manufactured end product” means any end product in product and service codes (PSCs) 1000-9999, except—

(1) PSC 5510, Lumber and Related Basic Wood Materials;

(2) Product or Service Group (PSG) 87, Agricultural Supplies;

(3) PSG 88, Live Animals;

(4) PSG 89, Subsistence;

(5) PSC 9410, Crude Grades of Plant Materials;

(6) PSC 9430, Miscellaneous Crude Animal Products, Inedible;

(7) PSC 9440, Miscellaneous Crude Agricultural and Forestry Products;

(8) PSC 9610, Ores;

(9) PSC 9620, Minerals, Natural and Synthetic; and

(10) PSC 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.

“Predecessor” means an entity that is replaced by a successor and includes any predecessors of the predecessor.

“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)](http://uscode.house.gov/)).

“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)](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t37t40+200+2++%2838%29%20%20AND%20%28%2838%29%20ADJ%20USC%29%3ACITE%20%20%20%20%20%20%20%20%20), with a disability that is service-connected, as defined in [38 U.S.C. 101(16)](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t37t40+200+2++%2838%29%20%20AND%20%28%2838%29%20ADJ%20USC%29%3ACITE%20%20%20%20%20%20%20%20%20).

“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.

“Small disadvantaged business concern”, consistent with 13 CFR 124.1002, means a small business concern under the size standard applicable to the acquisition, that—

(1) Is at least 51 percent unconditionally and directly owned (as defined at 13 CFR 124.105) by—

(i) One or more socially disadvantaged (as defined at 13 CFR 124.103) and economically disadvantaged (as defined at 13 CFR 124.104) individuals who are citizens of the United States; and

(ii) Each individual claiming economic disadvantage has a net worth not exceeding $750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(2) The management and daily business operations of which are controlled (as defined at 13.CFR 124.106) by individuals, who meet the criteria in paragraphs (1)(i) and (ii) of this definition.

“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)](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t37t40+200+2++%2838%29%20%20AND%20%28%2838%29%20ADJ%20USC%29%3ACITE%20%20%20%20%20%20%20%20%20)) 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.

“Successor” means an entity that has replaced a predecessor by acquiring the assets and carrying out the affairs of the predecessor under a new name (often through acquisition or merger). The term “successor” does not include new offices/divisions of the same company or a company that only changes its name. The extent of the responsibility of the successor for the liabilities of the predecessor may vary, depending on State law and specific circumstances.

“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.

**Note to paragraph (a):** By a court order issued on October 24, 2016, the following definitions in this paragraph (a) are enjoined indefinitely as of the date of the order: “Administrative merits determination”, “Arbitral award or decision”, paragraph (2) of “Civil judgment”, “DOL Guidance”, “Enforcement agency”, “Labor compliance agreement”, “Labor laws”, and “Labor law decision”. The enjoined definitions will become effective immediately if the court terminates the injunction. At that time, GSA, DoD and NASA will publish a document in the *Federal Register* advising the public of the termination of the injunction.

(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 accessed through [http://www.acquisition.gov](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](https://www.acquisition.gov/sites/default/files/current/far/html/52_212_213.html#wp1179194), 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](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%204_12.html#wp1073667)), except for paragraphs \_\_\_\_\_\_\_\_\_\_\_\_\_\_.

[*Offeror to identify the applicable paragraphs at (c) through (t) of this provision that the offeror has completed for the purposes of this solicitation only, if any.*

*These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.*

*Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted electronically on SAM.*]

(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, 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:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(10) *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 changes in ownership and control, principal office, or HUBZone employee percentage have occurred since it was certified in accordance with 13 CFR Part 126; and

(ii) It □ is, □ is not a HUBZone joint venture that complies with the requirements of 13 CFR Part 126, and the representation in paragraph (c)(10)(i) of this provision is accurate for each HUBZone small business concern participating in the HUBZone joint venture. [The offeror shall enter the names of each of the HUBZone small business concerns participating in the HUBZone joint venture: \_\_\_\_\_\_\_\_\_\_.] Each HUBZone small business concern participating in the HUBZone 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 Certificate*. (Applies only if the clause at Federal Acquisition Regulation (FAR) [52.225-1](https://www.acquisition.gov/sites/default/files/current/far/html/52_223_226.html#wp1192900), Buy American—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—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](https://www.acquisition.gov/sites/default/files/current/far/html/FARTOCP25.html#wp225048).

(g)(1) *Buy American—Free Trade Agreements—Israeli Trade Act Certificate*. (Applies only if the clause at FAR [52.225-3](https://www.acquisition.gov/sites/default/files/current/far/html/52_223_226.html#wp1169038), Buy American—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—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—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—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](https://www.acquisition.gov/sites/default/files/current/far/html/FARTOCP25.html#wp225048).

(2) *Buy American—Free Trade Agreements—Israeli Trade Act Certificate, Alternate I*. If Alternate I to the clause at FAR [52.225-3](https://www.acquisition.gov/sites/default/files/current/far/html/52_223_226.html#wp1169038) 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—Free Trade Agreements—Israeli Trade Act”:

Canadian End Products:

|  |
| --- |
| **Line Item No.** |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

[*List as necessary*]

(3) *Buy American—Free Trade Agreements—Israeli Trade Act Certificate, Alternate II*. If Alternate II to the clause at FAR [52.225-3](https://www.acquisition.gov/sites/default/files/current/far/html/52_223_226.html#wp1169038) 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—Free Trade Agreements—Israeli Trade Act”:

Canadian or Israeli End Products:

|  |  |
| --- | --- |
| **Line Item No.** | **Country of Origin** |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

[*List as necessary*]

(4) *Buy American—Free Trade Agreements—Israeli Trade Act Certificate, Alternate III*. If Alternate III to the clause at [52.225-3](https://www.acquisition.gov/sites/default/files/current/far/html/52_223_226.html#wp1169038) 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-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](https://www.acquisition.gov/sites/default/files/current/far/html/52_223_226.html#wp1169151), 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](https://www.acquisition.gov/sites/default/files/current/far/html/FARTOCP25.html#wp225048). 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 statute. 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 $3,500 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. §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. §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. §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)*. [*The Contracting Officer must list in paragraph (i)(1) any end products being acquired under this solicitation that are included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, unless excluded at* [*22.1503*](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%2022_15.html#wp1088086)*(b)*.]

(1) *Listed end products*.

|  |  |
| --- | --- |
| **Listed End Product**  | **Listed Countries of Origin** |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

(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 Labor Standards* (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.) [*The contracting officer is to check a box to indicate if paragraph (k)(1) or (k)(2) applies.*]

□ (1) Maintenance, calibration, or repair of certain equipment as described in FAR [22.1003-4](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%2022_10.html#wp1105165)(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](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%2022_10.html#wp1105165)(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](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%2022_10.html#wp1105165)(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](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%2022_10.html#wp1105165)(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 Labor Standards 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)*](http://uscode.house.gov/). (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)](http://uscode.house.gov/), reporting requirements of [26 U.S.C. 6041, 6041A, and 6050M](http://uscode.house.gov/), 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)](http://uscode.house.gov/)). If the resulting contract is subject to the payment reporting requirements described in FAR [4.904](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%204_9.html#wp1091081), 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) Government agencies are not permitted to use appropriated (or otherwise made available) funds for contracts with either an inverted domestic corporation, or a subsidiary of an inverted domestic corporation, unless the exception at [9.108-2](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%209_1.html#wp1085903)(b) applies or the requirement is waived in accordance with the procedures at [9.108-4](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%209_1.html#wp1085953).

(2) *Representation*. The Offeror represents that—

(i) It □ is, □  is not an inverted domestic corporation; and

(ii) It □ is, □ 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 e-mail questions concerning sensitive technology to the Department of State at [CISADA106@state.gov](https://www.acquisition.gov/sites/default/files/current/far/html/CISADA106%40state.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 $3,500 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](https://www.acquisition.gov/sites/default/files/current/far/html/52_212_213.html#wp1179194)(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.

(p) Ownership or Control of Offeror. (Applies in all solicitations when there is a requirement to be registered in SAM or a requirement to have a unique entity identifier in the solicitation.

(1) The Offeror represents that it □ has or □ does not have an immediate owner. If the Offeror has more than one immediate owner (such as a joint venture), then the Offeror shall respond to paragraph (2) and if applicable, paragraph (3) of this provision for each participant in the joint venture.

(2) If the Offeror indicates “has” in paragraph (p)(1) of this provision, enter the following information:

Immediate owner CAGE code: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

Immediate owner legal name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

(Do not use a “doing business as” name)

Is the immediate owner owned or controlled by another entity: □ Yes or □ No.

(3) If the Offeror indicates “yes” in paragraph (p)(2) of this provision, indicating that the immediate owner is owned or controlled by another entity, then enter the following information:

Highest-level owner CAGE code: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

Highest-level owner legal name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

(Do not use a “doing business as” name)

(q) *Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law*.

(1) As required by sections 744 and 745 of Division E of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235), and similar provisions, if contained in subsequent appropriations acts, The Government will not enter into a contract with any corporation that—

(i) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless an agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government; or

(ii) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless an agency has considered suspension or debarment of the corporation and made a determination that this action is not necessary to protect the interests of the Government.

(2) The Offeror represents that—

(i) It is □ is not □ a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and

(ii) It is □ is not □ a corporation that was convicted of a felony criminal violation under a Federal law within the preceding 24 months.

(r) *Predecessor of Offeror*. (Applies in all solicitations that include the provision at [52.204-16](https://www.acquisition.gov/sites/default/files/current/far/html/52_200_206.html#wp1152012), Commercial and Government Entity Code Reporting.)

(1) The Offeror represents that it □ is or □ is not a successor to a predecessor that held a Federal contract or grant within the last three years.

(2) If the Offeror has indicated “is” in paragraph (r)(1) of this provision, enter the following information for all predecessors that held a Federal contract or grant within the last three years (if more than one predecessor, list in reverse chronological order):

Predecessor CAGE code: \_\_\_\_\_\_\_\_ (or mark “Unknown”)

Predecessor legal name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Do not use a “doing business as” name)

(s) *Representation regarding compliance with labor laws (Executive Order 13673)*. If the offeror is a joint venture that is not itself a separate legal entity, each concern participating in the joint venture shall separately comply with the requirements of this provision.

(1)(i) For solicitations issued on or after October 25, 2016 through April 24, 2017: The Offeror □ does □ does not anticipate submitting an offer with an estimated contract value of greater than $50 million.

(ii) For solicitations issued after April 24, 2017: The Offeror □ does □ does not anticipate submitting an offer with an estimated contract value of greater than $500,000.

(2) If the Offeror checked “does” in paragraph (s)(1)(i) or (ii) of this provision, the Offeror represents to the best of the Offeror’s knowledge and belief [*Offeror to check appropriate block*]:

□ (i) There has been no administrative merits determination, arbitral award or decision, or civil judgment for any labor law violation(s) rendered against the offeror (see definitions in paragraph (a) of this section) during the period beginning on October 25, 2015 to the date of the offer, or for three years preceding the date of the offer, whichever period is shorter; or

□ (ii) There has been an administrative merits determination, arbitral award or decision, or civil judgment for any labor law violation(s) rendered against the Offeror during the period beginning on October 25, 2015 to the date of the offer, or for three years preceding the date of the offer, whichever period is shorter.

(3)(i) If the box at paragraph (s)(2)(ii) of this provision is checked and the Contracting Officer has initiated a responsibility determination and has requested additional information, the Offeror shall provide–

(A) The following information for each disclosed labor law decision in the System for Award Management (SAM) at [www.sam.gov](https://www.acquisition.gov/sites/default/files/current/far/html/www.sam.gov), unless the information is already current, accurate, and complete in SAM. This information will be publicly available in the Federal Awardee Performance and Integrity Information System (FAPIIS):

(1) The labor law violated.

(2) The case number, inspection number, charge number, docket number, or other unique identification number.

(3) The date rendered.

(4) The name of the court, arbitrator(s), agency, board, or commission that rendered the determination or decision;

(B) The administrative merits determination, arbitral award or decision, or civil judgment document, to the Contracting Officer, if the Contracting Officer requires it;

(C) In SAM, such additional information as the Offeror deems necessary to demonstrate its responsibility, including mitigating factors and remedial measures such as offeror actions taken to address the violations, labor compliance agreements, and other steps taken to achieve compliance with labor laws. Offerors may provide explanatory text and upload documents. This information will not be made public unless the contractor determines that it wants the information to be made public; and

(D) The information in paragraphs (s)(3)(i)(A) and (s)(3)(i)(C) of this provision to the Contracting Officer, if the Offeror meets an exception to SAM registration (see FAR [4.1102](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%204_11.html#wp1073577)(a)).

(ii)(A) The Contracting Officer will consider all information provided under (s)(3)(i) of this provision as part of making a responsibility determination.

(B) A representation that any labor law decision(s) were rendered against the Offeror will not necessarily result in withholding of an award under this solicitation. Failure of the Offeror to furnish a representation or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.

(C) The representation in paragraph (s)(2) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous representation, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation in accordance with the procedures set forth in FAR [12.403](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%2012_4.html#wp1087720).

(4) The Offeror shall provide immediate written notice to the Contracting Officer if at any time prior to contract award the Offeror learns that its representation at paragraph (s)(2) of this provision is no longer accurate.

(5) The representation in paragraph (s)(2) of this provision will be public information in the Federal Awardee Performance and Integrity Information System (FAPIIS).

**Note to paragraph (s)**: By a court order issued on October 24, 2016, this paragraph (s) is enjoined indefinitely as of the date of the order. The enjoined paragraph will become effective immediately if the court terminates the injunction. At that time, GSA, DoD and NASA will publish a document in the *Federal Register* advising the public of the termination of the injunction.

(t) *Public Disclosure of Greenhouse Gas Emissions and Reduction Goals*. Applies in all solicitations that require offerors to register in SAM ([52.212-1](https://www.acquisition.gov/sites/default/files/current/far/html/52_212_213.html#wp1179124)(k)).

(1) This representation shall be completed if the Offeror received $7.5 million or more in contract awards in the prior Federal fiscal year. The representation is optional if the Offeror received less than $7.5 million in Federal contract awards in the prior Federal fiscal year.

(2) *Representation*. [*Offeror to check applicable block(s) in paragraph (t)(2)(i) and (ii)*].

(i) The Offeror (itself or through its immediate owner or highest-level owner) □ does, □ does not publicly disclose greenhouse gas emissions, *i.e*., makes available on a publicly accessible website the results of a greenhouse gas inventory, performed in accordance with an accounting standard with publicly available and consistently applied criteria, such as the Greenhouse Gas Protocol Corporate Standard.

(ii) The Offeror (itself or through its immediate owner or highest-level owner) □ does, □ does not publicly disclose a quantitative greenhouse gas emissions reduction goal, *i.e.*, make available on a publicly accessible website a target to reduce absolute emissions or emissions intensity by a specific quantity or percentage.

(iii) A publicly accessible website includes the Offeror’s own website or a recognized, third-party greenhouse gas emissions reporting program.

(3) If the Offeror checked “does” in paragraphs (t)(2)(i) or (t)(2)(ii) of this provision, respectively, the Offeror shall provide the publicly accessible website(s) where greenhouse gas emissions and/or reduction goals are reported:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

(u)(1) In accordance with section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions), Government agencies are not permitted to use appropriated (or otherwise made available) funds for contracts with an entity that requires employees or subcontractors of such entity seeking to report waste, fraud, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

(2) The prohibition in paragraph (u)(1) of this provision does not contravene requirements applicable to Standard Form 312 (Classified Information Nondisclosure Agreement), Form 4414 (Sensitive Compartmented Information Nondisclosure Agreement), or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

(3) *Representation*. By submission of its offer, the Offeror represents that it will not require its employees or subcontractors to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting waste, fraud, or abuse related to the performance of a Government contract to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information (*e.g*., agency Office of the Inspector General).