

|  |  |   |  |  |  |   |  |
|--|--|---|--|--|--|---|--|
| <b>SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS<br/>OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, &amp; 30</b>  |  |   |  | 1. REQUISITION NO.   |  | PAGE 1 OF 30  |  |
| 2. CONTRACT NO.  |  | 3. AWARD/EFFECTIVE DATE   |  | 4. ORDER NO.   |  | 5. SOLICITATION NUMBER<br>VA260-17-Q-0716   |  |
|  |  |   |  |  |  | 6. SOLICITATION ISSUE DATE<br>09-26-2017  |  |
| 7. FOR SOLICITATION INFORMATION CALL:  |  | a. NAME<br>Greg Wilde   |  |  |  | b. TELEPHONE NO. (No Collect Calls)<br>360-553-7627   |  |
|  |  |   |  |  |  | 8. OFFER DUE DATE/LOCAL TIME<br>09-29-2017 11 AM EDT  |  |
| 9. ISSUED BY<br>Department of Veterans Affairs<br>Network Contracting Office 20<br><br>5115 NE 82nd Ave, Suite 102<br>Vancouver WA 98662   |  |   |  | 10. THIS ACQUISITION IS<br><input checked="" type="checkbox"/> UNRESTRICTED OR <input type="checkbox"/> SET ASIDE: _____ % FOR:<br><input type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> WOMEN-OWNED SMALL BUSINESS (WOSB) ELIGIBLE UNDER THE WOMEN-OWNED SMALL BUSINESS PROGRAM NAICS: 334516<br><input type="checkbox"/> HUBZONE SMALL BUSINESS <input type="checkbox"/> EDWOSB<br><input type="checkbox"/> SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS <input type="checkbox"/> 8(A) SIZE STANDARD: 1000 Employees |  |   |  |
| 11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED<br><input type="checkbox"/> SEE SCHEDULE   |  | 12. DISCOUNT TERMS  |  | 13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)<br><input type="checkbox"/>  |  | 13b. RATING<br>N/A  |  |
|  |  |   |  |  |  | 14. METHOD OF SOLICITATION<br><input checked="" type="checkbox"/> RFQ <input type="checkbox"/> IFB <input type="checkbox"/> RFP |  |
| 15. DELIVER TO<br>Department of Veterans Affairs<br>VA Puget Sound Health Care System<br>attn: James Meabon<br>1660 S Columbian Way<br>Seattle WA 98108  |  |   |  | 16. ADMINISTERED BY<br>Department of Veterans Affairs<br>Network Contracting Office 20<br><br>5115 NE 82nd Ave, Suite 102<br>Vancouver WA 98662  |  |   |  |
| 17a. CONTRACTOR/OFFEROR  |  | 18a. PAYMENT WILL BE MADE BY  |  |  |  |   |  |
|  |  |   |  |  |  |   |  |
| TELEPHONE NO.  |  | DUNS:   |  | DUNS+4:  |  |   |  |
| <input type="checkbox"/> 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER   |  |   |  | <input type="checkbox"/> 18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED<br><input type="checkbox"/> SEE ADDENDUM   |  |   |  |
| 19. ITEM NO.   |  | 20. See CONTINUATION Page<br>SCHEDULE OF SUPPLIES/SERVICES  |  | 21. QUANTITY   |  | 22. UNIT  |  |
|  |  |   |  |  |  | 23. UNIT PRICE  |  |
|  |  |   |  |  |  | 24. AMOUNT  |  |
|  |  | BioTek Cytation 5 Cell-Imaging Multi-Mode Reader, BioTek MultiFlo FX Microplate Dispenser, BioTek Biospa 8 Automated Incubator, installation, and configuration. Brand-Name or Equal. See continuation pages. |  |  |  |   |  |
|  |  | (Use Reverse and/or Attach Additional Sheets as Necessary)  |  |  |  |   |  |
| 25. ACCOUNTING AND APPROPRIATION DATA See CONTINUATION Page  |  |   |  | 26. TOTAL AWARD AMOUNT (For Govt. Use Only)  |  |   |  |
| <input checked="" type="checkbox"/> 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4. FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA  |  |   |  | <input checked="" type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED.   |  |   |  |
| <input type="checkbox"/> 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. FAR 52.212-5 IS ATTACHED. ADDENDA  |  |   |  | <input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED   |  |   |  |
| <input type="checkbox"/> 28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN _____ COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED |  |   |  | <input type="checkbox"/> 29. AWARD OF CONTRACT: REF. _____ OFFER DATED _____ YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN IS ACCEPTED AS TO ITEMS:  |  |   |  |
| 30a. SIGNATURE OF OFFEROR/CONTRACTOR   |  |   |  | 31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)   |  |   |  |
| 30b. NAME AND TITLE OF SIGNER (TYPE OR PRINT)  |  | 30c. DATE SIGNED  |  | 31b. NAME OF CONTRACTING OFFICER (TYPE OR PRINT)   |  | 31c. DATE SIGNED  |  |
|  |  |   |  |  |  |   |  |

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## SECTION B - CONTINUATION OF SF 1449 BLOCKS

### B.1 PRICE/COST SCHEDULE

#### ITEM INFORMATION

| ITEM<br>NUMBER | DESCRIPTION OF<br>SUPPLIES/SERVIC<br>ES   | QUANTIT<br>Y | UNI<br>T | UNIT PRICE | AMOUNT |
|----------------|---|--------------|----------|------------|--------|
| 0001           | 1 1 EA 11 120 551<br>AUTOMATED<br>INCUBATOR GAS<br>MODULE 44,169.13<br>44,169.13 Incubator,<br>Automated; BioTek;<br>BioSpa 8; Incubation<br>to 45degC; Includes<br>BioSpa software and<br>one alignment kit;<br>w/HEPA filter; 8 micr<br>LOCAL STOCK<br>NUMBER: 11 120 551 | 1.00         | EA       | _____      | _____  |
| 0002           | 2 1 EA 11 120 552<br>BIOSPA<br>ALIGNMENT KIT<br>235.53 235.53 Kit,<br>Alignment; BioTek;<br>For use with BioSpa 8,<br>Cytation 3, Cytation 5,<br>Synergy Neo2 Vendor<br>Catalog # 1410008<br>This item is being sold<br>as 1 per each<br>LOCAL STOCK<br>NUMBER: 11 120 552  | 1.00         | EA       | _____      | _____  |
| 0003           | 3 1 EA 11 120 555<br>BIOSPA<br>ALIGNMENT KIT<br>803.56 803.56<br>Accessory, BioTek;<br>Alignment kit and<br>Instrument Base; For<br>all liquid handlers; For<br>use with BioSpa 8<br>Vendor Catalog #<br>1410011 This item is<br>being so<br>LOCAL STOCK                    | 1.00         | EA       | _____      | _____  |

|                    |   |      |    |       |       |
|--------------------|---|------|----|-------|-------|
| NUMBER: 11 120 555 |   |      |    |       |       |
| <b>0004</b>        | 4 1 EA NON-<br>CATALOG BIOSPA<br>FIELD<br>CONFIGURATION<br>6,569.00 6,569.00<br>Vendor Catalog #<br>CONFIELDBIOSPAG<br>Open Market<br>LOCAL STOCK<br>NUMBER: NON-<br>CATALOG  | 1.00 | EA | _____ | _____ |
|                    |   |      |    | —     | —     |
| <b>0005</b>        | 5 1 EA<br>BTCYT5MFAV<br>CYTATION 5<br>IMAGING MULTI<br>MODE 107,555.00<br>107,555.00 Reader,<br>Cell Imaging Multi-<br>Mode; BioTek;<br>Cytation 5; Fluores,<br>brightfield and H-E<br>imaging w/<br>monochrom fluor,<br>filter/dichroic fluo<br>LOCAL STOCK<br>NUMBER:<br>BTCYT5MFAV | 1.00 | EA | _____ | _____ |
|                    |   |      |    | —     | —     |
| <b>0006</b>        | 6 1 EA BT8040003<br>DUAL REAGENT<br>DISPENSER<br>MODULE 9,115.00<br>9,115.00 Dispenser<br>Module, Dual reagent;<br>BioTek; Dispenses<br>into 1- to 384-well;<br>For use with Synergy<br>NEO HTS Multi-Mode<br>Microplate Reader<br>Vendor<br>LOCAL STOCK<br>NUMBER:<br>BT8040003      | 1.00 | EA | _____ | _____ |
|                    |   |      |    | —     | —     |
| <b>0007</b>        | 7 1 EA BT1320514<br>INJECTOR HEAD<br>FOR DUAL   | 1.00 | EA | _____ | _____ |
|                    |   |      |    | —     | —     |

|             |   |      |    |       |       |       |
|-------------|---|------|----|-------|-------|-------|
|             | REAGENT 210.00<br>210.00 Head, Injector;<br>BioTek; 21deg. angled<br>tips for dispensing<br>towards sides of<br>microplate well to<br>prevent cell layer<br>disruption; For use<br>with<br>LOCAL STOCK<br>NUMBER:<br>BT1320514  |      |    |       |       |       |
| <b>0008</b> | 8 1 EA BT1210008<br>GAS CONTROLLER<br>FOR CO2 AND O2<br>8,040.00 8,040.00<br>Controller, Gas;<br>Biotek; Used<br>w/Cytation3 Cell<br>Imaging Multi-Mode<br>and Synergy H1<br>Hybrid Microplate<br>Readers; Controls<br>CO2, O2 levels to<br>LOCAL STOCK<br>NUMBER:<br>BT1210008 | 1.00 | EA | _____ | _____ | _____ |
| <b>0009</b> | 9 1 EA BT1220517<br>CYTATION 3 20X<br>OBJECTIVE 2,605.00<br>2,605.00 Objective;<br>BioTek; BioStack; For<br>use with cytation3 cell<br>imaging multi-mode<br>reader; Magnification:<br>20X Vendor Catalog #<br>1220517 This item is<br>LOCAL STOCK<br>NUMBER:<br>BT1220517      | 1.00 | EA | _____ | _____ | _____ |
| <b>0010</b> | 10 1 EA BT1220544<br>CYTATION3<br>IMAGING 40X OBJ<br>4,645.00 4,645.00<br>Objective; BioTek;<br>BioStack; For use with<br>cytation3 cell imaging<br>multi-mode reader;  | 1.00 | EA | _____ | _____ | _____ |

|             |  |      |    |  |  |
|-------------|--|------|----|--|--|
|             | Magnification: 40X<br>Vendor Catalog #<br>1220544 This item<br>LOCAL STOCK<br>NUMBER:<br>BT1220544   |      |    |  |  |
| <b>0011</b> | 11 1 EA BT1220519<br>CYTATION 3 4X<br>OBJECTIVE 970.00<br>970.00 Objective;<br>BioTek; BioStack; For<br>use with cytation3 cell<br>imaging multi-mode<br>reader; Magnification:<br>4X Vendor Catalog #<br>1220519 Hazardous<br>Materia<br>LOCAL STOCK<br>NUMBER:<br>BT1220519    | 1.00 | EA |  |  |
| <b>0012</b> | 12 1 EA BT1225100<br>CYTATION 3<br>FILTER CUBE<br>1,670.00 1,670.00<br>Accessory, Imaging,<br>Cytation3; BioTek;<br>Filter Cube; Blue<br>(DAPI); Requires Blue<br>(DAPI) LED; Each<br>Vendor Catalog #<br>1225100 Hazardous<br>Material T<br>LOCAL STOCK<br>NUMBER:<br>BT1225100 | 1.00 | EA |  |  |
| <b>0013</b> | 13 1 EA BT1225007<br>LED CUBE 840.00<br>840.00 Cube, LED;<br>BioTek; For use with<br>Cytation 3, Cytation 5<br>Cell Imaging Multi-<br>Mode Readers and<br>Lionheart FX<br>Automated Live Cell<br>Imager Vendor<br>Catalog # 1225007 Thi<br>LOCAL STOCK<br>NUMBER:                | 1.00 | EA |  |  |

|             |  |      |    |       |       |       |
|-------------|--|------|----|-------|-------|-------|
| BT1225007   |  |      |    |       |       |       |
| <b>0014</b> | 14 1 EA BT1225101<br>CYTATION 3<br>FILTER CUBE<br>1,670.00 1,670.00<br>Accessory, Imaging,<br>Cytation3; BioTek;<br>Filter Cube; Green<br>(GFP); Requires Green<br>(GFP) LED; Each<br>Vendor Catalog #<br>1225101 This item is<br>being s<br>LOCAL STOCK<br>NUMBER:<br>BT1225101 | 1.00 | EA | _____ | _____ | _____ |
| <b>0015</b> | 15 1 EA BT1225001<br>CYTATION 3 LED<br>840.00 840.00<br>Accessory, Imaging,<br>Cytation3; BioTek;<br>LED; Green<br>(GFP)/Cyan (CFP);<br>For use with Blue<br>(GFP)/Cyan (CFP)<br>Filter Cube; Each<br>Vendor Catalog #<br>1225001 This it<br>LOCAL STOCK<br>NUMBER:<br>BT1225001 | 1.00 | EA | _____ | _____ | _____ |
| <b>0016</b> | 16 1 EA BT1225102<br>CYTATION 3<br>FILTER CUBE<br>1,670.00 1,670.00<br>Accessory, Imaging,<br>Cytation3; BioTek;<br>Filter Cube; Red<br>(Texas Red); Requires<br>Red (Texas Red) LED;<br>Each Vendor Catalog #<br>1225102 This item is<br>LOCAL STOCK<br>NUMBER:<br>BT1225102    | 1.00 | EA | _____ | _____ | _____ |

|             |  |      |    |       |       |
|-------------|--|------|----|-------|-------|
| <b>0017</b> | 17 1 EA BT1225002<br>CYTATION 3 LED<br>840.00 840.00<br>Accessory, Imaging,<br>Cytation3; BioTek;<br>LED; Red (Texas<br>Red); For use with Red<br>(Texas Red) Filter<br>Cube; Each Vendor<br>Catalog # 1225002<br>This item is being s<br>LOCAL STOCK<br>NUMBER:<br>BT1225002      | 1.00 | EA | _____ | _____ |
| <b>0018</b> | 18 1 EA<br>BTGEN5IPRIM<br>GEN5IPRIME<br>10,000.00 10,000.00<br>Software, Imaging;<br>BioTek; Gen5 Image<br>Prime; For use with<br>Cytation 3, Cytation 5<br>Cell Imaging Multi-<br>Mode Reader and<br>Lionheart FX<br>Automated Live Cell<br>LOCAL STOCK<br>NUMBER:<br>BTGEN5IPRIM | 1.00 | EA | _____ | _____ |
| <b>0019</b> | 19 1 EA NON-<br>CATALOG<br>CYTATION 5 FIELD<br>CONFIGURATION<br>9,690.00 9,690.00<br>Vendor Catalog #<br>CONFIELDCYT5M<br>Open Market<br>LOCAL STOCK<br>NUMBER: NON-<br>CATALOG  | 1.00 | EA | _____ | _____ |
| <b>0020</b> | 20 1 EA BTMFXPW<br>MULTIFLO FX<br>WITH PERI<br>WASHER 19,235.00<br>19,235.00 Dispenser,<br>Microplate; BioTek;<br>MultiFlo FX; w/1 peri-<br>pump dispenser/wash  | 1.00 | EA | _____ | _____ |



|             |  |      |    |       |       |
|-------------|--|------|----|-------|-------|
|             | module; For 6-1536-<br>well plates; 4 reagents<br>dispensed in parall<br>LOCAL STOCK<br>NUMBER:<br>BTMFXPW   |      |    |       |       |
| <b>0021</b> | 21 1 EA 11 120 643<br>EXT PERI PUMP<br>DISP MODULE<br>4,420.00 4,420.00<br>Module, Dispenser;<br>BioTek; External;<br>Adds 1 Peristaltic<br>pump dispenser to<br>MultiFlo base<br>instruments; For 6- to<br>1536-well microplates;<br>Inc<br>LOCAL STOCK<br>NUMBER: 11 120 643 | 1.00 | EA | _____ | _____ |
|             |  |      |    | —     | —     |
| <b>0022</b> | 22 1 EA 11 120 644<br>EXT DUAL<br>SYRINGE DISP<br>AUTO 7,735.00<br>7,735.00 Module,<br>Dispenser; BioTek;<br>External; Adds 2<br>syringe drive<br>dispensers to MultiFlo<br>base instruments;<br>Autoclavable Vendor<br>Catalog # 7210008<br>LOCAL STOCK<br>NUMBER: 11 120 644 | 1.00 | EA | _____ | _____ |
|             |  |      |    | —     | —     |
| <b>0023</b> | 23 1 EA NON-<br>CATALOG<br>MULTIFLO FX<br>FIELD CONFIG<br>2,678.00 2,678.00<br>Vendor Catalog #<br>CONFIELDMFXPW<br>Open Market<br>LOCAL STOCK<br>NUMBER: NON-<br>CATALOG  | 1.00 | EA | _____ | _____ |
|             |  |      |    | —     | —     |

|             |                                |      |    |                    |       |
|-------------|--------------------------------|------|----|--------------------|-------|
| <b>0024</b> | Installation and configuration | 1.00 | JB | _____              | _____ |
|             |                                |      |    | —                  | —     |
|             |                                |      |    | <b>GRAND TOTAL</b> | _____ |
|             |                                |      |    |                    | —     |

Please provide a quote or complete the price schedule above. If not providing items exactly as listed, you must provide documentation that explains how your items meet the salient characteristics below.

The three components are:

- 1) BioTek Cytation 5 Cell Imaging Multi-Mode Reader, Brand-Name or Equal. Salient characteristics:
  - a. Must have automated digital microscopy and multi-mode detection
  - b. Fluorescence, brightfield, color brightfield, and phase-contrast imaging modes
  - c. Timelapse and montage imaging methods
  - d. 1.25x to 60x (approximately) magnification
  - e. 16-bit CCD camera or better
  - f. Autofocus
  - g. Image processing software for cell counting
  - h. Capable of performing fluorescence, absorbance, and luminescence spectral scans
  - i. Gas control and monitoring for CO<sub>2</sub> and O<sub>2</sub>.
  - j. Must be able to control temperature up to 65 degrees Celsius.
- 2) BioTek BioSpa 8 Automated Incubator, Brand-Name or Equal. Salient characteristics:
  - a. Must handle lidded and unlidded microplates up to 24.5 mm tall
  - b. Must handle cell culture (35 mm and 60 mm) dishes and T25 flasks
  - c. Must be able to control temperature up to 45 degrees Celsius
  - d. Software that provides control, monitoring, and logging of CO<sub>2</sub>/O<sub>2</sub> levels and humidity.
  - e. Provides for scheduling and reporting for all liquid handling, detection, and imaging workflows.
  - f. Capability to run uninterrupted for up to 2 weeks.
- 3) BioTek MultiFlo FX Microplate Dispenser, Brand-Name or Equal. Salient characteristics:
  - a. Ability to dispense up to four reagents in parallel.
  - b. Must be compatible with differing microplates, including 6-, 12-, 24-, 48-, 96-, 384-, and 1534-well microplates, including plate washing capability, and random access dispensing.
  - c. Able to dispense individual volumes into individual wells.
  - d. Must be user programmable, have USB port for protocol transfer and storage, with onboard and pc-based software for programming and execution.

## SECTION C - CONTRACT CLAUSES

### C.1 52.212-4 CONTRACT TERMS AND CONDITIONS—COMMERCIAL ITEMS (JAN 2017)

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

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

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

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

(d) *Disputes.* This contract is subject to 41 U.S.C. chapter 71, Contract Disputes. Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

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

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

(g) *Invoice.*

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

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

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

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

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

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

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

(i) Payment.—

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

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

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

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

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

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

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

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

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

(D) Contractor point of contact.

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

(6) *Interest*.

(i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in 41 U.S.C. 7109, which is applicable to the period in which the amount becomes due, as provided in (i)(6)(v) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

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

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

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

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

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

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

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

(A) The date fixed under this contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(r) *Compliance with laws unique to Government contracts*. The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. chapter 37, Contract Work Hours and Safety Standards; 41 U.S.C. chapter 87, Kickbacks; 41 U.S.C. 4712 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. chapter 21 relating to procurement integrity.

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

(1) The schedule of supplies/services.

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

(3) The clause at 52.212-5.

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

(5) Solicitation provisions if this is a solicitation.

(6) Other paragraphs of this clause.

(7) The Standard Form 1449.

(8) Other documents, exhibits, and attachments

(9) The specification.

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

(1) Unless exempted by an addendum to this contract, the Contractor is responsible during performance and through final payment of any contract for the accuracy and completeness of the data within the SAM database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the SAM database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the SAM database to ensure it is current, accurate and complete. Updating information in

the SAM does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

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

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

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

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

(u) *Unauthorized Obligations.*

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

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

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

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



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

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

(End of Clause)

#### 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:

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

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

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

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

(End of Clause)

| <u><b>FAR<br/>Number</b></u> | <u><b>Title</b></u>  | <u><b>Date</b></u> |
|------------------------------|--|--------------------|
| 52.203-17                    | CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS<br>AND REQUIREMENT TO INFORM EMPLOYEES OF<br>WHISTLEBLOWER RIGHTS | APR 2014           |
| 52.204-4                     | PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED<br>PAPER  | MAY 2011           |
| 52.232-40                    | PROVIDING ACCELERATED PAYMENTS TO SMALL<br>BUSINESS SUBCONTRACTORS   | DEC 2013           |
| 852.203-70                   | COMMERCIAL ADVERTISING   | JAN 2008           |
| 852.211-73                   | BRAND NAME OR EQUAL  | JAN 2008           |
| 852.232-72                   | ELECTRONIC SUBMISSION OF PAYMENT REQUESTS  | NOV 2012           |
| 852.246-71                   | INSPECTION   | JAN 2008           |

### **C.3 VAAR 852.246-70 GUARANTEE (JAN 2008)**

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

(End of Clause)

(End of Addendum to 52.212-4)

#### **C.4 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:

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

☐ (2) 52.203-13, Contractor Code of Business Ethics and Conduct (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.)

☒ (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).

☒ (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).

☐ (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.

☐ (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 (June 2003) (15 U.S.C. 644).

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

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

☐ (16) 52.219-8, Utilization of Small Business Concerns (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.

☐ (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)).

☐ (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. 657f).

☐ (22) 52.219-28, Post Award Small Business Program Rerepresentation (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)).

☒ (25) 52.222-3, Convict Labor (June 2003) (E.O. 11755).

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

☐ (27) 52.222-21, Prohibition of Segregated Facilities (APR 2015).

☒ (28) 52.222-26, Equal Opportunity (SEP 2016) (E.O. 11246).

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

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

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

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

☒ (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). (E. O. 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, DoD, GSA, 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.)

☐ (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).

☐ (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.)

☐ (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 (JUN 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.

☐ (44) 52.223-18, Encouraging Contractor Policies to Ban Text Messaging While Driving (AUG 2011)

☐ (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) (5 U.S.C. 552a).

☐ (ii) Alternate I (JAN 2017) of 52.224-3.

☒ (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.

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

☐ (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).

☐ (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 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 (OCT 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.

(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)(A) 52.222-50, 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)(xvii):** 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, DoD, GSA, 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) (5 U.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.

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

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

(End of Clause)

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

## SECTION E - SOLICITATION PROVISIONS

### 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:

#### **E.1 52.252-1 SOLICITATION PROVISIONS INCORPORATED BY REFERENCE (FEB 1998)**

This solicitation incorporates one or more solicitation provisions 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. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at this/these address(es):

<http://www.acquisition.gov/far/index.html>  
<http://www.va.gov/oal/library/vaar/>

(End of Provision)

| <u>FAR<br/>Number</u> | <u>Title</u>                                      | <u>Date</u> |
|-----------------------|---|-------------|
| 52.211-6              | BRAND NAME OR EQUAL                               | AUG 1999    |
| 852.233-70            | PROTEST CONTENT/ALTERNATIVE DISPUTE<br>RESOLUTION | JAN 2008    |
| 852.233-71            | ALTERNATE PROTEST PROCEDURE                       | JAN 1998    |

#### **E.2 52.209-5 REPRESENTATION BY CORPORATIONS REGARDING AN UNPAID TAX LIABILITY OR A FELONY CONVICTION UNDER ANY FEDERAL LAW (DEVIATION)(MAR 2012)**

(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.

(End of Provision)

### **E.3 52.216-1 TYPE OF CONTRACT (APR 1984)**

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

(End of Provision)

### **E.4 52.225-18 PLACE OF MANUFACTURE (MAR 2015)**

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

"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.

(b) 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.

(End of Provision)

#### **E.5 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:

Hand-Carried Address:

Department of Veterans Affairs

Network Contracting Office 20

5115 NE 82nd Ave, Suite 102

Vancouver WA 98662

Mailing Address:

Department of Veterans Affairs

Network Contracting Office 20

5115 NE 82nd Ave, Suite 102

Vancouver WA 98662

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

(End of Provision)

(End of Addendum to 52.212-1)

#### **E.6 52.212-2 EVALUATION—COMMERCIAL ITEMS (OCT 2014)**

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

adherence to salient characteristics.

Technical and past performance, when combined, are of equal importance to price.

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

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

(End of Provision)