

**SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS
OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, & 30**

1. REQUISITION NO. PAGE 1 OF 122

2. CONTRACT NO.	3. AWARD/EFFECTIVE DATE	4. ORDER NO.	5. SOLICITATION NUMBER VA263-17-R-0500	6. SOLICITATION ISSUE DATE 11-1-2017
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7. FOR SOLICITATION INFORMATION CALL:	a. NAME Charles Morin, Contract Specialist	b. TELEPHONE NO. (No Collect Calls) 612-344-2149	8. OFFER DUE DATE/LOCAL TIME 11-29-2017 11:00PM CST
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9. ISSUED BY Department of Veterans Affairs NCO 23 - St. Paul Suite 506 316 Robert Street N. St. Paul, MN 55101	CODE	10. THIS ACQUISITION IS <input checked="" type="checkbox"/> UNRESTRICTED OR <input type="checkbox"/> SET ASIDE: _____ % FOR: <input type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> HUBZONE SMALL BUSINESS <input type="checkbox"/> SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS <input type="checkbox"/> WOMEN-OWNED SMALL BUSINESS (WOSB) ELIGIBLE UNDER THE WOMEN-OWNED SMALL BUSINESS PROGRAM <input type="checkbox"/> EDWOSB <input type="checkbox"/> 8(A)	NAICS: SIZE STANDARD:
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11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED <input checked="" type="checkbox"/> SEE SCHEDULE	12. DISCOUNT TERMS	<input type="checkbox"/> 13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)	13b. RATING N/A	14. METHOD OF SOLICITATION <input type="checkbox"/> RFQ <input type="checkbox"/> IFB <input checked="" type="checkbox"/> RFP
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15. DELIVER TO Department of Veterans Affairs Sioux Falls VA Health Care System 2501 West 22nd Street Sioux Falls, SD 57105	CODE	16. ADMINISTERED BY Department of Veterans Affairs NCO 23 - St. Paul Suite 506 316 Robert Street N. St. Paul, MN 55101	CODE
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17a. CONTRACTOR/OFFEROR TELEPHONE NO. _____ DUNS: _____ DUNS+4: _____	CODE	FACILITY CODE	18a. PAYMENT WILL BE MADE BY Department of Veterans Affairs Financial Services Center PO Box 149971 Austin TX 78714-9971 PHONE: _____ FAX: _____	CODE	Y
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<input type="checkbox"/> 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER	<input type="checkbox"/> SEE ADDENDUM	18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED
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19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
	Pathology Services for the Sioux Falls, VA Health Care System. Period of Performance: 6/1/2018 - 5/31/2019 See page 13 for Schedule of Services. (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)
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<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 checked="" type="checkbox"/> 28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN <u>1</u> COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED	<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:
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30a. SIGNATURE OF OFFEROR/CONTRACTOR	31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)
30b. NAME AND TITLE OF SIGNER (TYPE OR PRINT)	31b. NAME OF CONTRACTING OFFICER (TYPE OR PRINT) Contracting Officer
30c. DATE SIGNED	31c. DATE SIGNED

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SECTION B - CONTINUATION OF SF 1449 BLOCKS

B.1 CONTRACT ADMINISTRATION DATA

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

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

a. CONTRACTOR:

b. GOVERNMENT: Contracting Officer
Department of Veterans Affairs
NCO 23 – St. Paul
316 Robert Street N., Suite 503
St. Paul, MN 55101

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

- 52.232-33, Payment by Electronic Funds Transfer—Other Than System For Award Management, or
- 52.232-36, Payment by Third Party

3. INVOICES: Invoices shall be submitted in arrears:

- a. Quarterly
- b. Semi-Annually
- c. Other (Monthly)

4. GOVERNMENT INVOICE ADDRESS: All Invoices from the contractor shall be submitted electronically in accordance with VAAR Clause 852.232-72 Electronic Submission of Payment Requests.

Department of Veterans Affairs
Financial Services Center
PO Box 149971

Austin TX 78714-9971

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

AMENDMENT NO	DATE

B.2 IT CONTRACT SECURITY

VA INFORMATION AND INFORMATION SYSTEM SECURITY/PRIVACY

1. GENERAL

Contractors, contractor personnel, subcontractors, and subcontractor personnel shall be subject to the same Federal laws, regulations, standards, and VA Directives and Handbooks as VA and VA personnel regarding information and information system security.

2. ACCESS TO VA INFORMATION AND VA INFORMATION SYSTEMS

a. A contractor/subcontractor shall request logical (technical) or physical access to VA information and VA information systems for their employees, subcontractors, and affiliates only to the extent necessary to perform the services specified in the contract, agreement, or task order.

b. All contractors, subcontractors, and third-party servicers and associates working with VA information are subject to the same investigative requirements as those of VA appointees or employees who have access to the same types of information. The level and process of background security investigations for contractors must be in accordance with VA Directive and Handbook 0710, Personnel Suitability and Security Program. The Office for Operations, Security, and Preparedness is responsible for these policies and procedures.

c. Contract personnel who require access to national security programs must have a valid security clearance. National Industrial Security Program (NISP) was established by Executive Order 12829 to ensure that cleared U.S. defense industry contract personnel safeguard the classified information in their possession while performing work on contracts, programs, bids, or research and development efforts. The Department of Veterans Affairs does not have a Memorandum of Agreement with Defense Security Service (DSS). Verification of a Security Clearance must be processed through the Special Security Officer located in the Planning and National Security Service within the Office of Operations, Security, and Preparedness.

d. Custom software development and outsourced operations must be located in the U.S. to the maximum extent practical. If such services are proposed to be performed abroad and are not disallowed by other VA policy or mandates, the contractor/subcontractor must state where all non-U.S. services are provided and detail a security plan, deemed to be acceptable by VA, specifically to address mitigation of the resulting problems of communication, control, data protection, and so forth. Location within the U.S. may be an evaluation factor.

e. The contractor or subcontractor must notify the Contracting Officer immediately when an employee working on a VA system or with access to VA information is reassigned or leaves the contractor or subcontractor's employ. The Contracting Officer must also be notified immediately by the contractor or subcontractor prior to an unfriendly termination.

3. VA INFORMATION CUSTODIAL LANGUAGE

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

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

c. Prior to termination or completion of this contract, contractor/ subcontractor must not destroy information received from VA, or gathered/ created by the contractor in the course of performing this contract without prior written approval by the VA. Any data destruction done on behalf of VA by a contractor/subcontractor must be done in accordance with National Archives and Records Administration (NARA) requirements as outlined in VA Directive 6300, Records and Information Management and its Handbook 6300.1 Records Management Procedures, applicable VA Records Control Schedules, and VA Handbook 6500.1, Electronic Media Sanitization. Self-certification by the contractor that the data destruction requirements above have been met must be sent to the VA Contracting Officer within 30 days of termination of the contract.

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

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

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

g. If a VHA contract is terminated for cause, the associated BAA must also be terminated and appropriate actions taken in accordance with VHA Handbook 1600.01, Business Associate Agreements. Absent an agreement to use or disclose protected health information, there is no business associate relationship.

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

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

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

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

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

4. INFORMATION SYSTEM DESIGN AND DEVELOPMENT

a. Information systems that are designed or developed for or on behalf of VA at non-VA facilities shall comply with all VA directives developed in accordance with FISMA, HIPAA, NIST, and related VA security and privacy control requirements for Federal information systems. This includes standards for the protection of electronic PHI, outlined in 45 C.F.R. Part 164, Subpart C, information and system security categorization level designations in accordance with FIPS 199 and FIPS 200 with implementation of all baseline security controls commensurate with the FIPS 199 system security categorization (reference Appendix D of VA Handbook 6500, VA Information Security Program). During the development cycle a Privacy Impact Assessment (PIA) must be completed, provided to the COR, and approved by the VA Privacy Service in accordance with Directive 6507, VA Privacy Impact Assessment.

b. The contractor/subcontractor shall certify to the COR that applications are fully functional and operate correctly as intended on systems using the VA Federal Desktop Core Configuration (FDCC), and the common security configuration guidelines provided by NIST or the VA. This includes Internet Explorer 7 configured to operate on Windows XP and Vista (in Protected Mode on Vista) and future versions, as required.

c. The standard installation, operation, maintenance, updating, and patching of software shall not alter the configuration settings from the VA approved and FDCC configuration. Information technology staff must also use the Windows Installer Service for installation to the default "program files" directory and silently install and uninstall.

d. Applications designed for normal end users shall run in the standard user context without elevated system administration privileges.

e. The security controls must be designed, developed, approved by VA, and implemented in accordance with the provisions of VA security system development life cycle as outlined in NIST Special Publication 800-37, Guide for Applying the Risk Management Framework to Federal Information Systems, VA Handbook 6500, Information Security Program and VA Handbook 6500.5, Incorporating Security and Privacy in System Development Lifecycle.

f. The contractor/subcontractor is required to design, develop, or operate a System of Records Notice (SOR) on individuals to accomplish an agency function subject to the Privacy Act of 1974, (as amended), Public Law 93-579, December 31, 1974 (5 U.S.C. 552a) and applicable agency regulations. Violation of the Privacy Act may involve the imposition of criminal and civil penalties.

g. The contractor/subcontractor agrees to:

(1) Comply with the Privacy Act of 1974 (the Act) and the agency rules and regulations issued under the Act in the design, development, or operation of any system of records on individuals to accomplish an agency function when the contract specifically identifies:

(a) The Systems of Records (SOR); and

(b) The design, development, or operation work that the contractor/ subcontractor is to perform;

(1) Include the Privacy Act notification contained in this contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the redesign, development, or operation of a SOR on individuals that is subject to the Privacy Act; and

(2) Include this Privacy Act clause, including this subparagraph (3), in all subcontracts awarded under this contract which requires the design, development, or operation of such a SOR.

h. In the event of violations of the Act, a civil action may be brought against the agency involved when the violation concerns the design, development, or operation of a SOR on individuals to accomplish an agency function, and criminal penalties may be imposed upon the officers or employees of the agency when the violation concerns the operation of a SOR on individuals to accomplish an agency function. For purposes of the Act, when the contract is for the operation of a SOR on individuals to accomplish an agency function, the contractor/subcontractor is considered to be an employee of the agency.

(1) "Operation of a System of Records" means performance of any of the activities associated with maintaining the SOR, including the collection, use, maintenance, and dissemination of records.

(2) "Record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and contains the person's name, or identifying number, symbol, or any other identifying particular assigned to the individual, such as a fingerprint or voiceprint, or a photograph.

(3) "System of Records" means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

i. The vendor shall ensure the security of all procured or developed systems and technologies, including their subcomponents (hereinafter referred to as "Systems"), throughout the life of this contract and any extension, warranty, or maintenance periods. This includes, but is not limited to workarounds, patches, hotfixes, upgrades, and any physical components (hereafter referred to as Security Fixes) which may be necessary to fix all security vulnerabilities published or known to the vendor anywhere in the Systems, including Operating Systems and firmware. The vendor shall ensure that Security Fixes shall not negatively impact the Systems.

j. The vendor shall notify VA within 24 hours of the discovery or disclosure of successful exploits of the vulnerability which can compromise the security of the Systems (including the confidentiality or integrity of its data and operations, or the availability of the system). Such issues shall be remediated as quickly as is practical, but in no event longer than 30 days.

k. When the Security Fixes involve installing third party patches (such as Microsoft OS patches or Adobe Acrobat), the vendor will provide written notice to the VA that the patch has been validated as not affecting the Systems within 10 working days. When the vendor is responsible for operations or maintenance of the Systems, they shall apply the Security Fixes within 30 days.

l. All other vulnerabilities shall be remediated as specified in this paragraph in a timely manner based on risk, but within 60 days of discovery or disclosure. Exceptions to this paragraph (e.g. for the convenience of VA) shall only be granted with approval of the contracting officer and the VA Assistant Secretary for Office of Information and Technology.

5. INFORMATION SYSTEM HOSTING, OPERATION, MAINTENANCE, OR USE

a. For information systems that are hosted, operated, maintained, or used on behalf of VA at non-VA facilities, contractors/subcontractors are fully responsible and accountable for ensuring compliance with all HIPAA, Privacy Act, FISMA, NIST, FIPS, and VA security and privacy directives and handbooks. This includes conducting compliant risk assessments, routine vulnerability scanning, system patching and change management procedures, and the completion of an acceptable contingency plan for each system. The contractor's security control procedures must be equivalent, to those procedures used to secure VA systems. A Privacy Impact Assessment (PIA) must also be provided to the COR and approved by VA Privacy Service prior to operational approval. All external Internet connections to VA's network involving VA information must be reviewed and approved by VA prior to implementation.

b. Adequate security controls for collecting, processing, transmitting, and storing of Personally Identifiable Information (PII), as determined by the VA Privacy Service, must be in place, tested, and approved by VA prior to hosting, operation, maintenance, or use of the information system, or systems by or on behalf of VA. These security controls are to be assessed and stated within the PIA and if these controls are determined not to be in place, or inadequate, a Plan of Action and Milestones (POA&M) must be submitted and approved prior to the collection of PII.

c. Outsourcing (contractor facility, contractor equipment or contractor staff) of systems or network operations, telecommunications services, or other managed services requires certification and accreditation (authorization) (C&A) of the contractor's systems in accordance with VA Handbook 6500.3, Certification and Accreditation and/or the VA OCS Certification Program Office. Government- owned (government facility

or government equipment) contractor-operated systems, third party or business partner networks require memorandums of understanding and interconnection agreements (MOU-ISA) which detail what data types are shared, who has access, and the appropriate level of security controls for all systems connected to VA networks.

d. The contractor/subcontractor's system must adhere to all FISMA, FIPS, and NIST standards related to the annual FISMA security controls assessment and review and update the PIA. Any deficiencies noted during this assessment must be provided to the VA contracting officer and the ISO for entry into VA's POA&M management process. The contractor/subcontractor must use VA's POA&M process to document planned remedial actions to address any deficiencies in information security policies, procedures, and practices, and the completion of those activities. Security deficiencies must be corrected within the timeframes approved by the government. Contractor/subcontractor procedures are subject to periodic, unannounced assessments by VA officials, including the VA Office of Inspector General. The physical security aspects associated with contractor/ subcontractor activities must also be subject to such assessments. If major changes to the system occur that may affect the privacy or security of the data or the system, the C&A of the system may need to be reviewed, retested and re- authorized per VA Handbook 6500.3. This may require reviewing and updating all of the documentation (PIA, System Security Plan, Contingency Plan). The Certification Program Office can provide guidance on whether a new C&A would be necessary.

e. The contractor/subcontractor must conduct an annual self assessment on all systems and outsourced services as required. Both hard copy and electronic copies of the assessment must be provided to the COR. The government reserves the right to conduct such an assessment using government personnel or another contractor/subcontractor. The contractor/subcontractor must take appropriate and timely action (this can be specified in the contract) to correct or mitigate any weaknesses discovered during such testing, generally at no additional cost.

f. VA prohibits the installation and use of personally-owned or contractor/ subcontractor-owned equipment or software on VA's network. If non-VA owned equipment must be used to fulfill the requirements of a contract, it must be stated in the service agreement, SOW or contract. All of the security controls required for government furnished equipment (GFE) must be utilized in approved other equipment (OE) and must be funded by the owner of the equipment. All remote systems must be equipped with, and use, a VA-approved antivirus (AV) software and a personal (host-based or enclave based) firewall that is configured with a VA-approved configuration. Software must be kept current, including all critical updates and patches. Owners of approved OE are responsible for providing and maintaining the anti-viral software and the firewall on the non-VA owned OE.

g. All electronic storage media used on non-VA leased or non-VA owned IT equipment that is used to store, process, or access VA information must be handled in adherence with VA Handbook 6500.1, Electronic Media Sanitization upon: (i) completion or termination of the contract or (ii) disposal or return of the IT equipment by the contractor/subcontractor or any person acting on behalf of the contractor/subcontractor, whichever is earlier. Media (hard drives, optical disks, CDs, back-up tapes, etc.) used by the contractors/ subcontractors that contain VA information must be returned to the VA for sanitization or destruction or the contractor/subcontractor must self-certify that the media has been disposed of per 6500.1 requirements. This must be completed within 30 days of termination of the contract.

h. Bio-Medical devices and other equipment or systems containing media (hard drives, optical disks, etc.) with VA sensitive information must not be returned to the vendor at the end of lease, for trade-in, or other purposes. The options are:

- (1) Vendor must accept the system without the drive;
- (2) VA's initial medical device purchase includes a spare drive which must be installed in place of the original drive at time of turn-in; or
- (3) VA must reimburse the company for media at a reasonable open market replacement cost at time of purchase.

(4) Due to the highly specialized and sometimes proprietary hardware and software associated with medical equipment/systems, if it is not possible for the VA to retain the hard drive, then;

(a) The equipment vendor must have an existing BAA if the device being traded in has sensitive information stored on it and hard drive(s) from the system are being returned physically intact; and

(b) Any fixed hard drive on the device must be non-destructively sanitized to the greatest extent possible without negatively impacting system operation. Selective clearing down to patient data folder level is recommended using VA approved and validated overwriting technologies/methods/tools. Applicable media sanitization specifications need to be pre-approved and described in the purchase order or contract.

(c) A statement needs to be signed by the Director (System Owner) that states that the drive could not be removed and that (a) and (b) controls above are in place and completed. The ISO needs to maintain the documentation.

6. SECURITY INCIDENT INVESTIGATION

a. The term "security incident" means an event that has, or could have, resulted in unauthorized access to, loss or damage to VA assets, or sensitive information, or an action that breaches VA security procedures. The contractor/ subcontractor shall immediately notify the COR and simultaneously, the designated ISO and Privacy Officer for the contract of any known or suspected security/privacy incidents, or any unauthorized disclosure of sensitive information, including that contained in system(s) to which the contractor/ subcontractor has access.

b. To the extent known by the contractor/subcontractor, the contractor/ subcontractor's notice to VA shall identify the information involved, the circumstances surrounding the incident (including to whom, how, when, and where the VA information or assets were placed at risk or compromised), and any other information that the contractor/subcontractor considers relevant.

c. With respect to unsecured protected health information, the business associate is deemed to have discovered a data breach when the business associate knew or should have known of a breach of such information. Upon discovery, the business associate must notify the covered entity of the breach. Notifications need to be made in accordance with the executed business associate agreement.

d. In instances of theft or break-in or other criminal activity, the contractor/subcontractor must concurrently report the incident to the appropriate law enforcement entity (or entities) of jurisdiction, including the VA OIG and Security and Law Enforcement. The contractor, its employees, and its subcontractors and their employees shall cooperate with VA and any law enforcement authority responsible for the investigation and prosecution of any possible criminal law violation(s) associated with any incident. The contractor/subcontractor shall cooperate with VA in any civil litigation to recover VA information, obtain monetary or other compensation from a third party for damages arising from any incident, or obtain injunctive relief against any third party arising from, or related to, the incident.

7. LIQUIDATED DAMAGES FOR DATA BREACH

a. Consistent with the requirements of 38 U.S.C. 5725, a contract may require access to sensitive personal information. If so, the contractor is liable to VA for liquidated damages in the event of a data breach or privacy incident involving any SPI the contractor/subcontractor processes or maintains under this contract.

b. The contractor/subcontractor shall provide notice to VA of a "security incident" as set forth in the Security Incident Investigation section above. Upon such notification, VA must secure from a non-Department entity or the VA Office of Inspector General an independent risk analysis of the data breach to determine the level of risk associated with the data breach for the potential misuse of any sensitive personal information involved in the data breach. The term 'data breach' means the loss, theft, or other unauthorized access, or any access other than that incidental to the scope of employment, to data containing sensitive personal information, in electronic or printed form, that results in the potential compromise of the confidentiality or integrity of the data. Contractor shall fully cooperate with the entity performing the risk analysis. Failure to cooperate may be deemed a material breach and grounds for contract termination.

c. Each risk analysis shall address all relevant information concerning the data breach, including the following:

- (1) Nature of the event (loss, theft, unauthorized access);
- (2) Description of the event, including:
 - (a) date of occurrence;
 - (b) data elements involved, including any PII, such as full name, social security number, date of birth, home address, account number, disability code;
- (3) Number of individuals affected or potentially affected;
- (4) Names of individuals or groups affected or potentially affected;
- (5) Ease of logical data access to the lost, stolen or improperly accessed data in light of the degree of protection for the data, e.g., unencrypted, plain text;
- (6) Amount of time the data has been out of VA control;
- (7) The likelihood that the sensitive personal information will or has been compromised (made accessible to and usable by unauthorized persons);
- (8) Known misuses of data containing sensitive personal information, if any;
- (9) Assessment of the potential harm to the affected individuals;
- (10) Data breach analysis as outlined in 6500.2 Handbook, Management of Security and Privacy Incidents, as appropriate; and
- (11) Whether credit protection services may assist record subjects in avoiding or mitigating the results of identity theft based on the sensitive personal information that may have been compromised.

d. Based on the determinations of the independent risk analysis, the contractor shall be responsible for paying to the VA liquidated damages in the amount of \$20,000.00 per affected individual to cover the cost of providing credit protection services to affected individuals consisting of the following:

- (1) Notification;
- (2) One year of credit monitoring services consisting of automatic daily monitoring of at least 3 relevant credit bureau reports;
- (3) Data breach analysis;
- (4) Fraud resolution services, including writing dispute letters, initiating fraud alerts and credit freezes, to assist affected individuals to bring matters to resolution;
- (5) One year of identity theft insurance with \$20,000.00 coverage at \$0 deductible; and
- (6) Necessary legal expenses the subjects may incur to repair falsified or damaged credit records, histories, or financial affairs.

8. SECURITY CONTROLS COMPLIANCE TESTING

On a periodic basis, VA, including the Office of Inspector General, reserves the right to evaluate any or all of the security controls and privacy practices implemented by the contractor under the clauses contained within the contract. With 10 working-day's notice, at the request of the government, the contractor must fully cooperate and assist in a government-sponsored security controls assessment at each location wherein VA information is processed or stored, or information systems are developed, operated, maintained, or used on behalf of VA, including those initiated by the Office of Inspector General. The government may conduct a security control assessment on shorter notice (to include unannounced assessments) as determined by VA in the event of a security incident or at any other time.

9. TRAINING

a. All contractor employees and subcontractor employees requiring access to VA information and VA information systems shall complete the following before being granted access to VA information and its systems:

- (1) Sign and acknowledge (either manually or electronically) understanding of and responsibilities for compliance with the Contractor Rules of Behavior, Appendix E relating to access to VA information and information systems;

(2) Successfully complete the VA Cyber Security Awareness and Rules of Behavior training and annually complete required security training;

(3) Successfully complete the appropriate VA privacy training and annually complete required privacy training; and

(4) Successfully complete any additional cyber security or privacy training, as required for VA personnel with equivalent information system access [to be defined by the VA program official and provided to the contracting officer for inclusion in the solicitation document - e.g., any role-based information security training required in accordance with NIST Special Publication 800-16, Information Technology Security Training Requirements.]

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

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

(End of Clause)

B.4 SCHEDULE OF SERVICES

SCHEDULE OF SERVICES

The Contractor shall furnish all personnel to provide services necessary to perform On-Site 0.7 FTE PATHOLOGY PHYSICIAN SERVICE to eligible beneficiaries of the Department of Veterans Affairs, Sioux Falls VA Health Care System, (hereinafter referred to as Sioux Falls VAHCS). The Contractor's physician(s)' care shall cover the range of PATHOLOGY PHYSICIAN SERVICE as would be provided in a state-of-the-art civilian medical treatment facility and the standard of care shall be of a quality, meeting or exceeding currently recognized national standards. Additionally, contractor will provide resident supervision under this contract.

Place of Performance: Services shall be provided on site, Sioux Falls VAHCS:

Sioux Falls VAHCS
2501 W. 22nd Street
Sioux Falls, SD 57105

In addition to the on-site services, the VA required cytology preparations and screening specimens that will be performed at the contractor's facility. VA Sioux Falls does not have on staff cytotechnologist to perform the screening. The following services are required under this contract and are an integral part of the resident education of VA Pathology residents. The following is a description of the process under which the cytology services are to be performed:

1. Cytology Specimens are to be picked up from the VAMC laboratory by contractor between the hours of 8:00am – 9:00am Monday thru Friday excluding holidays.
2. Contractor to perform at their facility specimen preparation and staining.
3. Contractor to perform at their facility the cytotechnologist screening.
4. Stained slides picked up at 8:00am are required to be delivered on the same day to VAMC laboratory by the contractor between the hours of 1:00pm – 1:30pm.
5. A second specimen pick up is required between the hours of 1:00pm and 2:00pm Monday through Friday excluding holidays. Specimens picked up at 1:00 are required to be returned the next working day.
6. All slides are returned to VAMC laboratory with the cytotechnologist report. Pathology lab director to oversee resident review of slides and cytotechnologist report. Final report done by resident with lab director's supervision must be reported to CPRS within 48 hours.

Pricing Instructions: The offeror is instructed to edit the number of sub-CLINS to correspond with the number of key personnel submitted for the Contract Line Item Number (CLIN). Affiliate Offerors shall include the "title" of the personnel submitted. Other commercial health care Offerors shall identify by title/position or level of experience the key personnel submitted. Also, renumber sub-CLINs if adding or removing Key Personnel.

The Centers for Medicare & Medicaid Services at:

- <https://www.cms.gov/apps/physician-fee-schedule/search/search-criteria.aspx> a
- <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ClinicalLabFeeSched/Clinical-Laboratory-Fee-Schedule-Files-Items/17CLAB.html>
- <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ClinicalLabFeeSched/Clinical-Laboratory-Fee-Schedule-Files.html>

The Contractor shall propose a minimum of two (2) key personnel to be credentialed and be available for scheduling to meet the requirements of the contract. One FTE is defined by VA as a minimum of 80 hours every two weeks and does not include holidays.

CLIN 0001, 0002 and 0003 will be performed at the Sioux Falls VA Medical Center. CLIN 0004 through 0015 are tests that will be performed off-site at the contractor's facility. Hours under CLIN 0001, 0002 and 0004 will not be used in the performance of CLIN 0004 through 0015.

The Contractor will only be paid for actual hours or services provided.

Other than cost and price information is not required at this time. However, the VA may ask for this information at a later time to ensure a fair and reasonable price is being paid.

CLIN 0004 thru 0015 shall be priced at a firm fixed price per procedure costs. The required services for CLIN 0004 thru 0015 shall be performed at the contractor's facility. The quantities listed are estimates and quantities will vary. For pricing and evaluation purposes, the current CMS rates should be used in completing each CLIN for the base year and option years. Price Schedule shall be completed for each listed CLIN. Medicare allowable reimbursement rates are the benchmark for CLIN 0004 thru 0015. Proposed rates for the base year and any option years should they be renewed, will correspond to the most current and active published Medicare rates at the time services are rendered under the contract. The VA will pay, per episode of care, at Medicare rate at the time the patient is treated. Initial offer shall contain a proposed percentage of the Medicare rate for each CLIN on the price schedule for the base and option years. Contractor shall be required to provide a list of current Medicare rates and new proposed rates when option years are exercised or at any time there is a change in Medicare rates. Reimbursement for medically necessary services (CPT codes) that are authorized by the VA and not included in the price schedule will be paid in accordance with Healthcare Resources 8153 and shall not exceed the maximum allowable Medicare rate in effect at the time of the procedure.

Proposed rate of reimbursement shall be based on current Medicare rate in effect at the time of procedure. Therefore, for pricing purposes, identify the percentage of Medicare for CLIN 0004 thru 0015. **It is important the percentage of the Medicare rate is indicated as the contract shall be fixed at the percentage of the Medicare rate indicated.**

PERIOD OF PERFORMANCE

BASE YEAR: 6/1/2018 to 5/31/2019

<u>CLIN</u>	<u>SUB-CLIN</u>	<u>Description</u>	<u>QTY</u>	<u>Unit</u>	<u>Unit Cost</u>	<u>Total Annual Cost</u>
0001	None	<p>0.7 FTE PATHOLOGY PHYSICIAN SERVICE Board Certified/Board Eligible by the American Board of Pathology, Clinical Pathology.</p> <p>On-Site, Monday through Friday, 7:30 AM to 11:00 AM; 11:00 AM to 12:00 PM for Noon Conference Call, On-Call from 11:00 AM to 4:00 PM</p> <p>NOTE: Noon Conference consists of teaching residents and occasional sub-specialty efforts for VA patients on an as needed basis.</p>	1440	Hours	Do not price	Do not price
KEY PERSONNEL						
	0001a	NAME: _____ TITLE: _____		Hours	\$_____/hr	\$_____
	0001b	NAME: _____ TITLE: _____		Hours	\$_____/hr	\$_____
	0001c	NAME: _____ TITLE: _____		Hours	\$_____/hr	\$_____
	0001d	NAME: _____ TITLE: _____		Hours	\$_____/hr	\$_____
0002		On-Call, Pathologist Service 20 Hours per year	20	Hours	\$_____/hr	\$_____
0003		Call Back, Pathologist Service 10 Hours per year	10	Hours	\$_____/hr	\$_____

CLIN	DESCRIPTION	QTY	UNIT	COST	% of Medicare	Total Cost
0004	CMS Code 88321, Microslide Consultation	150	Each	\$86.55		\$ _____
0005	CMS Code 88142, Cytopath c/v Thin Layer	300	Each	\$27.79		\$ _____
0006	CMS Code G0476 HPV combo assay ca screen	200	Each	\$48.14		\$ _____
0007	CMS Code 88108-TC, Cytopath Concentrate Tech	325	Each	\$39.62		\$ _____
0008	CMS Code 88305-TC, Tissue Exam by Pathologist	50	Each	\$34.16		\$ _____
0009	CMS Code 88172-TC, Cyp DX Eval FNA 1st EA Site	75	Each	\$19.84		\$ _____
0010	CMS Code 88365-TC, Insitu Hybridization (Fish)	45	Each	\$132.26		\$ _____
0011	CMS Code 88323, Microslide Consultation	10	Each	\$139.85		\$ _____
0012	CMS Code 88312-TC, Special Stains Group 1	10	Each	\$70.32		\$ _____
0013	CMS Code 88365, Insitu Hybridization (Fish)	10	Each	177.66		\$ _____
0014	CMS Code 88342-TC, Immunohisto Antb 1st Stain	175	Each	\$69.96		\$ _____
0015	CMS Code 88360, Tumor Immunohistochem/manual	10	Each	\$121.09		\$ _____
TOTAL COST FOR BASE YEAR:						\$ _____

Documentation in support of an option year increase beyond the base amount in accordance with the Economic Price Adjustment Clause FAR 52.216-4 should be submitted to the Contracting Officer no later than 60 calendar days prior to the option year renewal date. If the contractor fails to submit any documentation in support of an option year increase or fails to submit the documentation by the required date, payment for services will remain at the negotiated rate for the previous year in the option year is renewed. Submitting option year increase documentation by the required date does not guarantee that any or all of the proposed increase will be approved. The Contracting Officer will review all documentation submitted in support of the option year increase, and evaluate it in accordance with Federal Acquisition Regulations (FAR), Subpart 31.2 and VA Acquisition Regulations (VAAR) to determine that the proposed costs are allowable.

OPTION YEAR 1: 6/1/2019 to 5/31/2020

<u>CLIN</u>	<u>SUB-CLIN</u>	<u>Description</u>	<u>QTY</u>	<u>Unit</u>	<u>Unit Cost</u>	<u>Total Annual Cost</u>
0001	None	<p>0.7 FTE PATHOLOGY PHYSICIAN SERVICE Board Certified/Board Eligible by the American Board of Pathology, Clinical Pathology.</p> <p>On-Site, Monday through Friday, 7:30 AM to 11:00 AM; 11:00 AM to 12:00 PM for Noon Conference Call, On-Call from 11:00 AM to 4:00 PM</p> <p>NOTE: Noon Conference consists of teaching residents and occasional sub-specialty efforts for VA patients on an as needed basis.</p>	1440	Hours	Do not price	Do not price
KEY PERSONNEL						
	0001a	NAME: _____ TITLE: _____		Hours	\$_____/hr	\$_____
	0001b	NAME: _____ TITLE: _____		Hours	\$_____/hr	\$_____
	0001c	NAME: _____ TITLE: _____		Hours	\$_____/hr	\$_____
	0001d	NAME: _____ TITLE: _____		Hours	\$_____/hr	\$_____
0002		On-Call, Pathologist Service 20 Hours per year	20	Hours	\$_____/hr	\$_____
0003		Call Back, Pathologist Service 10 Hours per year	10	Hours	\$_____/hr	\$_____

<u>CLIN</u>	<u>DESCRIPTION</u>	<u>QTY</u>	<u>UNIT</u>	<u>COST</u>	<u>% of Medicare</u>	<u>Total Cost</u>
0004	CMS Code 88321, Microslide Consultation	150	Each	\$86.55		\$ _____
0005	CMS Code 88142, Cytopath c/v Thin Layer	300	Each	\$27.79		\$ _____
0006	CMS Code G0476 HPV combo assay ca screen	200	Each	\$48.14		\$ _____
0007	CMS Code 88108-TC, Cytopath Concentrate Tech	325	Each	\$39.62		\$ _____
0008	CMS Code 88305-TC, Tissue Exam by Pathologist	50	Each	\$34.16		\$ _____
0009	CMS Code 88172-TC, Cyt DP DX Eval FNA 1st EA Site	75	Each	\$19.84		\$ _____
0010	CMS Code 88365-TC, Insitu Hybridization (Fish)	45	Each	\$132.26		\$ _____
0011	CMS Code 88323, Microslide Consultation	10	Each	\$139.85		\$ _____
0012	CMS Code 88312-TC, Special Stains Group 1	10	Each	\$70.32		\$ _____
0013	CMS Code 88365, Insitu Hybridization (Fish)	10	Each	177.66		\$ _____
0014	CMS Code 88342-TC, Immunohisto Antb 1st Stain	175	Each	\$69.96		\$ _____
0015	CMS Code 88360, Tumor Immunohistochem/manual	10	Each	\$121.09		\$ _____
TOTAL COST FOR OPTION YEAR ONE:						\$ _____

Documentation in support of an option year increase beyond the base amount in accordance with the Economic Price Adjustment Clause FAR 52.216-4 should be submitted to the Contracting Officer no later than 60 calendar days prior to the option year renewal date. If the contractor fails to submit any documentation in support of an option year increase or fails to submit the documentation by the required date, payment for services will remain at the negotiated rate for the previous year in the option year is renewed. Submitting option year increase documentation by the required date does not guarantee that any or all of the proposed increase will be approved. The Contracting Officer will review all documentation submitted in support of the option year increase, and evaluate it in accordance with Federal Acquisition Regulations (FAR), Subpart 31.2 and VA Acquisition Regulations (VAAR) to determine that the proposed costs are allowable.

OPTION YEAR 2: 6/1/2020 to 5/31/2021

CLIN	SUB-CLIN	Description	QTY	Unit	Unit Cost	Total Annual Cost
0001	None	<p>0.7 FTE PATHOLOGY PHYSICIAN SERVICE Board Certified/Board Eligible by the American Board of Pathology, Clinical Pathology.</p> <p>On-Site, Monday through Friday, 7:30 AM to 11:00 AM; 11:00 AM to 12:00 PM for Noon Conference Call, On-Call from 11:00 AM to 4:00 PM</p> <p>NOTE: Noon Conference consists of teaching residents and occasional sub-specialty efforts for VA patients on an as needed basis.</p>	1440	Hours	Do not price	Do not price
KEY PERSONNEL						
	0001a	NAME: _____ TITLE: _____		Hours	\$_____/hr	\$_____
	0001b	NAME: _____ TITLE: _____		Hours	\$_____/hr	\$_____
	0001c	NAME: _____ TITLE: _____		Hours	\$_____/hr	\$_____
	0001d	NAME: _____ TITLE: _____		Hours	\$_____/hr	\$_____
0002		On-Call, Pathologist Service 20 Hours per year	20	Hours	\$_____/hr	\$_____
0003		Call Back, Pathologist Service 10 Hours per year	10	Hours	\$_____/hr	\$_____

CLIN	DESCRIPTION	QTY	UNIT	COST	% of Medicare	Total Cost
0004	CMS Code 88321, Microslide Consultation	150	Each	\$86.55		\$ _____
0005	CMS Code 88142, Cytopath c/v Thin Layer	300	Each	\$27.79		\$ _____
0006	CMS Code G0476 HPV combo assay ca screen	200	Each	\$48.14		\$ _____
0007	CMS Code 88108-TC, Cytopath Concentrate Tech	325	Each	\$39.62		\$ _____
0008	CMS Code 88305-TC, Tissue Exam by Pathologist	50	Each	\$34.16		\$ _____
0009	CMS Code 88172-TC, Cyp DX Eval FNA 1st EA Site	75	Each	\$19.84		\$ _____
0010	CMS Code 88365-TC, Insitu Hybridization (Fish)	45	Each	\$132.26		\$ _____
0011	CMS Code 88323, Microslide Consultation	10	Each	\$139.85		\$ _____
0012	CMS Code 88312-TC, Special Stains Group 1	10	Each	\$70.32		\$ _____
0013	CMS Code 88365, Insitu Hybridization (Fish)	10	Each	177.66		\$ _____
0014	CMS Code 88342-TC, Immunohisto Antb 1st Stain	175	Each	\$69.96		\$ _____
0015	CMS Code 88360, Tumor Immunohistochem/manual	10	Each	\$121.09		\$ _____
TOTAL COST FOR OPTION YEAR TWO:						\$ _____

Documentation in support of an option year increase beyond the base amount in accordance with the Economic Price Adjustment Clause FAR 52.216-4 should be submitted to the Contracting Officer no later than 60 calendar days prior to the option year renewal date. If the contractor fails to submit any documentation in support of an option year increase or fails to submit the documentation by the required date, payment for services will remain at the negotiated rate for the previous year in the option year is renewed. Submitting option year increase documentation by the required date does not guarantee that any or all of the proposed increase will be approved. The Contracting Officer will review all documentation submitted in support of the option year increase, and evaluate it in accordance with Federal Acquisition Regulations (FAR), Subpart 31.2 and VA Acquisition Regulations (VAAR) to determine that the proposed costs are allowable.

OPTION YEAR 3: 6/1/2021 to 5/31/2022

CLIN	SUB-CLIN	Description	QTY	Unit	Unit Cost	Total Annual Cost
0001	None	<p>0.7 FTE PATHOLOGY PHYSICIAN SERVICE Board Certified/Board Eligible by the American Board of Pathology, Clinical Pathology.</p> <p>On-Site, Monday through Friday, 7:30 AM to 11:00 AM; 11:00 AM to 12:00 PM for Noon Conference Call, On-Call from 11:00 AM to 4:00 PM</p> <p>NOTE: Noon Conference consists of teaching residents and occasional sub-specialty efforts for VA patients on an as needed basis.</p>	1440	Hours	Do not price	Do not price
KEY PERSONNEL						
	0001a	NAME: _____ TITLE: _____		Hours	\$_____/hr	\$_____
	0001b	NAME: _____ TITLE: _____		Hours	\$_____/hr	\$_____
	0001c	NAME: _____ TITLE: _____		Hours	\$_____/hr	\$_____
	0001d	NAME: _____ TITLE: _____		Hours	\$_____/hr	\$_____
0002		On-Call, Pathologist Service 20 Hours per year	20	Hours	\$_____/hr	\$_____
0003		Call Back, Pathologist Service 10 Hours per year	10	Hours	\$_____/hr	\$_____

CLIN	DESCRIPTION	QTY	UNIT	COST	% of Medicare	Total Cost
0004	CMS Code 88321, Microslide Consultation	150	Each	\$86.55		\$ _____
0005	CMS Code 88142, Cytopath c/v Thin Layer	300	Each	\$27.79		\$ _____
0006	CMS Code G0476 HPV combo assay ca screen	200	Each	\$48.14		\$ _____
0007	CMS Code 88108-TC, Cytopath Concentrate Tech	325	Each	\$39.62		\$ _____
0008	CMS Code 88305-TC, Tissue Exam by Pathologist	50	Each	\$34.16		\$ _____
0009	CMS Code 88172-TC, Cyt DP DX Eval FNA 1st EA Site	75	Each	\$19.84		\$ _____
0010	CMS Code 88365-TC, Insitu Hybridization (Fish)	45	Each	\$132.26		\$ _____
0011	CMS Code 88323, Microslide Consultation	10	Each	\$139.85		\$ _____
0012	CMS Code 88312-TC, Special Stains Group 1	10	Each	\$70.32		\$ _____
0013	CMS Code 88365, Insitu Hybridization (Fish)	10	Each	177.66		\$ _____
0014	CMS Code 88342-TC, Immunohisto Antb 1st Stain	175	Each	\$69.96		\$ _____
0015	CMS Code 88360, Tumor Immunohistochem/manual	10	Each	\$121.09		\$ _____
TOTAL COST FOR OPTION YEAR THREE:						\$ _____

Documentation in support of an option year increase beyond the base amount in accordance with the Economic Price Adjustment Clause FAR 52.216-4 should be submitted to the Contracting Officer no later than 60 calendar days prior to the option year renewal date. If the contractor fails to submit any documentation in support of an option year increase or fails to submit the documentation by the required date, payment for services will remain at the negotiated rate for the previous year in the option year is renewed. Submitting option year increase documentation by the required date does not guarantee that any or all of the proposed increase will be approved. The Contracting Officer will review all documentation submitted in support of the option year increase, and evaluate it in accordance with Federal Acquisition Regulations (FAR), Subpart 31.2 and VA Acquisition Regulations (VAAR) to determine that the proposed costs are allowable.

OPTION YEAR 4: 6/1/2022 to 5/31/2023

CLIN	SUB-CLIN	Description	QTY	Unit	Unit Cost	Total Annual Cost
0001	None	<p>0.7 FTE PATHOLOGY PHYSICIAN SERVICE Board Certified/Board Eligible by the American Board of Pathology, Clinical Pathology.</p> <p>On-Site, Monday through Friday, 7:30 AM to 11:00 AM; 11:00 AM to 12:00 PM for Noon Conference Call, On-Call from 11:00 AM to 4:00 PM</p> <p>NOTE: Noon Conference consists of teaching residents and occasional sub-specialty efforts for VA patients on an as needed basis.</p>	1440	Hours	Do not price	Do not price
KEY PERSONNEL						
	0001a	NAME: _____ TITLE: _____		Hours	\$_____/hr	\$_____
	0001b	NAME: _____ TITLE: _____		Hours	\$_____/hr	\$_____
	0001c	NAME: _____ TITLE: _____		Hours	\$_____/hr	\$_____
	0001d	NAME: _____ TITLE: _____		Hours	\$_____/hr	\$_____
0002		On-Call, Pathologist Service 20 Hours per year	20	Hours	\$_____/hr	\$_____
0003		Call Back, Pathologist Service 10 Hours per year	10	Hours	\$_____/hr	\$_____

CLIN	DESCRIPTION	QTY	UNIT	COST	% of Medicare	Total Cost
0004	CMS Code 88321, Microslide Consultation	150	Each	\$86.55		\$ _____
0005	CMS Code 88142, Cytopath c/v Thin Layer	300	Each	\$27.79		\$ _____
0006	CMS Code G0476 HPV combo assay ca screen	200	Each	\$48.14		\$ _____
0007	CMS Code 88108-TC, Cytopath Concentrate Tech	325	Each	\$39.62		\$ _____
0008	CMS Code 88305-TC, Tissue Exam by Pathologist	50	Each	\$34.16		\$ _____
0009	CMS Code 88172-TC, Cyp DX Eval FNA 1st EA Site	75	Each	\$19.84		\$ _____
0010	CMS Code 88365-TC, Insitu Hybridization (Fish)	45	Each	\$132.26		\$ _____
0011	CMS Code 88323, Microslide Consultation	10	Each	\$139.85		\$ _____
0012	CMS Code 88312-TC, Special Stains Group 1	10	Each	\$70.32		\$ _____
0013	CMS Code 88365, Insitu Hybridization (Fish)	10	Each	177.66		\$ _____
0014	CMS Code 88342-TC, Immunohisto Antb 1st Stain	175	Each	\$69.96		\$ _____
0015	CMS Code 88360, Tumor Immunohistochem/manual	10	Each	\$121.09		\$ _____
TOTAL COST FOR OPTION YEAR FOUR:						\$ _____

Documentation in support of an option year increase beyond the base amount in accordance with the Economic Price Adjustment Clause FAR 52.216-4 should be submitted to the Contracting Officer no later than 60 calendar days prior to the option year renewal date. If the contractor fails to submit any documentation in support of an option year increase or fails to submit the documentation by the required date, payment for services will remain at the negotiated rate for the previous year in the option year is renewed. Submitting option year increase documentation by the required date does not guarantee that any or all of the proposed increase will be approved. The Contracting Officer will review all documentation submitted in support of the option year increase, and evaluate it in accordance with Federal Acquisition Regulations (FAR), Subpart 31.2 and VA Acquisition Regulations (VAAR) to determine that the proposed costs are allowable.

TOTAL COST FOR BASE PERFORMANCE AND ALL OPTION YEARS:	\$ _____
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In accordance with FAR 16.504(a)(1), The guaranteed minimum and maximum dollar amounts are listed in the table below. These amounts cover the base and option of the contract. The maximum dollar amounts listed shall not be exceeded.

Minimum	\$25,000.00
Maximum	\$2,500,000.00

Ordering Procedures:

A task order will be placed by the Administrative NCO 23 Contracting Officer.

Each ordering vehicle will document the quantity, and other pertinent data to ensure the services provide the appropriate level of patient care to the maximum order allowable under the resultant contract. No additional services are authorized without prior approval through the Administrative Contracting Officer and/or Contracting Officer.

It is anticipated that a single contract will be awarded.

B.5 PERFORMANCE WORK STATEMENT**PERFORMANCE WORK STATEMENT (PWS)**

for

Pathology Physician Service (0.7 FTE)**1. GENERAL**

- 1.1. Services Provided: The Contractor shall provide a 0.7 Full Time Equivalent (FTE) Board Certified/Board Eligible, Pathologist certified by the American Board of Pathology, Clinical Pathology, to perform the requirements in accordance with this contract. The Department of Veterans Affairs, Sioux Falls VA Health Care System (SF VAHCS) Chief, Pathology and Laboratory Medicine (PLM) will have final technical and administrative direction over all services provided. Additionally, the Contractor shall provide per-procedure lab tests that will be performed at their own facility.
- 1.2. Place of Performance - Contractor shall furnish services at the following locations:
 - 1.2.1. Sioux Falls VA Health Care System (VAHCS), 2501 West 22nd Street, Sioux Falls, South Dakota 57105
- 1.3. Authority: Title 38, USC 8153, Health Care Resources (HCR) Sharing Authority.
- 1.4. Policy/Handbooks: The contractor shall be subject to the following policies, including any subsequent updates during the period of performance:
 - 1.4.1. VA Directive 1663: Health Care Resources Contracting - Buying
http://www1.va.gov/vapubs/viewPublication.asp?Pub_ID=347
 - 1.4.2. VHA Directive 2006-041 "Veterans' Health Care Service Standards" (expired but still in effect pending revision)
https://www1.va.gov/vhapublications/ViewPublication.asp?pub_ID=1443
 - 1.4.3. VHA Handbook 1100.17: National Practitioner Data Bank Reports -
http://www1.va.gov/vhapublications/ViewPublication.asp?pub_ID=2135
 - 1.4.4. VHA Handbook 1100.18 Reporting And Responding To State Licensing Boards -
http://www1.va.gov/vhapublications/ViewPublication.asp?pub_ID=1364
 - 1.4.5. VHA Handbook 1100.19 Credentialing and Privileging -
http://www.va.gov/vhapublications/ViewPublication.asp?pub_ID=2910

- 1.4.6. VHA Handbook 1907.01 Health Information Management and Health Records:
http://www.va.gov/vhapublications/ViewPublication.asp?pub_ID=3088
- 1.4.7. Privacy Act of 1974 (5 U.S.C. 552a) as amended
http://www.justice.gov/oip/foia_updates/Vol_XVII_4/page2.htm
- 1.4.8. VHA Handbook 1400.01, Resident Supervision -
http://vaww.va.gov/vhapublications/ViewPublication.asp?pub_ID=2847
- 1.5. Definitions/Acronyms- Terms used in this contract shall be interpreted as follows unless the context expressly requires a different construction and/or interpretation. In case of a conflict in language between the Definitions and other sections of this contract, the language in this section shall govern.
- 1.5.1. ABIM: American Board of Internal Medicine <http://www.abim.org/>
- 1.5.2. ACGME: Accreditation Council for Graduate Medical Education
- 1.5.3. AOD: Admitting Officer of the Day
- 1.5.4. BLS: Basic Life Support
- 1.5.5. CDC: Centers for Disease Control and Prevention
- 1.5.6. CDR: Contract Discrepancy Report
- 1.5.7. CEU: Certified Education Unit
- 1.5.8. CME: Continuing Medical Education
- 1.5.9. CMS: Centers for Medicare and Medicaid Services
- 1.5.10. Contracting Officer (CO) – The person executing this contract on behalf of the Government with the authority to enter into and administer contracts and make related determinations and findings.
- 1.5.11. Contracting Officer’s Representative (COR) – A person appointed by the CO to take necessary action to ensure the Contractor performs in accordance with and adheres to the specifications contained in the contract and to protect the interest of the Government. The COR shall report to the CO promptly any indication of non-compliance in order that appropriate action can be taken.
- 1.5.12. COS: Chief of Staff
- 1.5.13. CPARS: Contractor Performance Assessment Reporting System
- 1.5.14. CPRS: Computerized Patient Recordkeeping System- electronic health record system used by the VA.
- 1.5.15. Credentialing: Credentialing is the systematic process of screening and evaluating qualification and other credentials, including licensure, required education, relevant training and experience and current competence and health status.
- 1.5.16. FSMB: Federation of State Medical Boards
- 1.5.17. HHS: Department of Health and Human Services
- 1.5.18. HIPAA: Health Insurance Portability and Accountability Act
- 1.5.19. HR: Human Resources
- 1.5.20. ISO: Information Security Officer
- 1.5.21. Medical Emergency - a sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity that the absence of immediate medical attention could reasonably result in: Permanently placing a patient's health in jeopardy, causing other serious medical consequences, causing impairments to body functions, or causing serious or permanent dysfunction of any body-organ or part.

- 1.5.22. MOD: Medical Officer of the Day
- 1.5.23. National Provider Identifier (NPI): NPI is a standard, unique 10-digit numeric identifier required by HIPAA. The Veterans Health Administration must use NPIs in all HIPAA-standard electronic transactions for individual (health care practitioners) and organizational entities (medical centers).
- 1.5.24. Non-Contract Provider - any person, organization, agency, or entity that is not directly or indirectly employed by the Contractor or any of its subcontractors
- 1.5.25. NPPEs: National Plan and Provider Enumeration System
- 1.5.26. PACT: Patient Aligned Care Team
- 1.5.27. PALS: Pediatric Advanced Life Support
- 1.5.28. PLM: Pathology and Laboratory Medicine
- 1.5.29. POP: Period of Performance
- 1.5.30. PPD: Purified Protein Derivative
- 1.5.31. PWS: Performance Work Statement
- 1.5.32. Privileging (Clinical Privileging): Privileging is the process by which a practitioner, licensed for independent practice; e.g., without supervision, direction, required sponsor, preceptor, mandatory collaboration, etc.; is permitted by law and the facility to practice independently, to provide specific medical or other patient care services within the scope of the individual's license, based upon the individual's clinical competence as determined by peer references, professional experience, health status, education, training and licensure. Clinical privileges must be facility-specific and provider-specific.
- 1.5.33. QASP: Quality Assurance Surveillance Plan
- 1.5.34. Veterans Health Administration (VHA): The central office for administration of the VA medical centers through throughout the United States. The VHA is located in Washington, D.C.
- 1.5.35. Veterans Integrated Services Network (VISN): The regional oversight for the VA medical centers in South Dakota.
- 1.5.36. VISTA (Veterans Integrated Systems Technology Architecture): A PC based system that will capture and store clinical imagery, scanned documents and other non-textual data files and integrates them into patient's medical record and with the hospital information system.
- 1.5.37. VetPro: a federal web-based credentialing program for healthcare providers.
- 1.5.38. Veterans Affairs Medical Center (VAMC): Unless identified with the name of a different VA Medical Center, for purposes of this contract, this term shall mean the Sioux Falls VA Health Care System (SF VAHCS).
- 1.5.39. Sioux Falls Veterans Health Care System (SF VAHCS): Unless identified with the name of a different VA Health Care System, for purposes of this contract, this term shall mean the Sioux Falls VA Health Care System.

2. QUALIFICATIONS

- 2.1. Contractor's physician(s)/Facility shall meet requirements for appointment to the medical staff, Sioux Falls VAHCS, as outlined in the Medical Staff Bylaws and be certified by the American Board of Pathology, Clinical Pathology, to perform the requirements in accordance with this contract.

- 2.1.1. License - Personnel assigned by the Contractor to perform the services covered by this contract shall be licensed in a State, Territory or Commonwealth of the United States or the District of Columbia and meet the professional qualification criteria of VA. The qualifications of such personnel shall also be subject to review by VA Chief of Staff and approval by VA Facility Director. The Contracting Officer will be notified prior to any changes in personnel. VA reserves the right to approve the assignment of individual personnel furnished by the Contractor to perform the functions specified in the contract. The personnel assigned by the Contractor will be credentialed and privileged by the VA in accordance with VHA Handbook 1100.19.
- 2.1.2. Credentialing and Privileging
- 2.1.2.1. Pathologists assigned by the contractor must be board certified in Pathology and cooperate with all VA Credentialing and privileging requirements. They are members of the medical staff of the Sioux Falls VAHCS and will be bound by the medical staff bylaws and standards of care and practice. In that post-graduate medical education is a critical part of the VA's mission, Pathologists assigned to the VA must also remain in good standing with our medical school affiliate, the University of South Dakota and approved for the teaching and supervision of residents.
- 2.1.2.2. The personnel assigned by the Contractor must complete VA credentialing process for delineation of clinical privileges in accordance with VHA Handbook 1100.19.
- 2.1.2.3. Contractor will ensure that all contract personnel to be employed under this requirement participate in the Credentialing and privileging process. No services will be provided by any contract personnel prior to obtaining approval by the SF VAHCS Professional Standards Board, Clinical Executive Board and Director. The contractor will be provided copies of current requirements and updates as they are published.
- 2.1.2.4. Privileges will require renewal at least every two (2) years in accordance with SF VAHCS and (The Joint Commission) requirements. Contract personnel assigned by the contractor to work at the SF VAHCS will be required to report specific patient outcome information, such as complications, to the Service Chief. Quality improvement data provided by the physicians and/or collected by the Services will be used to analyze individual practice patterns. The Service Chief will utilize the data to formulate recommendations for the Professional Standards Board to consider in the renewal of clinical privileges.
- 2.1.2.5. It is a policy of this SF VAHCS that all contract personnel to be employed under this contract must be BLS certified unless a waiver has been granted by a Patient Service Line (PLS) Director. As part of the credentialing process, the contractor BLS certification must be sent to the Medical Staff Office. Failure to provide proof of certification to the Medical Staff Office may impact the contract personnel qualification under this requirement.

No services will be provided by any contract personnel prior to obtaining approval by the SF VAHCS Professional Standards Board, Clinical Executive Board and Director.

2.1.2.6. Pathologist overseeing resident training must be eligible for academic appointment to the University of South Dakota.

2.1.3. Technical Proficiency - Pathologist shall be Board certified in anatomic and clinical pathology.

2.1.4. Continuing Medical Education (CME)/Certified Education Unit (CEU)
Requirements: Contractor shall provide the COR copies of current CMEs as required or requested by the SFVAHCS. Contracted staff that are certified or licensed in a state that requires continuing education will continue to meet the minimum standards to remain current with certification and/or licensure. Contractor shall report CME hours to the credentials office for tracking. These documents are required for both privileging and re-privileging. Failure to provide shall result in loss of privileges for Contractor's physician(s).

2.1.5. Training (ACLS, BLS, CPRS and VA MANDATORY): Contractor shall meet all VA educational requirements and mandatory course requirements defined herein; all training must be completed by the Contractor's physician(s) as required by the VA. Additional training requirements may be added at the discretion of the Government. Training requirements may include the following:

- Age Specific and Cultural Competencies
- Basic Life Support (BLS)
- Computerized Patient Record System (CPRS) Training
- Infection Control and Bloodborne Pathogens
- Patient Abuse
- Patient Safety
- Patient Rights
- Prevention & Management of Disruptive Behavior (PMDB) Level I
- VA Privacy and Information Security Awareness and Rules of Behavior
- VHA Privacy and HIPAA Focused Training

2.1.6. Standard Personnel Testing (PPD, etc.): Contractor shall provide proof of the following tests for Contractor's physician(s) within five (5) calendar days after task order award and prior to the past year.

2.1.6.1. TUBERCULOSIS TESTING: Contractor shall provide proof of a negative reaction to PPD testing for all Contractor's physician(s). A negative chest radiographic report for active tuberculosis shall be provided in cases of positive PPD results. The PPD test shall be repeated annually.

2.1.6.2. RUBELLA TESTING: Contractor shall provide proof of immunization for all Contractor's physician(s) for measles, mumps, rubella or a rubella

titer of 1.8 or greater. If the titer is less than 1.8, a rubella immunization shall be administered with follow-up documentation to the COR.

2.1.6.3. OSHA REGULATION CONCERNING OCCUPATIONAL EXPOSURE TO BLOODBORNE PATHOGENS: Contractor shall provide generic self-study training for all Contractor's physician(s); provide their own Hepatitis B vaccination series at no cost to the VA if they elect to receive it; maintain an exposure determination and control plan; maintain required records; and ensure that proper follow-up evaluation is provided following an exposure incident. The SFVAHCS shall notify the Contractor of any significant communicable disease exposures as appropriate. Contractor shall adhere to current CDC/HICPAC Guideline for Infection Control in health care personnel (as published in American Journal for Infection Control- AJIC 1998; 26:289-354 <http://www.cdc.gov/hicpac/pdf/InfectControl98.pdf>) for disease control. Contractor shall provide follow up documentation of clearance to return to the workplace prior to their return.

2.1.7. Conflict of Interest: The Contractor and all Contractor's physician(s) are responsible for identifying and communicating to the CO and COR conflicts of interest at the time of proposal and during the entirety of contract performance. At the time of proposal, the Contractor shall provide a statement which describes, in a concise manner, all relevant facts concerning any past, present, or currently planned interest (financial, contractual, organizational, or otherwise) or actual or potential organizational conflicts of interest relating to the services to be provided. The Contractor shall also provide statements containing the same information for any identified consultants or subcontractors who shall provide services. The Contractor must also provide relevant facts that show how it's organizational and/or management system or other actions would avoid or mitigate any actual or potential organizational conflicts of interest. These statements shall be in response to the VAAR provision 852.209-70 Organizational Conflicts of Interest (Jan 2008) and fully outlined in response to the subject attachment in Section D of the solicitation document.

2.1.8. Citizenship related Requirements

2.1.8.1. The Contractor certifies that the Contractor shall comply with any and all legal provisions contained in the Immigration and Nationality Act of 1952, As Amended; its related laws and regulations that are enforced by Homeland Security, Immigration and Customs Enforcement and the U.S Department of Labor as these may relate to non-immigrant foreign nationals working under contract or subcontract for the Contractor while providing services to Department of Veterans Affairs patient referrals;

2.1.8.2. While performing services for the Department of Veterans Affairs, the Contractor shall not knowingly employ, contract or subcontract with an illegal alien; foreign national non-immigrant who is in violation their status, as a result of their failure to maintain or comply with the terms and conditions of their admission into the United States. Additionally, the

Contractor is required to comply with all “E-Verify” requirements consistent with “Executive Order 12989” and any related pertinent Amendments, as well as applicable Federal Acquisition Regulations.

- 2.1.8.3. If the Contractor fails to comply with any requirements outlined in the preceding paragraphs or its Agency regulations, the Department of Veterans Affairs may, at its discretion, require that the foreign national who failed to maintain their legal status in the United States or otherwise failed to comply with the requirements of the laws administered by Homeland Security, Immigration and Customs Enforcement and the U.S Department of Labor, shall be prohibited from working at the Contractor’s place of business that services Department of Veterans Affairs patient referrals; or other place where the Contractor provides services to veterans who have been referred by the Department of Veterans Affairs; and shall form the basis for termination of this contract for breach.
- 2.1.8.4. This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under 18 U.S.C. 1001.
- 2.1.8.5. The Contractor agrees to obtain a similar certification from its subcontractors. The certification shall be made as part of the offerors response to the RFP using the subject attachment in Section D of the solicitation document.

2.1.9. Annual Office of Inspector General (OIG) Statement: In accordance with HIPAA and the Balanced Budget Act (BBA) of 1977, the Department of Health and Human Services (HHS) Office of Inspector General (OIG) has established a list of parties and entities excluded from Federal health care programs. Specifically, the listed parties and entities may not receive Federal Health Care program payments due to fraud and/or abuse of the Medicare and Medicaid programs.

- 2.1.9.1. Therefore, Contractor shall review the HHS OIG List of Excluded Individuals/Entities on the HHS OIG web site at <http://oig.hhs.gov/exclusions/index.asp> to ensure that the proposed Contractor’s physician(s) is not listed. Contractor should note that any excluded individual or entity that submits a claim for reimbursement to a Federal health care program, or causes such a claim to be submitted, may be subject to a Civil Monetary Penalty (CMP) for each item or service furnished during a period that the person was excluded and may also be subject to treble damages for the amount claimed for each item or service. CMP’s may also be imposed against the Contractor that employ or enter into contracts with excluded individuals to provide items or services to Federal program beneficiaries.
- 2.1.9.2. By submitting their proposal, the Contractor certifies that the HHS OIG List of Excluded Individuals/Entities has been reviewed and that the

Contractors are and/or firm is not listed as of the date the offer/bid was signed.

- 2.2. Clinical/Professional Direction:
- 2.2.1. The contractor shall provide a Pathologist to be present at the Sioux Falls VAHCS and must be actually performing the required services for the period specified.
- 2.2.2. The Pathologists will perform the following tasks as part of their contract requirements. Approximately 25 autopsies per year, 450 units cross-matched, 600 transfusions, 120 frozen sections, 1,000,000 tests, 3,300 surgical specimens.
- 2.3. Non Personal Healthcare Services: The parties agree that the Contractor and all Contractor's physician(s) shall not be considered VA employees for any purpose.
- 2.4. Inherent Government Functions: Contractor and Contractor's physician(s) shall not perform inherently governmental functions. This includes, but is not limited to, determination of agency policy, determination of Federal program priorities for budget requests, direction and control of government employees (outside a clinical context), selection or non-selection of individuals for Federal Government employment including the interviewing of individuals for employment, approval of position descriptions and performance standards for Federal employees, approving any contractual documents, approval of Federal licensing actions and inspections, and/or determination of budget policy, guidance, and strategy.
- 2.5. No Employee status: The Contractor shall be responsible for protecting Contractor's physician(s) furnishing services. To carry out this responsibility, the Contractor shall provide or certify that the following is provided for all their staff providing services under the resultant contract:
- 2.5.1.1. Workers' compensation
- 2.5.1.2. Professional liability insurance
- 2.5.1.3. Health examinations
- 2.5.1.4. Income tax withholding, and
- 2.5.1.5. Social security payments.
- 2.6. Tort Liability: The Federal Tort Claims Act does not cover Contractor or Contractor's physician(s). When a Contractor or Contractor's physician(s) has been identified as a provider in a tort claim, the Contractor shall be responsible for notifying their legal counsel and/or insurance carrier. Any settlement or judgment arising from a Contractor's (or Contractor's physician(s)) action or non-action shall be the responsibility of the Contractor and/or insurance carrier.
- 2.7. Key Personnel:
- 2.7.1. The VA Full Time Equivalency (FTE) for the service required is one (1) qualified person. More contract Pathologists may be identified for substitution and coverage purposes.

- 2.7.2. It is essential that continuity of services is maintained to the maximum degree possible, hence, substitution of contractor provided Staff shall be limited to urgent/emergent absences of approved, assigned providers. The Contractor shall be responsible for providing coverage to the VA during periods of vacancies of the Contractor's personnel due to sick leave, personal leave, vacations and additional coverage as required. In the event a scheduled staff is unable to complete an assigned shift, the contractor shall provide replacement staff coverage and notify the Contracting Officer Representative (COR) immediately of the schedule change.
- 2.8. Personnel Substitutions: During the first thirty (30) calendar days of performance, the Contractor shall make NO substitutions of key personnel unless the substitution is necessitated by illness, death or termination of employment. The Contractor shall notify the CO, in writing, within fifteen (15) calendar days after the occurrence of any of these events and provide the information required below. After 90 days, the Contractor shall submit the information required below to the CO at least fifteen (15) calendar days prior to making any permanent substitutions.
- 2.8.1. The Contractor shall provide a detailed explanation of the circumstances necessitating the proposed substitutions, complete resumes for the proposed substitutes, and any additional information requested by the CO. Proposed substitutes shall have comparable qualifications to those of the persons being replaced. The CO will notify the Contractor within fifteen (15) calendar days after receipt of all required information of the decision on the proposed substitutes. The contract and task order will be modified to reflect any approved changes of key personnel.
- 2.8.2. For temporary substitutions where the key person shall not be reporting to work for three (3) consecutive work days or more, the Contractor shall provide a qualified replacement for the key person. The substitute shall have comparable qualifications to the key person. Any period exceeding two weeks will require the procedure as stated above.
- 2.8.3. The Government reserves the right to refuse acceptance of any Contractor personnel at any time after performance begins, if personal or professional conduct jeopardizes patient care or interferes with the regular and ordinary operation of the facility. Breaches of conduct include intoxication or debilitation resulting from drug use, theft, patient abuse, dereliction or negligence in performing directed tasks, or other conduct resulting in formal complaints by patient or other staff members to designated Government representatives. Standards for conduct shall mirror those prescribed by current federal personnel regulations. Should the VA COS or designee show documented clinical problems or continual unprofessional behavior/actions with any Contractor's physician(s), she/he may request, without cause, immediate replacement of said Contractor's physician(s).
- 2.8.4. The CO and COR shall deal with issues raised concerning Contractor's physician(s) conduct. The final arbiter on questions of acceptability is the CO.
- 2.9. Contingency Plan: Because continuity of care is an essential part of the Sioux Falls VAHCS medical services, the Contractor shall have a contingency plan in place to be utilized if the

Contractor's physician(s) leaves Contractor's employment or is unable to continue performance in accordance with the terms and conditions of the resulting contract or task order.

- 2.10. Standard of Care. The standard of care should be equal to that provided by the VA if the VA were capable of providing the services at their location. The contractor shall provide competent, quality Pathology services to all patients of the Sioux Falls VA. Contractor shall provide all services specified in this contract for any VA beneficiary, regardless of the race, color, religion, sex, or national origin of the person for whom such services are ordered. The Contractor further warrants that he/she shall not resort to subcontracting as a means of circumventing this provision

3. HOURS OF OPERATION

- 3.1. VA Business Hours: The VAHCS is open 24 hours a day, seven (7) days a week, including holidays. The services covered by this contract shall be furnished by the contractor as defined herein. The Contractor will not be required, except in case of emergency, to furnish such services on a national holiday or during off-duty hours as described below
- 3.1.1. Work Schedule: Monday through Friday, 7:30 AM to 11:00 AM. All contract work to be accomplished during the daily schedule. The contractor will be released or dismissed to leave early when all work has been completed prior to the end of the duty day.
- 3.1.2. Noon Conference: Monday through Friday, 12:00 PM to 1:00 PM at the contractor's facility to review complex cases for the SFVAHCS.
- 3.1.3. On-Call Services: 11:00 AM to 7:30 AM, 7 days per week, including weekends and holidays.
- 3.1.4. Call Back Service: Contractor to respond to the SFVAHCS within 30 minutes.
- 3.2. Cancellations: Unless a state of emergency has been declared or clinics are otherwise cancelled by the Sioux Falls VAHCS, the Contractor shall be responsible for providing services.
- 3.3. Federal Holidays: The following holidays are observed by the Department of Veterans Affairs:
- New Year's Day
 - President's Day
 - Martin Luther King's Birthday
 - Memorial Day
 - Independence Day
 - Labor Day
 - Columbus Day
 - Veterans Day
 - Thanksgiving
 - Christmas

- Any day specifically declared by the President of the United States to be a national holiday.

4. CONTRACTOR RESPONSIBILITIES

4.1. Clinical Personnel Required: The Contractor shall provide Contractor's physician(s) that are competent, qualified per this performance work statement and adequately trained to perform assigned duties. Pathologists will perform necessary Clinical Pathology services that shall include, but not limited to the following:

- 4.1.1.1. Contractor's physician(s) shall be responsible for signing in and out when in attendance. Time sheets will be used by the COR to confirm hours/day and services provided against the contractor's invoices.
- 4.1.1.2. The Contractor is responsible for providing back up coverage for any unplanned leave.
- 4.1.1.3. The contractor shall provide an evaluation tool to be completed by VA personnel regarding the contracted staff's performance and conduct. Should performance or conduct be deemed inappropriate, the contracted staff will be exempt from returning to the VAHCS.

4.2. Standards of Care:

- 4.2.1.1. VA Standards: VHA Directive 2006-041 "Veterans' Health Care Service Standards" (expired but still in effect pending revision)
https://www1.va.gov/vhapublications/ViewPublication.asp?pub_ID=1443
- 4.2.1.2. The professional standards of The Joint Commission (TJC)
http://www.jointcommission.org/emergency_department/
- 4.2.1.3. The standards of the American Hospital Association (AHA)
<http://www.hpoe.org/resources?show=100&type=8> and;
- 4.2.1.4. The requirements contained in this PWS.

4.3. Resident Supervision and Teaching:

4.3.1. Resident Supervision/Teaching: According to the guidelines dictated by the Residency Review Committee of ACGME, the contractor's physician (s) performing the services shall be responsible for residents. Contractor's physician (s) shall be responsible for:

- 4.3.1.1. Academic environment: Provide for an academic environment conducive to the training and professional development for residents rotating through the Pathology Service.

4.4. PATIENT CARE DOCUMENTATION: Contractor's physician(s) shall be responsible for complying with documentation and ensuring that all notes and encounters are completed and signed and shall appropriately document medical records in accordance with VA standards, equivalent to TJC compliance guidelines, standard commercial practice and guidelines established

by SFVAHCS. Timeliness standards for encounters are closure within seven (7) days. Timeliness for signing of notes is within ten (10) days. Discharge summaries to be completed within 24 hours. All visit or shift documentation must be completed prior to the contracted staff leaving the VA premises.

4.5. MEDICAL RECORDS

- 4.5.1. Authorities: Contractor's physician(s) providing healthcare services to VA patients shall be considered as part of the Department Healthcare Activity and shall comply with the U.S.C.551a (Privacy Act), 38 U.S.C. 5701 (Confidentiality of claimants records), 5 U.S.C. 552 (FOIA), 38 U.S.C. 5705 (Confidentiality of Medical Quality Assurance Records) 38 U.S.C. 7332 (Confidentiality of certain medical records), Title 5 U.S.C. § 522a (Records Maintained on Individuals) as well as 45 C.F.R. Parts 160, 162, and 164 (HIPAA).
- 4.5.2. HIPPA: This Contract and its requirements meet exception in 45 CFR 164.502(e), and do not require a BAA in order for Covered Entity to disclose Protected Health Information to: a health care provider for treatment. Based on this exception, a BAA is not required for this contract. Treatment and administrative patient records generated by this contract or provided to the Contractors by the VA are covered by the VA system of records entitled 'Patient Medical Records-VA' (24VA19). Contractor generated VA Patient records are the property of the VA and shall not be accessed, released, transferred, or destroyed except in accordance with applicable laws and regulations. Contractor shall ensure that all records pertaining to medical care and services are available for immediate transmission when requested by the VA. Records identified for review, audit, or evaluation by VA representatives and authorized federal and state officials, shall be accessed on-site during normal business hours or mailed by the Contractor at his expense. Contractor shall deliver all final patient records, correspondence, and notes to the VA within twenty-one (21) calendar days after the contract expiration date.
- 4.5.3. Disclosure: Contractor's physician(s) may have access to patient medical records: however, Contractor shall obtain permission from the VA before disclosing any patient information. Subject to applicable federal confidentiality or privacy laws, the Contractor, or their designated representatives, and designated representatives of federal regulatory agencies having jurisdiction over Contractor, may have access to VA 's records, at VA's place of business on request during normal business hours, to inspect and review and make copies of such records. The VA will provide the Contractor with a copy of VHA Handbook 1907.1, Health Information management and Health Records and VHA Handbook 1605.1, Privacy and Release of Information. The penalties and liabilities for the unauthorized disclosure of VA patient information mandated by the statutes and regulations mentioned above, apply to the Contractor.
- 4.5.4. Standards for Documenting Care: Care shall be appropriately documented in the electronic medical records in accordance with standard commercial practice and guidelines established by VHA Handbook 1907.01 *Health Information Management and Health Records*:

http://www.va.gov/vhapublications/ViewPublication.asp?pub_ID=1423 and all guidelines provided by the SFVAHCS.

- 4.5.5. **Release of Information:** The VA shall maintain control of releasing any patient medical information and will follow policies and standards as defined, but not limited to Privacy Act requirements. In the case of the VA authorizing the Contractor to release patient information, the Contractor in compliance with VA regulations, and at his/her own expense, shall use VA Form 3288, Request for and Consent to Release of Information from Individual's Records, to process "Release of Information Requests." In addition, the Contractor shall be responsible for locating and forwarding records not kept at their facility. The VA's Release of Information Section shall provide the Contractor with assistance in completing forms. Additionally, the Contractor shall use VA Form 10-5345, Request for and Authorization to Release Medical Records or Health Information, when releasing records protected by 38 U.S.C. 7332. Treatment and release records shall include the patient's consent form. Completed Release of Information requests will be forwarded to the VA Privacy Officer at the following address:

AARON CORK (aaron.cork@va.gov)
 Privacy Officer, FOIA, Records Management
 Building 16
 2205 West 22nd Street, Sioux Falls, SD 57105
 Phone: 605-336-3230 Ext 9-6784

- 4.6. **DIRECT PATIENT CARE: 90%** of the time involved in direct patient care. Per the qualification section of this PWS, the Contractor shall provide the following staff with the scope of care including the unit description, qualifications, required skills and work hours:
- 4.6.1. Response time of one-half hour on emergent pathology consultations, including but not limited to, unexpected frozen sections, bronchial alveolar GMS stains, blood bank compatibility and blood bank transfusion reaction interpretations.
- 4.6.2. Twenty minute turnaround time and physician notification for typical single frozen sections.
- 4.6.3. Gross and microscopic examination of surgical specimens and rendering final report to the clinical service within two (2) working days for cases not requiring consultation, special stains, or special processing such as decalcification.
- 4.6.4. Gross and microscopic examination of cytology specimens and rendering final report to the clinical service within three (3) working days after receipt at the contractor's facility for cases not requiring consultation, special stains, or special processing such as decalcification.
- 4.6.5. Peer review of required cases and selected cases after diagnosis. This includes a second opinion on all new malignancies (excluding skin squamous and basal cell)

and other reviews as required by VA and VA Sioux Falls Pathology and Laboratory Medicine.

- 4.6.6. Personal communication with patient provider of unexpected diagnoses of clinical significance, and diagnoses of malignancy not previously established (excluding skin squamous and basal cell carcinoma), ideally within one working day of the time that the diagnoses was made.
- 4.6.7. Gross provisional autopsy reports within 24 hours (72 hours for weekends, 96 hours for weekend adjacent to a holiday).
- 4.6.8. Complete post-mortem examinations with final copy, in required format, within thirty business days.
- 4.6.9. All autopsies will be performed, or directly supervised, by a pathologist qualified in anatomic pathology in accordance with the College of American Pathologist (CAP) Standard ANP.33050.
- 4.6.10. Guidance and assistance to the Laboratory Service, including the performance and reporting of test results of laboratory services.
- 4.6.11. Daily completion and VISTA computer entry of accurate and appropriate CPT coding of routine cases by all pathologists.
- 4.6.12. Assist in providing professional direction of support personnel employed by the SF VAHCS subject to the approval the Chief, Pathology and Laboratory Medicine Service. This shall include instructing pathology residents, medical students, graduate students, technology students (MT or MLT, ASCP), nursing and medical staff.
- 4.6.13. The staff pathologist will consistently observe referral testing sources and otherwise cooperate with efforts to contain costs and improve efficiency while maintaining a high standard of care. For example, anatomic pathology stains (private referral vs. Sioux Falls VA), physician ordering practices and education, and transfusions requests.
- 4.6.14. Will participate in rotating on-call pathology support for the service, subject to the approval of the Chief, Pathology and Laboratory Medicine. Physicians shall provide after-hour on-call coverage including evenings, weekdays, weekends and holidays.
- 4.6.15. Provide coverage during any absences including sick leave or vacation time, holidays, etc.
- 4.6.16. Participation, timely and successful completion of surveys as required by accrediting agencies or the Department of Veterans Affairs to include, but not limited to, the American Society of Clinical Pathologists cytopathology proficiency non-GYN, other CMS approved proficiency samples, CAP Histopathology Quality Improvement Program (HQIP), CAP Histopathology Quality Improvement

Immunohistochemical stains (HQIHC) and CAP MK, CD20 Immunohistochemical stains.

- 4.6.17. The Clinical Pathology staff must be knowledgeable with the clinical applications and analytic methodologies of each of Laboratory section and shall serve as a consultant to the clinical staff in test selection and interpretation.
- 4.6.18. The contractor shall assist and be responsible for providing services that meet the standards as established by The Joint Commission, Department of Veterans Affairs, College of American Pathologists (CAP) and any other organization having review authority over operations of the Pathology and Laboratory Medicine Service of the SF VAHCS.
- 4.6.19. The contractor should provide services in accordance with the scope of work and terms of the contract in order to assure continuity of care to patients of the Department of Veterans Affairs, Sioux Falls, SD.
- 4.6.20. The contractor is responsible for obtaining continuing education credits for compliance with state licensure.
- 4.6.21. The contractor will abide by all safety policies and procedures of the Department of Veterans Affairs, Sioux Falls, SD to include, but not limited to, personal protective equipment (PPE) and fire drills.
- 4.6.22. Participation and cooperation with patient safety review activities, when requested, such as Root Cause Analysis and Failure Mode Effect Analysis.
- 4.6.23. All consults must be addressed within seven (7) business days through the daily use of the consult tracking report in accordance with SF VAHCS Center Circular 11-89 (copy attached), Service Level Consult Management Plan. Available upon request.
- 4.6.24. The contractor shall abide by the bylaws, rules and regulations of the VA Medical Staff. Available upon request.
- 4.6.25. The contractor shall provide services to the satisfaction of the medical staff, Chief of Pathology and Laboratory Medicine, and the Chief of Staff. The adequacy of these services will be measured by the criteria listed in the contract as well and the participation in the College of American Pathologist Laboratory inspection and accreditation program, as well as inspection by The Joint Commission and internal peer review as deemed appropriate by the Chief of Staff, the Contracting Officer (CO) and the Contracting Officer's Representative (COR).
- 4.6.26. A critical part of the mission of the SF VAHCS is post-graduate medical education. Contractor will be required to provide resident supervision and clinical instruction of residents, in accordance with VHA Handbook 1400.01 (https://www.va.gov/OPTOMETRY/docs/VHA_Handbook_1400-01_Resident_Supervision_12-19-2012.pdf), in accordance with hospital residency rotation schedule, and to participate in educational conferences, such as Tumor Board. Diagnostic

procedures (e.g. invasive procedures such as bone marrows and fine needle aspirates) are procedures that require a high level of expertise in their performance an interpretation. Although gaining experience in doing such procedures is an integral part of the education of the resident, such procedures may be done only be residents with the required knowledge, skill, and judgement and under an appropriate level of supervisor by a supervising practitioner. Supervising practitioners are responsible for authorizing the performance of such procedures and must be physically present in the procedural area. Supervision for these procedures takes into account the complexity and inherent risk of the procedure, the experience of the resident, and assigned graduated levels of responsibility.

4.6.27. CYTOLOGY AND SPECIALTY STAIN SERVICES

- 4.6.27.1. Meet requirements for appointment to the medical staff, Sioux Falls, VAHCS as outlined in the Medical Staff Bylaws.
- 4.6.27.2. Pathologists must be Board certified in anatomic and clinical pathology.
- 4.6.27.3. Pathologist overseeing resident training must be eligible for academic appointment to the University of South Dakota.
- 4.6.27.4. Personnel assigned by the Contractor to perform the services covered by this contract shall be licensed in a State, Territory or Commonwealth of the United States or the District of Columbia and meet the professional qualification criteria of VA. The qualifications of such personnel shall also be subject to review by VA Chief of Staff and approval by VA Facility Director. The Contracting Officer will be notified prior to any changes in personnel. VA reserves the right to approve the assignment of individual personnel furnished by the Contractor to perform the functions specified in the contract. The personnel assigned by the Contractor will be credentialed and privileged by the VA in accordance with VHA Handbook 1100.19.
- 4.6.27.5. Pathologists assigned by the contractor must be board certified in Pathology and cooperate with all VA Credentialing and privileging requirements. They are members of the medical staff of the SF VAHCS and will be bound by the medical staff bylaws and standards of care and practice. In that post-graduate medical education is a critical part of the VA's mission, Pathologists assigned to the VA must also remain in good standing with our medical school affiliate, the University of South Dakota and approved for the teaching and supervision of residents.
- 4.6.27.6. The Pathology & Laboratory Medicine Service at the Department of Veterans Affairs, SF VAHCS, requires the services of a contractor to provide specialized specific diagnostic testing needs not provided by the Sioux Falls VAHCS.
- 4.6.27.7. Cytology specimen testing needs consists of preparation, staining, cytotechnologist screen and results. Surgical pathology testing consists

of immunoperoxidase stains, special stains, and slide interpretations that are not College of American Pathologist approved to perform in the VA laboratory.

- 4.6.27.8. Contractor to provide courier service to and from the SF VAHCS laboratory Monday-Friday (excluding holidays) for specimen pick up and slide delivery. Routine specimen pick up from the Sioux Falls VAHCS laboratory will be between both 0800-0900 and 1300-1400 (includes cytology report delivery) business days, Monday through Friday at no additional charge.
- 4.6.27.9. Consultation regarding selection, collection, transportation and result interpretation shall also be provided when required. The contractor must provide the following services:
- 4.6.27.9.1. Provide the following for transport of the specimens to include:
- 4.6.27.9.2. Lab test request forms (it is possible that vendor may need to customize forms to include information required by the VA)
- 4.6.27.9.3. Special instructions for handling of specimen
- 4.6.27.9.4. Perform required specimen preparation, staining, cytotechnologist interpretation and return of slides to VA laboratory by 1330 M-F.
- 4.6.27.9.5. Contractor shall provide a monthly billing for tests provided each month following the month in which the service was delivered.
- 4.6.27.9.6. Contractor shall consult with VA Laboratory on test results by telephone as needed.
- 4.6.27.9.7. Provide the VA Laboratory with a means of communication to permit immediate inquiry regarding the status of a pending test.
- 4.6.27.9.8. A Laboratory User's Manual or similar documentation will be available to the VA Laboratory. The manual shall include a list of cytology tests that the Contractor provides along with the testing methodology used for each test, length of time of testing, which days the test is run, and specimen requirements and any special handling required.

4.6.27.9.9. Provide copies of CAP accreditation and proficiency testing that the contractor subscribes.

4.6.27.10. The Contractor shall assure compliance of all procedures and practices by the following accrediting agencies, and the facility and employees shall have all licenses, permits, accreditation, professional certifications and qualifications required by federal and state law to provide laboratory testing and consult services. This includes:

4.6.27.10.1. Accreditation by the College of American Pathologists (CAP)

4.6.27.10.2. Accreditation by the Centers for Prevention and Disease Control (CDC)

4.6.27.11. Contractor will access VA records by Virtual Protocol Network (VPN). Reports completed during noon conference review must be finalized the same day unless additional stains are required. Contractor will access patient charts when VA providers or lab staff have questions regarding test results.

4.6.28. CYTOLOGY LAB REQUIREMENTS – CONTRACTORS FACILITY

4.6.28.1. The Pathologists overseeing the laboratory must have an unrestricted license to practice medicine in one of the states or territories of the United States or District of Columbia.

4.6.28.2. The laboratory must have highly skilled and trained personnel certified as Cytotechnologists.

4.6.28.3. The qualifications of such personnel shall also be subject to review by SF VAHCS Laboratory Director.

4.6.28.4. No person who screens GYN cytopathology slides may screen more than 100 slides per 24-hours (average 12.5 slides/hour) and in not less than eight (8) hours. This count includes any screening they perform for other employers or at another facility.

4.6.28.5. The VA laboratory shall be responsible to provide laboratory specimens prepared in accordance with the contractor's Laboratory User's Manual. All specimens will be properly identified and labeled for testing. The contractor shall provide an adequate supply of requisition forms, special instructions and a current list of tests with specimen requirements. These requirements shall be defined in the laboratory user's manual.

4.6.29. LABORATORY REPORTS

4.6.29.1. A report is defined as a printed final copy of pathology interpretive consult. If results are telephoned prior to sending, the written report must include the name of the individual notified of the results, date and time of telephone report. Each report shall at a minimum indicate the following information:

- Patient's name and Social Security number
- Physician's name (if supplied)
- VA Medical Center name
- Patient's location, e.g. clinic, ward (if supplied)
- Test ordered
- Date/time of specimen collection (when available)
- Date/time specimen received in Reference Lab
- Date test completed
- Test result
- Name of testing laboratory (contractor and/or subcontractor)
- Testing laboratory specimen number
- Type of specimen
- Comments related to the test provided by the submitting lab
- Information that may indicate a questionable validity of test results
- Unsatisfactory specimen shall be reported with reason as to its unsuitability for testing

4.6.29.2. To ensure proper handling and test performance, the contractor shall provide the following updated information upon request during the life of the contract:

4.6.29.2.1. Annual summary

4.6.29.2.2. Proficiency testing data. When results for the American Society of Clinical Pathologists cytopathology proficiency GYN are available they must be provided to the VA Laboratory Director.

4.6.29.2.3. The contractor(s) facilities, methodologies (defined as the principal of the method and references), and quality control procedures may be examined by representatives of the VA at any time during the life of the contract.

4.6.29.2.4. Contractor agrees to maintain the minimum acceptable service, reporting systems and quality controls as specified herein. Immediate (within 24 hours) notification must be given to VA upon adverse action by a regulatory agency.

4.5.29.3 Contractor shall provide the SF VAHCS Laboratory a testing summary report annually at the end of each contract year. Provide annual report with quality control summary, negative review with current high grade squamous intraepithelial (HGSIL) summary (CLIA review), and statistics by diagnosis for GYN, volume by category, abnormal rate per year, unsatisfactory rate per year,

fluid specimen types receive per year and FNA types. At the end of each contract year a cumulative (year-to-date) report shall be submitted to the VA providing the name of test ordered, price of test, cumulative totals and a total of all funds spent by that VA facility on laboratory testing services.

4.5.29.4 The Contractor shall advise the VA of any changes in assay methodology, procedures, and any new tests introduced. In the event that the contractor changes the assay procedures or a critically important component of an assay the contractor shall notify the VA Contracting Office and the VA Laboratory Director prior to the intended change. He shall provide documentation that the quality and efficacy of the test will remain unchanged or be improved. Changes in the assay material, testing procedures or methodology that have not been reviewed and pre-approved by VA Laboratory Director and mutually agreed upon in writing between the contractor and the VA Contracting Officer, may be sufficient cause for the VA to use an alternate contractor for that specific test for the duration of the contract.

4.5.30 CONSULT REQUIREMENTS.

4.5.30.3 Contractor is required to do a second review of all new malignancies except squamous and basal cell skin carcinoma. All second review reports for malignancies are to be done within the same day of slide receipt.

4.5.30.4 Inconclusive case interpretations by the on duty staff pathologist shall require a second pathologist review/consult.

4.5.31 Teaching Responsibilities. Teaching responsibilities will be conducted for medical residents and fellows on the renal service and on clinical rotations at the VA (reference VHA Handbook 1400.01).

4.5.32 CONTRACTOR POINT(S) OF CONTACT: The Contractor shall provide telephone number(s) and contact person(s) to be used by the VAHCS Pathology & Laboratory Medicine Service for specimen inquiries, and Lab Technical/Pathologist consultation.

Phone Number for Specimen Inquiries: _____

Lab Technical Director/Pathologists: _____

4.7. Administrative: 10% of time not involved in direct patient care

4.7.1. Staff Meetings. If requested or required by the Sioux Falls VAHCS, Contractor’s physician(s) shall attend unit meetings as scheduled by the unit director.

4.7.2. Process Improvement (PI) documentation: The Contractor’s physician(s) shall complete the appropriate QM/PI documentation pertaining to all procedures, complications and outcome of examinations.

- 4.7.2.1. Specialized CPRS Documentation Procedures: Patient documentation is completed using the Computerized Patient Record System (CPRS).
- 4.7.2.2. Contractor's physician(s) shall document care given and select appropriate Evaluation and Management (E&M) procedure codes in CPRS. Documentation must be sufficient to support both the E&M and procedure codes. Documentation and coding functions must be completed by the end of each patient care encounter.
- 4.7.3. Patient Safety Compliance and Reporting: Contractor's physician(s) shall follow all established patient safety and infection control standards of care. Contractor's physician(s) shall make every effort to prevent medication errors, falls, and patient injury caused by acts of commission or omission in the delivery of care. All events related to patient injury, medication errors, and other breeches of patient safety shall be reported to the Nurse Manager or designee as soon as possible, but not later than the end of the shift. Additionally, Contractors shall notify the COR (within 24 hours) of the incident and submit to the COR the Patient Safety Report, following up with COR as required or requested.
- 4.7.4. Customer Service: Contractor's physician(s) shall refer all patient/customer service issues to the Department Supervisor Physician and/or Department Nurse Manager or designee.

4.8. PERFORMANCE STANDARDS, QUALITY ASSURANCE (QA) AND QUALITY IMPROVEMENT (QI)

- 4.8.1. Quality Management/Quality Assurance Surveillance: Contract personnel shall be subject to Quality Management measures, such as patient satisfaction surveys, timely completion of medical records, and Peer Reviews. Methods of Surveillance: Focused Provider Practice Evaluation (FPPE) and Ongoing Provider Practice Evaluation (OPPE). Contractor performance will be monitored by the government using the standards as outlined in this Performance Work Statement (PWS) and methods of surveillance detailed in the Quality Assurance Surveillance Plan (QASP). The QASP shall be attached to the resultant contract and shall define the methods and frequency of surveillance conducted.
- 4.8.1.1.1. The contractor's staff is expected to actively participate in the facility's performance improvement activities as part of the contracted service time.
- 4.8.2. Patient Complaints: The CO will resolve complaints concerning Contractor relations with the Government employees or patients. The CO is final authority on validating complaints. In the event that The Contractor is involved and named in a validated patient complaint, the Government reserves the right to refuse acceptance of the services of such personnel. This does not preclude refusal in the event of incidents involving physical or verbal abuse.
- 4.8.3. The Government reserves the right to refuse acceptance of any Contractor personnel at any time after performance begins, if personal or professional conduct jeopardizes patient care or interferes with the regular and ordinary operation of the facility. Breaches of conduct include intoxication or debilitation resulting from drug use, theft, patient abuse, dereliction or negligence in performing directed tasks, or other conduct resulting in formal complaints

by patient or other staff members to designated Government representatives. Standards for conduct shall mirror those prescribed by current federal personnel regulations. The CO and COR shall deal with issues raised concerning Contractor's conduct. The final arbiter on questions of acceptability is the CO.

4.9. Performance Standards

4.9.1. Measure: Qualifications of Key Personnel

- 4.9.1.1. Performance Requirement: All Contractor's physician(s) shall be currently licensed and certified in accordance with the PWS.
- 4.9.1.2. Standard: All (100%) staff is licensed and licenses are current.
- 4.9.1.3. Acceptable Quality Level: 100% meet Standards
- 4.9.1.4. Surveillance Method: Verification from contractor.
- 4.9.1.5. Frequency: Annually

4.9.2. Measure: Computerized Patient Record System (CPRS)

- 4.9.2.1. Performance Requirement: Contractor's physician(s) shall be responsible for ensuring documentation is complete, accurate, and timely and entered into the computerized medical record.
- 4.9.2.2. Standard: All (100%) accuracy and completion.
- 4.9.2.3. Acceptable Quality Level: 90%
- 4.9.2.4. Surveillance Method: Random Inspection of records with audits by HIMS using reports from the dictation system and VISTA. Medical Service to alert COR of any staff who is non-compliant with these requirements.
- 4.9.2.5. Frequency: Quarterly

4.9.3. Measure: Maintains licensing, registration, and certification

- 4.9.3.1. Performance Requirement: Updated Licensing, registration and certification shall be provided as they are renewed. Licensing and registration information kept current.
- 4.9.3.2. Standard: All (100%) licensing, registration(s) and certification(s) for Contractor's physician(s) shall be provided as they are renewed. Licensing and registration information kept current.
- 4.9.3.3. Acceptable Quality Level: All (100%) licensing, registration(s) and certification(s) for Contractor's physician(s) shall be provided as they are renewed. Licensing and registration information kept current. No acceptable deviation.
- 4.9.3.4. Surveillance Method: Verification and/or documentation provided by contractor
- 4.9.3.5. Frequency: Upon of award of contract/task order, when new staff is added, and yearly hereafter

4.9.4. Measure: Mandatory Training

- 4.9.4.1. Performance Requirement: Contractor shall complete all required training on time per SFVAHCS policy.
- 4.9.4.2. Standard: All (100%) of required training is complete on time by Contractor's physician(s).
- 4.9.4.3. Acceptable Quality Level: 100% completions, no deviations.
- 4.9.4.4. Surveillance Method: Periodic Sampling

- 4.9.4.5. Frequency: Quarterly
- 4.9.5. Measure: Privacy, Confidentiality and HIPAA
 - 4.9.5.1. Performance Requirement: Contractor is aware of all laws, regulations, policies and procedures relating to Privacy, Confidentiality and HIPAA and complies with all standards Zero breaches of privacy or confidentiality
 - 4.9.5.2. Standard: All (100%) contractor staff comply with all laws, regulations, policies and procedures relating to Privacy, Confidentiality and HIPAA
 - 4.9.5.3. Acceptable Quality Level: 100% compliance; no deviations.
 - 4.9.5.4. Surveillance Method: Periodic Sampling; Contractor shall provide evidence of annual training required by the Sioux Falls VAHCS, reports violations per VA Directive 6500.6.
 - 4.9.5.5. Frequency: Quarterly
- 4.9.6. Measure: Turnaround Times
 - 4.9.6.1. Performance Requirement: Contractor shall not exceed the acceptable turnaround standards.

Indicator	Standard
Physician notification for typical single frozen sections. M-F business days 7:30 AM to 4:00 PM	Twenty minute turnaround time – specimen receipt to physician notification
Provider notification of all new malignancies (excluding skin squamous and basal cell carcinoma)	Within 24 hours of diagnosis
Correlation of frozen section and final diagnoses.	Frozen interpretation correlates with permanent slides
Surgical pathology report completion.	Within 2 working days of specimen receipt at the VAHCS.
Cytopathology report completion	Within 3 working days of specimen receipt at the contractor’s facility.
Autopsy provisional anatomic diagnoses	Within 24 hours (72 hours for weekends and 96 hours for weekends adjacent to holidays) of post.
Autopsy final anatomic diagnoses.	Within 30 business days of post.

- 4.9.6.2. Standard: All (100%) contractor staff comply with all laws, regulations, policies and procedures relating to Privacy, Confidentiality and HIPAA
- 4.9.6.3. Acceptable Quality Level: 100% compliance; no deviations.
- 4.9.6.4. Surveillance Method: Observation
- 4.9.6.5. Frequency: Monthly/Quarterly
- 4.9.7. Measure: Quality Management Requirements
 - 4.9.7.1. Performance Requirement:
 - 4.9.7.1.1. Contractor will adhere to all applicable Joint Commission Standards.
 - 4.9.7.1.2. All applicable VAHCS policies and procedures shall be followed by the contract.
 - 4.9.7.1.3. Contract personnel shall provide compassionate care with respect for the special needs of the veteran population served.

- 4.9.7.1.4. Care delivered will reflect the SF VAHCS's mission, vision and values.
- 4.9.7.1.5. Deviations from the contract requirements must be approved by the Contracting Officer.
- 4.9.7.2. Standard: All (100%) contractor staff comply with all laws, regulations, policies and procedures relating to Privacy, Confidentiality and HIPAA
- 4.9.7.3. Acceptable Quality Level: 100% compliance; no deviations.
- 4.9.7.4. Surveillance Method: Observation
- 4.9.7.5. Frequency: Monthly/Quarterly
- 4.9.8. Measure: Patient Rights
 - 4.9.8.1. Performance Requirement:
 - 4.9.8.1.1. Care provided will respect and integrate the patient's beliefs, values and cultural influences.
 - 4.9.8.1.2. The Contractor shall involve the patient in care decisions by keeping him/her fully informed about the diagnosis, plan of care and treatment goals, risks and benefits of proposed treatment, and prognosis. Shared decision making shall be pursued.
 - 4.9.8.1.3. Protection of all patients' rights is of highest priority.
 - 4.9.8.1.4. The contracted physician is required to review the Patient Rights handbook, and follow the standard of care.
 - 4.9.8.1.5. Patient privacy and confidentiality shall be maintained at all times.
 - 4.9.8.1.6. Computer access will be granted on a need-to-know basis, and security of computerized information will be maintained at all times.
 - 4.9.8.1.7. The contractor and patient care services provided shall be included in VAHCS data collection activities related to patient compliments, complaints and satisfaction.
 - 4.9.8.2. Standard: All (100%) contractor staff comply with all laws, regulations, policies and procedures relating to Privacy, Confidentiality and HIPAA
 - 4.9.8.3. Acceptable Quality Level: 100% compliance; no deviations.
 - 4.9.8.4. Surveillance Method: Observation
 - 4.9.8.5. Frequency: Monthly/Quarterly
- 4.9.9. Measure: Patient Safety
 - 4.9.9.1. Performance Requirement:
 - 4.9.9.1.1. Patient safety shall be a primary focus of the contractor.
 - 4.9.9.1.2. Every effort shall be made by the contractor to prevent medication errors, falls, and patient injury caused by acts of commission or omission in the delivery of care.
 - 4.9.9.1.3. The VAHCS shall determine when a Root Cause Analysis (RCA) is required of the contractor and must be submitted to the COR in a timely manner.
 - 4.9.9.1.4. Contractor will communicate critical test results to the ordering practitioner or the Licensed Responsible Care Giver who is responsible for the care of the patient during that episode of care as outlined in SF VAHCS Center Circular 11-100 Reporting Diagnostic Test and Critical Results. SF VAHCS Center Circular's will be provided upon request to the contractor. The write down-read back

method of communication will be used, documenting in the medical record the name of the provider notified of the critical test results and the date and time of the notification.

- 4.9.9.2. Standard: All (100%) contractor staff comply with all laws, regulations, policies and procedures relating to Privacy, Confidentiality and HIPAA
- 4.9.9.3. Acceptable Quality Level: 100% compliance; no deviations.
- 4.9.9.4. Surveillance Method: Observation
- 4.9.9.5. Frequency: Monthly/Quarterly

4.9.10. Measure: Patient Safety

- 4.9.10.1. Performance Requirement:
 - 4.9.10.1.1. Contractor will communicate with patient's primary care provider with any significant issues/complications.
 - 4.9.10.1.2. All personnel providing direct care services must have appropriate identification and have evidence of appropriate training prior to providing any services to veterans.
 - 4.9.10.1.3. All accidents, malfunctions, injuries, and deaths related to the delivery of services shall be immediately reported verbally to the VA Contracting Officer's Technical Representative (COTR). The Contractor may be required to provide evidence of follow-up through a written report of the incident, describing the event, analysis of cause and effect, and corrective action taken. If such a report is requested by the VA COTR, this will be done within three (3) working days of the verbal report. The Contractor shall provide a point of contact (POC) who shall be responsible for the performance of the work under this contract. The POC shall have full authority to act for the Contractor on all matters relating to the daily operation of this contract. The POC may be a contract health care provider performing under this contract. An alternate may be designated, but the Contractor shall identify, in writing, those times when the alternate shall act as the POC.
- 4.9.10.2. Standard: All (100%) contractor staff comply with all laws, regulations, policies and procedures relating to Privacy, Confidentiality and HIPAA
- 4.9.10.3. Acceptable Quality Level: 100% compliance; no deviations.
- 4.9.10.4. Surveillance Method: Observation
- 4.9.10.5. Frequency: Monthly/Quarterly

4.9.11. Measure: Patient Education

- 4.9.11.1. Performance Requirement: Contractor provides instructions to and coordinated with the patient and caregiver(s)
- 4.9.11.2. Standard: All contract employees (100%) comply
- 4.9.11.3. Acceptable Quality Level: 100% compliance; no deviations.
- 4.9.11.4. Surveillance Method: Observation
- 4.9.11.5. Frequency: Monthly/Quarterly

4.10. Registration with Contractor Performance Assessment Reporting System

- 4.10.1. As prescribed in Federal Acquisition Regulation (FAR) Part 42.15, the Department of Veterans Affairs (VA) evaluates Contractor past performance on all contracts that exceed \$150,000, and shares those evaluations with other Federal Government contract specialists and procurement officials. 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 uses an online database, CPARS, which is maintained by the Naval Seal Logistics Center in Portsmouth, New Hampshire. CPARS has connectivity with the Past Performance Information Retrieval System (PPIRS) database, which is available to all Federal agencies. PPIRS is the system used to collect and retrieve performance assessment reports used in source selection determinations and completed CPARS report cards transferred to PPIRS. CPARS also includes access to the federal awardee performance and integrity information system (FAPIIS). FAPIIS is a web-enabled application accessed via CPARS for Contractor responsibility determination information.
- 4.10.2. Each Contractor whose contract award is estimated to exceed \$150,000 requires a CPARS evaluation. A government Focal Point will register your contract within thirty days after contract order award and, at that time, you will receive an email message with a User ID (to be used when reviewing evaluations). Additional information regarding the evaluation process can be found at www.cpars.gov or if you have any questions, you may contact the Customer Support Desk @ DSN: 684-1690 or COMM: 207-438-1690.
- 4.10.3. For contracts with a period of one year or less, the contracting officer will perform a single evaluation when the contract is complete. For task orders exceeding one year, the contracting officer will evaluate the Contractor's performance annually. Interim reports will be filed each year until the last year of the contract, when the final report will be completed. The report shall be assigned in CPARS to the Contractor's designated representative for comment. The Contractor representative will have sixty (60) days to submit any comments and re-assign the report to the CO.
- 4.10.4. Failure for the Contractor's representative to respond to the evaluation within those sixty (60) days, will result in the Government's evaluation being placed on file in the database with a statement that the Contractor failed to respond; the Contractor's representative will be "locked out" of the evaluation and may no longer send comments.

5. GOVERNMENT RESPONSIBILITIES

- 5.1. Contract/Task Order Administration/Performance Monitoring: After award of Contract/Task Order, all inquiries and correspondence relative to the administration of the Contract/Task Order shall be addressed to the Contracting Officer's Representative.

5.1.1. CO RESPONSIBILITIES:

Charles Hurry
charles.hurry@va.gov
651-293-3025
Department of Veterans Affairs
Network Contracting Officer (NCO23)
Suite 506

316 Robert Street N.
St. Paul, MN 55101

- 5.1.1.1. The Contracting Officer is the only person authorized to approve changes or modify any of the requirements of this contract. The Contractor shall communicate with the Contracting Officer on all matters pertaining to contract administration. Only the Contracting Officer is authorized to make commitments or issue any modification to include (but not limited to) terms affecting price, quantity or quality of performance of this contract.
- 5.1.1.2. The Contracting Officer shall resolve complaints concerning Contractor relations with the Government employees or patients. The Contracting Officer is final authority on validating complaints. In the event the Contractor effects any such change at the direction of any person other than the Contracting Officer without authority, no adjustment shall be made in the contract price to cover an increase in costs incurred as a result thereof.
- 5.1.1.3. In the event that contracted services do not meet quality and/or safety expectations, the best remedy will be implemented, to include but not limited to a targeted and time limited performance improvement plan; increased monitoring of the contracted services; consultation or training for Contractor personnel to be provided by the VA; replacement of the contract personnel and/or renegotiation of the task order terms or termination of the contract. The VA reserves the right to refuse service from contract employees due to performance or conduct issues.

5.1.2. Contracting Officer's Representative (COR)

John Becker
john.becker3@va.gov
605-336-3230 x96220
Sioux Falls VA Health Care System (VAHCS)
Medical COR Liaison
2501 West 22nd Street
Sioux Falls, SD 57105

- 5.1.2.1. The COR shall be the VA official responsible for verifying contract/task order ended by the monitoring procedures shall be forwarded immediately to the Contracting Officer compliance. After contract/task order award, any incidents of Contractor noncompliance as evidenced by the monitoring procedures shall be forwarded immediately to the Contracting Officer.
- 5.1.2.2. The COR will be responsible for monitoring the Contractor's performance to ensure all specifications and requirements are fulfilled. Quality Improvement data that will be collected for ongoing monitoring includes but is not limited to: enter data that may be collected.

5.1.2.3. The COR will maintain a record-keeping system of services by periodic inspection, verification and /or documentation provided by contractor and invoices. The COR will review this data monthly when invoices are received and certify all invoices for payment by comparing the hours documented on the VA record-keeping system and those on the invoices. Any evidence of the Contractor's non-compliance as evidenced by the monitoring procedures shall be forwarded immediately to the Contracting Officer.

5.1.2.4. The COR will review and certify monthly invoices for payment. If in the event the Contractor fails to provide the services in this contract/task order, payments will be adjusted to compensate the Government for the difference.

5.1.2.5. All contract administration functions will be retained by the VA.

6. SPECIAL CONTRACT REQUIREMENTS

6.1. Reports/Deliverables: The Contractor shall be responsible for complying with all reporting requirements established by the contract. Contractor shall be responsible for assuring the accuracy and completeness of all reports and other documents as well as the timely submission of each. Contractor shall comply with contract requirements regarding the appropriate reporting formats, instructions, submission timetables, and technical assistance as required.

6.1.1. The following are brief descriptions of required documents that must be submitted by Contractor: upon award; weekly; monthly; quarterly; annually, etc. identified throughout the PWS and is provided here as a guide for Contractor convenience. If an item is within the PWS and not listed here, the Contractor remains responsible for the delivery of the item.

What	Submit as noted	Submit To
Quality Control Plan: Description and reporting reflecting the contractor's plan for meeting of contract requirements and performance standards.	Upon proposal and as frequently as indicated in the performance standards.	Contracting Officer
VA Directive 1663 Appendix B Other than Cost and Price Information Supporting Proposed Physician Rate (required for Affiliate onsite hourly- remove if it does not apply)	Upon the request of the Contracting Officer or upon change in key personnel	Contracting Officer
Copy of Sub Contracting Plan (as required) Copy of Contractor Certification Statement if non-subcontracting possibilities exist.	Upon proposal and as updated	Contracting Officer
Copies of any and all licenses, certifications to include primary source verification of all licensed and certified staff.	Upon proposal and upon renewal of licenses and upon renewal of option periods or change of key personnel.	COR
Certification that staff list have been compared to OIG list.	Upon proposal and upon new hires.	Contracting Officer
Proof of Indemnification and Medical Liability Insurance.	Upon proposal and upon renewals.	COR

Certificates of Completion for Cyber Security and Patient Privacy Training Courses.	Before receiving an account on VA Network and annual training and new hires.	COR
BLS Certification	Upon award and every two years after award.	COR
Contingency plan for replacing key personnel to maintain services as required under the terms of the contract.	Upon proposal and as updated	COR

Note – Depending on the level of competition for this requirement, you may be asked to submit cost and price information in order for the VA to determine a fair and reasonable price.

7. BILLING:

7.1. Invoice requirements and supporting documentation: Supporting documentation and invoice must be submitted no later than the 20th workday of the month. Subsequent changes or corrections shall be submitted by separate invoice. In addition to information required for submission of a “proper” invoice in accordance with FAR 52.212-4(g), all invoices must include:

- Name and Address of Contractor
- Invoice Date and Invoice Number
- Contract/Task Order Number
- Date of Service
- Contractor’s physician(s) (Name of Contractor’s employee performing service)
- Hourly Rate
- Quantity of hours worked
- Total price

7.2. Vendor Electronic Invoice Submission Methods

7.2.1. Facsimile, e-mail, and scanned documents are not acceptable forms of submission for payment requests. Electronic form means an automated system transmitting information electronically according to the accepted electronic data transmission methods below:

7.2.2. VA’s Electronic Invoice Presentment and Payment System – The FSC uses a third-party contractor, OB10, to transition vendors from paper to electronic invoice submission. Please go to this website: <http://ob10.com/us/en/veterans-affairs-us/> to begin submitting electronic invoices, free of charge.

7.2.3. A system that conforms to the X12 electronic data interchange (EDI) formats established by the Accredited Standards Center (ASC) chartered by the American National Standards Institute (ANSI). The X12 EDI Web site (<http://www.x12.org>).

7.2.4. The Contract may contact FSC at the phone number or email address listed below with any questions about the e-invoicing program or OB10:

- OB10 e-Invoice Setup Information: 1-877-489-6135
- OB10 e-Invoice email: VA.Registration@ob10.com

- FSC e-Invoice Contact Information: 1-877-353-9791
- FSC e-invoice email: vafscshd@va.gov

7.3. Payment Adjustments:

7.3.1. Invoices will be prorated for partial days/hours worked. The contractor shall be paid only for actual work performed. In the event that the contract provider works a portion of an hour, the government may adjust payments by 15 minute increments. Contract providers shall be responsible for reporting time worked accurately. The Contract shall be paid for actual hours performed.

7.4. Payments in full/no billing VA beneficiaries: The Contractor shall accept payment for services rendered under this contract/task order as payment in full. VA beneficiaries shall not under any circumstances be charged nor their insurance companies charged for services rendered by the Contractor, even if VA does not pay for those services. This provision shall survive the termination or ending of the contract/task order.

7.4.1. To the extent that the Veteran desires services which are not a VA benefit or covered under the terms of this contract, the Contractor must notify the Veteran that there will be a charge for such service and that the VA will not be responsible for payment.

7.4.2. The Contractor shall not bill, charge, collect a deposit from, seek compensation, remuneration, or reimbursement from, or have any recourse against, any person or entity other than VA for services provided pursuant to this contract. It shall be considered fraudulent for the Contractor to bill other third party insurance sources (including Medicare) for services rendered to Veteran enrollees under this contract.

8. CONTRACTOR Security Requirements (Handbook 6500.6) Contractors, contractor personnel, subcontractors, and subcontractor personnel shall be subject to the same Federal laws, regulations, standards, and VA Directives and Handbooks as VA and VA personnel regarding information and information system security.

8.1. ACCESS TO VA INFORMATION AND VA INFORMATION SYSTEMS

8.1.1. A contractor/subcontractor shall request logical (technical) or physical access to VA information and VA information systems for their employees, subcontractors, and affiliates only to the extent necessary to perform the services specified in the contract, agreement, or contract.

8.1.2. All contractors, subcontractors, and third-party servicers and associates working with VA information are subject to the same investigative requirements as those of VA appointees or employees who have access to the same types of information. The level and process of background security investigations for contractors must be in accordance with VA Directive and Handbook 0710, *Personnel Suitability and Security Program* (https://www1.va.gov/vhapublications/ViewPublication.asp?pub_ID=1568, and http://www1.va.gov/vhapublications/ViewPublication.asp?pub_ID=1569%20%20). The Office for Operations, Security, and Preparedness is responsible for these policies and procedures.

- 8.1.3. Contract personnel who require access to national security programs must have a valid security clearance. National Industrial Security Program (NISP) was established by Executive Order 12829 to ensure that cleared U.S. defense industry contract personnel safeguard the classified information in their possession while performing work on contracts, programs, bids, or research and development efforts. The Department of Veterans Affairs does not have a Memorandum of Agreement with Defense Security Service (DSS). Verification of a Security Clearance must be processed through the Special Security Officer located in the Planning and National Security Service within the Office of Operations, Security, and Preparedness.
- 8.1.4. Custom software development and outsourced operations must be located in the U.S. to the maximum extent practical. If such services are proposed to be performed abroad and are not disallowed by other VA policy or mandates, the contractor/subcontractor must state where all non-U.S. services are provided and detail a security plan, deemed to be acceptable by VA, specifically to address mitigation of the resulting problems of communication, control, data protection, and so forth. Location within the U.S. may be an evaluation factor.
- 8.1.5. The contractor or subcontractor must notify the Contracting Officer immediately when an employee working on a VA system or with access to VA information is reassigned or leaves the contractor or subcontractor's employ. The Contracting Officer must also be notified immediately by the contractor or subcontractor prior to an unfriendly termination.

8.2. VA INFORMATION CUSTODIAL LANGUAGE

- 8.2.1. Information made available to the contractor or subcontractor by VA for the performance or administration of this contract or information developed by the contractor/subcontractor in performance or administration of the contract shall be used only for those purposes and shall not be used in any other way without the prior written agreement of the VA. This clause expressly limits the contractor/subcontractor's rights to use data as described in Rights in Data - General, FAR 52.227-14(d)(1).
- 8.2.2. VA information should not be co-mingled, if possible, with any other data on the contractors/subcontractor's information systems or media storage systems in order to ensure VA requirements related to data protection and media sanitization can be met. If co-mingling must be allowed to meet the requirements of the business need, the contractor must ensure that VA's information is returned to the VA or destroyed in accordance with VA's sanitization requirements. VA reserves the right to conduct on-site inspections of contractor and subcontractor IT resources to ensure data security controls, separation of data and job duties, and destruction/media sanitization procedures are in compliance with VA directive requirements.
- 8.2.3. Prior to termination or completion of this contract, contractor/subcontractor must not destroy information received from VA, or gathered/created by the contractor in the course of performing this contract without prior written approval by the VA. Any data destruction done on behalf of VA by a contractor/subcontractor must be done in accordance with National Archives and Records Administration (NARA) requirements as outlined in VA Directive 6300, *Records and Information Management* (http://www1.va.gov/vapubs/viewPublication.asp?Pub_ID=429&FTType=2) and its Handbook 6300.1 *Records Management Procedures*

(http://www.va.gov/vapubs/viewPublication.asp?Pub_ID=475&FTtype=2) applicable VA Records Control Schedules, and VA Handbook 6500.1, *Electronic Media Sanitization* (http://www1.va.gov/vapubs/viewPublication.asp?Pub_ID=416&FTtype=2). Self-certification by the contractor that the data destruction requirements above have been met must be sent to the VA Contracting Officer within 30 days of termination of the contract.

- 8.2.4. The contractor/subcontractor must receive, gather, store, back up, maintain, use, disclose and dispose of VA information only in compliance with the terms of the contract and applicable Federal and VA information confidentiality and security laws, regulations and policies. If Federal or VA information confidentiality and security laws, regulations and policies become applicable to the VA information or information systems after execution of the contract, or if NIST issues or updates applicable FIPS or Special Publications (SP) after execution of this contract, the parties agree to negotiate in good faith to implement the information confidentiality and security laws, regulations and policies in this contract.
- 8.2.5. The contractor/subcontractor shall not make copies of VA information except as authorized and necessary to perform the terms of the agreement or to preserve electronic information stored on contractor/subcontractor electronic storage media for restoration in case any electronic equipment or data used by the contractor/subcontractor needs to be restored to an operating state. If copies are made for restoration purposes, after the restoration is complete, the copies must be appropriately destroyed.
- 8.2.6. If VA determines that the contractor has violated any of the information confidentiality, privacy, and security provisions of the contract, it shall be sufficient grounds for VA to withhold payment to the contractor or third party or terminate the contract for default or terminate for cause under Federal Acquisition Regulation (FAR) part 12.
- 8.2.7. If a VHA contract is terminated for cause, the associated BAA must also be terminated and appropriate actions taken in accordance with VHA Handbook 1600.01, *Business Associate Agreements*. Absent an agreement to use or disclose protected health information, there is no business associate relationship.
- 8.2.8. The contractor/subcontractor must store, transport, or transmit VA sensitive information in an encrypted form, using VA-approved encryption tools that are, at a minimum, FIPS 140-2 validated.
- 8.2.9. The contractor/subcontractor's firewall and Web services security controls, if applicable, shall meet or exceed VA's minimum requirements. VA Configuration Guidelines are available upon request.
- 8.2.10. Except for uses and disclosures of VA information authorized by this contract for performance of the contract, the contractor/subcontractor may use and disclose VA information only in two other situations: (i) in response to a qualifying order of a court of competent jurisdiction, or (ii) with VA's prior written approval. The contractor/subcontractor must refer all requests for, demands for production of, or inquiries about, VA information and information systems to the VA contracting officer for response.

- 8.2.11. Notwithstanding the provision above, the contractor/subcontractor shall not release VA records protected by Title 38 U.S.C. 5705, confidentiality of medical quality assurance records and/or Title 38 U.S.C. 7332, confidentiality of certain health records pertaining to drug addiction, sickle cell anemia, alcoholism or alcohol abuse, or infection with human immunodeficiency virus. If the contractor/subcontractor is in receipt of a court order or other requests for the above mentioned information, that contractor/subcontractor shall immediately refer such court orders or other requests to the VA contracting officer for response.
- 8.2.12. For service that involves the storage, generating, transmitting, or exchanging of VA sensitive information but does not require C&A or an MOU-ISA for system interconnection, the contractor/subcontractor must complete a Contractor Security Control Assessment (CSCA) on a yearly basis and provide it to the COR.

8.3. SECURITY INCIDENT INVESTIGATION

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

8.4. LIQUIDATED DAMAGES FOR DATA BREACH

- 8.5. Consistent with the requirements of 38 U.S.C. §5725, a contract may require access to sensitive personal information. If so, the contractor is liable to VA for liquidated damages in the event of a data breach or privacy incident involving any SPI the contractor/subcontractor processes or maintains under this contract.
- 8.6. The contractor/subcontractor shall provide notice to VA of a “security incident” as set forth in the Security Incident Investigation section above. Upon such notification, VA must secure from a non-Department entity or the VA Office of Inspector General an independent risk analysis of the data breach to determine the level of risk associated with the data breach for the potential misuse of any sensitive personal information involved in the data breach. The term 'data breach' means the loss, theft, or other unauthorized access, or any access other than that incidental to the scope of employment, to data containing sensitive personal information, in electronic or printed form, that results in the potential compromise of the confidentiality or integrity of the data. Contractor shall fully cooperate with the entity performing the risk analysis. Failure to cooperate may be deemed a material breach and grounds for contract termination.
- 8.7. Each risk analysis shall address all relevant information concerning the data breach, including the following:
 - 8.7.1. Nature of the event (loss, theft, unauthorized access);
 - 8.7.2. Description of the event, including:
 - 8.7.2.1. Date of occurrence;
 - 8.7.2.2. Data elements involved, including any PII, such as full name, social security number, date of birth, home address, account number, disability code;
 - 8.7.2.3. Number of individuals affected or potentially affected;
 - 8.7.2.4. Names of individuals or groups affected or potentially affected;
 - 8.7.2.5. Ease of logical data access to the lost, stolen or improperly accessed data in light of the degree of protection for the data, e.g., unencrypted, plain text;
 - 8.7.2.6. Amount of time the data has been out of VA control;
 - 8.7.2.7. The likelihood that the sensitive personal information will or has been compromised (made accessible to and usable by unauthorized persons);
 - 8.7.2.8. Known misuses of data containing sensitive personal information, if any;
 - 8.7.2.9. Assessment of the potential harm to the affected individuals;
 - 8.7.2.10. Data breach analysis as outlined in 6500.2 Handbook, Management of Security and Privacy Incidents, as appropriate; and

- 8.7.2.11. Whether credit protection services may assist record subjects in avoiding or mitigating the results of identity theft based on the sensitive personal information that may have been compromised.

8.7.3. Based on the determinations of the independent risk analysis, the contractor shall be responsible for paying to the VA liquidated damages to cover the cost of providing credit protection services to affected individuals consisting of the following:

- 8.7.3.1. Notification;
- 8.7.3.2. One year of credit monitoring services consisting of automatic daily monitoring of at least 3 relevant credit bureau reports;
- 8.7.3.3. Data breach analysis;
- 8.7.3.4. Fraud resolution services, including writing dispute letters, initiating fraud alerts and credit freezes, to assist affected individuals to bring matters to resolution;
- 8.7.3.5. One year of identity theft insurance with \$20,000.00 coverage at \$0 deductible; and
- 8.7.3.6. Necessary legal expenses the subjects may incur to repair falsified or damaged credit records, histories, or financial affairs.

8.7.4. SECURITY CONTROLS COMPLIANCE TESTING

- 8.7.4.1. *On a periodic basis, VA, including the Office of Inspector General, reserves the right to evaluate any or all of the security controls and privacy practices implemented by the contractor under the clauses contained within the contract. With 10 working-days' notice, at the request of the government, the contractor must fully cooperate and assist in a government-sponsored security controls assessment at each location wherein VA information is processed or stored, or information systems are developed, operated, maintained, or used on behalf of VA, including those initiated by the Office of Inspector General. The government may conduct a security control assessment on shorter notice (to include unannounced assessments) as determined by VA in the event of a security incident or at any other time.*

8.7.5. TRAINING

- 8.7.5.1. All contractor employees and employees requiring access to VA information and VA information systems shall complete the following before being granted access to VA information and its systems:
 - 8.7.5.1.1. Sign and acknowledge (either manually or electronically) understanding of and responsibilities for compliance with the *Contractor Rules of Behavior*, Appendix D (see Attachment #4 Contractor Rules of Behavior) relating to access to VA information and information systems;
 - 8.7.5.1.2. Successfully complete the *VA Cyber Security Awareness and Rules of Behavior* training and annually complete required security training;
 - 8.7.5.1.3. Successfully complete the appropriate VA privacy training and annually complete required privacy training; and

8.7.5.1.4. Successfully complete any additional cyber security or privacy training, as required for VA personnel with equivalent information system access *[to be defined by the VA program official and provided to the contracting officer for inclusion in the solicitation document – e.g., any role-based information security training required in accordance with NIST Special Publication 800-16, Information Technology Security Training Requirements.]*

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

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

8.7.6. CONTRACTOR SECURITY INVESTIGATION REQUIREMENTS

8.7.6.1. All Contractor employees and/or agents who access the Department of Veterans Affairs computer systems or VA sensitive information in order to perform the Contract will be the subject of background investigations. Each Contractor employee and/or agent must receive a favorable adjudication from the VA Law Enforcement Training Center/SIC prior to performing any part of the Contract. If the investigation is not completed prior to the start of the Contract, the Contractor will be responsible for the actions of those individuals they provide to perform work.

8.7.6.2. Position Sensitivity - The position sensitivity has been designated as **Low Risk** by the COR

8.7.6.3. Background Investigation - The level of background investigation commensurate with the required level of access is National Agency Check with written Inquiries (NACI)

8.7.6.4. Contractor Responsibilities:

8.7.6.4.1. The contractor shall bear the expense of obtaining background investigations. If the Office of Personnel Management (OPM) conducts the investigation, the contractor shall reimburse VA within 30 days. If timely payment is not made within 30 days from date of bill for collection, then VA shall deduct the cost incurred from the contractors 1st month's invoice(s) for services rendered.

8.7.6.4.2. It is imperative for the contractor to provide, at the request of VA, a listing of contractor personnel performing services under the contract in order for the background investigation process to commence. This list will include name (first, middle, last) social security number; date of birth; city, state, and country of birth.

8.7.6.4.3. The contractor or their employees shall submit a complete background investigation packet. Additional guidance and information in completing the

required forms, and examples of the forms, can be found at:
<https://vaww.visn16.portal.va.gov/sites/lit/vasic/default.aspx>

8.7.6.4.4. The following required forms must be submitted to the VA Office of Security and Law Enforcement **before** contract performance begins:

8.7.6.4.4.1. Standard Form 85, Questionnaire for Non-Sensitive Positions

8.7.6.4.4.2. Optional Form 306, Declaration for Federal Employment

8.7.6.4.4.3. Standard Form 86A (EG), Continuation Sheet for Questionnaire

8.7.6.4.4.4. Electronic Fingerprint Form

8.7.6.4.5. Fingerprinting is required with the background investigation. Fingerprinting can be done at the local VA Facility. The Electronic Fingerprint Verification Form must be submitted with the above required forms.

8.7.6.4.6. The Contractor shall inform the contract employee that when filling out Standard Form 85, that there should be no gaps in employment history. Any gaps in employment history on Standard Form 85 may result in OPM rejecting the documentation for investigation and delay contract performance.

8.7.6.4.7. The contractor, when notified of an unfavorable determination by the Government, shall withdraw the employee from consideration from working under the contract, and at the request of the VA, submit another employee for consideration.

8.7.6.4.8. The contractor may utilize a private investigating agency if such agency possesses an OPM and Defense Security Service certification. A Cage Code number must be provided to the VA Office of Security and Law Enforcement. VA Office of Security and Law Enforcement will verify the information and advise the contracting officer whether contractor's access to the computer systems can be authorized.

8.7.6.4.9. All contractor employees and subcontractors are required to complete VA's Privacy training annually. All Contractor employees and subcontractors requiring access to VA computer network are required to complete Cyber Security training courses annually either on-line or hard copy. Documented proof must be provided to the Contracting Officer.

8.7.6.4.10. The contractor will notify the COR immediately when their employee(s) no longer require access to VA computer systems.

8.7.6.5. Government Responsibilities

8.7.6.5.1. The contracting officer will request the contractor employee's background investigation by the Office of Security and Law Enforcement.

8.7.6.5.2. The Office of Security and Law Enforcement will notify the contractor with instructions for the contractor's employees, coordinate the background investigations, and notify the contracting officer and contractor of the results of the investigations.

8.7.6.5.3. The VA facility will pay for requested investigations in advance. A bill for collection will be sent to the contractor to reimburse the VA facility. The contractor will reimburse the VA facility within 30 days. If timely payment is not made within 30 days from date of bill for collection, then VA shall deduct the cost incurred from the contractor's 1st month's invoice(s) for services rendered.

8.7.6.6. The current fees associated with background investigations are \$381.00 each for low level investigation, \$1,632.00 each for medium level investigation, and \$3,984.00 each for high level investigation.

8.7.7. As VA routinely reviews and updates policies and procedures covering contractor computer access, security requirements may change during the term of this contract and new policies and procedures may be implemented unilaterally during the term of this agreement.

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.

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

C.2 52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER (MAY 2011)

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

"Postconsumer fiber" means— (1) Paper, paperboard, and fibrous materials from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; or

(2) All paper, paperboard, and fibrous materials that enter and are collected from municipal solid waste; but not

(3) Fiber derived from printers' over-runs, converters' scrap, and over-issue publications.

(b) The Contractor is required to submit paper documents, such as offers, letters, or reports that are printed or copied double-sided on paper containing at least 30 percent postconsumer fiber, whenever practicable, when not using electronic commerce methods to submit information or data to the Government.

(End of Clause)

)

C.3 52.216-18 ORDERING (OCT 1995)

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

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

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

(End of Clause)

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

(a) *Minimum order.* When the Government requires supplies or services covered by this contract in an amount of less than \$500.00, the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.

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

(1) Any order for a single item in excess of \$550,000.00;

(2) Any order for a combination of items in excess of \$550,000.00; or

(3) A series of orders from the same ordering office within 10 days that together call for quantities exceeding the limitation in paragraph (b)(1) or (2) of this section.

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

(d) Notwithstanding paragraphs (b) and (c) of this section, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within 3 days after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

(End of Clause)

C.5 52.216-22 INDEFINITE QUANTITY (OCT 1995)

(a) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The Contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the

"maximum." The Government shall order at least the quantity of supplies or services designated in the Schedule as the "minimum."

(c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

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

(End of Clause)

C.6 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.

(End of Clause)

C.7 52.217-8 OPTION TO EXTEND SERVICES (NOV 1999)

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within 30 days of contract expiration. The specified rates under this clause will be those rates in effect under the contract each time an option under is exercised under this clause.

(End of Clause)

C.8 52.224-1 PRIVACY ACT NOTIFICATION (APR 1984)

The Contractor will be required to design, develop, or operate a system of records on individuals, to accomplish an agency function subject to the Privacy Act of 1974, Public Law 93-579, December 31, 1974 (5 U.S.C. 552a) and applicable agency regulations. Violation of the Act may involve the imposition of criminal penalties..

(End of Clause)

C.9 52.237-3 CONTINUITY OF SERVICES (JAN 1991)

(a) The Contractor recognizes that the services under this contract are vital to the Government and must be continued without interruption and that, upon contract expiration, a successor, either the Government or

another contractor, may continue them. The Contractor agrees to (1) furnish phase-in training and (2) exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

(b) The Contractor shall, upon the Contracting Officer's written notice, (1) furnish phase-in, phase-out services for up to 90 days after this contract expires and (2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the Contracting Officer's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.

(c) The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

(d) The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract.

(End of Clause)

C.10 52.228-5 INSURANCE—WORK ON A GOVERNMENT INSTALLATION (JAN 1997)

(a) The Contractor shall, at its own expense, provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance required in the Schedule or elsewhere in the contract.

(b) Before commencing work under this contract, the Contractor shall notify the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Government's interest shall not be effective—

(1) For such period as the laws of the State in which this contract is to be performed prescribe; or

(2) Until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer, whichever period is longer.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts under this contract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. The Contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the Contracting Officer upon request.

(End of Clause)

C.11 SUPPLEMENTAL INSURANCE REQUIREMENTS

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

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

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

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

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

(End of Clause)

C.12 VAAR 852.203-70 COMMERCIAL ADVERTISING (JAN 2008)

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

(End of Clause)

C.13 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.

(End of Clause)

C.14 VAAR 852.215-71 EVALUATION FACTOR COMMITMENTS (DEC 2009)

The offeror agrees, if awarded a contract, to use the service-disabled veteran-owned small businesses or veteran-owned small businesses proposed as subcontractors in accordance with 852.215-70, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors, or to substitute one or more service-disabled veteran-owned small businesses or veteran-owned small businesses for subcontract work of the same or similar value.

(End of Clause)

C.15 VAAR 852.215-70 SERVICE-DISABLED VETERAN-OWNED AND VETERAN-OWNED SMALL BUSINESS EVALUATION FACTORS (JUL 2016)(DEVIATION)

(a) In an effort to achieve socioeconomic small business goals, depending on the evaluation factors included in the solicitation, VA shall evaluate offerors based on their service-disabled veteran-owned or veteran-owned small business status and their proposed use of eligible service-disabled veteran-owned small businesses and veteran-owned small businesses as subcontractors.

(b) Eligible service-disabled veteran-owned offerors will receive full credit, and offerors qualifying as veteran-owned small businesses will receive partial credit for the Service-Disabled Veteran-Owned and Veteran-owned Small Business Status evaluation factor. To receive credit, an offeror must be registered and verified in Vendor Information Pages (VIP) database (<https://www.vip.vetbiz.gov>).

(c) Non-veteran offerors proposing to use service-disabled veteran-owned small businesses or veteran-owned small businesses as subcontractors will receive some consideration under this evaluation factor. Offerors must state in their proposals the names of the SDVOSBs and VOSBs with whom they intend to subcontract and provide a brief description of the proposed subcontracts and the approximate dollar values of the proposed subcontracts. In addition, the proposed subcontractors must be registered and verified in the VetBiz.gov VIP database (<https://www.vip.vetbiz.gov>).

(End of Clause)

C.16 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

(End of Clause)

C.17 VAAR 852.219-71 VA MENTOR-PROTÉGÉ PROGRAM (DEC 2009)

(a) Large businesses are encouraged to participate in the VA Mentor-Protégé Program for the purpose of providing developmental assistance to eligible service-disabled veteran-owned small businesses and veteran-owned small businesses to enhance the small businesses' capabilities and increase their participation as VA prime contractors and as subcontractors.

(b) The program consists of:

(1) Mentor firms, which are contractors capable of providing developmental assistance;

(2) Protégé firms, which are service-disabled veteran-owned small business concerns or veteran-owned small business concerns; and

(3) Mentor-Protégé Agreements approved by the VA Office of Small and Disadvantaged Business Utilization.

(c) Mentor participation in the program means providing business developmental assistance to aid protégés in developing the requisite expertise to effectively compete for and successfully perform VA prime contracts and subcontracts.

(d) Large business prime contractors serving as mentors in the VA Mentor-Protégé Program are eligible for an incentive for subcontracting plan credit. VA will recognize the costs incurred by a mentor firm in providing assistance to a protégé firm and apply those costs for purposes of determining whether the mentor firm attains its subcontracting plan participation goals under a VA contract. The amount of credit given to a mentor firm for these protégé developmental assistance costs shall be calculated on a dollar-for-dollar basis and reported by the large business prime contractor via the Electronic Subcontracting Reporting System (eSRS).

(e) Contractors interested in participating in the program are encouraged to contact the VA Office of Small and Disadvantaged Business Utilization for more information

(End of Clause)

C.18 VAAR 852.232-72 ELECTRONIC SUBMISSION OF PAYMENT REQUESTS (NOV 2012)

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

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

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

(3) *Electronic form* means an automated system transmitting information electronically according to the Accepted electronic data transmission methods and formats identified in paragraph (c) of this clause. Facsimile, email, and scanned documents are not acceptable electronic forms for submission of payment requests.

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

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

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

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

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

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

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

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

- (1) Awards made to foreign vendors for work performed outside the United States;
- (2) Classified contracts or purchases when electronic submission and processing of payment requests could compromise the safeguarding of classified or privacy information;
- (3) Contracts awarded by contracting officers in the conduct of emergency operations, such as responses to national emergencies;
- (4) Solicitations or contracts in which the designated agency office is a VA entity other than the VA Financial Services Center in Austin, Texas; or
- (5) Solicitations or contracts in which the VA designated agency office does not have electronic invoicing capability as described above.

(End of Clause)

C.19 VAAR 852.237-7 INDEMNIFICATION AND MEDICAL LIABILITY INSURANCE (JAN 2008)

(a) It is expressly agreed and understood that this is a non- personal services contract, as defined in Federal Acquisition Regulation (FAR) 37.101, under which the professional services rendered by the Contractor or its health-care providers are rendered in its capacity as an independent contractor. The Government may evaluate the quality of professional and administrative services provided but retains no control over professional aspects of the services rendered, including by example, the Contractor's or its health-care providers' professional medical judgment, diagnosis, or specific medical treatments. The Contractor and its health-care providers shall be liable for their liability-producing acts or omissions. The Contractor shall maintain or require all health-care providers performing under this contract to maintain, during the term of this contract, professional liability insurance issued by a responsible insurance carrier of not less than the following amount(s) per specialty per occurrence: * _____. However, if the Contractor is an entity or a subdivision of a State that either provides for self-insurance or limits the liability or the amount of insurance purchased by State entities, then the insurance requirement of this contract shall be fulfilled by incorporating the provisions of the applicable State law.

* Amounts are listed below:

(b) An apparently successful offeror, upon request of the Contracting Officer, shall, prior to contract award, furnish evidence of the insurability of the offeror and/or of all health- care providers who will perform under this contract. The submission shall provide evidence of insurability concerning the medical liability insurance required by paragraph (a) of this clause or the provisions of State law as to self-insurance, or limitations on liability or insurance.

(c) The Contractor shall, prior to commencement of services under the contract, provide to the Contracting Officer Certificates of Insurance or insurance policies evidencing the required insurance coverage and an endorsement stating that any cancellation or material change adversely affecting the Government's interest shall not be effective until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer. Certificates or policies shall be provided for the Contractor and/or each health- care provider who will perform under this contract.

(d) The Contractor shall notify the Contracting Officer if it, or any of the health-care providers performing under this contract, change insurance providers during the performance period of this contract. The notification shall provide evidence that the Contractor and/or health-care providers will meet all the requirements of this clause, including those concerning liability insurance and endorsements. These requirements may be met either under the new policy, or a combination of old and new policies, if applicable.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts for health-care services under this contract. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraph (a) of this clause.

* Amounts from paragraph (a) above:

\$1,000,000.00

(End of Clause)

C.20 VAAR 852.237-70 CONTRACTOR RESPONSIBILITIES (APR 1984)

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

(End of Clause)

C.21 52.204-9 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (JAN 2011)

(a) The Contractor shall comply with agency personal identity verification procedures identified in the contract that implement Homeland Security Presidential Directive-12 (HSPD-12), Office of Management and Budget (OMB) guidance M-05-24, and Federal Information Processing Standards Publication (FIPS PUB) Number 201.

(b) The Contractor shall account for all forms of Government-provided identification issued to the Contractor employees in connection with performance under this contract. The Contractor shall return such identification to the issuing agency at the earliest of any of the following, unless otherwise determined by the Government:

- (1) When no longer needed for contract performance.
- (2) Upon completion of the Contractor employee's employment.
- (3) Upon contract completion or termination.

(c) The Contracting Officer may delay final payment under a contract if the Contractor fails to comply with these requirements.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts when the subcontractor's employees are required to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system. It shall be the responsibility of the prime Contractor to return such identification to the issuing agency in accordance with the terms set forth in paragraph (b) of this section, unless otherwise approved in writing by the Contracting Officer.

(End of Clause)

C.22 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>FAR</u> <u>Number</u>	<u>Title</u>	<u>Date</u>
52.203-17	CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS	APR 2014
52.204-18	COMMERCIAL AND GOVERNMENT ENTITY CODE MAINTENANCE	JUL 2016
52.232-18	AVAILABILITY OF FUNDS	APR 1984
52.232-35	DESIGNATION OF OFFICE FOR GOVERNMENT RECEIPT OF ELECTRONIC FUNDS TRANSFER INFORMATION	JUL 2013
52.232-40	PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS	DEC 2013

(End of Addendum to 52.212-4)

C.23 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) 52.209-10, Prohibition on Contracting with Inverted Domestic Corporations (NOV 2015).

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

(3) 52.233-4, Applicable Law for Breach of Contract Claim (Oct 2004) (Public Laws 108-77 and 108-78 (19 U.S.C. 3805 note)).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or 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 (NOV 2011) (15 U.S.C. 637(a)(14)).

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

(21) 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 (Oct 1995) (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).

Employee Class

Monetary Wage-Fringe Benefits

- (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) 52.219-8, Utilization of Small Business Concerns (NOV 2016) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities.
- (iii) 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.
- (iv) 52.222-21, Prohibition of Segregated Facilities (APR 2015).
- (v) 52.222-26, Equal Opportunity (SEP 2016) (E.O. 11246).
- (vi) 52.222-35, Equal Opportunity for Veterans (OCT 2015) (38 U.S.C. 4212).
- (vii) 52.222-36, Equal Opportunity for Workers with Disabilities (JUL 2014) (29 U.S.C. 793).
- (viii) 52.222-37, Employment Reports on Veterans (FEB 2016) (38 U.S.C. 4212).
- (ix) 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.
- (x) 52.222-41, Service Contract Labor Standards (MAY 2014) (41 U.S.C. chapter 67).
- (xi)(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).
- (xii) 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).
- (xiii) 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).
- (xiv) 52.222-54, Employment Eligibility Verification (OCT 2015) (E. O. 12989).
- (xv) 52.222-55, Minimum Wages Under Executive Order 13658 (DEC 2015).
- (xvi) 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, DoD, GSA, and NASA will publish a document in the **Federal Register** advising the public of the termination of the injunction.

- (xvii) 52.222-60, Paycheck Transparency (Executive Order 13673) (OCT 2016).
- (xviii) 52.222-62 Paid Sick Leave Under Executive Order 13706 (JAN 2017) (E.O. 13706).
- (xix)(A) 52.224-3, Privacy Training (JAN 2017) (5 U.S.C. 552a).
- (B) Alternate I (JAN 2017) of 52.224-3.

(xx) 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).

(xxi) 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.

(End of Clause)

C.24 52.216-4 ECONOMIC PRICE ADJUSTMENT—LABOR AND MATERIAL (JAN 2017)

(a) The Contractor shall notify the Contracting Officer if, at any time during contract performance, the rate of pay for labor (including fringe benefits) or the unit prices for material shown in the Schedule either increase or decrease. The Contractor shall furnish this notice within 60 days after the increase or decrease, or within any additional period that the Contracting Officer may approve in writing, but not later than the date of final payment under this contract. The notice shall include the Contractor's proposal for an adjustment in the contract unit prices to be negotiated under paragraph (b) of this clause, and shall include, in the form required by the Contracting Officer, supporting data explaining the cause, effective date, and amount of the increase or decrease and the amount of the Contractor's adjustment proposal.

(b) Promptly after the Contracting Officer receives the notice and data under paragraph (a) of this clause, the Contracting Officer and the Contractor shall negotiate a price adjustment in the contract unit prices and its effective date. However, the Contracting Officer may postpone the negotiations until an accumulation of increases and decreases in the labor rates (including fringe benefits) and unit prices of material shown in the Schedule results in an adjustment allowable under paragraph (c)(3) of this clause. The Contracting Officer shall modify this contract (1) to include the price adjustment and its effective date and (2) to revise the labor rates (including fringe benefits) or unit prices of material as shown in the Schedule to reflect the increases or decreases resulting from the adjustment. The Contractor shall continue performance pending agreement on, or determination of, any adjustment and its effective date.

(c) Any price adjustment under this clause is subject to the following limitations:

(1) Any adjustment shall be limited to the effect on unit prices of the increases or decreases in the rates of pay for labor (including fringe benefits) or unit prices for material shown in the Schedule. There shall be no adjustment for—

(i) Supplies or services for which the production cost is not affected by such changes;

(ii) Changes in rates or unit prices other than those shown in the Schedule; or

(iii) Changes in the quantities of labor or material used from those shown in the Schedule for each item.

(2) No upward adjustment shall apply to supplies or services that are required to be delivered or performed before the effective date of the adjustment, unless the Contractor's failure to deliver or perform according to the delivery schedule results from causes beyond the Contractor's control and without its fault or negligence, within the meaning of the Default clause.

(3) There shall be no adjustment for any change in rates of pay for labor (including fringe benefits) or unit prices for material which would not result in a net change of at least 3 percent of the then-current total contract price. This limitation shall not apply, however, if, after final delivery of all line items, either party requests an adjustment under paragraph (b) of this clause.

(4) The aggregate of the increases in any contract unit price made under this clause shall not exceed 10 percent of the original unit price. There is no percentage limitation on the amount of decreases that may be made under this clause.

(d) The Contracting Officer may examine the Contractor's books, records, and other supporting data relevant to the cost of labor (including fringe benefits) and material during all reasonable times until the end of 3 years after the date of final payment under this contract or the time periods specified in Subpart 4.7 of the Federal Acquisition Regulation (FAR), whichever is earlier.

(End of Clause)

SECTION D - CONTRACT DOCUMENTS, EXHIBITS, OR ATTACHMENTS

See attached document: ATTACHMENT 1- QASP.

See attached document: ATTACHMENT 2 - CONTRACTOR RULES OF BEHAVIOR.

See attached document: ATTACHMENT 4 - ORGANIZATIONAL CONFLICT OF INTEREST.

See attached document: ATTACHMENT 5 - IMMIGRATION AND NATIONALITY ACT
CERTIFICATION.

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.* The offeror agrees to hold the prices in its offer firm for 30 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.

(End of Provision)

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.

This section provides general guidance for preparing Offer/Proposal VA263-17-R-0500. The Offeror's Offer/Proposal must include all data and information requested herein, and must be submitted in accordance with these instructions. Nonconformance with the instructions provided herein may result in an unfavorable proposal evaluation. Proposals shall be clear, concise, and shall include sufficient detail for effective evaluation and for substantiating the validity of the stated claims. Offerors shall assume that the Government has no prior knowledge of their abilities and experience, and will base its evaluation on the information presented in the Offeror's proposal. Offerors are required to meet all solicitation requirements, including terms and conditions, representations and certifications, and technical requirements.

SOLICITATION QUESTIONS: Questions concerning the solicitation will be accepted from the solicitation posting date until 11:00 pm CST November 15th, 2017. Questions will only be accepted by email at **charles.morin@va.gov**. All questions must be submitted by **11:00 PM CST on November 15th, 2017**.

RFP SUBMISSIONS: Proposal's must be submitted by **11:00 PM CST on November 29th, 2017**, to **charles.morin@va.gov**.

Charles Morin (Contract Specialist)
Department of Veterans Affairs NCO 23
Suite 506
316 Robert Street N.
St. Paul, MN 55101

Specific Instructions:

1. PART I – PRICE PROPOSAL – Submit one copy.
 - (a) Complete blocks 17a and 30a through c of the RFP, page 1, Standard Form (SF) 1449, and all fill-ins in the Contract Administration Data section of the solicitation. In doing so, the offeror accedes to the contract terms and conditions as written in the solicitation in its entirety.
 - (b) Insert proposed unit prices for each Contract Line Item Number (CLIN). All prices must be submitted using the Schedule of Services on pg. 13 through pg. 23 of the RFP. The proposal must be submitted for the base period and four option periods.
 - (c) Return any solicitation amendments to the original solicitation documents, signed by the same official authorized to sign the SF 1449.
2. PART II – TECHNICAL QUOTE
 - (a) **Section 1 – Cover letter.** Shall be a maximum two-page Cover Letter and shall include the name and address of the organization submitting the proposal, together with the name,

address, e-mail address and telephone number of the contact person who has the actual power to legally bind the offeror and make representations relative to the offeror's proposal and any resultant contract, for the offeror.

- (b) **Section 2 – Table of Contents.** Shall be a detailed Table of Contents and shall include an outline of the proposal, identified by a sequential page number.
- (c) **Section 3 Evaluation Factors.** Offers will be evaluated on the basis of their **(1) Technical Excellence, (2) Past Performance, (3) Price, and (4) Veterans Preference Status.**

The Government seeks to award a contract resulting from this solicitation to the responsible offeror, whose offer conforms to the solicitation and gives the Sioux Falls VA Medical Center the greatest confidence that it will best meet its requirements at an affordable price. The following information or factors shall be used to evaluate offers based on the three evaluation factors of technical, past performance, and price. The Source Selection Authority (SSA), using sound business judgment, bases the source selection decision on an integrated assessment of the three evaluation factors. The SSA may select a higher-rated, higher-priced offeror, when the SSA reasonably determines the better technical and/or past performance of the higher-priced offeror justifies the higher cost.

All offerors will be required to prepare and submit their complete proposal submission in accordance with the proposal preparation instructions in Provision 52.212-1 of this request for proposal. Proposals and other information will be evaluated against the evaluation criteria stated in this provision. The following factors shall be used to evaluate offers: Technical, Past Performance and Price. Technical and Past Performance, when combined are approximately equal in importance to Price.

RELATIVE IMPORTANCE OF THE EVALUATION FACTORS

Technical Capability and Past Performance will be afforded primary emphasis with Technical Capability being more important than Past Performance. Past Performance is more important than Veterans Preference. Sub-factors within the technical evaluation are equal in importance. Evaluation factors other than cost/price, when combined, are significantly more important than cost/price.

FACTOR	FACTOR DESCRIPTION	RELATIVE IMPORTANCE
Factor 1	Technical Capability – evaluated by the Technical Evaluation Board	1
Factor 2	Past Performance	2
Factor 3	Price	3
Factor 4	Veterans Preference	4

EVALUATION FACTORS:

A. TECHNICAL CAPABILITY - Factor 1

Technical and past performance when combined, are significantly more important than price.

Sub Factors 1-6 are of equal importance

Assessment: The offeror's proposal shall, as a minimum, address each of the technical proposal criteria as they apply to the PWS. During evaluations of each proposal, the Government will evaluate the technical proposal based on the evaluation criteria described below, which are tailored to specific principal tasks in the PWS, and listed in descending order of importance. The Government will infer from the offeror's responses to these specified evaluation criteria the offeror's capability to perform to the requirements of the entire PWS.

- 1) Offeror shall provide a minimum of one (1) Board Certified Board Eligible physician.

- 2) Personnel Qualifications. The offeror must provide information demonstrating the qualification of personnel to meet the requirements to include:
 - Curriculum Vitae(CV) for proposed professional staff
 - Copy of degree(s), licenses(s), board certification(s)/board eligibility, fellowship(s), and accreditation
 - Copy of American Heart Association (AHA) Basic Life Support (BLS) Training Certificate

- 3) Experience. The offeror must demonstrate his/her ability to meet the requirement by providing information on the proposed provider's experience.
 - How many years of experience does the provider have?
 - Does the provider have recent experience providing similar services?

- 4) Clinical Skills
 - Provide information on the provider's specialized training and experience, i.e. fellowship training, a long-standing appointment, significant private practice clinical experience focusing on the required service and exemplifying the provider's knowledge, judgement, adaptability, clinical skills, technical facility, and personal characteristics to carry out the entire scope required.

- 5) Medical Liability Insurance. Offeror to provide a copy of Medical Liability Insurance in the amount equal to or greater than the amount listed in the solicitation.
- 6) Management Capabilities. (The offeror will be evaluated to determine whether it has demonstrated understanding of the requirements to provide services as required by the PWS.)
 - Provide information that depicts evidence regarding your firm’s qualifications and experience in management positions within the healthcare community.
 - Describe the firm’s ability to provide the personnel and perform services in accordance with the requirements.
 - Provide information regarding quality assurance, i.e. Quality Assurance (QA) monitors, QA plans, and QA performance improvement plans

Adjectival	Description
Exceptional	Contractor’s technical proposal exceeds all of the evaluation criteria.
Very Good	Contractor’s technical proposal meets all and exceeds some of the evaluation criteria.
Satisfactory	Contractor’s technical proposal meets all of the evaluation criteria.
Marginal	Contractor’s technical proposal meets some but not all of the evaluation criteria.
Unsatisfactory	<i>Contractor’s technical proposal does not meet any of the evaluation criteria.</i>

The above adjectival subjective rating system will be used to determine the technical rating of each sub factor and overall technical rating of each Offeror’s proposal.

B. PAST PERFORMANCE - Factor 2

Technical and past performance when combined, are significantly more important than price

Past performance and quality of services offered. “Past performance evaluations will be conducted using information provided with the offer, information obtained from references, information obtained from the CPS or PPIRS, and information from any other sources deemed appropriate. When evaluating past performance the government may consider the currency and relevancy of the information, the source of the information, the context of the data provided, and the general trends in the contractor’s performance. The

government may take into account past performance information regarding predecessor companies, key personnel who have relevant experience and/or subcontractors that will perform major or critical aspects of the requirement. An offeror that has no available relevant past performance history will not be evaluated favorably or unfavorably. Offeror is to provide the following:

- (1) Offeror to provide a narrative identifying the type and scope of practice for the past five (5) years addressing professional background, experience, and level of professional competence. Provide any information currently available (letters, metrics, customer surveys, independent surveys, etc.) which demonstrates customer satisfaction with overall job performance and quality of services provided for same or similar type contract. In addition, explain any corrective actions taken in the past, if any, for substandard performance and any current performance problems.
- (2) Offeror shall provide a list of three (3) references including name, address, and telephone number.
- (3) Provide documentation of any past or pending malpractice and/or tort claims.
- (4) The government will evaluate the quality and extent of offerors performance deemed relevant to the requirements of the RFP. The government will use information submitted by the offeror and other sources such as other Federal Government offices and commercial sources, to assess performance. The evaluation of past performance information will take into account past performance information regarding predecessor companies and key personnel who have relevant experience, that will perform major or critical aspects of the requirement when such information is relevant to the acquisition.
- (5) The Government may evaluate information on problems identified and encountered on previous contracts and corrective actions taken by the offeror. In the case of an offeror without a record of relevant past performance or for whom information on past performance is not available, the offeror will not be evaluated favorably or unfavorably on past performance.

PAST PERFORMANCE RATINGS AND DEFINITIONS:
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Very Relevant	Present/past performance effort involved essentially the same scope and magnitude of effort and complexities this solicitation requires.
Relevant	Present/past performance effort involved similar scope and magnitude of effort and complexities this solicitation requires.
Somewhat Relevant	Present/past performance effort involved some of the scope and magnitude of effort and complexities this solicitation requires
Not Relevant	Present/past performance effort involved little or none of the scope and magnitude of effort and complexities this solicitation requires.

C. PRICE – Factor 3

Technical and past performance when combined, are significantly more important than price.

The offer should contain the offeror's best terms from a price standpoint. In determining the competitive range, price will be considered. Unrealistically low proposed prices may be grounds for eliminating a proposal from competition either on the basis that either the offeror does not understand the requirement or the offeror has made an unrealistic proposal.

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).

Although the price proposal is lower than the others in importance, it will contribute to the source selection decision. While price proposal will not be rated as is Technical Capability, Past Performance, and Veterans Preference evaluation criteria (Factors 1, 2, and 3), it will be evaluated in terms of fairness and reasonableness. After an evaluation of the Technical Capability, Past Performance, and Veterans Preference criteria has been completed, price will be compared against these evaluations to determine the combination that is most likely to provide Best Value to the Government.

D. VETERANS PREFERENCE - Factor 4

Per VAAR 815.304 – In an effort to assist SDVOSBs and VOSBs, contracting officers shall include evaluation factors providing additional consideration to such offerors in competitively negotiated solicitations that are not set aside for SDVOSBs or VOSBs. Additional consideration shall also be given to any offeror, regardless of size status, that proposes to subcontract with SDVOSBs or VOSBs.

Per VAAR 852.215-70:

RATING	DEFINITION
Full Credit	Offeror is certified in VETBIZ as a SDVOSB.
Partial Credit	Offeror is certified in VETBIZ as a VOSB.
Some Consideration	Non-Veteran Offeror will utilize SDVOSB or VOSB as subcontractors
No Consideration	Non-Veteran Offeror with no SDVOSB or VOSB Subcontractors

To receive credit under the Veterans Preference evaluation factor, an offeror must furnish a completed representation (Federal Acquisition Regulation clause 52.212-3 or 52.219-1) that shows that it qualifies as a

veteran-owned or service disabled veteran-owned small business and the offeror must be registered and verified by The Center for Veterans Enterprise at www.vetbiz.gov.

Non-veteran offerors proposing to use service-disabled veteran-owned small businesses or veteran-owned small businesses as subcontractors will receive some consideration under this evaluation factor. Offerors must state in their proposals the names of the SDVOSBs and VOSBs with whom they intend to subcontract and provide a brief description of the proposed subcontracts and the approximate dollar values of the proposed subcontracts. In addition, the proposed subcontractors must be registered and verified in the VetBiz.gov VIP database (<http://www.vetbiz.gov>).

Non-veteran offerors not proposing to use service-disabled veteran-owned small businesses or veteran-owned small businesses as subcontractors will receive no consideration under this evaluation factor.

The following are brief descriptions of required documents that must be submitted by contractor: upon award; weekly; monthly; quarterly; annually, etc. identified throughout the PWS and is provided here as a guide for Contractor convenience. If an item is within the PWS and not listed here, the contractor remains responsible for the delivery of the item.

What	Submit as noted	Submit To
Quality Control Plan: Description and reporting reflecting the contractor's plan for meeting of contract requirements and performance standards.	Upon proposal and as frequently as indicated in the performance standards.	Contracting Officer
VA Directive 1663 Appendix B Other than Cost and Price Information Supporting Proposed Physician Rate (required for Affiliate onsite hourly- remove if it does not apply)	Upon the request of the Contracting Officer or upon change in key personnel	Contracting Officer
Copy of Sub Contracting Plan (as required) Copy of Contractor Certification Statement if non-subcontracting possibilities exist.	Upon proposal and as updated	Contracting Officer
Copies of any and all licenses, certifications to include primary source verification of all licensed and certified staff.	Upon proposal and upon renewal of licenses and upon renewal of option periods or change of key personnel.	COR
Certification that staff list have been compared to OIG list.	Upon proposal and upon new hires.	Contracting Officer
Proof of Indemnification and Medical Liability Insurance.	Upon proposal and upon renewals.	COR
Certificates of Completion for Cyber Security and Patient Privacy Training Courses.	Before receiving an account on VA Network and annual training and new hires.	COR
BLS Certification	Upon award and every two years after award.	COR
Contingency plan for replacing key personnel to maintain services as required under the terms of the contract.	Upon proposal and as updated	COR

E.2 52.209-5 CERTIFICATION REGARDING RESPONSIBILITY MATTERS (OCT 2015)

(a)(1) The Offeror certifies, to the best of its knowledge and belief, that—

(i) The Offeror and/or any of its Principals—

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

(B) 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 public (Federal, State, or local) 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 (if offeror checks "have," the offeror shall also see 52.209-7, if included in this solicitation);

(C) Are are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(1)(i)(B) of this provision; and

(D) 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.

(1) Federal taxes are considered delinquent if both of the following criteria apply:

(i) *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.

(ii) *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.

(2) *Examples.*

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

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

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

(iv) 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).

(ii) The Offeror has [] has not [], within a 3-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) Principal, for the purposes of this certification, 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).

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER SECTION 1001, TITLE 18, UNITED STATES CODE.

(b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) 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 certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

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

(End of Provision)

E.3 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 (FAPIS) 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 FAPIS as required through maintaining an active registration in the System for Award Management database via <https://www.acquisition.gov> (see 52.204-7).

(End of Provision)

E.4 52.216-1 TYPE OF CONTRACT (APR 1984)

The Government contemplates award of a Firm Fixed-Price, Indefinite Quantity Indefinite Quantity with and Economic Price Adjustment contract resulting from this solicitation.

(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:

Charles Hurry
Hand-Carried Address:

Department of Veterans Affairs
NCO 23 – St. Paul
Suite 506
316 Robert Street N.
St. Paul, MN 55101

Mailing Address:

Department of Veterans Affairs
NCO 23 – St. Paul
Suite 506
316 Robert Street N.
St. Paul, MN 55101

(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)

E.6 VAAR 852.215-70 SERVICE-DISABLED VETERAN-OWNED AND VETERAN-OWNED SMALL BUSINESS EVALUATION FACTORS (JUL 2016)(DEVIATION)

(a) In an effort to achieve socioeconomic small business goals, depending on the evaluation factors included in the solicitation, VA shall evaluate offerors based on their service-disabled veteran-owned or veteran-owned small business status and their proposed use of eligible service-disabled veteran-owned small businesses and veteran-owned small businesses as subcontractors.

(b) Eligible service-disabled veteran-owned offerors will receive full credit, and offerors qualifying as veteran-owned small businesses will receive partial credit for the Service-Disabled Veteran-Owned and Veteran-owned Small Business Status evaluation factor. To receive credit, an offeror must be registered and verified in Vendor Information Pages (VIP) database (<https://www.vip.vetbiz.gov>).

(c) Non-veteran offerors proposing to use service-disabled veteran-owned small businesses or veteran-owned small businesses as subcontractors will receive some consideration under this evaluation factor. Offerors must state in their proposals the names of the SDVOSBs and VOSBs with whom they intend to subcontract and provide a brief description of the proposed subcontracts and the approximate dollar values of the proposed subcontracts. In addition, the proposed subcontractors must be registered and verified in the VetBiz.gov VIP database (<https://www.vip.vetbiz.gov>).

(End of Clause)

E.7 VAAR 852.233-70 PROTEST CONTENT/ALTERNATIVE DISPUTE RESOLUTION (JAN 2008)

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

- (1) Include the name, address, fax number, and telephone number of the protester;
- (2) Identify the solicitation and/or contract number;

- (3) Include an original signed by the protester or the protester's representative and at least one copy;
 - (4) Set forth a detailed statement of the legal and factual grounds of the protest, including a description of resulting prejudice to the protester, and provide copies of relevant documents;
 - (5) Specifically request a ruling of the individual upon whom the protest is served;
 - (6) State the form of relief requested; and
 - (7) Provide all information establishing the timeliness of the protest.
- (b) Failure to comply with the above may result in dismissal of the protest without further consideration.
- (c) Bidders/offerors and contracting officers are encouraged to use alternative dispute resolution (ADR) procedures to resolve protests at any stage in the protest process. If ADR is used, the Department of Veterans Affairs will not furnish any documentation in an ADR proceeding beyond what is allowed by the Federal Acquisition Regulation.

(End of Provision)

E.8 VAAR 852.233-71 ALTERNATE PROTEST PROCEDURE (JAN 1998)

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

(End of Provision)

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

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

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

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

E.9 VAAR 852.270-1 REPRESENTATIVES OF CONTRACTING OFFICERS (JAN 2008)

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

(End of Provision)

E.10 VAAR 852.271-70 NONDISCRIMINATION IN SERVICES PROVIDED TO BENEFICIARIES (JAN 2008)

The contractor agrees to provide all services specified in this contract for any person determined eligible by the Department of Veterans Affairs, regardless of the race, color, religion, sex, or national origin of the

person for whom such services are ordered. The contractor further warrants that he/she will not resort to subcontracting as a means of circumventing this provision.

(End of Provision)

E.11 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 Number</u>	<u>Title</u>	<u>Date</u>
52.232-38	SUBMISSION OF ELECTRONIC FUNDS TRANSFER INFORMATION WITH OFFER	JUL 2013
52.204-16	COMMERCIAL AND GOVERNMENT ENTITY CODE REPORTING	JUL 2016

(End of Addendum to 52.212-1)

E.12 VAAR 852.273-73 EVALUATION - HEALTH-CARE RESOURCES (JAN 2003)

(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 information or factors shall be used to evaluate offers:

- Technical
- Past Performance
- Price
- Veterans Preference

(b) Except when it is determined not to be in the Government's best interest, 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 materially unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(c) If this solicitation is a request for proposals (RFP), 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)

E.13 VAAR 852.273-70 LATE OFFERS (JAN 2003)

This provision replaces paragraph (f) of FAR provision 52.212-1. Offers or modifications of offers received after the time set forth in a request for quotations or request for proposals may be considered, at the discretion of the contracting officer, if determined to be in the best interest of the Government. Late bids submitted in response to an invitation for bid (IFB) will not be considered.

(End of Provision)

E.14 VAAR 852.273-74 AWARD WITHOUT EXCHANGES (JAN 2003)

The Government intends to evaluate proposals and award a contract without exchanges with offerors. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint. However, the Government reserves the right to conduct exchanges if later determined by the contracting officer to be necessary.

(End of Provision)

E.15 VAAR 852.209-70 ORGANIZATIONAL CONFLICTS OF INTEREST (JAN 2008)

(a) It is in the best interest of the Government to avoid situations which might create an organizational conflict of interest or where the offeror's performance of work under the contract may provide the contractor with an unfair competitive advantage. The term "organizational conflict of interest" means that because of other activities or relationships with other persons, a person is unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or the person has an unfair competitive advantage.

(b) The offeror shall provide a statement with its offer which describes, in a concise manner, all relevant facts concerning any past, present, or currently planned interest (financial, contractual, organizational, or otherwise) or actual or potential organizational conflicts of interest relating to the services to be provided under this solicitation. The offeror shall also provide statements with its offer containing the same information for any consultants and subcontractors identified in its proposal and which will provide services under the solicitation. The offeror may also provide relevant facts that show how its organizational and/or management system or other actions would avoid or mitigate any actual or potential organizational conflicts of interest.

(c) Based on this information and any other information solicited or obtained by the contracting officer, the contracting officer may determine that an organizational conflict of interest exists which would warrant disqualifying the contractor for award of the contract unless the organizational conflict of interest can be mitigated to the contracting officer's satisfaction by negotiating terms and conditions of the contract to that effect. If the conflict of interest cannot be mitigated and if the contracting officer finds that it is in the best interest of the United States to award the contract, the contracting officer shall request a waiver in accordance with FAR 9.503 and 48 CFR 809.503.

(d) Nondisclosure or misrepresentation of actual or potential organizational conflicts of interest at the time of the offer, or arising as a result of a modification to the contract, may result in the termination of the contract at no expense to the Government.

(End of Provision)

E.16 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) Web site 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, dated August 25, 2016, can be obtained from 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, subchapter IV, formerly known as the Davis-Bacon Act;
- (iv) 41 U.S.C. chapter 67, 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—

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

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

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), applied in accordance with the rules and definitions of 6 U.S.C. 395(c).

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, subchapter IV, formerly known as the Davis-Bacon Act.
- (6) 41 U.S.C. chapter 67, 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).

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)).

Service-disabled veteran-owned small business concern—

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

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

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.

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.

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

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

(2) The management and daily business operations of which are controlled by one or more veterans.

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

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

(1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

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

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

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

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

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

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

(4) *Small disadvantaged business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents 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 change in ownership and control, principal office, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR Part 126; and

(ii) It is, is not a joint venture that complies with the requirements of 13 CFR Part 126, and the representation in paragraph (c)(10)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. [The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture:_____.] Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

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

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

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

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

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

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

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

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

(f) *Buy American Certificate.* (Applies only if the clause at Federal Acquisition Regulation (FAR) 52.225-1, 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.

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

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

(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products as defined in the clause of this solicitation entitled “Buy American—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 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 FAR 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

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

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

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

[List as necessary]

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

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

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

Other End Products:

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

[List as necessary]

(iii) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25. For line items covered by the WTO GPA, the Government will evaluate offers of U.S.-made or designated country end products without regard to the restrictions of the Buy American 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. Sec. 6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

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

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

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

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

(1) *Listed end products.*

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

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

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

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

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

(2) Outside the United States.

(k) *Certificates regarding exemptions from the application of the Service Contract 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.)

[(I\$ARC_05)] (1) Maintenance, calibration, or repair of certain equipment as described in FAR 22.1003-4(c)(1). The offeror does does not certify that—

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

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

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

~~[(I\$ARC_06)]~~ (2) Certain services as described in FAR 22.1003- 4(d)(1). The offeror [] does [] does not certify that—

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

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

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

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

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

(i) If the offeror does not certify to the conditions in paragraph (k)(1) or (k)(2) and the Contracting Officer did not attach a Service Contract 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.

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

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

(2) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

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

[] TIN: _____.

[] TIN has been applied for.

[] TIN is not required because:

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

- Offeror is an agency or instrumentality of a foreign government;
- Offeror is an agency or instrumentality of the Federal Government.

(4) *Type of organization.*

- Sole proprietorship;
- Partnership;
- Corporate entity (not tax-exempt);
- Corporate entity (tax-exempt);
- Government entity (Federal, State, or local);
- Foreign government;
- International organization per 26 CFR 1.6049-4;
- Other _____.

(5) *Common parent.*

- Offeror is not owned or controlled by a common parent;
- Name and TIN of common parent:
Name _____
TIN _____.

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

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

(1) 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(b) applies or the requirement is waived in accordance with the procedures at 9.108-4.

(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 email questions concerning sensitive technology to the Department of State at CISADA106@state.gov.

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

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

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

(iii) Certifies that the offeror, and any person owned or controlled by the offeror, does not knowingly engage in any transaction that exceeds \$3,500 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(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, 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, 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(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.

(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, DoD, GSA, 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(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 Web site 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 Web site a target to reduce absolute emissions or emissions intensity by a specific quantity or percentage.

(iii) A publicly accessible Web site includes the Offeror's own Web site 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 Web site(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).

(End of Provision)

Attachment 1

QUALITY ASSURANCE SURVEILLANCE PLAN (QASP)

The contractor will be evaluated in accordance with the following:

1. PURPOSE

- a. This Quality Assurance Surveillance Plan (QASP) provides a systematic method to evaluate performance for the stated contract. This QASP explains the following:
 - What will be monitored?
 - How monitoring will take place.
 - Who will conduct the monitoring?
 - How monitoring efforts and results will be documented.
- b. This QASP does not detail how the contractor accomplishes the work. Rather, the QASP is created with the premise that the contractor is responsible for management and quality control actions to meet the terms of the contract. It is the Government's responsibility to be objective, fair, and consistent in evaluating performance.
- c. This QASP is a "living document" and the Government may review and revise it on a regular basis. However, the Government shall coordinate changes with the contractor through contract modification. Copies of the original QASP and revisions shall be provided to the contractor and Government officials implementing surveillance activities.

2. GOVERNMENT ROLES AND RESPONSIBILITIES

- a. The following personnel shall oversee and coordinate surveillance activities.
 - (1) Contracting Officer (CO) – The CO shall ensure performance of all necessary actions for effective contracting, ensure compliance with the contract terms, and shall safeguard the interests of the United States in the contractual relationship. The CO shall also assure that the contractor receives impartial, fair, and equitable treatment under this contract. The CO is ultimately responsible for the final determination of the adequacy of the contractor's performance.

Assigned CO: Charles Hurry

Organization or Agency: NCO 23 Contracting Office, Minneapolis, MN

- (2) Contracting Officer's Representative (COR) – The COR is responsible for technical administration of the contract and shall assure proper Government surveillance of the contractor's performance. The COR shall keep a quality assurance file. The COR is not empowered to make any contractual commitments or to authorize any contractual changes on the Government's behalf.

Assigned COR: John Becker

Organization or Agency: Sioux Falls VA Health Care System

Attachment 1

3. CONTRACTOR REPRESENTATIVES

- a. The following employee(s) of the contractor serve as the contractor's program manager(s) for this contract.

Primary:

Alternate:

4. PERFORMANCE STANDARDS

- a. The contractor is responsible for performance of ALL terms and conditions of the contract. CORs will provide contract progress reports quarterly to the CO reflecting performance on this plan and all other aspects of the resultant contract. The performance standards outlined in this QASP shall be used to determine the level of contractor performance in the elements defined. Performance standards define desired services. The Government performs surveillance to determine the level of Contractor performance to these standards.
- b. The Performance Requirements are listed below in Section 6. The Government shall use these standards to determine contractor performance and shall compare contractor performance to the standard and assign a rating. At the end of the performance period, these ratings will be used, in part, to establish the past performance of the contractor on the contract.

5. METHODS OF QA SURVEILLANCE

- a. Various methods exist to monitor performance. The COR shall use the surveillance methods listed below in the administration of this QASP.
 - (1) DIRECT OBSERVATION. 100% surveillance
 - (2) PERIODIC INSPECTION. Inspections scheduled and reported quarterly per COR delegation or as needed. For example, ten (10) randomly selected patient files will be reviewed per inspection period. All inspections and reports will be conducted in compliance with VA Privacy and Information security standards.
 - (3) VALIDATED USER/CUSTOMER COMPLAINTS.
 - (4) RANDOM SAMPLING. For example, ten (10) randomly selected patient files will be reviewed per quarter. All reviews and reports will be conducted in compliance with VA Privacy and Information security standards.
 - (5) Verification and/or documentation provided by Contractor. For example, off-site contracts may require the contractor to provide information on services provided to patients.

Attachment 1
PERFORMANCE MEASURES

Measures	PWS Reference	Performance Requirement	Acceptable Quality Level	Surveillance Method	Met AQL/Did not meet AQL
1. Physician Notification for typical single frozen sections. Business Days, M-F, 8AM to 4:30PM	4.9.6	Initial frozen section is 20 minutes; 10 minutes for each additional specimen - specimen receipt to physician notification	90% compliance	Review critical value report	CPAR Rating
2. Provider notification of all new malignancies (excluding skin squamous and basal cell carcinoma)	4.9.6	Within 24 hours of diagnosis	100% compliance, no deviations	Review PLMS QA Management Minutes.	CPAR Rating
3. Correlation of Frozen Section and Final Diagnoses (Frozen interpretation correlates with permanent slides)	4.9.6	Frozen interpretation correlates with permanent slides	98% compliance	Review PLMS QA Management Minutes.	CPAR Rating
4. Surgical pathology report completion	4.9.6	Routine within 3 working days of specimen receipt, complicated within 5 working days of specimen receipt.	90% compliance	Review PLMS QA Management Minutes.	CPAR Rating
5. Cytopathology report completion	4.9.6	Routine within 3 working days of specimen receipt, complicated within 5 working days of specimen receipt.	90% compliance	Review PLMS QA Management Minutes.	CPAR Rating
6. Autopsy provisional anatomic diagnoses.	4.9.6	Within 24 hours (72 hours for weekends and 96 hours for weekends adjacent to holidays) of post	100% compliance, no deviations	Review monthly report.	CPAR Rating
7. Autopsy Final Report	4.9.6	Complete post mortem examinations with final copy, in required format, within thirty (30) business days	100% compliance, no deviations	Review monthly report	CPAR Rating
8. CPT Coding	4.9.6	Daily completion by all pathologists	100% compliance, no deviations	Documentation when slides are received	CPAR Rating

Attachment 1

Measures	PWS Reference	Performance Requirement	Acceptable Quality Level	Surveillance Method	Met AQL/Did not meet AQL
9. Qualifications of Key Personnel	4.9.1	All Contractor's physician(s) shall be currently licensed and certified in accordance with the PWS.	100% compliance, no deviations	Verification from contractor	CPAR Rating
10. Computerized Patient Record System (CPRS)	4.9.2	Contractor's physician(s) shall be responsible for ensuring documentation is complete, accurate, and timely and entered into the computerized medical record	All (100%) accuracy and completion.	Random Inspection of records with audits by HIMS using reports from the dictation system and VISTA. Medical Service to alert COR of any staff who is non-compliant with these requirements.	CPAR Rating
11. Maintains licensing, registration, and certification	4.9.3	Updated Licensing, registration and certification shall be provided as they are renewed. Licensing and registration information kept current.	100% compliance, no deviations	Verification from contractor	CPAR Rating
12. Mandatory Training	4.9.4	Contractor shall complete all required training on time per SFVAHCS policy	100% compliance, no deviations	Periodic Sampling	CPAR Rating
13. Privacy, Confidentiality and HIPAA	4.9.5	Contractor is aware of all laws, regulations, policies and procedures relating to Privacy, Confidentiality and HIPAA and complies with all standards Zero breaches of privacy or confidentiality	100% compliance, no deviations	Periodic Sampling	CPAR Rating
14. Quality Management Requirements	4.9.7	All of 4.9.7.1	100% compliance, no deviations	Observation	CPAR Rating
15. Patient Rights	4.9.8	All of 4.9.8.1	100% compliance, no deviations	Observation	CPAR Rating
16. Patient Safety	4.9.9 and 4.9.10	All of 4.9.9.1 and 4.9.10.1.1	100% compliance, no deviations	Observation	CPAR Rating

Attachment 1

Measures	PWS Reference	Performance Requirement	Acceptable Quality Level	Surveillance Method	Met AQL/Did not meet AQL
17. Patient Education	4.9.11	Contractor provides instructions to and coordinated with the patient and caregiver(s)	100% compliance, no deviations	Observation	CPAR Rating

Attachment 1

6. RATINGS

Metrics and methods are designed to determine rating for a given standard and acceptable quality level. The following ratings shall be used:

<p>EXCEPTIONAL</p>	<p>Performance meets contractual requirements and exceeds many to the Government's benefit. The contractual performance of the element or sub-element being assessed was accomplished with few minor problems for which corrective actions taken by the contractor were highly effective. <i>Note: To justify an Exceptional rating, you should identify <u>multiple</u> significant events in each category and state how it was a benefit to the GOVERNMENT. However a singular event could be of such magnitude that it alone constitutes an Exceptional rating. Also there should have been NO significant weaknesses identified.</i></p>
<p>VERY GOOD</p>	<p>Performance meets contractual requirements and exceeds some to the Government's benefit. The contractual performance of the element or sub-element being assessed was accomplished with some minor problems for which corrective actions taken by the contractor were effective. <i>Note: To justify a Very Good rating, you should identify a significant event in each category and state how it was a benefit to the GOVERNMENT. Also there should have been NO significant weaknesses identified.</i></p>
<p>SATISFACTORY</p>	<p>Performance meets contractual requirements. The contractual performance of the element or sub-element contains some minor problems for which corrective actions taken by the contractor appear or were satisfactory. <i>Note: To justify a Satisfactory rating, there should have been only minor problems, or major problems the contractor recovered from without impact to the contract. Also there should have been NO significant weaknesses identified.</i></p>
<p>MARGINAL</p>	<p>Performance does not meet some contractual requirements. The contractual performance of the element or sub-element being assessed reflects a serious problem for which the contractor has not yet identified corrective actions. The contractor's proposed actions appear only marginally effective or were not fully implemented. <i>Note: To justify Marginal performance, you should identify a significant event in each category that the contractor had trouble overcoming and state how it impacted the GOVERNMENT. A Marginal rating should be supported by referencing the management tool that notified the contractor of the contractual deficiency (e.g. Management, Quality, Safety or Environmental Deficiency Report or letter).</i></p>
<p>UNSATISFACTORY</p>	<p>Performance does not meet most contractual requirements and recovery is not likely in a timely manner. The contractual performance of the element or sub-element being assessed contains serious problem(s) for which the contractor's corrective actions appear or were ineffective. <i>Note: To justify an Unsatisfactory rating, you should identify multiple significant events in each category that the contractor had trouble overcoming and state how it impacted the GOVERNMENT. However, a singular problem could be of such serious magnitude that it alone constitutes an unsatisfactory rating. An Unsatisfactory rating should be supported by referencing the management tools used to notify the contractor of the contractual deficiencies (e.g. Management, Quality, Safety or Environmental Deficiency Reports, or letters).</i></p>

7. DOCUMENTING PERFORMANCE

- a. The Government shall document positive and/or negative performance. Any report may become a part of the supporting documentation for any contractual action and preparing annual past performance using CONTRACTOR PERFORMANCE ASSESSMENT REPORT SYSTEM (CPARS).

Attachment 1

- b. If contractor performance does not meet the Acceptable Quality level, the CO shall inform the contractor. This will normally be in writing unless circumstances necessitate verbal communication. In any case the CO shall document the discussion and place it in the contract file. When the COR and the CO determines formal written communication is required, the COR shall prepare a Contract Discrepancy Report (CDR), and present it to CO. The CO will in turn review and will present to the contractor's program manager for corrective action.
- c. The contractor shall acknowledge receipt of the CDR in writing. The CDR will specify if the contractor is required to prepare a corrective action plan to document how the contractor shall correct the unacceptable performance and avoid a recurrence. The CDR will also state how long after receipt the contractor has to present this corrective action plan to the CO. The Government shall review the contractor's corrective action plan to determine acceptability. The CO shall also assure that the contractor receives impartial, fair, and equitable treatment. The CO is ultimately responsible for the final determination of the adequacy of the contractor's performance and the acceptability of the Contractor's corrective action plan.
- d. Any CDRs may become a part of the supporting documentation for any contractual action deemed necessary by the CO. See Sample CDR below.

Attachment 1

CONTRACT DISCREPANCY REPORT				
1. CONTRACT NUMBER		2. REPORT NUMBER FOR THIS DISCREPANCY		
3. TO: <i>(Contracting Officer)</i>		4. FROM: <i>(Name of COR)</i>		
5. DATES				
a. CDR PREPARED	b. RETURNED BY CONTRACTOR:		c. ACTION COMPLETE	
6. DISCREPANCY OR PROBLEM <i>(Describe in detail. Include reference to PWS Directive; attach continuation sheet if necessary.)</i>				
7. SIGNATURE OF COR			Date:	
8. SIGNATURE OF CONTRACTING OFFICER			Date:	
9a. TO <i>(Contracting Officer)</i>		9a. FROM <i>(Contractor)</i>		
10. CONTRACTOR RESPONSE AS TO CAUSE, CORRECTIVE ACTION AND ACTIONS TO PREVENT RECURRENCE. <i>(Cite applicable quality control program procedures or new procedures. Attach continuation sheet(s) if necessary.)</i>				
11. SIGNATURE OF CONTRACTOR REPRESENTATIVE			Date:	
12. GOVERNMENT EVALUATION. <i>(Acceptance, partial acceptance, reflection. Attach continuation sheet(s) if necessary.)</i>				
13. GOVERNMENT ACTIONS <i>(Acceptance, partial acceptance, reflection. Attach continuation sheet(s) if necessary.)</i>				
14. CLOSE OUT				
	NAME	TITLE	SIGNATURE	DATE
CONTRACTOR NOTIFIED				
COR				
CONTRACTING OFFICER				

Attachment 1

8. FREQUENCY OF MEASUREMENT

- a. Frequency of Measurement. The frequency of measurement is defined in the contract or otherwise in this document. The government (COR or CO) will periodically analyze whether the frequency of surveillance is appropriate for the work being performed.
- b. Frequency of Performance Reporting. The COR shall communicate with the Contractor and will provide written reports to the Contracting Officer quarterly (or as outlined in the contract or COR delegation) to review Contractor performance.

9. COR AND CONTRACTOR ACKNOWLEDGEMENT OF QASP

Signed:

COR Name/Title	Date
----------------	------

Signed:

Contractor Name/Title	Date
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MARCH 12, 2010 VA HANDBOOK 6500.6

APPENDIX C

C-1

VA INFORMATION AND INFORMATION SYSTEM SECURITY/PRIVACY LANGUAGE FOR INCLUSION INTO CONTRACTS, AS APPROPRIATE

1. GENERAL

Contractors, contractor personnel, subcontractors, and subcontractor personnel shall be subject to the same Federal laws, regulations, standards, and VA Directives and Handbooks as VA and VA personnel regarding information and information system security.

2. ACCESS TO VA INFORMATION AND VA INFORMATION SYSTEMS

a. A contractor/subcontractor shall request logical (technical) or physical access to VA information and VA information systems for their employees, subcontractors, and affiliates only to the extent necessary to perform the services specified in the contract, agreement, or task order.

b. All contractors, subcontractors, and third-party servicers and associates working with VA information are subject to the same investigative requirements as those of VA appointees or employees who have access to the same types of information. The level and process of background security investigations for contractors must be in accordance with VA Directive and Handbook 0710, *Personnel Suitability and Security Program*. The Office for Operations, Security, and Preparedness is responsible for these policies and procedures.

c. Contract personnel who require access to national security programs must have a valid security clearance. National Industrial Security Program (NISP) was established by Executive Order 12829 to ensure that cleared U.S. defense industry contract personnel safeguard the classified information in their possession while performing work on contracts, programs, bids, or research and development efforts. The Department of Veterans Affairs does not have a Memorandum of Agreement with Defense Security Service (DSS). Verification of a Security Clearance must be processed through the Special Security Officer located in the Planning and National Security Service within the Office of Operations, Security, and Preparedness.

d. Custom software development and outsourced operations must be located in the U.S. to the maximum extent practical. If such services are proposed to be performed abroad and are not disallowed by other VA policy or mandates, the contractor/subcontractor must state where all non-U.S. services are provided and detail a security plan, deemed to be acceptable by VA, specifically to address mitigation of the resulting problems of communication, control, data protection, and so forth. Location within the U.S. may be an evaluation factor.

e. The contractor or subcontractor must notify the Contracting Officer immediately when an employee working on a VA system or with access to VA information is reassigned or leaves the contractor or subcontractor's employ. The Contracting Officer must also be notified immediately by the contractor or subcontractor prior to an unfriendly termination.

3. VA INFORMATION CUSTODIAL LANGUAGE

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

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

4. SECURITY INCIDENT INVESTIGATION

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

5. LIQUIDATED DAMAGES FOR DATA BREACH

- a. Consistent with the requirements of 38 U.S.C. §5725, a contract may require access to sensitive personal information. If so, the contractor is liable to VA for liquidated damages in the event of a data breach or privacy incident involving any SPI the contractor/subcontractor processes or maintains under this contract.
- b. The contractor/subcontractor shall provide notice to VA of a “security incident” as set forth in the Security Incident Investigation section above. Upon such notification, VA must secure from a non-Department entity or the VA Office of Inspector General an independent risk analysis of the data breach to determine the level of risk associated with the data breach for the potential misuse of any sensitive personal information involved in the data breach. The term 'data breach' means the loss, theft, or other unauthorized access, or any access other than that incidental to the scope of employment, to data containing sensitive personal information, in electronic or printed form, that results in the potential compromise of the confidentiality or integrity of the data. Contractor shall fully cooperate with the entity performing the risk analysis. Failure to cooperate may be deemed a material breach and grounds for contract termination.
- c. Each risk analysis shall address all relevant information concerning the data breach, including the following:
- (1) Nature of the event (loss, theft, unauthorized access);
 - (2) Description of the event, including:
 - (a) date of occurrence;
 - (b) data elements involved, including any PII, such as full name, social security number, date of birth, home address, account number, disability code;
 - (3) Number of individuals affected or potentially affected;
 - (4) Names of individuals or groups affected or potentially affected;
 - (5) Ease of logical data access to the lost, stolen or improperly accessed data in light of the

Attachment 2

degree of protection for the data, e.g., unencrypted, plain text;

(6) Amount of time the data has been out of VA control;

(7) The likelihood that the sensitive personal information will or has been compromised (made accessible to and usable by unauthorized persons);

(8) Known misuses of data containing sensitive personal information, if any;

(9) Assessment of the potential harm to the affected individuals;

(10) Data breach analysis as outlined in 6500.2 Handbook, *Management of Security and Privacy Incidents*, as appropriate; and

(11) Whether credit protection services may assist record subjects in avoiding or mitigating the results of identity theft based on the sensitive personal information that may have been compromised.

d. Based on the determinations of the independent risk analysis, the contractor shall be responsible for paying to the VA liquidated damages in the amount of \$37.50 per affected individual to cover the cost of providing credit protection services to affected individuals consisting of the following:

(1) Notification;

(2) One year of credit monitoring services consisting of automatic daily monitoring of at least 3 relevant credit bureau reports;

(3) Data breach analysis;

(4) Fraud resolution services, including writing dispute letters, initiating fraud alerts and credit freezes, to assist affected individuals to bring matters to resolution;

(5) One year of identity theft insurance with \$20,000.00 coverage at \$0 deductible; and

(6) Necessary legal expenses the subjects may incur to repair falsified or damaged credit records, histories, or financial affairs.

6. TRAINING

a. All contractor employees and subcontractor employees requiring access to VA information and VA information systems shall complete the following before being granted access to VA information and its systems:

(1) Sign and acknowledge (either manually or electronically) understanding of and responsibilities for compliance with the *Contractor Rules of Behavior*, Appendix E relating to access to VA information and information systems;

(2) Successfully complete the *VA Cyber Security Awareness and Rules of Behavior* training and annually complete required security training;

(3) Successfully complete the appropriate VA privacy training and annually complete required privacy training; and

(4) Successfully complete any additional cyber security or privacy training, as required for VA personnel with equivalent information system access [to be defined by the VA program official and provided to the contracting officer for inclusion in the solicitation document – e.g., any role-based information security training required in accordance with NIST Special Publication 800-16, *Information Technology Security Training Requirements*.]

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

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

**MARCH 12, 2010 VA HANDBOOK 6500.6
APPENDIX D**

CONTRACTOR RULES OF BEHAVIOR

This User Agreement contains rights and authorizations regarding my access to and use of any information assets or resources associated with my performance of services under the contract terms with the Department of Veterans Affairs (VA). This User Agreement covers my access to all VA data whether electronic or hard copy ("Data"), VA information systems and resources ("Systems"), and VA sites ("Sites"). This User Agreement incorporates Rules of Behavior for using VA, and other information systems and resources under the contract.

1. GENERAL TERMS AND CONDITIONS FOR ALL ACTIONS AND ACTIVITIES UNDER THE CONTRACT:

- a. I understand and agree that I have no reasonable expectation of privacy in accessing or using any VA, or other Federal Government information systems.
- b. I consent to reviews and actions by the Office of Information & Technology (OI&T) staff designated and authorized by the VA Chief Information Officer (CIO) and to the VA OIG regarding my access to and use of any information assets or resources associated with my performance of services under the contract terms with the VA. These actions may include monitoring, recording, copying, inspecting, restricting access, blocking, tracking, and disclosing to all authorized OI&T, VA, and law enforcement personnel as directed by the VA CIO without my prior consent or notification.
- c. I consent to reviews and actions by authorized VA systems administrators and Information Security Officers solely for protection of the VA infrastructure, including, but not limited to monitoring, recording, auditing, inspecting, investigating, restricting access, blocking, tracking, disclosing to authorized personnel, or any other authorized actions by all authorized OI&T, VA, and law enforcement personnel.
- d. I understand and accept that unauthorized attempts or acts to access, upload, change, or delete information on Federal Government systems; modify Federal government systems; deny access to Federal government systems; accrue resources for unauthorized use on Federal government systems; or otherwise misuse Federal government systems or resources are prohibited.
- e. I understand that such unauthorized attempts or acts are subject to action that may result in criminal, civil, or administrative penalties. This includes penalties for violations of Federal laws including, but not limited to, 18 U.S.C. §1030 (fraud and related activity in connection with computers) and 18 U.S.C. §2701 (unlawful access to stored communications).
- f. I agree that OI&T staff, in the course of obtaining access to information or systems on my behalf for performance under the contract, may provide information about me including, but not limited to, appropriate unique personal identifiers such as date of birth and social security number to other system administrators, Information Security Officers (ISOs), or other authorized staff without further notifying me or obtaining additional written or verbal permission from me.
- g. I understand I must comply with VA's security and data privacy directives and handbooks. I understand that copies of those directives and handbooks can be obtained from the Contracting Officer's Representative (COR). If the contractor believes the policies and guidance provided by the COR is a material unilateral change to the contract, the contractor must elevate such concerns to the Contracting Officer for resolution.

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h. I will report suspected or identified information security/privacy incidents to the COR and to the local ISO or Privacy Officer as appropriate.

2. GENERAL RULES OF BEHAVIOR

a. Rules of Behavior are part of a comprehensive program to provide complete information security. These rules establish standards of behavior in recognition of the fact that knowledgeable users are the foundation of a successful security program. Users must understand that taking personal responsibility for the security of their computer and the information it contains is an essential part of their job.

b. **The following rules apply to all VA contractors. I agree to:**

- (1) Follow established procedures for requesting, accessing, and closing user accounts and access. I will not request or obtain access beyond what is normally granted to users or by what is outlined in the contract.
- (2) Use only systems, software, databases, and data which I am authorized to use, including any copyright restrictions.
- (3) I will not use other equipment (OE) (non-contractor owned) for the storage, transfer, or processing of VA sensitive information without a VA CIO approved waiver, unless it has been reviewed and approved by local management and is included in the language of the contract. If authorized to use OE IT equipment, I must ensure that the system meets all applicable 6500 Handbook requirements for OE.
- (4) Not use my position of trust and access rights to exploit system controls or access information for any reason other than in the performance of the contract.
- (5) Not attempt to override or disable security, technical, or management controls unless expressly permitted to do so as an explicit requirement under the contract or at the direction of the COR or ISO. If I am allowed or required to have a local administrator account on a government-owned computer, that local administrative account does not confer me unrestricted access or use, nor the authority to bypass security or other controls except as expressly permitted by the VA CIO or CIO's designee.
- (6) Contractors' use of systems, information, or sites is strictly limited to fulfill the terms of the contract. I understand no personal use is authorized. I will only use other Federal government information systems as expressly authorized by the terms of those systems. I accept that the restrictions under ethics regulations and criminal law still apply.
- (7) Grant access to systems and information only to those who have an official need to know.
- (8) Protect passwords from access by other individuals.
- (9) Create and change passwords in accordance with VA Handbook 6500 on systems and any devices protecting VA information as well as the rules of behavior and security settings for the particular system in question.
- (10) Protect information and systems from unauthorized disclosure, use, modification, or destruction. I will only use encryption that is FIPS 140-2 validated to safeguard VA sensitive information, both safeguarding VA sensitive information in storage and in transit regarding my access to and use of any information assets or resources associated with my performance of services under the contract terms with the VA.
- (11) Follow VA Handbook 6500.1, *Electronic Media Sanitization* to protect VA information. I will contact the COR for policies and guidance on complying with this requirement and will follow the COR's orders.
- (12) Ensure that the COR has previously approved VA information for public dissemination, including e-mail communications outside of the VA as appropriate. I will not make any unauthorized disclosure of any VA sensitive information through the use of any means of communication including but not limited to e-mail, instant messaging, online chat, and web bulletin boards or logs.
- (13) Not host, set up, administer, or run an Internet server related to my access to and use of any information assets or resources associated with my performance of services under the contract terms with the VA unless explicitly authorized under the contract or in writing by the COR.

Attachment 2

(14) Protect government property from theft, destruction, or misuse. I will follow VA directives and handbooks on handling Federal government IT equipment, information, and systems. I will not take VA sensitive information from the workplace without authorization from the COR.

(15) Only use anti-virus software, antispyware, and firewall/intrusion detection software authorized by VA. I will contact the COR for policies and guidance on complying with this requirement and will follow the COR's orders regarding my access to and use of any information assets or resources associated with my performance of services under the contract terms with VA.

(16) Not disable or degrade the standard anti-virus software, antispyware, and/or firewall/intrusion detection software on the computer I use to access and use information assets or resources associated with my performance of services under the contract terms with VA. I will report anti-virus, antispyware, firewall or intrusion detection software errors, or significant alert messages to the COR.

(17) Understand that restoration of service of any VA system is a concern of all users of the system.

(18) Complete required information security and privacy training, and complete required training for the particular systems to which I require access.

3. ADDITIONAL CONDITIONS FOR USE OF NON- VA INFORMATION TECHNOLOGY RESOURCES

a. When required to complete work under the contract, I will directly connect to the VA network whenever possible. If a direct connection to the VA network is not possible, then I will use VA approved remote access software and services.

b. Remote access to non-public VA information technology resources is prohibited from publicly-available IT computers, such as remotely connecting to the internal VA network from computers in a public library.

c. I will not have both a VA network line and any kind of non-VA network line including a wireless network card, modem with phone line, or other network device physically connected to my computer at the same time, unless the dual connection is explicitly authorized by the COR.

d. I understand that I may not obviate or evade my responsibility to adhere to VA security requirements by subcontracting any work under any given contract or agreement with VA, and that any subcontractor(s) I engage shall likewise be bound by the same security requirements and penalties for violating the same.

4. STATEMENT ON LITIGATION

This User Agreement does not and should not be relied upon to create any other right or benefit, substantive or procedural, enforceable by law, by a party to litigation with the United States Government.

5. ACKNOWLEDGEMENT AND ACCEPTANCE

I acknowledge receipt of this User Agreement. I understand and accept all terms and conditions of this User Agreement, and I will comply with the terms and conditions of this agreement and any additional VA warning banners, directives, handbooks, notices, or directions regarding access to or use of information systems or information. The terms and conditions of this document do not supersede the terms and conditions of the signatory's employer and VA.

Print or type your full name Signature _____

Last 4 digits of SSN Date _____

Office Phone Position Title _____

Contractor's Company _____

Name _____

Please complete and return the original signed document to the COR within the timeframe stated in the terms of the contract.

Attachment 4 – Immigration and Nationality Act Certification

“The Contractor certifies that the Contractor shall comply with any and all legal provisions contained in the Immigration and Nationality Act of 1952, As Amended; its related laws and regulations that are enforced by Homeland Security, Immigration and Customs Enforcement and the U.S Department of Labor as these may relate to non-immigrant foreign nationals working under contract or subcontract for the Contractor while providing services to Department of Veterans Affairs patient referrals;

While performing services for the Department of Veterans Affairs, the Contractor shall not knowingly employ, contract or subcontract with an illegal alien; foreign national non-immigrant who is in violation their status, as a result of their failure to maintain or comply with the terms and conditions of their admission into the United States. Additionally, the Contractor is required to comply with all “E-Verify” requirements consistent with “Executive Order 12989” and any related pertinent Amendments, as well as applicable Federal Acquisition Regulations.

If the Contractor fails to comply with any requirements outlined in the preceding paragraphs or its Agency regulations, the Department of Veterans Affairs may, at its discretion, require that the foreign national who failed to maintain their legal status in the United States or otherwise failed to comply with the requirements of the laws administered by Homeland Security, Immigration and Customs Enforcement and the U.S Department of Labor, shall be prohibited from working at the Contractor’s place of business that services Department of Veterans Affairs patient referrals; or other place where the Contractor provides services to veterans who have been referred by the Department of Veterans Affairs; and shall form the basis for termination of this contract for breach.

The Contractor agrees to obtain a similar certification from its subcontractors.

Signature: _____
Date: _____
Typed Name and Title: _____
Company Name: _____

This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under 18 U.S.C. 1001.”

Attachment 3 – Organizational Conflict of Interest

[CONTRACTOR NAME]

[ADDRESS]

SOLICITATION # VA263-17-R-0500

CONTRACTOR CONFLICT OF INTEREST CERTIFICATION STATEMENT

[] _____[CONTRACTOR NAME]_____ represents that the individuals listed in the Key Personnel and Temporary Emergency Substitutions section of the solicitation VA263-17-R-0500 Pathology Services in have no present, or currently planned interest (financial, contractual, organizational, or otherwise) or actual or organizational conflicts of interest relating to the services to be provided to the Minneapolis VA Health Care System under the referenced solicitation.

None of the employees listed in the solicitation have a past interest (financial, contractual, organizational, or otherwise) or actual or organizational conflicts of interest relating to the services to be provided to the Minneapolis VA Health Care System under the referenced solicitation.

OR

[] Statement attached describing, in a concise manner, all relevant facts concerning any past, present, or currently planned interest (financial, contractual, organizational, or otherwise) or actual or potential organizational conflicts of interest relating to the services to be provided under this solicitation. The offeror shall also provide statements with its offer containing the same information for any consultants and subcontractors identified in its proposal and which will provide services under the solicitation. The offeror may also provide relevant facts that show how its organizational and/or management system or other actions would avoid or mitigate any actual or potential organizational conflicts of interest.

NAME OF CERTIFYING OFFICIAL
TITLE

SIGNATURE

DATE