

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

1. REQUISITION NO. PAGE 1 OF 99

2. CONTRACT NO.	3. AWARD/EFFECTIVE DATE	4. ORDER NO.	5. SOLICITATION NUMBER VA256-17-R-0994	6. SOLICITATION ISSUE DATE 09-22-2017
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7. FOR SOLICITATION INFORMATION CALL:	a. NAME AJ Raiber	b. TELEPHONE NO. (No Collect Calls) 479-444-4012	8. OFFER DUE DATE/LOCAL TIME 10-20-2017 2:00 PM
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9. ISSUED BY Department of Veterans Affairs Network Contracting Office 16 ATTN: AJ Raiber 2575 Keystone Crossing Fayetteville AR 72703	CODE 36C256	10. THIS ACQUISITION IS <input type="checkbox"/> UNRESTRICTED OR <input checked="" type="checkbox"/> SET ASIDE: 100 % FOR: <input type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> HUBZONE SMALL BUSINESS <input checked="" type="checkbox"/> SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS <input type="checkbox"/> WOMEN-OWNED SMALL BUSINESS (WOSB) ELIGIBLE UNDER THE WOMEN-OWNED SMALL BUSINESS PROGRAM <input type="checkbox"/> EDWOSB <input type="checkbox"/> 8(A)	NAICS: 621610 SIZE STANDARD: \$15.0 Million
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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
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15. DELIVER TO See Performance Work Statement	CODE 36C256	16. ADMINISTERED BY Department of Veterans Affairs Network Contracting Office 16 ATTN: AJ Raiber 2575 Keystone Crossing Fayetteville AR 72703	CODE 36C256
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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 P.O. Box 149971 Austin TX 78714-8972 PHONE: _____ FAX: _____	CODE _____
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17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER  SEE ADDENDUM

19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
	See Price Schedule Attached for item listing				
(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 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) AJ Raiber 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 AJ Raiber

Department of Veterans Affairs  
Network Contracting Office 16  
2575 Keystone Crossing  
Fayetteville, AR 72703

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

[X] 52.232-33, Payment by Electronic Funds Transfer—System for Award Management,  
or

[X] 52.232-36, Payment by Third Party

3. INVOICES: Invoices shall be submitted in arrears:

a. Quarterly

b. Semi-Annually

c. Other  Monthly in Arrears

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 78714-8972

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

AMENDMENT NO	DATE

## B.2 LIMITATIONS ON SUBCONTRACTING-- MONITORING AND COMPLIANCE (JUN 2011)

This solicitation includes VAAR 852.219-10 VA Notice of Total Service- Disabled Veteran-Owned Small Business Set-Aside. Accordingly, any contract resulting from this solicitation will include this clause. The contractor is advised in performing contract administration functions, the CO may use the services of a support contractor(s) retained by VA to assist in assessing the contractor's compliance with the limitations on subcontracting or percentage of work performance requirements specified in the clause. To that end, the support contractor(s) may require access to contractor's offices where the contractor's business records or other proprietary data are retained and to review such business records regarding the contractor's compliance with this requirement. All support contractors conducting this review on behalf of VA will be required to sign an "Information Protection and Non-Disclosure and Disclosure of Conflicts of Interest Agreement" to ensure the contractor's business records or other proprietary data reviewed or obtained in the course of assisting the CO in assessing the contractor for compliance are protected to ensure information or data is not improperly disclosed or other impropriety occurs. Furthermore, if VA determines any services the support contractor(s) will perform in assessing compliance are advisory and assistance services as defined in FAR 2.101, Definitions, the support contractor(s) must also enter into an agreement with the contractor to protect proprietary information as required by FAR 9.505-4, obtaining access to proprietary information, paragraph (b). The contractor is required to cooperate fully and make available any records as may be required to enable the CO to assess the contractor's compliance with the limitations on subcontracting or percentage of work performance requirement.

## B.3 PERFORMANCE WORK STATEMENT (PWS)

### 1. **General:**

The Department of Veterans Affairs (VA) has a requirement for home oxygen services to VA beneficiaries throughout Veteran Integrated Service Network (VISN) 16 comprising of the states of Arkansas, Louisiana, Mississippi and parts of Alabama, Florida, Missouri, Oklahoma and Texas.

### 2. **Description of Services/Introduction:**

The Contractor shall provide all personnel, equipment, supplies, facilities, transportation, tools, materials, supervision, and other items and non-personal services necessary to provide home oxygen equipment and services as defined in this Performance Work Statement (PWS). The services associated with this contract include: all logistical/administrative functions involved with the day to day operation of providing the service to the Veteran and their families, including furnishing warehouse space, surplus supplies, and quarterly in home respiratory therapy visits. This includes providing a Quality Control (QC) Plan about how the contractor will comply with the requirements of the contract to include coordinating and managing patient care, deliveries consisting of pickup and delivery of supplies, educate the patient and/or caregiver on proper use of equipment, documenting education and understanding, documenting use of supplies and inspection of home in relation to home oxygen in accordance with The Joint Commission (TJC) concerning patient use/safety of home oxygen standards, including the Home Care National Patient Safety Goals. The requirement includes providing in home supplies such as the following: low decibel concentrator (rental) with two broad categories of flow rates and replacement parts; various cylinder sizes (rental) to provide oxygen [ex. A (smallest)-E (largest)H and/or M] and replacement parts; portable oxygen concentrator; liquid oxygen; valved fireproof cannula; procurement/distribution of two types of oxygen and backup/spare parts; nasal cannula to include micro nasal cannula, high flow, Oxymizer pendant, nasal cannula with cushion ear piece, soft pronged nasal cannula/masks to include Oxymask, tracheostomy mask, bi-flow nasal mask, aerosol mask and replacement parts, and any interface, adapter or connection to enhance oxygen delivery/masks to include Oxymask, tracheostomy mask, bi-flow nasal mask, aerosol mask and replacement parts, and any interface, adapter or connection to enhance oxygen delivery;

and replacement parts; oxygen bleed in connector; portable oxygen systems (used when a Veteran travels or for primary source for patient mobility); Contractor is responsible for delivery and associated services related to delivery/proper use of equipment.

3. **Objectives:**

The Contractor shall provide home oxygen services for VA outpatients. These services include delivery, set-up, education, pick-up, cleaning, preventative maintenance, ongoing RT visits (quarterly) to assess compliance and safety, after-hours support, and storage of equipment.

4. **Scope:**

This PWS defines the effort required for the delivery, setup, education installation, and management of home oxygen services, in accordance with applicable TJC home care standards, to Veteran beneficiaries serviced by the VISN 16. All content contained herein regarding TJC standards shall be interpreted in the following manner. All issuing and follow-up care provided under this contract shall be provided in accordance with all current TJC standards. Contractor's facility(ies) may be inspected by the VA prior to the contract award. The use of the terms "beneficiary", "Veteran", "Patients", and "patient" are used interchangeably and refer to the recipient of required supplies, equipment, and incidental services required under the contract. Any changes to the PWS will be made via a bilateral modification in accordance with FAR 52.212-4(c)

5. **Geographical Boundaries:** The geographical boundaries described herein have been determined as the areas of responsibility/jurisdiction for each local VA Medical Center:

- a. **FAYETTEVILLE, AR VAMC AND CBOC's:** Contractor shall service any patients that are treated at the Fayetteville, AR VAMC, regardless of their physical location. This includes but is not limited to the patients in the catchment area delineated below and patients who reside in or near bordering states catchment areas, (i.e., Muskogee, OK catchment area, but prefer to be seen in Fayetteville), Ft. Smith, AR, Mt. Vernon, MO, and Harrison, AR. The Fayetteville VAMC catchment area includes: 11 counties in Northwest Arkansas (Benton, Boone, Carroll, Crawford, Franklin, Madison, Marion, Newton, Scott, Sebastian, Washington); 11 counties in Southwest Missouri (Barry, Christian, Dade Greene, Jasper, Lawrence, McDonald, Newton, Stone Taney, Webster); 2 counties in Southeast Kansas (Cherokee, Crawford); 2 counties in Northwest Oklahoma (Adair, Delaware).
- b. **HOUSTON, TX VAMC:** Contractor shall service any patients that are treated at the Houston, TX VAMC Clinic of Jurisdiction/Primary Service Area (COJ/PSA) to include, but not limited to, the following counties: Angelina, Austin, Brazoria, Chambers, Colorado, Fort Bend, Galveston, Grimes, Hardin, Harris, Jasper, Jefferson, Liberty, Matagorda, Montgomery, Nacogdoches, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Trinity, Tyler, Walker, Waller, Washington, and Wharton. Patients may also reside in the following parishes in Louisiana: Beauregard, Calcaieu, and Cameron.
- c. **ALEXANDRIA, LA MEDVAMC:** Contractor shall service any patients that are treated at the Alexandria, LA VAMC, regardless of their physical location. Service area to include, but not limited to, the following counties: Winn, Cheneyville, Grant, Deville, La Salle, Flatwoods Caldwell, Forest Hill, Franklin Lena, Catahoula, Pineville Concordia, Woodworth, Avoyelles Olla, Rapides, Jena Vernon, Jonesville, Natchitoches Harrisonburg, Beauregard Allen, Evangeline, St Landry, Calcasieu Jeff Davis, Cameron, Acadia, St Martin Lafayette, Iberia, Vermilion, Monterey Vidalia, Ball, Boyce
- d. **LITTLE ROCK, AR MEDVAMC:** Contractor shall service any patients that are treated at the CAVHS, regardless of their physical location. This includes, but is not limited to, patients who reside in or near bordering state catchment areas, (i.e., Shreveport's catchment area, but prefer to be seen in at CAVHS), All counties in Arkansas: Arkansas, Ashley, Baxter, Benton, Boone, Bradley, Calhoun, Carroll, Chicot, Clark, Clay, Cleburne, Cleveland, Columbia, Conway,

Craighead, Crawford, Crittenden, Cross, Dallas, Desha, Drew, Faulkner, Franklin, Fulton, Garland, Grant, Greene, Hempstead, Hot Springs, Howard, Independence, IZARD, Jackson, Jefferson, Johnson, Lafayette, Lawrence, Lee, Lincoln, Little River, Logan, Lonoke, Madison, Marion, Miller, Mississippi, Monroe, Montgomery, Nevada, Newton, Ouachita, Perry, Phillips, Pike, Poinsett, Polk, Pope, Prairie, Pulaski, Randolph, Saline, Scott, Searcy, Sebastian, Sevier, Sharp, St. Francis, Stone, Union, Van Buren, Washington, White, Woodruff, Yell,

**COUNTIES IN TEXAS:** Bowie, Morris, Franklin, Cass

**COUNTIES IN OKLAHOMA:** McCurtain, Le Flore

**COUNTIES IN MISSOURI:** Ozark

- e. **NEW ORLEANS, VA MEDVAMC/SLVHCS:** Contractor shall service any patients that are treated at the Southeast Louisiana Veterans Health Care System (SLVHCS), regardless of their physical location. This includes, but is not limited to patients in the following parishes and patients who reside in or near bordering state catchment areas, but prefer to be seen at SLVHCS.  
**PARISHES IN LOUISIANA:** Orleans, Plaquemine, St. Charles, St. John, Thibodeaux, Iberville, St. Tammany, Livingston, West Baton Rouge, St. Helena, St. John the Baptist, Terrebonne, St. Bernard, Jefferson, Lafourche, Assumption, Vermillion, Ascension, Tangipahoa, East Baton Rouge, Pointe Coupe, East Feliciana, West Feliciana, Washington, and St. James
- f. **BILOXI, MS MEDVAMC:** Contractor shall service any patients that are treated at the Biloxi GCVHCS, regardless of their physical location. This includes, but is not limited to, patients in the following counties and patients who reside in or near bordering state catchment areas, (i.e. outside Biloxi's catchment area, but prefer to be seen in Biloxi or its Outpatient Clinics).  
**COUNTIES IN MISSISSIPPI:** Pearl River, Stone, Greene, Jackson, Hancock, Harrison and George

**COUNTIES IN ALABAMA:** Washington, Mobile, Escambia and Baldwin

**COUNTIES IN FLORIDA:** Escambia, Santa Rosa, Okaloosa and Fort Walton

- g. **SHREVEPORT, LA MEDVAMC:** Contractor shall service any patients that are treated at the Overton Brooks VA Medical Center in Shreveport, LA, regardless of their physical location. This includes, but is not limited to, patients in the following parishes and patients who reside in or near bordering state catchment areas, (i.e. outside Shreveport's catchment area, but prefer to be seen in Shreveport or its Outpatient Clinics).  
**PARISHES IN LOUISIANA:** Bienville, Bossier, Caddo, Claiborne, Desoto, Jackson, Lincoln, Ouachita, Red River, Sabine, Union, Webster

**COUNTIES IN TEXAS:** Bowie, Camp, Cass, Gregg, Harrison, Marion, Morris, Nacogdoches, Panola, Rusk, Red River, San Augustine, Shelby, Titus, Upshur

**COUNTIES IN ARKANSAS:** Columbia, Lafayette, Little River, Miller, Sevier

- h. **JACKSON, MS MEDVAMC:** Contractor shall service any patients that are treated at the G.V. "Sonny" Montgomery VA Medical Center in Jackson, MS, regardless of their physical location. This includes, but is not limited to, patients in the following counties and patients who reside in or near bordering state catchment areas, (i.e. outside Jackson's catchment area, but prefer to be seen in Jackson or its Outpatient Clinics). Mississippi counties under G. V. (Sonny) Montgomery VAMC PSA: Washington, Sunflower, Leflore, Carroll, Montgomery, Webster, Choctaw, Oktibbeha, Lowndes, Issaquena, Sharkey, Humphreys, Holmes, Attalla, Winston, Noxubee, Warren, Yazoo, Madison, Leake, Neshoba, Kemper, Hinds, Rankin, Scott, Newton, Lauderdale, Claiborne, Copiah, Simpson, Smith, Jasper, Clarke, Jefferson, Lincoln, Lawrence, Jefferson

Davis, Covington, Jones, Wayne, Adams, Franklin, Wilkinson, Amite, Pike, Walthall, Marion, Lamar, Forrest, and Perry

**PARISHES IN LOUISIANA:** Madison, Morehouse, East Carroll, West Carroll, Richland Tensas

6. **Work Load Data:**

The volumes or amounts shown in the Contract Line Item Numbers (CLINs) are estimates only and impose no obligation on the VA. The contract shall be for the actual requirements of the VA as ordered by the VA during the life of the contract. Below is a list of each location's estimated oxygen-using Patients per month.

	<b>Per Month</b>	<b>Total per year</b>
VISN 16 Medical Centers		
1 Alexandria VA Medical Center, Alexandria, LA	280	3,360
2 Gulf Shores VA Medical Center, Biloxi, MS	659	7,908
3 Veterans Health Care System of the Ozarks, Fayetteville, AR	1,800	21,600
4 Michael E DeBakey VA Medical Center, Houston, TX	2,041	24,492
5 G.V. "Sonny" Montgomery VA Medical Center, Jackson, MS	640	7,680
6 Central Arkansas Veterans Health Care System, Little Rock, AR	1,063	12,756
7 Southeast Louisiana Veterans Health Care System, New Orleans, LA	444	5,328
8 Overton Brooks VA Medical Center, Shreveport, LA	675	8,100
	<b>7,602</b>	<b>91,224</b>

7. **Ordering Process:**

The COR or designee shall provide (via encrypted email and/or fax) the Contractor with notification to initiate individual patient service requirements, including the patient's oxygen prescription by authorized Licensed Independent Practitioner (LIP), equipment, supplies and services to be provided including date and place of delivery. The Contractor shall confirm receipt (via encrypted email and/or fax) of the request within one (1) working hour of notification to the ordering facility. The COR or designee shall also provide notification (via encrypted email and/or fax) to the Contractor of VA initiated discontinuation of service. The Contractor shall provide a toll-free telephone number for the purpose of communicating with VA eligible beneficiaries (Veterans) and VA staff. In addition, the Contractor **SHALL NOT** place collect telephone calls to the VA or to any VA beneficiary, family member or caregiver.

8. **Quality Control:**

The Contractor shall develop a QC plan to ensure compliance with all applicable/current guidelines put forth by TJC standards and this PWS. The Contractor shall also develop and maintain an organization-wide planning structure and processes that focus on safety and quality to ensure services are performed in accordance with this PWS. The QC plan shall address at a minimum:

- a. Patient satisfaction data.
- b. Initial Patient Set-Ups within standards listed in paragraph 22(j) and 22(k).
- c. Documentation of Patient Set-ups.



- d. Emergency Services with 4 hours of notification.
- e. Semi-annual TJC compliance self-assessment reports
- f. Incident reports within 4 hours.
- g. Quarterly Customer satisfaction reports.
- h. Quarterly infection control reports.
- i. Semi-annual performance improvement reports.
- j. Preventative maintenance on equipment.
- k. Preventative maintenance reports monthly.
- l. Quarterly reassessment of patient after initial set-up/equipment installation and submit reports.
- m. Quarterly Respiratory Therapist visits
- n. Disaster Preparedness Plan.
- o. Plan for prevention and control of infection

9. **Patient Education Requirements:**

The Contractor shall provide education or re-education to each Veteran and/or caregiver on all equipment which is being used to include travel literature. This information is to be presented written and verbally on equipment, supplies, and services in the preference or learning style based on need. Education in demonstration and material covered shall be in written form to be left with the patient or care giver. The written material shall be in English as well as the foreign or preferred language of the patient; in the event the patient does not speak English. The Contractor provides information and instructions about infection control issues related to equipment and supplies it provides. The Contractor must evaluate the patient's and/or caregiver's understanding of the education and training it provided. Contractor provides education on how to communicate concerns about patient safety issues that occur before, during and after care is received. The Contractor, as directed by CO or COR shall implement any new or revised education material. The VA shall determine whether the Contractor shall use their forms or forms supplied by the VA for documentation of education services provided to Patients. A copy of the signed education forms shall be provided to the COR with-in 24 hours upon request.

10. **Patient Rights and Responsibilities:**

The Contractor shall provide a copy of VA approved Patient Rights & Responsibilities and any applicable information concerning advance directives during initial setup to all patients.

11. **Reports:**

- a. **Initial Setups:** Contractor shall provide to stations a report of all faxes received the prior day no later than (NLT) 1pm each work day. Report shall include all veterans serviced under the contract. Data shall include, at a minimum, date and time fax was received (including time zone if different from sending station), patient first and last name, last 4 of patient social security number, vendor patient identification number, if any, and type of request (initial setup, renewal, travel, etc.). Report will be consolidated weekly to show all initial setup requests and the date and time setup was completed. This weekly report will be provided NLT 1pm the Monday of the following week to the COR or designee of each facility via encrypted email or fax.
- b. **PM & RT Home Visit Report:** Contractor shall provide a report on compliance with the quarterly home visit requirement for Home Oxygen Patients and 30-day home visit requirement for Patients using Ventilators. Report shall include all veterans serviced under the contract. Data shall include date of last home visit performed, due date of next home visit, date visit was actually completed. Report shall be compiled monthly and provided NLT the 15th of each month to the COR or designee of each facility via encrypted email or fax.

- c. **Travel:** Contractor shall provide a report on patient travel arranged each month. Data shall include patient name, last 4 of SSN, date facility requested travel, travel dates, and dates veteran received travel equipment. Report shall be compiled monthly and provided NLT the 15th of the month to the COR or designee of each facility via encrypted email or fax.
- d. **Incident:** Reporting special incidents found or occurring during a home visit, to include finding patients in need of emergency medical assistance, safety hazards that do not fall into the category of presenting immediate life-threatening danger to the patient or Contractors staff, inability to contact a patient within a reasonable period of time, and any other incident meeting the Contractors written policy for incident reporting according to accreditation standards.
- e. **Customer Satisfaction:** In accordance with TJC standards the Contractor shall collect data on service satisfaction from contracted patients and their families from each facility on a quarterly basis. A copy of survey results shall be submitted to each station's COR or designee in quarterly reports with an aggregate summary report to the VISN Prosthetics Rep or designee.
- f. **Infection Control/Communicable Diseases:** Quarterly Report shall include data related to the Contractor's ongoing Infection Control Program.
- g. **Performance Improvement:** The Contractor shall collect data on important processes and outcomes related to patient care and organizational functions on a semi-annual basis.
- h. **Dispatch Plan:** The Contractor shall provide a detailed plan which adequately addresses the dispatch requirements necessary to meet the needs of the requirements of the PWS as part of their proposal and provide an updated copy to the CO and COR when changes occur.
- i. **Emergency Patient Safety:** The Contractor shall provide the following emergency patient safety reports, within five (5) business days of the action, throughout the contract period.
  - 1) **Sentinel Events:** The Contractor is required to inform the COR or designated person within four (4) hours of a sentinel event (as defined by TJC) that occurs during the performance of this contract that involves VA beneficiaries.
  - 2) **Refusal of service:** All beneficiaries have the right to refuse service. In the event a beneficiary refuses service or orders the equipment to be removed from the home, the Contractor shall comply with the beneficiary's wishes, however in addition to a written report; the Contractor shall report the specifics of the refusal to the COR or designee by telephone within one (1) hour (follow up via encrypted email and/or fax, within 24 hours). The Contractor shall obtain signed Against Medical Advice (AMA) form from veteran and notify COR/designee within 24 hours.
  - 3) **Suspected incident:** The Contractor shall report suspected incidents of abuse or neglect to the patient by family members or caregivers. Suspected incidents shall be reported immediately (within four (4) hours) to the COR or designee, as well as to the adult protective agency. The Contractor shall follow all state and local laws in reporting suspected incidents of abuse or neglect.
- j. **Meetings:**
  - 1) The Contractor shall meet, or participate in a conference call, with each station COR monthly to discuss the progress of the service being provided to VA beneficiaries. Each station COR will discuss with the Contractor any issues and complaints from the Government, beneficiaries, or the Contractor. All issues and complaints from the prior month will be

addressed to ensure that all corrections have been made and a process is in place to help ensure corrections remain in effect. Each station COR will maintain a complaint log to ensure all issues and complaints are addressed.

- 2) The Contractor shall meet with or participate in a conference call with the Contracting Officer and each of the station CORs on a quarterly basis to discuss the progress of the contract and to address any issues or complaints from the government, beneficiaries or contractor. All issues and complaints from the prior quarter will be addressed to ensure that all corrections have been made and a process is in place to help ensure corrections remain in effect. The COR will submit to the Contracting Officer each quarter a COR Quarterly Report that will address any issues or complaints.
  
- 3) Site Visits – Periodic, unscheduled on-site contractor, home oxygen patient, and ventilator patient visits may be made by COR or designee to monitor Contractor's under this contract. The Contractor shall make available all records and/or documentation necessary during the monitoring visit to the COR or designee. Other visits may be made by the Joint Commission surveyors and/or the Home Respiratory Care Team for each facility.

#### 12. **Infection Control/Communicable Diseases Requirements:**

- a. Contractor shall have a QC plan for prevention and control of infection. The plan shall meet current TJC standards. Quarterly reports shall be provided to the CORs (see paragraph 11f).
- b. Contractor shall provide a list of names to the COR or designee of all veteran patients exposed to communicable diseases by contracted staff during an identified incubation period. The type of exposure shall also be identified.
- c. The COR or designee shall consult with VA infection control staff regarding the need to contact exposed patients and/or complete any needed medical follow-up.
- d. The Contractor shall report non-compliant reported or observed behavior with fire safety guidelines set forth in the patient education and re-assessment material and/or behaviors which pose a risk of self-harm or harm to others. Such behavior shall be reported to the COR or their designee during the home visit if the Contractor's staff determines the patient's non-compliant behavior, within the home environment, is not improving after education on the fire hazard of smoking when on oxygen treatment is provided. Noncompliant behavior and any follow-up actions (i.e. educations) shall be documented.

#### 13. **Holidays:**

The Contractor is required to perform services 365 (366 leap year) days a year, to include all holidays.

#### 14. **Place of Performance:**

Services shall be performed in the Veteran's place of residence, VA Medical or VA authorized Facilities for patients being discharged who require oxygen for travel to their residence. The area of service shall be all patients serviced by VISN 16, regardless of where patient resides. The equipment needs are subject to change as determined by the prescribing clinician. Contractors shall have sufficient facilities or resources physically located in the geographic area in which they shall provide service to be able to meet the timelines required in this performance work statement. VA Health Care

Systems and Medical Centers which are serviced by the VISN 16 include, but are not limited to those listed in paragraph 5.

**15. Special Qualifications:**

- a. Each branch office or distribution point shall meet or exceed all applicable TJC standards. All documentation related to the patient record during the duration of this contract is the property of the VA and shall be turned over to the new Contractor as part of the Phase In/Phase Out upon the termination or non-renewal of this contract.
- b. The Contractor shall have written policies and job descriptions that specify staff requirements to the specialized equipment, supplies and services it provides to patients such as; qualifications, experience, applicable certification, registration or license, training requirements and continuing education requirements. Contractor shall provide the CO/COR or designee with documented competency training to deliver prescribed supplies/oxygen concentrators/portable oxygen concentrators/cylinders/liquid oxygen (LOX) upon initiation of the contract and upon request thereafter.
- c. The Contractor shall adhere to the provision of Public Law 104-191, Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the National Standards to Protect the Privacy and Security of Protected Health Information (PHI).
- d. The Contractor shall internally maintain a patient account folder holding all documentation related to the supplies and services provided in compliance with the Privacy Act and Health Insurance Portability and Accountability Act (HIPAA). All patient files are subject to review by designated VA officials and accreditation surveyors on behalf of the VA during accreditation surveys or consultation. At a minimum, the patient folder shall adhere to current TJC standards for patient record keeping.
- e. The Contractor shall provide upon request all Contractor personnel files; which shall comport to Federal & State laws/regulations which shall contain information relative to the contract requirements for each individual providing services in support of this contract. Information should include experience, training records, performance reports and any certifications/licenses.
- f. The Contractor shall provide CO/COR or their designee with a list of all employees currently competent to perform delivery/recovery and patient education services at the time the contract is awarded and through the life of the contract whenever there is a change to staffing. COR or their designee shall inspect employee files at the time of the inspection of Contractor premises and vehicles. Employee files shall be maintained at the local contract site.
- g. The Contractor shall educate, evaluate and document employee education in a manner that meets or exceeds TJC accreditation standards.
- h. Only employees that have been properly trained and who have demonstrated competency shall perform equipment deliveries, recoveries, and patient education on the equipment.
- i. The contractor shall obtain PKI certification for all branch location managers to ensure secure communications.

**16. Key Personnel:**

The Contractor shall provide a listing of key personnel required to successfully implement this requirement to include all Certified Respiratory Therapists (CRT) and/or Registered Respiratory Therapist (RRT). Key personnel are the members of the Contractor's management team including the

Customer Service Manager, Logistics Manager, Billing Manager, Distribution Point Managers and the CRTs and or RRTs. In addition to having key personnel on the contract, the Contractor must also provide and maintain a comprehensive list of employees that are to be used in support of this contract action. Although these positions are not referenced as key personnel, they are integral in maintaining continuity of operations in support of this contract. The Contractor shall provide a quarterly listing of all personnel used in support of this contract. In the event a new contracted employee is brought on to support the contract, the Contractor shall notify the COR or designee immediately. The Contractor shall be responsible for the correct title classification of workers and compliance with all applicable wage and hour laws, reference Department of Labor (DOL) wage rate information. (<http://www.wdol.gov/sca.aspx>). Contractor employees shall not be considered Government employees for any purpose under this contract.

**17. Registration /Licensure/Accreditation requirements:**

Contractor is responsible to comply with all applicable Federal & State laws/regulations in support of the contracted requirements.

- a) Registration: National Provider Identification (NPI)
- b) Distributor License:
  - 1) Applicable State(s)
  - 2) FDA permits and licenses as applicable
  - 3) The Contractor's Respiratory Care Practitioner (RCP) shall be credentialed with the National Board for Respiratory Care (NBRC) and hold a current state license where the work shall be performed.
  - 4) All personnel servicing Veterans shall maintain a current valid driver's license.
- c) Evidence of ability to meet or exceed TJC Accreditation Standards.
- d) Certified Respiratory Therapists (CRT) or Registered Respiratory Therapist (RRT).

**18. Service Transition (Phase In/Phase Out):**

- a. In the event award(s) are made to other than the incumbent Contractor, the new Contractor(s) shall arrange with the incumbent Contractor for exchange of equipment ensuring that there is no disruption of supplies/services to veteran beneficiaries. 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 furnish phase-in training; and exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor. The Contractor shall, upon the Contracting Officer's written notice, furnish phase-in, phase-out services for up to 90 days after this contract expiration and 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. Successful Offeror shall provide a detailed contract change over plan that can be utilized upon contract award.

- b. This transition period will be designated for the transfer of VA veteran beneficiaries from the incumbent to the successor Contractor. The change shall, at a minimum, include oxygen care and instructions, usage, set up, emergency service, etc. The transition shall be coordinated through the Contracting Officer, and facility COR. Any requirement for an RRT or CRT visit shall be coordinated between the Contractor and COR. The appropriate VA facility shall provide the successful Contractor(s) with an up to date prescription.
- c. The Contractor shall provide the facility COR by 12:00 noon each Friday, during the transition period, a detailed listing of all VA beneficiaries contractor owned equipment whose Oxygen Service has been changed over from the incumbent to the successor Contractor. The list shall include the exact date of the change for each beneficiary. Along with this list the successor Contractor shall also provide documentation showing that the incumbent Contractor has been notified to pick-up their equipment.

19. **Physical Security:**

The Contractor shall be responsible for safeguarding all Government equipment, personal patient information, information and property provided for Contractor use.

20. **Government Furnished Property**

The Government will not provide any equipment to the contractor for use under this contract unless added through a contract modification.

21. **Contractor Furnished Items and Responsibilities:**

The Contractor shall furnish all supplies, equipment, facilities and services required to perform work under this contract. All electrically powered equipment used in performance of this contract shall be Underwriters Laboratories (UL) Approved Equipment and in compliance with regulatory standards. The Contractor shall be responsible for scheduling appointments with Patients to initiate set ups and deliveries. Deliveries shall not be left unattended at the patient's home; physical acceptance of deliveries must take place between the Contractor and either the patient or caregiver. If the patient fails to meet two (2) consecutive appointments, the Contractor shall notify (via encrypted email and/or fax) the COR/Representative within 24 hours of the second missed appointment. The COR shall notify (via encrypted email and/or fax) the Contractor of any changes. If the Contractor has not documented valid attempts to contact the patient for set ups and or deliveries, the Government reserves the right to call in a third party and bill the Contractor. The Contractor shall not be paid for those services during the billing period if services are not rendered.

- a) **Materials:** The Contractor shall provide the Operation and Service manual to the patient and/or caregiver upon delivering any equipment. The manual shall contain information on operation, maintenance, and troubleshooting for clinicians, users, caregivers and service technicians. Contractor shall provide to the Government, one (1) copy of the Operation and Service manual for each type of equipment with any proposals regarding this contract.
- b) **Supplies:** The Contractor shall be staffed and have sufficient supplies to render satisfactory and courteous service at all times to the patient as listed below. The Contractor shall be responsible for the acts and omissions of their employees. In accordance with the order/consult received from the Government, the Contractor shall provide the patient with the following disposable supplies:
  - 1) Oxygen cannula (including low flow and high flow cannulas, special cannulas as requested by VA clinician and demand flow cannulas) colored extension tubing. **The Contractor shall provide the patient or caregiver with enough supplies to change at a minimum of every two (2) weeks with a supply in reserve at all times until the Contractor's next scheduled visit.**

- 2) Various interfaces and connectors, swivel adapter, oxygen bleed in adapter, to enhance oxygen delivery, washers, wrenches, oxygen nipple adaptors (Christmas trees), provided as needed.
  - 3) All masks types (when prescribed) for change every two (2) weeks with a 30-day supply in reserve at all times until the Contractor's next scheduled visit.
  - 4) 25-50 feet of oxygen connecting tubing shall be replaced on a 90-day supply with an equivalent section of tubing in reserve at all times until Contractor's next scheduled visit.
  - 5) Trachea collar or t-piece adapter and accessories (i.e. tubing, large volume nebulizer, drainage bag, oxygen bleed-in adapter when needed and any other supplies/equipment that is needed to carry out clinician orders) allowing for change every three (3) days with a supply in reserve at all times until the Contractors next scheduled visit.
  - 6) Humidifiers (disposable) and water traps as ordered by a VA clinician. The number of humidifiers shall be sufficient to ensure that they are not depleted between re-supply visits. The number of traps shall be based on the manufacturer's recommended change rate.
  - 7) Safety holder(s), storage rack(s), and/or an e-cylinder cart shall be provided for all veterans with a prescription for tanks (cylinders) and for use with the back-up system.
  - 8) NO SMOKING OXYGEN IN USE SIGNAGE and one backup. Visible and legible from the street.
  - 9) Valved Fireproof Cannula shall be provided to all oxygen users.
  - 10) The Contractor shall install the Valved Fireproof-Cannula devices during contract start-up and during any initial equipment set-ups.
  - 11) The Contractor shall replace the Valved Fireproof Cannula devices semi-annually (every six (6) months).
- c) **Equipment:** The Contractor shall provide the following equipment to meet the requirements per the PWS. The following equipment is considered stationary and each unit shall have an attached sticker with a correct vendor name and emergency telephone number. The Contractor shall comply with all applicable Federal & State laws/regulations in support of the contracted requirements. The Contractor shall install and service all equipment and supplies ordered under this contract. All disposable supplies shall be new and unused. A label with the Contractor's name and emergency telephone number, where they can be reached 24 hours/day, shall be affixed to all equipment.
- 1) **Oxygen Concentrators:** The oxygen concentrators shall be Underwriter Laboratory (UL) approved and shall at a minimum meet the following specifications:
    - a) Alarms for the following failures required: Power Failure, O<sub>2</sub> Concentration, and Irregular Pressure and Loss of Flow.
    - b) The oxygen concentrator shall not perform below the manufacturer's specification, at minimum delivers 93±3% or higher concentration of oxygen at flow rates up to 10 liters per minute (LPM).

- c) The oxygen concentrator shall contain an hour meter and oxygen concentration indicator (OCI). Should either of these components fail, the OCI must be removed from service and replaced with a working unit. Failed units cannot be put back into service until repairs have been made and the system successfully tested. Contractor shall maintain records of each unit that fails, the repairs done, and the successful testing of the unit.
  - d) Oxygen sensing devices.
  - e) The oxygen concentrator shall be grounded internally or plug into a three-prong wall outlet appropriate for the patient's home (outlet adaptors are not acceptable).
  - f) Be double insulated and have 3 prong plugs.
  - g) Be mounted on wheels for easy movement by patient/caregiver.
  - h) Shall meet Food and Drug Administration (FDA) Quality Systems Regulations (QSR) standards.
  - i) The portable oxygen concentrators shall be Federal Aviation Administration (FAA) approved.
  - j) The portable oxygen concentrator shall be electrically powered operate on 120 Volts Alternating Current (VAC), 60 hertz (Hz).
- 2) **Types of Stationary Electrical Oxygen Concentrators.**
- a) Low-flow Concentrator ( $\leq 5$  liter per minute (LPM)):
  - b) High-flow Concentrator ( $> 5$  liter per minute (LPM)):
  - c) Low Decibel Concentrator – 40 decibels or less
- 3) **Stationary Oxygen Cylinders.** The Contractor shall furnish cylinders in accordance with the Interstate Commerce Commission Regulations. Contractor shall transport cylinders in accordance with the Code of Federal Regulations (CFR) Part 49, U.S. Department of Transportation.
- a) Types of cylinders “G”, “H” and “M”.
  - b) Shall have a safety stand.
  - c) Regulator flow gauge.
  - d) Cylinder wrench and consumables.
  - e) Stationary gas oxygen systems used as backup may only be charged for when backing up VA owned equipment.
  - f) Pulse dose regulator as prescribed by VA Clinician
- 4) **Liquid Oxygen Reservoir:** Standard reservoir holds 110 pounds of liquid oxygen. The standard reservoir weighs 65 pounds full.
- a) Reservoir shall have condensation collection tray.
  - b) Shall have quick release valve for easy refilling.
  - c) Flow meter range of 0 to 15 LPM.
  - d) Shall have electrical or mechanical content indicators.
  - e) Be mounted on wheels for easy movement by patient/caregiver.
- 5) **Combined Stationary and Portable Units:** Home Fill Stations: Concentrator base with compatibility for oxygen cylinder refill that allow a patient to fill their own high pressure



cylinders from a concentrator. In addition to the requirements for a standard oxygen concentrator:

- a) Oxygen Cylinder Refill Stations shall be a minimum of 5 LPM, fill any size cylinders with capability for continuous or pulse dose.
  - b) Oxygen provided shall be United States Pharmacopoeia (U.S.P.) oxygen.
  - c) Have a minimum four (4) compatible Post Valve Cylinders with integrated conserver (various sizes).
  - d) Gas cylinders have integral flow regulator.
  - e) Appropriate interlocking fill fitting for custom portable oxygen cylinders.
  - f) Indicator light when cylinder is full.
  - g) Audible alarm for compressor failure.
  - h) Carry bag (backpack, shoulder strap, waist pack) or wheeled cart for cylinders.
  - i) Oxygen provided shall be U.S.P. Oxygen.
- 6) **Portable Oxygen Concentrator (POC)**: A concentrator that can be powered via AC or DC. It is similar to a stationary concentrator but is smaller and more mobile.
- a) Must be Federal Aviation Administration Approved.
  - b) Shall be available for delivery within four (4) hours of a request.
  - c) Minimum continuous flow range of 0.5 LPM to 3 LPM.
  - d) Minimum pulse dose up to a setting of 6.
  - e) Minimum of 12 hours battery life or sufficient batteries for 12 hours of use based on patient's highest usage rate in the prescription.
  - f) Have continuous and pulse doses (40 ml or greater) flow option.
- 7) **Portable Oxygen Systems**.
- a) Oxygen cylinders - The Contractor shall furnish aluminum cylinders that are in accordance with the Interstate Commerce Commission Regulations, and transport cylinders in accordance with Code of Federal Regulations (CFR) Part 49, U.S. Department of Transportation.
  - b) Types of Cylinders "B", "C", "D", and "E", "M6".
  - c) Shall have a safety stand for storage, Safety stands are provided at no additional charge to the Government.
  - d) Carrying case, shoulder/waist bag, backpack or cart.
  - e) Regulator flow gauge.
  - f) Cylinder wrench and consumables.
  - g) Patient shall be provided unlimited cylinders per month.
- 8) **Liquid portable systems**: The Liquid oxygen system consists of large reservoir and portable unit that is filled from a Liquid Oxygen Reservoir.
- a) Shall have carrying case (shoulder/waist bag, backpack or cart) or built in shoulder strap.
  - b) Easy to read contents gauge/scale.
  - c) Shall have flow setting of 1-6 for standard units or 1-15 high flow units.
  - d) Shall have quick release valve for easy refilling.
  - e) Shall have electrical or mechanical content indicators.
  - f) May have a built-in Demand Valve Regulator (DVR).
- 9) **Oxygen Regulators**: Device which regulates gas flow and pressure from a portable oxygen system.
- a) Continuous flow regulator - Flow 0-8 LPM or 0-15 LPM based on prescription.

- b) **Demand Valve Regulator (DVR):** A device that limits the oxygen flow to inspiration only and thereby increases the duration of the oxygen supply. The Contractor shall only provide a demand valve regulator upon a special request by the VA. Gas DVR devices shall accommodate up to a setting of 6.
- i. **Pneumatic powered DVR:** Pneumatic units shall appropriately meet the following specifications based on patient needs:
- Pulse dose from .25 to 6 or higher.
  - Have easy to read content gauge.
  - Conservation ratio of 3:1 or higher.
  - Have continuous flow setting.
  - Weigh less than 30 ounces.
  - Notes: Conserving ratios are based on a breathe rate of 20 breaths per minute (BPM).
- ii. **Battery-Powered DVR:** Battery units shall approximately meet the following specifications based on patient needs:
- Pulse dose from .5 to 6 or higher
  - Have easy to read content gauge
  - Conservation ratio of 3:1 or higher
  - Bolus delivered per breath of at least 10cc per setting
  - Have continuous flow setting
  - Weigh less than 30 ounces
  - Contractor shall test and replace batteries as needed
- iii. **Liquid System Conserving Device (DVR):**
- Electronic DVR built into portable unit.
  - Minimum flow setting 1 to 4 LPM on pulse (e.g. Helios)
  - May also have continuous flow setting up to 6 LPM (e.g. Marathon, Spirit)
  - Easy to read contents gauge/scale
  - Carrying case, shoulder/waist bag or backpack
- 10) **Ventilator:** Used to provide ventilation or ventilation assistance in patients with impaired ventilator drive. The Government must approve any ventilator suggested for use under this contract. The Contractor shall use the same ventilator for all patients covered under this contract unless there is a clinical justification approved by the Government on a patient by patient basis. Each unit shall have an attached sticker with an up to date vendor name and emergency telephone number. The type of ventilator used shall reflect the patient's prescription.
- a) The Contractor shall provide a back-up ventilator in the home for all patients being ventilated via invasive ventilation.
- b) The Contractor shall have back-up ventilator available for exchange within one hour of notification of ventilator failure for all patients being ventilated via non-invasive ventilation.
- c) Contractor shall provide a self-inflating resuscitation bag with mask to all patients using a ventilator.

- d) All ventilator set ups/follow-ups/education shall be performed by a trained CRT/RRT/~~RN~~.
  - e) All new requests for ventilator set-ups shall be completed within 24 hours, unless otherwise indicated by the VA clinician.
  - f) The Contractor shall ensure a local CRT/RRT/~~RN~~ is on-call and available to respond to a patient's home within one hour of an emergency call.
  - g) The Contractor shall provide water chamber, large bore heated wire tubing, bacterial filters, sterile water and any other adapters, connectors or interface items necessary for a closed system based on the ventilator in use.
  - h) **The Contractor shall provide the patient or caregiver with enough ventilator consumable supplies to change every seven (7) days with one complete set up in reserve.**
  - i) **Contractor shall provide a stand, carry case, and IV Pole for water bag.**
  - j) **All ventilator patients and equipment and prescription shall be assessed by CRT/RRT monthly.**
  - k) Units shall be capable of invasive or non-invasive therapy.
  - l) The Contractor shall provide a 50/60 Hz, 12 Volt DC batteries with up to 3 hours of operations for use in the event of power failure.
- 11) **Cylinders**: The Contractor shall furnish aluminum cylinders that are in accordance with the Interstate Commerce Commission Regulations, and transport cylinders in accordance with Code of Federal Regulations (CFR) Part 49, U.S. Department of Transportation. Safety stands are provided at no additional charge to the Government.
- 12) **Heat Moisture Exchange (HME)**: Used to enhance humidification of inhaled gases by conserving moisture from exhaled gases.
- a) **The Contractor shall provide the patient or caregiver with enough supplies to change the humidification and moisture exchange device every 24 hours or as needed with two (2) in reserves at all times.**
  - b) The Contractor shall be responsible for setup and education on use of equipment for patient and caregiver. Education shall be performed by a trained CRT/RRT/RN.
- 13) **Resuscitation Bag**: **If patient has a bypassed or artificial airway one (1) self-inflating resuscitation bag with mask and oxygen tubing shall be provided by the Contractor.**
- 14) **Large Volume Nebulizer**: Used for aerosolized particle delivery
- a) Contractor shall supply large volume compressor, large bore tubing, drainage bags, aerosol bottle with sterile water and patient interface.
  - b) **The Contractor shall provide the patient or caregiver with enough supplies to change every three (3) days with one complete set up in reserve.** Education shall be performed by a trained CRT/RRT/RN.
- 15) **High Flow Humidification System**: Used for high flow heated molecular humidification.

- a) Contractor shall supply the high flow humidification delivery system, heated breathing tube, patient interface and humidification chamber.
  - b) The Contractor shall provide the patient or caregiver with enough supplies to change every seven (7) days with one (1) complete set up in reserve.
  - c) The Contractor shall be responsible for setup and education on use of equipment for patient and caregiver. Education shall be performed by a trained CRT/RRT/RN.
- 16) **Air Compressor:** A high volume air compressor capable of producing 15 liters of compressed air per minute, supplies shall include trach collar, "T" piece or mask and disposable or reusable type aerosol corrugated home 6-inch tubing, large volume nebulizer with adapter, reservoir for humidification.
- 17) Stock Storage – The contractor shall, upon request by the facility, stock portable set ups at the VA to send home with the patients.

22. **Specific Tasks:**

- a. Oxygen therapy delivery system including but not limited to home oxygen and home respiratory equipment. Initial setup(s) for home oxygen at the patient's residence shall be performed by a certified respiratory therapist (CRT) or registered respiratory therapist (RRT) which is licensed in accordance with the governing standards of the location where the services are to be provided.
- b. Patient or caregiver education shall be performed on the proper utilization for all issued equipment to include the following:
  1. An explanation of the plan for care, treatment and services.
  2. Procedures to follow in an event of an emergency.
  3. Basic health practices and safety.
  4. Infection prevention and control.
  5. Basic home safety.
  6. Safe and effective use of medical equipment or supplies.
  7. Potential hazards and safety considerations related to the equipment.
  8. Storage, handling and access to medical gases.
  9. Proper equipment usage.
  10. Equipment maintenance, function and operation system.
  11. Equipment power source: electric, battery, compressor air, oxygen, and UL approved.
  12. Notification to local power company of need for priority re-connection of power.
  13. Proper utilization of oxygen with the prescribed ventilator.
  14. Troubleshooting the equipment and system alarms.
  15. Equipment and equipment settings that have been prescribed.
  16. Emergency Procedures and how to respond to:
    - i. Power failure
    - ii. Equipment failure
17. Infection control and patient supply storage:
  - i. Cleaning or replacement of the oxygen tubing, and humidifier.
  - ii. Cleaning or replacement of the resuscitation bag and supplies.
  - iii. Cleaning or replacement of all equipment and accessories.

18. Provide continuing education in use as needed or directed by a licensed and privileged Department of Veteran Affairs Clinician.
  19. All education material provided by the Contractor shall be initially reviewed and approved by the VA. Any changes to educational materials shall need to be reapproved prior to providing the documentation to Patients.
- c. The Contractor shall provide a signed document to the ordering facility COR verifying the following:
    - a) Patient has a safe home environment in accordance with TJC standards.
    - b) Patient received proper education and instructions.
    - c) Return demonstration has been accomplished with the patient and caregiver on the proper use of the oxygen equipment, and other home medical equipment upon initial set up.
  - d. The Contractor shall provide and post on all entrances into the residence, a sign stating "Warning Oxygen in Use, No Smoking" or other verbiage that No Smoking is allowed due to oxygen being present and document that the patient/care giver is instructed in the safe use of oxygen and equipment per Occupational Safety and Health Administration (OSHA), and TJC regulations. Specified sign shall be no smaller than 4" X 6" along with a backup sign.
  - e. The Contractor shall provide the initial set-up within four (4) hours of notification for continuous flow oxygen prescriptions and ventilator therapy or any other therapy as determined by the VA Clinical Staff to be urgent, to include weekends and holidays. All other requests shall be completed within 24 hours of receipt of the order to include weekends and holidays.
  - f. The Contractor shall provide initial setup at the patient's residence the same day of discharge regardless of what time the order was received.
    1. If any modifications or preparations need to be made to equipment, these changes shall be coordinated with Patient caregiver and made before the patient arrives home from the hospital. Other items that shall be prepared ahead of time include:
      - i. The Contractor shall establish designated Customer Service support phone line for Patients to call for in home assistance.
      - ii. Provide the Patient or caregiver with all emergency numbers.
  - g. Quarterly RT visits shall be performed by the RRT/CRT for all Patients that utilize home oxygen services.
  - h. Documentation shall be provided to the ordering facility's COR documenting a thorough review of the patient's equipment, to include all equipment records, and any re-education of the patient and/or caregiver, if necessary, documentation shall be provided to the ordering facility's COR for all home visits with the monthly bill.
  - i. **Preventive Maintenance/Home Assessment:** The Contractor shall perform routine maintenance every quarter and preventative maintenance per manufactures guidelines with documentation of these checks. Preventive maintenance shall only be performed by a certified service technician that has received the approved training. The Contractor shall provide all documentation to the COR or designee with signatures and dates on the contract inception date and monthly thereafter. If the patient does not receive a reassessment of equipment per manufacturers' guidelines or a quarterly RT home visit, documentation shall be provided (via encrypted email and/or fax) to the COR or designee identifying the reason preventative maintenance was not done.

- j. The contractor shall provide the initial set-up the same day when the prescription is received by 3:00 PM Central Time to include weekends and holidays; this shall also apply to service calls and critical setups as designated by the VA.
- k. The contractor shall provide initial setup within 24 hours when prescription is received after 3:00 PM Central Time to include weekends and holidays. This shall also apply to service calls and critical setups as designated by the VA.
- l. **Segregation of Items:** The Contractor shall clearly segregate equipment provided in support of contract from any veteran owned equipment. Upon delivery to Veteran, the Contractor shall provide Contractor's emergency contact information in case of failure.

23. **Backup System:**

Veterans with a prescription for an oxygen concentrator shall be provided with a backup system consisting of a compressed gas source and regulator with stand, humidifiers, and cannulas/masks for use during the event of a power failure or mechanical problem with electrical home oxygen equipment. The Contractor shall provide documentation (via encrypted email and/or fax) if the patient declines the oxygen back-up system, to include the reason for declining backup system and the veterans signature. Notification (via encrypted email and/or fax) shall be provided to COR or designee within five (5) business days of the veteran declining any prescribed equipment or Contractor's inability to deliver the prescribed equipment.

24. **Demurrage Charges:**

The VA shall not pay for the Contractor's lost or damaged equipment provided under this contract unless circumstances as reviewed by the Contracting Officer are concluded to be the results of willful negligence on behalf of Patients or VA employees. Willful negligence is defined as an intentional act by the patient or caregiver that results in damage or loss of any contractor owned equipment or failure to provide prudent care in the safeguarding of such equipment. The VA shall not be held liable for normal wear and tear of equipment. The VA shall not pay for rental on equipment used by an unauthorized individual during the performance of this contract or for equipment that is lost due to no fault of the patient or caregiver.

25. **Home Assessment Requirements:**

The Contractor shall perform an assessment of the beneficiary's home and environment in accordance with TJC standards, and maintain documentation of assessments in the individual patient file or folder. Assessments shall be done upon initial set-up and quarterly thereafter.

- a) The Contractor shall verbally notify the COR or designee during the home visit if the Contractor's staff determines that the presence of oxygen in the home presents such a danger that the oxygen must be removed, or in the case of an initial set-up, not placed in the home. All verbal notification shall be documented in the patient folder and with the monthly billing.
- b) The Contractor shall verbally notify the COR or designee of any unsafe conditions observed in the VA beneficiary's home that precludes the installation or continuance of oxygen service. Unsafe conditions may include, but are not limited to, fire safety hazards, oxygen safety hazards, patient abuse by family or caregivers, or any instance that places the patient or Contractor's staff in immediate danger. The Contractor shall furnish verbal and written documentation of the safety hazard of the incident. Notification includes verbal immediate and documented incident for patient file and submitted with monthly billing.
- c) The Contractor shall check the adequacy of the electrical outlets in the patient's home which are being used for oxygen equipment and immediately report unsafe conditions to the COR or

designee. VA shall not be responsible or liable for any unsafe electrical conditions. Any alterations to the veteran's residence shall be the responsibility of the veteran. If ordered equipment cannot be safely installed, the COR or designee may provide an alternative oxygen delivery system after approval until new prescription can be obtained. If no alternative is available, the COR or designee and/or the prescribing VA clinician shall be notified within two (2) hours of patient visit.

- d) The Contractor shall verify the presence or absence of a working smoke detector and the presence of functional fire extinguisher with a full gauge. The Contractor shall document this verification in the patient file, incident report.
- e) Expectations for Compliance:
  - 1) Inquire about the presence or absence of a functional smoke detector and fire extinguisher when oxygen is delivered, as well as with subsequent encounters.
  - 2) When smoke detectors, and fire extinguishers are present:
    - a) Ask the patient during each service check visit if they have tested their smoke detectors and checked the condition (charge level) of their fire extinguishers in the last 30 days.
    - b) Check all medical equipment provided to home oxygen patients on each service visit to ensure its fire safety. Document in the home care record that this check has occurred.
  - 3) In homes where there is evidence of smoking or there is a potential for open flames such as in heating devices, cooking surfaces, or fireplaces the Contractor shall verify the following:
    - a) That 'no smoking' signage is properly posted.
    - b) Patient and/or caregiver understand and confirm understanding verbalizing the dangers of smoking and open flames.
    - c) Patient and/or caregiver shall avoid smoking or the presence flames anywhere near oxygen.
    - d) COR or designee has been notified if patient/caregiver persists in using open flame devices in the vicinity of oxygen home care record the occurrence of items listed above.

#### 26. **High Risk Patient:**

High-risk patients are patients who exhibit unsafe clinical or behavioral traits involving oxygen and smoking, such as; attempting to hide their smoking materials or activities from staff, having a history of non-compliance with smoking rules; or smoking in a patient's bedroom or other areas designated as non-smoking areas. VA shall notify the Contractor via encrypted email and/or fax of all high-risk Patients. The Contractor shall notify the COR or designee of high-risk Patients that they identify in the home via encrypted email and/or fax within one (1) day of the home visit. Contractor notification to each COR or designee shall consist of Contractor's written report/form and shall contain at a minimum Veteran's name and last four (4) numbers of their social security number, shall clearly document findings and what precautions were provided to the patient.

#### 27. **Patient Travel:**

- a) The Contractor shall be responsible for arranging and coordinating all home oxygen for Veterans who travel both within and outside their respective contracted jurisdiction. The VA facility(ies) will be responsible for approving the travel, notifying the contractor of the travel dates, and what equipment are approved, **no later than five (5) calendar days before travel date**. Arrangements and coordination of oxygen for Veterans in a travel status shall be provided at no additional cost to the VA. Coordination of oxygen needed for air transportation is the responsibility of the Veteran. The Contractor shall contact Veteran to coordinate travel within 48 hours of receipt of VA facility Travel Oxygen Approval form.
- b) The Contractor shall arrange for home oxygen for Veterans traveling outside the areas covered by the respective VA medical facility and/or temporarily relocating. All maintenance requirements, as described in this Performance Work Statement, are applicable. It is the responsibility of the Contractor to locate an oxygen provider/source at the Veteran's travel destination, make the appropriate arrangements and invoice the VA. The VA shall pay the contractor awarded the contract and will have no interaction with the oxygen provider at the travel destination. All set-up and maintenance forms shall be sent to the facility COR. Additional costs incurred as a result of home oxygen support for Veteran travel, temporary relocation or to support infrequent instances of home oxygen supply shall be individually discussed with the CO/COR to make a 'fair and reasonable' determination.
- c) The Contractor shall arrange for home oxygen for Veterans requiring emergency travel. (Emergency travel is defined as any travel with 48 hours' or less notice). The Contractor shall contact Veteran to coordinate travel within 1 hour of receipt of VA facility Travel Oxygen Approval form. In event of after-hours emergency request, Veteran shall contact Contractor directly to coordinate travel. The following business day, the Contractor shall coordinate with the Prosthetics and Sensory Aids Service (P&SAS) and/or Respiratory Therapy Services at the local VA facility. **Should emergent travel commence prior to the following business day, the contractor shall contact the medical center after-hours number to receive authorization to proceed.**
- d) Leisure Travel: Leisure travel is not considered an emergency. Travel is considered a travel emergency when travel occurs less than 48 hours from Veteran notification to contractor. The Contractor shall notify VA facility(ies) within 2 (two) hours but not to exceed four (4) hours of notification from Veteran(s). VA facility(ies) will respond to the contractor within two (2) not to exceed four (4) hours.
- e) Authorized Veteran Travel Areas: The Contractor shall be responsible for arranging and coordinating all U.S. States and U.S. territories.

## 28. **Delivery Schedule:**

The Contractor shall develop a consistent delivery schedule for service, equipment, and supplies with each patient following receipt of the facility order. Deliveries shall be made on a regular basis with sufficient frequency to ensure the patient maintains a safe reserve of oxygen in case of emergency.

## 29. **Contractor Visits:**

The Contractor's schedule for visits to beneficiaries' residences in performance of this contract shall be by appointment. Typical scheduled hours are between 8:00 AM and 6:00 PM Monday through Friday. The Contractor shall provide services in support of this contract five days (5) per week; exceptions shall be made in the cases of emergencies. The Contractor shall be responsible for scheduling the follow-up appointments to the patient's home at least 72 hours prior to the appointment. On each scheduled setup/delivery the Contractor shall train the patient on the use and care of the equipment and supplies. Contractor personnel visiting VA beneficiary homes shall dress professionally and wear a picture identification badge.

## 30. **Emergency Services and Protocol:**



- a) Emergency services are for medical equipment provided to Patients when an equipment malfunction, low/zero balance of oxygen back up, or natural disaster may threaten a patient's health. The Contractor shall provide to the Contracting Officer, and COR a written emergency management plan within 10 days of contract award. This emergency action plan shall address continuity of services for all patients in the affected region.
- b) The Contractor shall provide emergency maintenance assistance 24 hours/7 days a week. A document listing the emergency telephone number shall be provided to the patient at the time of set up.
- c) The patient shall first call the Contractor in an emergency equipment situation. The Contractor shall have a well-established communication system, providing 24-hour emergency services and the ability to provide services at the patient's home (or present location) within two (2) hours of a call, but in no case to exceed six (6) hours of a call.
- d) The Contractor shall provide a backup oxygen supply that shall last a minimum of three times the organization's maximum response time and function at the prescribed flow rate, frequency, and duration. If the Contractor is unable to respond to an emergency service call within six (6) hours, the Contractor shall be responsible for making arrangements with another supplier, who meets all TJC standards, to provide oxygen at the Contractor's expense. A written explanation (via encrypted email and/or fax) of why the Contractor was unable to respond to the emergency shall be provided to the COR or designee within two (2) business days. The cost of backup systems, backup oxygen, and backup equipment shall be borne by the Contractor. If "H or M" size oxygen cylinder is used for backup, the Contractor shall furnish an "H or M" size oxygen cylinder stand for each "H or M" size oxygen cylinder. Liquid oxygen supply shall be considered backup oxygen; however, the oxygen supply shall be maintained at the minimum three (3) times the maximum response time.
- e) In the event of disaster, natural or otherwise, the Contractor shall notify the CO, COR or their designee within four (4) hours if services covered under this contract may be affected.
- f) Emergency calls made to the Contractor shall be considered life threatening with an immediate response to the site of the veteran beneficiary's domicile, no matter the distance from the Contractor's place of business. An emergency exists if the COR informs the Contractor that he/she considers the situation an emergency, or if the VA beneficiary states in a telephone call to the Contractor that an emergency exists regarding the function or use of the respiratory related equipment or use of the equipment.
- g) As a minimum, the backup system shall provide continuing equipment function for forty-eight (48) hours. In addition to the ventilators, the Contractor shall provide a backup system equal to three (3) times the maximum response rate for all other Primary Oxygen Systems, including Government owned equipment. Contractor shall have a Clinician (RT/RN) available to provide after-hours education and equipment management for Patients with a bypassed upper airway, or receiving ventilator therapy.
- h) In the event the Contractor is unable to meet the appropriate response times for emergencies, the Government has the right to obtain the services from another source and to charge the Contractor any costs incurred over and above the contract price. A mandatory written justification detailing why emergency service was not available shall be provided by the Contractor to the facility COR and the Contracting Officer within twelve (12) hours from the original time the Contractor was called to provide the service.

31. **Termination of Oxygen Services:**

- a) Upon termination of oxygen service to the beneficiary, the Contractor shall pickup all oxygen equipment and supplies no later than forty-eight (48) hours after receipt of notification from the VA. Payment of services shall cease upon this notification. The final invoice shall be prorated from the date of notification. Final services shall be billed with the next scheduled invoice.
- b) Upon the death of a beneficiary the VA shall notify the Contractor via telephone and/or consult. Arrangement shall be made within 48 hours to pick up all supplies and equipment. Additional billing shall not be honored after the date of the cancellation notice.
- c) In the event the Contractor gains knowledge of the patient's death, or change in requirement status, prior to the servicing VA, the Contractor shall immediately notify the VA of the patient's death and the date the Contractor was made aware of the death. Billing shall cease effective the date of the patient's death. The final invoice shall be prorated from the date of notification.

**32. Invoicing Information:**

- a) Payment shall be made monthly in arrears based upon the Government's certification of a properly submitted invoice.
- b) No later than the 10<sup>th</sup> of the month, the Contractor shall submit an invoice and back-up documentation to the CORs for review for the previous month.
  - a) Invoices shall be sent to the respective VA facilities, using an Excel Spreadsheet format in alphabetical order by full last name, full first name no later than the 10th of each month, as well as a paper hard copy of the invoice in the same package All invoices shall include appropriate paperwork as specified within this contract. Any orders received by the contractor within the 5 days prior to the end of the month may be billed in the subsequent month. For example, an order received during the last 5 days of August, may be billed in September so that the Contractor has time to gather all required documentation.
  - b) The VA shall require all service related documentation.
  - c) The excel file shall be submitted to each location through secure electronic means (PKI encrypted email or secure file server with encryption and restricted access). The excel spreadsheet shall have the base format as shown below. Any additional fields desired for the benefit of the contractor or Government may be added, but the base format shall remain intact.

Last Name	First Name	Last 4	Date of Svc	Item Description	Qty	Unit Cost	Total Cost
Lastname1	Firstname1	1234	6/30/2017	C Tank Contents	2	\$XX.XX	\$YY.YY
Lastname1	Firstname1	1234	7/14/2017	C Tank Contents	1	\$XX.XX	\$YY.YY
Lastname1	Firstname1	1234	7/28/2017	C Tank Contents	1	\$XX.XX	\$YY.YY
Lastname1	Firstname1	1234	6/30/2017	E Tank Contents	4	\$XX.XX	\$YY.YY
Lastname1	Firstname1	1234	7/14/2017	E Tank Contents	5	\$XX.XX	\$YY.YY
Patient 1 Total							\$ZZZ.ZZ
Lastname2	Firstname2	5678	6/30/2017	Concentrator 5LPM	1	\$XX.XX	\$YY.YY
Lastname2	Firstname2	5678	6/30/2017	C Tank Contents	1	\$XX.XX	\$YY.YY
Lastname2	Firstname2	5678	6/30/2017	C Tank Contents	1	\$XX.XX	\$YY.YY
Patient 2 Total							\$ZZZ.ZZ

Table 1 - Basic excel file format

- c) Past charges shall be separated on a separate invoice.
- d) Each station shall then review the invoice and create a discrepancy list (if applicable) and submit that back to the Contractor within 15 working days of receiving the invoice.
- e) Upon resolution of the discrepancies, The Contractor and the COR shall agree on the total price for the month, the VA shall approve the invoice for payment.

### 33. **Performance Objectives:**

- a. The Performance Objectives and Performance Thresholds will be verified by Government personnel IAW the Quality Assurance Surveillance Plan. Each Performance Objective represents a significant task as identified in the PWS by the Government at the time of contract award. The Performance Threshold represents the minimum acceptable level of performance. The Performance Objectives and Performance Thresholds represent the most significant tasks of this contract and do not excuse the Contractor from performance of other responsibilities identified in this PWS.

Performance Objectives	PWS Reference	Performance Threshold
Initial Setups and Education	Para 22	98% of all initial home oxygen setups are completed timely in accordance with this PWS.
Preventive Maintenance/RT Home Visits	Para 21(c) (10), 22(g) and 22(i)	98% of patient shall receive timely quarterly routine maintenance and preventative maintenance visits and monthly or quarterly Respiratory Technician visits as required
Patient Travel	Para 27	98% of patient travel shall comply with the PWS.
Emergency Services	Para 30	100% of all emergency maintenance services shall be provided to all patients within 6 hours of notification.
Reports	Para 11	95% of reports shall provide timely reports IAW their respective due dates.

## B.4 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 contractor/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. 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. However, it is the policy of the VA to forgo collection of liquidated damages in the event the contractor provides payment of actual damages in an amount determined to be adequate by the agency.

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 \$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.

(End of Clause)

**Contract Periods:** The contract shall contain a two-year base period and one three-year option as shown below. A contract modification must be issued, in accordance with 52.217-9, to exercise the option period.

**Base Period:** ~~January 1, 2018 through December 31, 2019~~ March 1, 2018 through February 29, 2020  
**Option Period:** ~~January 1, 2020 through December 31, 2022~~ March 1, 2020 through February 28, 2023

**Contract Pricing:** The pricing for this contract shall be run in “pricing years” as shown below. The price for services will be tied to the month in which services are rendered. No contract modification is required to enact each year’s pricing.

**Pricing Year 1:** ~~January 1, 2018 through December 31, 2018~~ March 1, 2018 through February 28, 2019  
**Pricing Year 2:** ~~January 1, 2019 through December 31, 2019~~ March 1, 2019 through February 29, 2020  
**Pricing Year 3:** ~~January 1, 2020 through December 31, 2020~~ March 1, 2020 through February 28, 2021  
**Pricing Year 4:** ~~January 1, 2021 through December 31, 2021~~ March 1, 2021 through February 28, 2022  
**Pricing Year 5:** ~~January 1, 2022 through December 31, 2022~~ March 1, 2022 through February 28, 2023

**Guaranteed Minimum and Maximum Contract Value:** As stated in section E of this solicitation, the Government anticipates making multiple split awards for this requirement (a minimum of two contracts are anticipated). Therefore, a separate guaranteed minimum and maximum contract value has been set for each station. Any contractor awarded a contract for more than a single station will add the guaranteed minimums for each station awarded to calculate the full contract minimum. Likewise, the full contract maximum value will be calculated by adding the station maximums for all stations awarded to the contractor.

**Evaluation of options exercised under FAR 52.217-8:** For the purposes of the award of this Contract, the Government intends to evaluate the option to extend services under FAR 52.217-8 as follows:



The evaluation will consider the possibility that the option can be exercised at any time, and can be exercised in increments of one to six months, but not for more than a total of six months during the life of the contract. The evaluation will assume that the prices for any option exercised under FAR 52.217-8 will be at the same rates as those in effect under the contract at the time the option is exercised. The evaluation will therefore assume that the addition of the price or prices of any possible extension or extensions under FAR 52.217-8 to the total price for the basic requirement and the total price for the priced options has the same effect on the total price of all proposals relative to each other, and will not affect the ranking of proposals based on price, unless, after reviewing the proposals, the Government determines that there is a basis for finding otherwise. This evaluation will not obligate the Government to exercise any option under FAR 52.217-8.

**See attached document: S02 Attch Price Schedule.**

### **Contractor Performance Assessment Reporting System**

(a) FAR 42.1502 directs all Federal agencies to collect past performance information on contracts. The Department of the Department of Veterans Affairs (VA) has implemented Contractor Performance Assessment Reporting System (CPARS) to comply with this regulation. One or more past performance evaluations will be conducted in order to record your contract performance as required by FAR 42.15.

(b) The past performance evaluation process is a totally paperless process using CPARS. CPARS is a web-based system that allows for electronic processing of the performance evaluation report. Once the report is processed, it is available in the Past Performance Information Retrieval System (PPIRS) for Government use in evaluating past performance as part of a source selection action.

(c) We request that you furnish the Contracting Officer with the name, position title, phone number, and email address for each person designated to have access to your firm's past performance evaluation(s) for the contract. Each person granted access will have the ability to provide comments in the Contractors portion of the report and state whether or not the Contractor agrees with the evaluation, before returning the report to the Assessing Official. The report information must be protected as source selection sensitive information not releasable to the public.

(d) When your Contractor Representative(s) (Past Performance Points of Contact) are registered in CPARS, they will receive an automatically-generated email with detailed login instructions. Further details, systems requirements, and training information for CPARS are available at <http://www.cpars.csd.disa.mil/>. The CPARS User Manual, registration for On Line Training for Contractor Representatives, and a practice application may be found at this site.

(e) The Assessing Official will complete an interim or final past performance evaluation and the report will be accessible at <http://www.cpars.csd.disa.mil/>. The Contractor Representative has the option to provide comments on the evaluation, indicate if they concur or do not concur with the evaluation, sign, and then return the evaluation to the Assessing Official. The Contractor Representative has a total of 60 days following the Assessing Official's evaluation signature date to send comments. If the Contractor Representative sends comments within the first 14 days following the Assessing Official's signature date and the Assessing Official or Reviewing Official closes the evaluation, the evaluation will become available in PPIRS-RC within 1 day. On day 15 following the Assessing Official's evaluation signature date, the evaluation will become available in PPIRS-RC with or without Contractor Representative comments and whether or not it has been closed by the Assessing Official or Reviewing Official. If no Contractor Representative comments have been sent and the evaluation has not been closed, it will be marked as "Pending" in PPIRS-RC. If the Contractor Representative sends comments at any time prior to 61 days following the Assessing Official's evaluation signature date, those comments will be reflected in

PPIRS-RC within 1 day. On day 61 following the Assessing Official's evaluation signature date, the Contractor Representative will be "locked out" of the evaluation and may no longer send comments.

(f) The following guidelines apply concerning Contractor Representative use of the past performance evaluation:

- (1) Protect the evaluation as "source selection information." After review, transmit the evaluation by completing and submitting the form through CPARS. If for some reason you are unable to view and/or submit the form through CPARS, contact the Contracting Officer for instructions.
- (2) Strictly control access to the evaluation within your organization. Ensure the evaluation is never released to persons or entities outside of your control.
- (3) Prohibit the use of or reference to evaluation data for advertising, promotional material, pre award surveys, responsibility determinations, production readiness reviews, or other similar purposes.

## SECTION C - CONTRACT CLAUSES

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

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

(1) Within a reasonable time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

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

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

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

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

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

(g) *Invoice.*

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

(i) Name and address of the Contractor;

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

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

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

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

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

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

(i) Payment. —

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

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

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

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

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

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

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

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

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

(D) Contractor point of contact.

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

(6) *Interest.*

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

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

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

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

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

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

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

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

(A) The date fixed under this contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The schedule of supplies/services.

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

(3) The clause at 52.212-5.

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

(5) Solicitation provisions if this is a solicitation.

(6) Other paragraphs of this clause.

(7) The Standard Form 1449.

(8) Other documents, exhibits, and attachments

(9) The specification.

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

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

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

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

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

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

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

(u) *Unauthorized Obligations.*

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

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

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

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



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

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

(End of Clause)

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

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

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

#### **C.2 52.204-4 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 52.204-21 BASIC SAFEGUARDING OF COVERED CONTRACTOR INFORMATION SYSTEMS (JUN 2016)**

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

*Covered contractor information system* means an information system that is owned or operated by a contractor that processes, stores, or transmits Federal contract information.

*Federal contract information* means information, not intended for public release, that is provided by or generated for the Government under a contract to develop or deliver a product or service to the

Government, but not including information provided by the Government to the public (such as on public Web sites) or simple transactional information, such as necessary to process payments.

*Information* means any communication or representation of knowledge such as facts, data, or opinions, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual (Committee on National Security Systems Instruction (CNSSI) 4009).

*Information system* means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information (44 U.S.C. 3502).

*Safeguarding* means measures or controls that are prescribed to protect information systems.

(b) *Safeguarding requirements and procedures.* (1) The Contractor shall apply the following basic safeguarding requirements and procedures to protect covered contractor information systems. Requirements and procedures for basic safeguarding of covered contractor information systems shall include, at a minimum, the following security controls:

(i) Limit information system access to authorized users, processes acting on behalf of authorized users, or devices (including other information systems).

(ii) Limit information system access to the types of transactions and functions that authorized users are permitted to execute.

(iii) Verify and control/limit connections to and use of external information systems.

(iv) Control information posted or processed on publicly accessible information systems.

(v) Identify information system users, processes acting on behalf of users, or devices.

(vi) Authenticate (or verify) the identities of those users, processes, or devices, as a prerequisite to allowing access to organizational information systems.

(vii) Sanitize or destroy information system media containing Federal Contract Information before disposal or release for reuse.

(viii) Limit physical access to organizational information systems, equipment, and the respective operating environments to authorized individuals.

(ix) Escort visitors and monitor visitor activity; maintain audit logs of physical access; and control and manage physical access devices.

(x) Monitor, control, and protect organizational communications (i.e., information transmitted or received by organizational information systems) at the external boundaries and key internal boundaries of the information systems.

(xi) Implement subnetworks for publicly accessible system components that are physically or logically separated from internal networks.

(xii) Identify, report, and correct information and information system flaws in a timely manner.

(xiii) Provide protection from malicious code at appropriate locations within organizational information systems.

(xiv) Update malicious code protection mechanisms when new releases are available.

(xv) Perform periodic scans of the information system and real-time scans of files from external sources as files are downloaded, opened, or executed.

(2) *Other requirements.* This clause does not relieve the Contractor of any other specific safeguarding requirements specified by Federal agencies and departments relating to covered contractor information systems generally or other Federal safeguarding requirements for controlled unclassified information (CUI) as established by Executive Order 13556.

(c) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (c), in subcontracts under this contract (including subcontracts for the acquisition of commercial items, other than commercially available off-the-shelf items), in which the subcontractor may have Federal contract information residing in or transiting through its information system.

(End of Clause)

#### **C.4 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.5 52.216-19 ORDER LIMITATIONS (OCT 1995)**

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

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

(1) Any order for a single item in excess of \$10,000;

(2) Any order for a combination of items in excess of \$1,500,000.00; or

(3) A series of orders from the same ordering office within three (3) 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 one (1) 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.6 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 September 30, 2023.

(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 prior to contract end date. The 'specified' rates under this clause will be those rates in effect under the contract each time an option is exercised under this clause.

(End of Clause)

### **C.8 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 prior to contract end date; 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.9 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.10 52.224-2 PRIVACY ACT (APR 1984)**

(a) The Contractor 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—

(i) The systems of records; and

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

(2) 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 design, development, or operation of a system of records on individuals that is subject to the Act; and

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

(b) 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 system of records 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 system of records on individuals to accomplish an agency function. For purposes of the Act, when the contract is for the operation of a system of records on individuals to accomplish an agency function, the Contractor and any employee of the Contractor is considered to be an employee of the agency.

(c) (1) "Operation of a system of records," as used in this clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.

(2) "Record," as used in this clause, 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 that contains the person's name, or the

identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.

(3) "System of records on individuals," as used in this clause, 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.

(End of Clause)

## **C.11 52.227-17 RIGHTS IN DATA—SPECIAL WORKS (DEC 2007)**

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

"Data" means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

"Unlimited rights" means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) Allocation of Rights.

(1) The Government shall have—

(i) Unlimited rights in all data delivered under this contract, and in all data first produced in the performance of this contract, except as provided in paragraph (c) of this clause.

(ii) The right to limit assertion of copyright in data first produced in the performance of this contract, and to obtain assignment of copyright in that data, in accordance with paragraph (c)(1) of this clause.

(iii) The right to limit the release and use of certain data in accordance with paragraph (d) of this clause.

(2) The Contractor shall have, to the extent permission is granted in accordance with paragraph (c)(1) of this clause, the right to assert claim to copyright subsisting in data first produced in the performance of this contract.

(c) Copyright—

(1) Data first produced in the performance of this contract.

(i) The Contractor shall not assert or authorize others to assert any claim to copyright subsisting in any data first produced in the performance of this contract without prior written permission of the Contracting Officer. When copyright is asserted, the Contractor shall affix the appropriate copyright notice of 17 *U.S.C. 401 or 402* and acknowledgment of Government sponsorship (including contract number) to the data when delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. The Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license for all delivered data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.

(ii) If the Government desires to obtain copyright in data first produced in the performance of this contract and permission has not been granted as set forth in paragraph (c)(1)(i) of this clause, the Contracting Officer shall direct the Contractor to assign (with or without registration), or obtain the assignment of, the copyright to the Government or its designated assignee.

(2) *Data not first produced in the performance of this contract.* The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and that contain the copyright notice of 17 U.S.C. 401 or 402, unless the Contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause.

(d) *Release and use restrictions.* Except as otherwise specifically provided for in this contract, the Contractor shall not use, release, reproduce, distribute, or publish any data first produced in the performance of this contract, nor authorize others to do so, without written permission of the Contracting Officer.

(e) *Indemnity.* The Contractor shall indemnify the Government and its officers, agents, and employees acting for the Government against any liability, including costs and expenses, incurred as the result of the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication, or use of any data furnished under this contract; or any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply unless the Government provides notice to the Contractor as soon as practicable of any claim or suit, affords the Contractor an opportunity under applicable laws, rules, or regulations to participate in the defense of the claim or suit, and obtains the Contractor's consent to the settlement of any claim or suit other than as required by final decree of a court of competent jurisdiction; and these provisions do not apply to material furnished to the Contractor by the Government and incorporated in data to which this clause applies.

(End of Clause)

## **C.12 52.232-19 AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR (APR 1984)**

Funds are not presently available for performance under this contract beyond September 30. The Government's obligation for performance of this contract beyond that date is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise for performance under this contract beyond September 30, until funds are made available to the Contracting Officer for performance and until the Contractor receives notice of availability, to be confirmed in writing by the Contracting Officer.

(End of Clause)

## **C.13 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.14 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.15 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.16 VAAR 852.219-10 VA NOTICE OF TOTAL SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS SET-ASIDE (JUL 2016) (DEVIATION)**

(a) *Definition.* For the Department of Veterans Affairs, "Service-disabled veteran-owned small business concern or SDVSOB":

(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 or eligible surviving spouses (see VAAR 802.201 Surviving Spouse definition);

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

(iii) The business meets Federal small business size standards for the applicable North American Industry Classification System (NAICS) code identified in the solicitation document;

(iv) The business has been verified for ownership and control pursuant to 38 CFR 74 and is so listed in the Vendor Information Pages database, (<https://www.vip.vetbiz.gov>); and

(v) The business will comply with subcontracting limitations in 13 CFR 125.6, as applicable

(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).

(b) *General.*

(1) Offers are solicited only from verified service-disabled veteran-owned small business concerns. Offers received from concerns that are not verified service-disabled veteran-owned small business concerns shall not be considered.

(2) Any award resulting from this solicitation shall be made to a verified service-disabled veteran-owned small business concern.

(c) *Agreement.* A service-disabled veteran-owned small business concern agrees that in the performance of the contract, the concern will comply with the limitation on subcontracting requirements in 13 CFR §125.6.

(d) A joint venture may be considered a service-disabled veteran owned small business concern if the joint venture complies with the requirements in 13 CFR 125.15, provided that any reference therein to SDVO SBC is to be construed to apply to a VA verified SDVOSB as appropriate.

(e) Any service-disabled veteran-owned small business concern (non-manufacturer) must meet the requirements in FAR 19.102(f) of the Federal Acquisition Regulation to receive a benefit under this program.

(End of Clause)

## **C.17 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 Presentation 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.18 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 Oklahoma, Arkansas, Louisiana, Texas, Mississippi, Alabama, and Florida. Further, it is agreed that any negligence of the Government, its officers, agents, servants and employees, shall not be the responsibility of the contractor hereunder with the regard to any claims, loss, damage, injury, and liability resulting there from.

(End of Clause)

### **C.19 VAAR 852.270-1 REPRESENTATIVES OF CONTRACTING OFFICERS (JAN 2008)**

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

(End of Provision)

### **C.20 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)**

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

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

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

(End of Clause)

<b><u>FAR Number</u></b>	<b><u>Title</u></b>	<b><u>Date</u></b>
52.203-17	CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS	APR 2014
52.227-14	RIGHTS IN DATA – GENERAL	MAY 2014
52.232-18	AVAILABILITY OF FUNDS	APR 1984
52.232-40	PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS	DEC 2013
852.271-70	NONDISCRIMINATION IN SERVICES PROVIDED TO BENEFICIARIES	JAN 2008

(End of Addendum to 52.212-4)

## **C.21 52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (JAN 2017)**

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

(1) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (JAN 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).

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

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

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

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

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

(2) 52.203-13, Contractor Code of Business Ethics and Conduct (OCT 2015) (41 U.S.C. 3509).

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

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

(5) [Reserved]

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

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

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

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

(10) [Reserved]

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

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

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

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

(13) [Reserved]

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

(ii) Alternate I (NOV 2011).

(iii) Alternate II (NOV 2011).

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

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

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

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

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

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

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

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

(v) Alternate IV (NOV 2016) of 52.219-9.

(18) 52.219-13, Notice of Set-Aside of Orders (NOV 2011) (15 U.S.C. 644(r)).

(19) 52.219-14, Limitations on Subcontracting (JAN 2017) (15 U.S.C. 637(a) (14)).

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

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

(22) 52.219-28, Post Award Small Business Program Rerepresentation (Jul 2013) (15 U.S.C. 632(a)(2)).

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

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

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

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

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

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

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

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

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

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

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

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

(34) 52.222-54, Employment Eligibility Verification (OCT 2015). (E. O. 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in 22.1803.)

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

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

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

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

(38) 52.223-11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (JUN 2016) (E.O. 13693).

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

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

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

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

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

(ii) Alternate I (JUN 2014) of 52.223-14.

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

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

(ii) Alternate I (JUN 2014) of 52.223-16.

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

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

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

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

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

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

(49) (i) 52.225-3, Buy American—Free Trade Agreements—Israeli Trade Act (MAY 2014) (41 U.S.C. chapter 83, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, 19 U.S.C. 3805 note, 19 U.S.C. 4001 note, Pub. L. 103-182, 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, 110-138, 112-41, 112-42, and 112-43).

(ii) Alternate I (MAY 2014) of 52.225-3.

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

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

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

(51) 52.225-13, Restrictions on Certain Foreign Purchases (JUN 2008) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) 52.222-17, Nondisplacement of Qualified Workers (MAY 2014) (E.O. 13495).

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

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

Employee Class	Monetary Wage-Fringe Benefits
Customer Service Rep II	\$13.32
Driver/Courier	\$19.48
Truck Driver, Light	\$19.48

(4) 52.222-43, Fair Labor Standards Act and Service Contract Labor Standards—Price Adjustment (Multiple Year and Option Contracts) (MAY 2014) (29 U.S.C. 206 and 41 U.S.C. chapter 67).

(5) 52.222-44, Fair Labor Standards Act and Service Contract Labor Standards—Price Adjustment (MAY 2014) (29 U.S.C. 206 and 41 U.S.C. chapter 67).

(6) 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements (MAY 2014) (41 U.S.C. chapter 67).



(7) 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services—Requirements (MAY 2014) (41 U.S.C. chapter 67).

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

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

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

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

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

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

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

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

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

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (OCT 2015) (41 U.S.C. 3509).

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

(iii) 52.219-8, Utilization of Small Business Concerns (NOV 2016) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities.

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

- (v) 52.222-21, Prohibition of Segregated Facilities (APR 2015).
- (vi) 52.222–26, Equal Opportunity (SEP 2016) (E.O. 11246).
- (vii) 52.222-35, Equal Opportunity for Veterans (OCT 2015) (38 U.S.C. 4212).
- (viii) 52.222-36, Equal Opportunity for Workers with Disabilities (JUL 2014) (29 U.S.C. 793).
- (ix) 52.222-37, Employment Reports on Veterans (FEB 2016) (38 U.S.C. 4212).
- (x) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause 52.222-40.
- (xi) 52.222-41, Service Contract Labor Standards (MAY 2014) (41 U.S.C. chapter 67).
- (xii)(A) 52.222-50, Combating Trafficking in Persons (MAR 2015) (22 U.S.C. chapter 78 and E.O. 13627).
  - (B) Alternate I (MAR 2015) of 52.222-50 (22 U.S.C. chapter 78 and E.O. 13627).
- (xiii) 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements (MAY 2014) (41 U.S.C. chapter 67).
- (xiv) 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services—Requirements (MAY 2014) (41 U.S.C. chapter 67).
- (xv) 52.222-54, Employment Eligibility Verification (OCT 2015) (E. O. 12989).
- (xvi) 52.222-55, Minimum Wages Under Executive Order 13658 (DEC 2015).
- (xvii) 52.222-59, Compliance with Labor Laws (Executive Order 13673) (OCT 2016) (Applies at \$50 million for solicitations and resultant contracts issued from October 25, 2016 through April 24, 2017; applies at \$500,000 for solicitations and resultant contracts issued after April 24, 2017).

**Note to paragraph (e)(1)(xvii):** By a court order issued on October 24, 2016, 52.222-59 is enjoined indefinitely as of the date of the order. The enjoined paragraph will become effective immediately if the court terminates the injunction. At that time, DoD, GSA, and NASA will publish a document in the **Federal Register** advising the public of the termination of the injunction.
- (xviii) 52.222-60, Paycheck Transparency (Executive Order 13673) (OCT 2016)).
- (xix) 52.222-62 Paid Sick Leave Under Executive Order 13706 (JAN 2017) (E.O. 13706).
- (xx)(A) 52.224-3, Privacy Training (JAN 2017) (5 U.S.C. 552a).
  - (B) Alternate I (JAN 2017) of 52.224-3.
- (xxi) 52.225–26, Contractors Performing Private Security Functions Outside the United States (OCT 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).

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

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

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

(End of Clause)

## **C.22 MANDATORY WRITTEN DISCLOSURES**

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

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

### BUSINESS ASSOCIATE AGREEMENT BETWEEN THE DEPARTMENT OF VETERANS AFFAIRS VETERANS HEALTH ADMINISTRATION, VISN 16, AND \_\_\_\_\_

Purpose. The purpose of this Business Associate Agreement (Agreement) is to establish requirements for the Department of Veterans Affairs (VA) Veterans Health Administration (VHA) VISN 16 and \_\_\_\_\_ in accordance with the Health Insurance Portability and Accountability Act (HIPAA), the Health Information Technology for Economic and Clinical Health Act (HITECH) Act, and the HIPAA Privacy, Security, Breach Notification, and Enforcement Rules (“HIPAA Rules”), 45 C.F.R. Parts 160 and 164, for the Use and Disclosure of Protected Health Information (PHI) under the terms and conditions specified below.

Scope. Under this Agreement and other applicable contracts or agreements, \_\_\_\_\_ will provide Home Oxygen Delivery and Supply services to, for, or on behalf of VISN 16.

In order for \_\_\_\_\_ to provide such services, VISN 16 will disclose PHI to and will use or disclose PHI in accordance with this Agreement.

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

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

“Covered Entity” shall have the same meaning as the term is defined at 45 C.F.R. § 160.103. For the purposes of this Agreement, Covered Entity shall refer to VISN 16.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Notification shall be sent to Jose Arriola and The Contracting Officer and to the VHA Health Information Access Office, Business Associate Program Manager by email at [VHABAAIssues@va.gov](mailto:VHABAAIssues@va.gov).

(3) Business Associate shall not notify individuals or the Department of Health and Human Services directly unless Business Associate is not acting as an agent of Covered Entity but in its capacity as a Covered Entity itself.

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

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

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

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

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

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

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

(2) The written report shall be addressed to:

Jose Arriola and submitted by email to The Contracting Officer and to the VHA Health Information Access Office, Business Associate Program Manager at [VHABAAIssues@va.gov](mailto:VHABAAIssues@va.gov)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. Termination.

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

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

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

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

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

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

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

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

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

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

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

**Department of Veterans Affairs**

**Veterans Health Administration**

**VISN 16**

**By:**

\_\_\_\_\_  
**Name: AJ Raiber**

**By:**

\_\_\_\_\_  
**Name:**



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**Title: Contracting Officer**

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**Title:**

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**Date:**

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**Date:**

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See attached document: S02 Attch QUALITY ASSURANCE SURVEILLANCE PLAN.

See attached document: P07 Wage Determination.

## 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](http://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](http://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)

## **E.2 Addendum to Instructions to Offerors**

Pursuant to VAAR 852.219-10 and in accordance with PL 109-461 and the Kingdomware Decision this solicitation will be set-aside for the exclusive participation of Service-Disabled Veteran-Owned Small Business (SDVOSB) concerns. If only one offer from a responsible SDVOSB concern is received, the contracting officer reserves the right to make award if the offer meets the solicitation requirements. FAR 19.501(g) provides that a contract may not be awarded as a result of a small business set-aside if the cost to the awarding agency exceeds the fair market price.

Offerors shall submit proposals in two volumes as described below. Proposals may be submitted in-person, via mail, electronically via email or via Facsimile. Be sure to follow the instructions for each submission type.

In-Person or Mail submissions – Volumes One and Two should be contained in a file or binder clearly marked on the outside with the solicitation number, company name and volume number.

Email Submissions - Electronic Files should be submitted with the solicitation number, company name and volume number in the file name.

Facsimile Submissions – This is the least preferred method of delivery due to the increased possibility of submission loss, scrambled documents, legibility issues, and other risks inherent in the use of Facsimile machines. Any offeror submitting a proposal via facsimile shall send the documents with a cover page for each volume. The cover pages shall include the solicitation number, company name and volume number.

VOLUME ONE – Volume one shall contain the technical portion of the offeror’s proposal relating to the first three evaluation factors. Offerors should provide complete, concise documentation to describe their ability to meet the requirements of the performance work statement and answer the concerns shown in the evaluation section below. No pricing information shall be contained in volume one.

VOLUME TWO – Volume two shall contain the offeror’s price proposal and shall contain the signed SF 1449, the completed price schedule, a copy of the offeror’s current SAM registration, proof of the offeror’s SDVOSB verification from the Center for Verification and Evaluation, a signed copy of the BAA, and a signed copy of the QASP.

#### ADDENDUM to FAR 52.212-1 INSTRUCTIONS TO OFFERORS—COMMERCIAL ITEMS

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

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

### **E.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 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:

AJ Raiber

Contracting Officer  
Hand-Carried Address:

Department of Veterans Affairs

Network Contracting Office 16  
2575 Keystone Crossing

Fayetteville AR 72703  
Mailing Address:

Department of Veterans Affairs

Network Contracting Office 16  
Attn: AJ Raiber  
2575 Keystone Crossing  
Fayetteville AR 72703

(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 852.233-70 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.7 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.8 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)

**FAR**  
**Number**  
52.216-27

**Title**  
SINGLE OR MULTIPLE AWARDS  
(End of Addendum to 52.212-1)

**Date**  
OCT 1995

## **E.9 52.212-2 EVALUATION—COMMERCIAL ITEMS (OCT 2014)**

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

Technical Capability

Key Personnel  
Past Performance  
Price

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

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

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

(End of Provision)

The following information or factors shall be used to evaluate offers:

- (1) Technical Capability
- (2) Key Personnel
- (3) Past Performance
- (4) Price

**Relative Importance:** Factor 1 is the most important. Factors 2 and 3 are of equal importance, and are both slightly less important than factor 1. The non-price factors (1 through 3) when combined are significantly more important than price.

~~(a) 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).~~

(b) If this solicitation is a request for proposals (RFP), a written notice of award or acceptance of an offer, or part thereof, 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.

(c) Offerors are cautioned to follow the detailed instructions fully and carefully, as the Government reserves the right to make an award based on initial offers received, without discussions of such offers.

(d) Offerors may be asked to clarify certain aspects of their proposal (for example, the relevance of past performance information) or respond to adverse past performance information to which the offeror has not previously had an opportunity to respond. Adverse past performance is defined as past performance information that supports a less than satisfactory rating on any evaluation element or any unfavorable comments received from sources without a formal rating system.

**Factor 1 Technical Capability:** The Government wants assurance that the selected firm is capable of performing mission-critical Home Oxygen services. The Government wants assurance that an offeror's capability is exemplified by appropriate resources and understanding to implement the requirements of the Performance Work Statement (PWS). The Government is interested in the offeror's efficient and realistic approach to improving the organization's ability to provide for VISN 16 Home Oxygen Services to veterans.

Offeror shall provide a clear, logical plan for organizing the tasks and feasible methods for delivery of home oxygen services at locations specified in the solicitation. The proposed approach shall address offerors' understanding of the Government organization needs, as well as the degree to which the offeror understands home oxygen services, respiratory equipment functionality and operations, setup and installation, patient education and patient satisfaction.

Describe the capability to recruit adequate registered and/or certified Respiratory Therapists to meet the needs of the requirements of the PWS. Describe organization structure and management practices relative to the requirements contained in the PWS.

Provide planned and detailed emergency action plan to include emergency preparedness and how the 24/7 patient emergency response requirement will be met.

Provide a detailed plan which adequately addresses the dispatch requirements necessary to meet the needs of the requirements of the PWS.

Provide the planned approach for customer service in terms of accessibility, customer interaction, and responsiveness to beneficiaries, COR, and the Contracting Officer before, during, and after required services are performed.

The strength of the offeror's response will be based on the offeror's response to approach for program goals and the methods, resources, schedules and other aspects essential to the performance of the requirements in the PWS.

The Government is interested in recent and relevant experience which is related to providing home oxygen services requiring a broad scope of functional responsibilities (similar to those described in the PWS); especially those primarily governmental in nature (Department of Veterans Affairs, Department of Defense, or other federal or state entities).

Offeror shall provide description of Offeror's capabilities, background and relevant information regarding stability and strengths and shall provide evidence of ability to perform the services of this contract. The offeror shall provide information on experience related to the PWS requirements. Include the following information on the contracts you have or currently are in the process of completing in the last three years:

Name of project

CO's name, CO's organization, e-mail address, and telephone number

Brief description of project to include geographical area covered and approximate number of patients served and services provided

Contract Number

Type of contract

Term of contract

Value of contract

The offeror will be evaluated to determine whether it has demonstrated capability to deliver home oxygen services described in the PWS (or areas similar to those described in the PWS) to patient population equal to or greater than required in the PWS.

The Government is interested and wants a firm that is capable of performing the necessary logistical management and supply chain management to provide the needed services, supplies, and equipment to the veterans within the specified locations and within the specified timeframes in the PWS.

Offeror shall specify locations of proposed facilities to be utilized to include street address, city and county as distribution centers or distribution points. Describe proposed approach to determine selection of materials and equipment. Describe proposed approach to forecast the needs for supplies and equipment to achieve the end results of providing for home oxygen services in the specified timeframes required in the PWS. Describe the proposed approach for handling delivery of supply and equipment within the required timeframes required in the SOW. Describe the proposed approach for procuring supplies and equipment to include any proposed sub-contracting plans. Describe the proposed approach for handling product recalls.

The offeror will be evaluated to determine the level of confidence provided to the Government with respect to the offeror's supply chain methods and approach in successfully meeting and/or exceeding the requirements in a timely manner. The offeror will be evaluated to determine if the Offeror's logistical management approach and supply chain management methods have adequately and completely considered, defined, and satisfied the requirements specified in the PWS.

**Factor 2 Key Personnel:** The Government wants assurance that the offeror has appropriate staff in place, or can have them in place, to provide patient-oriented world-class service to our Veterans. To that end, the Government desires to review the qualifications and experience of the key personnel proposed by the offeror to provide such service.

Offerors shall provide the resumes or curricula vitae (CV) for the following key personnel that will work in support of this contract: Customer Service Manager, Logistics Manager, Billing Manager, Distribution Point Managers, and Certified or Registered Respiratory Technicians.

Proposed key personnel plan will be evaluated for relevance to the work and depth of experience which meet or exceed the training and experience requirements for the positions for which each is proposed.

The Government will be basing its evaluation and award decision based on the key personnel listed in each offer. Therefore, personnel listed in an offeror's proposal may not be changed without concurrence of the Contracting Officer in writing. If it is necessary for the successful contractor to replace one of the key personnel after award of the contract, the resume or CV of the proposed replacement must be forwarded to the Contracting Officer for review by the COR. This review will be centered on the proposed replacement's skills and training to ensure they meet or exceed the requirements of the position to which they are being proposed. Upon acceptance, the Contracting Officer will notify the Contractor and the proposed personnel may begin work on the contract.

**Factor 3 Past Performance:** An offeror's past performance is important in determining its ability to successfully perform required services. The government is especially interested in recent and relevant past performance that relates very closely to the requirement set forth in the PWS and the degree of responsiveness to customer requirements.

**Past Performance Evaluation:** The Government will evaluate the offerors previous performance in the following areas: Adherence to provide management, technical, and administrative experience; effective quality control; timely submission of submittal data; approach to problem solving. 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.

(a). Performance Confidence will be evaluated in accordance with FAR 15.305(a)(2). Performance confidence ratings assess the probability of the offeror successfully accomplishing the proposed effort based on the offerors past performance. In assessing past performance confidence, the evaluators will primarily rely on information provided by reports from the Contractor Performance Assessment Reporting System (CPARS). However, the Government may use data independently obtained from other government and commercial sources to be used in the evaluation process.

(b). The Government will evaluate the offerors ability to successfully perform the service based on demonstrated past and present experience under recent and relevant contracts. Relevancy is defined as contracts performed in the last three (3) years involving:

(i) Experience with Home Oxygen Service contracts

(ii) Demonstrated management of experienced/qualified professional staff and administrative support personnel

(iii) Demonstrated ability providing home oxygen services in a large geographical area with up to 7,600 patients.

(c). Recent past performance consists of contracts, completed or in progress, performed for Federal agencies and commercial customers within the last three (3) years from date of issuance of this solicitation. The purpose of the past performance evaluation is to allow the government to assess the offeror's ability to perform the effort described in this RFP, based on the offeror's demonstrated present and past performance. The assessment process will result in an overall performance confidence

assessment in accordance with the ratings defined below. Offerors with no relevant past or present performance history or the offeror's performance record is so limited that no confidence assessment rating can be reasonably assigned shall receive the rating "Unknown Confidence," meaning the rating is treated neither favorably nor unfavorably.

(d). The following relevancy definitions, apply:

(i). VERY RELEVANT: Past performance effort involved essentially the same scope and magnitude of effort and complexities this solicitation requires.

(ii). RELEVANT: Past performance effort involved similar scope and magnitude of effort and complexities this solicitation requires.

(iii). SOMEWHAT RELEVANT: Past performance effort involved some of the scope and magnitude of effort and complexities this solicitation requires.

(iv). NOT RELEVANT: Past performance effort involved little or none of the scope and magnitude of effort and complexities this solicitation requires.

(e). The process will result in an overall performance rating as defined below. This performance assessment represents the Government evaluation team's judgment of the probability of an offeror successfully accomplishing the proposed effort based on the offerors demonstrated past and present performance. The ratings are defined as follows:

Rating and Description:

**SUBSTANTIAL CONFIDENCE:** Based on the offerors performance record, the government has a high expectation that the offeror will successfully perform the required effort.

**SATISFACTORY CONFIDENCE:** Based on the offerors performance record, the government has an expectation that the offeror will successfully perform the required effort.

**LIMITED CONFIDENCE:** Based on the offerors performance record, the government has a low expectation that the offeror will successfully perform the required effort.

**NO CONFIDENCE** Based on the offerors performance record, the government has no expectation that the offeror will be able to successfully perform the required effort

**UNKNOWN CONFIDENCE** No performance record is identifiable or the offerors performance record is so sparse that no confidence assessment rating can be reasonably assigned.

#### **Factor 4 Price**

The offer should contain the offeror's best terms from a price standpoint. In determining the competitive range, price will be considered.

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, Key personnel, and Past Performance, (Factors 1, 2, and 3), it will be evaluated in terms of fairness and reasonableness. After an evaluation of the non-price factors has been completed, price will be compared against the non-price factor evaluation to determine the combination most advantageous to the Government.

Due to the possibility of split awards (see below) pricing will be evaluated at the station level (i.e. the total price for Alexandria will be considered separate from the total price for Biloxi and so forth). This evaluation of CLIN groups will be used in the determination of whether a single award for the stations other than Houston can be made at a fair and reasonable price.

**Split Award** – The Government intends to make a split award for this contract. The CLINS for Houston, TX (7001-7018) will be made as a single award. For the remaining CLINS (0001 – 6018), the Government will give preference to making a single award, but reserves the right to make split awards if it is in the Government’s best interest to do so considering technical capabilities, past performance and prices offered. If no offeror is deemed technically capable to service the entire group of stations other than Houston, the government will then consider making multiple split awards to ensure full coverage of the VISN. If one or more offerors are determined to be capable of servicing all the stations other than Houston, it is the Government’s intention to make a single award as long as the price offered is fair and reasonable and no other evaluation factors would otherwise remove the contractor from consideration for award.

In any case, each station shall be awarded in total to a single offeror (i.e. there will not be any awards made for only a portion of a station). The Government may award all seven (7) remaining stations to a single contractor, or may award any combination of stations to a contractor if it is in the best interest of the Government to do so. Each station is separately defined in the attached price schedule and the CLINs are separately defined as well (i.e. CLINs 0001-0018 belong to Alexandria, LA). At no time will any station’s CLINs be separated for award.

Any offeror who submits an “All or None” proposal may not be considered for a single award if it is determined to be in the best interest of the Government to award split awards.

## **E.10 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](http://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](http://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 .

(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.)

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

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

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

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

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

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

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

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

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

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

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

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

(l) *Taxpayer Identification Number (TIN)* (26 U.S.C. 6109, 31 U.S.C. 7701). (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 (1)(3) through (1)(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](mailto:CISADA106@state.gov).

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

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

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

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

(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 (FAPIS).

**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)