

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

1. REQUISITION NO. NONE
 PAGE 1 OF 67

2. CONTRACT NO. 3. AWARD/EFFECTIVE DATE 4. ORDER NO. 5. SOLICITATION NUMBER 36C10X18R0134 6. SOLICITATION ISSUE DATE 05-17-2018

7. FOR SOLICITATION INFORMATION CALL: a. NAME Brian Kadel brian.kadel@va.gov b. TELEPHONE NO. (No Collect Calls) 240.215.1653 8. OFFER DUE DATE/LOCAL TIME 05-29-2018 10:00AM

9. ISSUED BY Strategic Acquisition Center - Frederick Department of Veterans Affairs 321 Ballenger Center Drive, Suite 125 Frederick MD 21703
 CODE []
 10. THIS ACQUISITION IS UNRESTRICTED OR SET ASIDE: _____ % FOR:
 SMALL BUSINESS WOMEN-OWNED SMALL BUSINESS (WOSB) ELIGIBLE UNDER THE WOMEN-OWNED SMALL BUSINESS PROGRAM NAICS: 524292
 HUBZONE SMALL BUSINESS EDWOSB SIZE STANDARD: \$32.5 Million
 SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS 8(A)

11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED SEE SCHEDULE 12. DISCOUNT TERMS
 13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)
 13b. RATING N/A
 14. METHOD OF SOLICITATION RFQ IFB RFP

15. DELIVER TO Strategic Acquisition Center - Frederick Department of Veterans Affairs 321 Ballenger Center Drive, Suite 125 Frederick MD 21703
 CODE []
 16. ADMINISTERED BY Strategic Acquisition Center - Frederick Department of Veterans Affairs 321 Ballenger Center Drive, Suite 125 Frederick MD 21703
 CODE []

17a. CONTRACTOR/OFFEROR CODE [] FACILITY CODE [] 18a. PAYMENT WILL BE MADE BY Strategic Acquisition Center - Frederick Department of Veterans Affairs 321 Ballenger Center Drive, Suite 125 Frederick MD 21703
 CODE []
 TELEPHONE NO. DUNS: DUNS+4: PHONE: FAX:

17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER SEE ADDENDUM

19. ITEM NO.	20. See CONTINUATION Page SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
	Workers' Compensation Pharmacy Benefits Management Program Please see B.3 for Performance Work Statement All proposal intentions, questions and proposals shall be submitted in accordance with instructions to offerors in Section E. Proposal Intentions: 10:00AM, 05/21/2018 Questions: 10:00AM, 05/21/2018 Proposals: see block 8 above **Solicitation previously issued under 36C10XR0003** (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)

27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4. FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA ARE ARE NOT ATTACHED.
 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. FAR 52.212-5 IS ATTACHED. ADDENDA ARE ARE NOT ATTACHED

28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN _____ COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED 29. AWARD OF CONTRACT: REF. _____ OFFER DATED _____ YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN IS ACCEPTED AS TO ITEMS:

30a. SIGNATURE OF OFFEROR/CONTRACTOR 31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)
 30b. NAME AND TITLE OF SIGNER (TYPE OR PRINT) 30c. DATE SIGNED 31b. NAME OF CONTRACTING OFFICER (TYPE OR PRINT) 31c. DATE SIGNED

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SECTION B - CONTINUATION OF SF 1449 BLOCKS

B.1 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: **TBD**

b. GOVERNMENT: Contracting Officer 0010X
Strategic Acquisition Center – Frederick
Department of Veterans Affairs
321 Ballenger Center Drive, Suite 125
Frederick, MD 21703

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

3. INVOICES: See below.

The medical costs associated with the PBM Program will be paid for by Employee Compensation Fund. This fund is reimbursed annually through a "chargeback" process by the VA. The Contractor's revenue is generated through negotiated pricing arrangements with providers. The Contractor pays the provider directly and then invoices the Department of Labor (DOL)'s Office of Worker's Compensation Program (OWCP) at a rate that incorporates revenue for the Contractor, but is less than the Federal Employee Compensation Act (FECA) Fee Schedule located via the following link:

<https://www.dol.gov/owcp/regs/feeschedule/fee.htm>

The Contractor selected shall negotiate its own contract with pharmacies and providers for services that shall generate a discount for generic and brand named drugs, DME, and diagnostic services at a rate that is below the FECA fee schedule and agreed upon at award. The Contractor selected shall be responsible for assisting VA staff with achieving the goal of increasing program penetration, defined as the number of service items paid through the PBM versus the total items paid which is currently at 92 percent. The PBM Program will allow VA employees who are injured on-the-job to receive services at no direct cost to the VA. Participation in the PBM Program is voluntary and does not affect the employee's option of choosing their own provider as stipulated by the FECA. There will be no funds obligated under this contract. The contractor shall provide a monthly copy of all invoices submitted to the DOL's OWCP for reimbursement to the Contracting Officer, Contract Specialist, and Contracting Officer's Representative identified in Section B.1 of the contract/award.

4. GOVERNMENT INVOICE ADDRESS: See above.

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

AMENDMENT NO	DATE

B.2 SUBCONTRACTING COMMITMENTS--MONITORING AND COMPLIANCE (JUN 2011)

This solicitation includes VAAR 852.215-70, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors, and VAAR 852.215-71, Evaluation Factor Commitments. Accordingly, any contract resulting from this solicitation will include these clauses. The contractor is advised in performing contract administration functions, the CO may use the services of a support contractor(s) to assist in assessing contractor compliance with the subcontracting commitments incorporated into the contract. To that end, the support contractor(s) may require access to the contractor's business records or other proprietary data to review such business records regarding contract compliance with this requirement. All support contractors conducting this review on behalf of VA will be required to sign an "Information Protection and Non-Disclosure and Disclosure of Conflicts of Interest Agreement" to ensure the contractor's business records or other proprietary data reviewed or obtained in the course of assisting the CO in assessing the contractor for compliance are protected to ensure information or data is not improperly disclosed or other impropriety occurs. Furthermore, if VA determines any services the support contractor(s) will perform in assessing compliance are advisory and assistance services as defined in FAR 2.101, Definitions, the support contractor(s) must also enter into an agreement with the contractor to protect proprietary information as required by FAR 9.505-4, obtaining access to proprietary information, paragraph (b). The contractor is required to cooperate fully and make available any records as may be required to enable the CO to assess the contractor compliance with the subcontracting commitments.

B.3 PERFORMANCE WORK STATEMENT

The Department of Veterans Affairs (VA) employs a workforce of approximately 380,000 Federal civilian employees. There were approximately 15,000 VA cases under active case management in FY 17. These cases generated \$21,971 in prescription costs and \$37,553,546 in durable medical equipment (DME), Imaging, diagnostic services, and physical therapy costs on the VA Chargeback in FY 2017.

Based on an average of this historical data, the annual estimated cost is \$70,663,998, and the total estimated cost for a three-year contract is \$211,991,994. In Fiscal Year (FY) 2017, VA's Pharmacy Benefit Management (PBM) Program saved approximately \$1,750,000 in medical costs on the VA Workers' Compensation (WC) Chargeback Report. The current participation rate is 90 percent.

2. PURPOSE

The VA is seeking an expert and experienced Contractor, specializing in federal WC, to support the PBM Program or WC. The PBM Program will be a national program for VA employees who are injured on the job, and require prescription medications, durable medical equipment (DME) (walkers, crutches, canes, splints, muscle stimulators, etc.), physical therapy and diagnostic services (Magnetic Resonance Imaging (MRI), Computerized Tomography Scans (CT), Radiology, X-Rays, Electromyogram (EMG), and Nerve Conduction Velocity (NCV) studies. The function of the PBM is to provide a more efficient way for employees who are injured on the job to obtain the services they need, without the need to save receipts or file reimbursement forms.

3. PERIOD OF PERFORMANCE

The estimated contract Period of Performance (PoP) is for a 6-month base period starting on June 29, 2018, through December 29, 2018, with five 6-month option periods (three years total if all options are exercised).

4. ELIGIBILITY

There are two groups of VA employees eligible for coverage under this program.

1. Group 1 is comprised of those who have an existing claim under the FECA. These employees have fully adjudicated WC claims, and have coverage for all prescriptions that meet the OWCP requirements for their accepted injury.
2. Group 2 is comprised of new FECA claimants. These employees are newly injured on the job and have filed FECA claims pending adjudication by OWCP.

VA requires that the PBM Program provide a system for first-fill prescription coverage for employees who sustain a traumatic injury at work. The PBM Program will provide a pharmacy card system to these employees as part of the VA injury packet. Full prescription coverage for the work-related traumatic injury will be provided to all injured employees upon filing a FECA claim for traumatic injury. The VA anticipates 95 percent of these claims will be approved and all prescription costs covered by OWCP.

5. REQUIREMENT OBJECTIVES

The successful Contractor, at a minimum, shall demonstrate the following objectives to operate the PBM Program, to include, but not limited to:

1. Three years' experience in providing PBM services, Experience specializing in federal WC in conjunction with OWCP is required.

2. Can assign a single program manager full-time to support the VA account with at least five years' experience managing a PBM program. Federal PBM WC program experience is desirable.
3. Has national access to pharmacy chains and a majority of other pharmacies with a minimum of 65,000 network pharmacies during the contract term to meet the needs of VA.
4. Can securely transfer electronically all prescription information between participating network pharmacy, PBM, and OWCP. The contractor shall submit bills electronically to OWCP at point of sale.
5. At a minimum, has established a claims processing system that will conform to the National Council for Prescription Drug Programs (NCPDP) standards. The Contractor shall validate NPI number and DEA number to ensure physicians and pharmacies are registered. The Contractor shall be able to report NPI, DEA, and other related information to Government upon request.
6. At a minimum, can bill for prescriptions using the 11-digit National Drug Code (NDC) Number.
7. Can provide a pharmacy program to potentially eligible VA employees. This method is required by OWCP and limited to VA employees.
8. Has the ability to provide a voluntary mail order program option for any VA employee to utilize when requesting this service. The Contractor shall send out information packets to eligible VA employees to inform them of the voluntary mail order option and instructions for requesting this service.
9. Can administer an International Classification of Disease (ICD) 10 code in accordance with and as determined by OWCP.
10. Has the ability to provide a Review and Reporting (RR) Program to include the information necessary to process the bill. The contractor shall obtain access to and use various excluded provider lists (e.g., HHS excluded provider and similar state lists) to deny payment to providers included on those lists. Additionally, Government will provide a list of entities for which payments should not be made. The contractor shall neither pay (nor seek reimbursement for) pharmacy or DME bills for the entities identified by the contractor on these lists, by the Government, or as otherwise suspended or debarred. The contractor shall provide ongoing monitoring to ensure such providers are not part of the network.
11. Can implement a Drug Review and Reporting (RR) Program and must include at a minimum the following:
 - a. Detection of fraud and abuse patterns by providers or employees
 - b. Screening for drug/drug contraindications, drug/age, contraindications, drug/pregnancy contraindications
 - c. Duplicate prescriptions
 - d. Therapeutic overlap
 - e. Early refill
 - f. Prospective, concurrent, and retrospective RR program specific to, but not restricted to, opioids, letters of medical necessity, and excessive costs.
12. Can implement Formulary Administration and a therapeutics committee with ability to develop and administer one or more ICD-10 code based formularies in accordance with and as determined by OWCP.

13. Can provide PBM services to support about 380,000 employees of which about 18,000 employees receive prescriptions, durable medical equipment and diagnostic services as a benefit of the WC program.

14. In accordance with FECA law, any requests for DME may require up to two estimates. If DOL should require an estimate, the contractor shall provide the requested estimate to DOL. If DOL approves the contractor's submitted estimate and if the contractor is voluntarily selected by the claimant, the contractor shall be able to provide efficient, accurate, and timely processing of DME requests to the claimant.

15. Assure accurate and timely report inquiries. The contractor shall ensure that all bill, claimant, provider, pharmacy, drug, and DME-related data used for processing the bill may be shared with the Government.

16. Regular monitoring of rental to ownership conversion for DME, with 100% of the rental costs applied to purchase (Hearing aids are defined as DME for the purposes of the Federal Employees' Compensation Program.)

17. Can implement reimbursement for duplicate bill payment, monitor providers for billing outside of network, and capture billing outside of network.

18. Can bill for all DME items using definable and/or acceptable coding, and in accordance with OWCP regulations and procedures.

19. Can ensure contracted discount rate below FECA fee schedule is used for generic and brand-named drugs, compounded drugs, and specialty drugs. Diagnostic services and DME items, will achieve a cumulative savings rate below FECA fee schedule.

20. Has access to medical imaging and testing networks, chains or suppliers sufficiently to affect a minimum penetration rate, based on dollars, as mutually agreed to during contract term.

21. Can bill for medical imaging and testing services using Procedure Coding: Billings for medical services subject to the OWCP fee schedule must be identified according to the American Medical Association Physicians' Current Procedural Terminology coding scheme (CPT), the Healthcare Common Procedure Coding System (HCPCS), including the American Dental Association Codes (ADA), or designated OWCP generic codes. The applicable coding rules should be followed as appropriate, including the use of correct CPT and HCPCS modifiers. Use of non-specific or "unlisted" codes to identify procedures clearly described by a CPT code will be denied. OWCP now uses a correct coding initiative program that is based on the CMS model, and separately billed components of services also billed under comprehensive codes will be rejected.

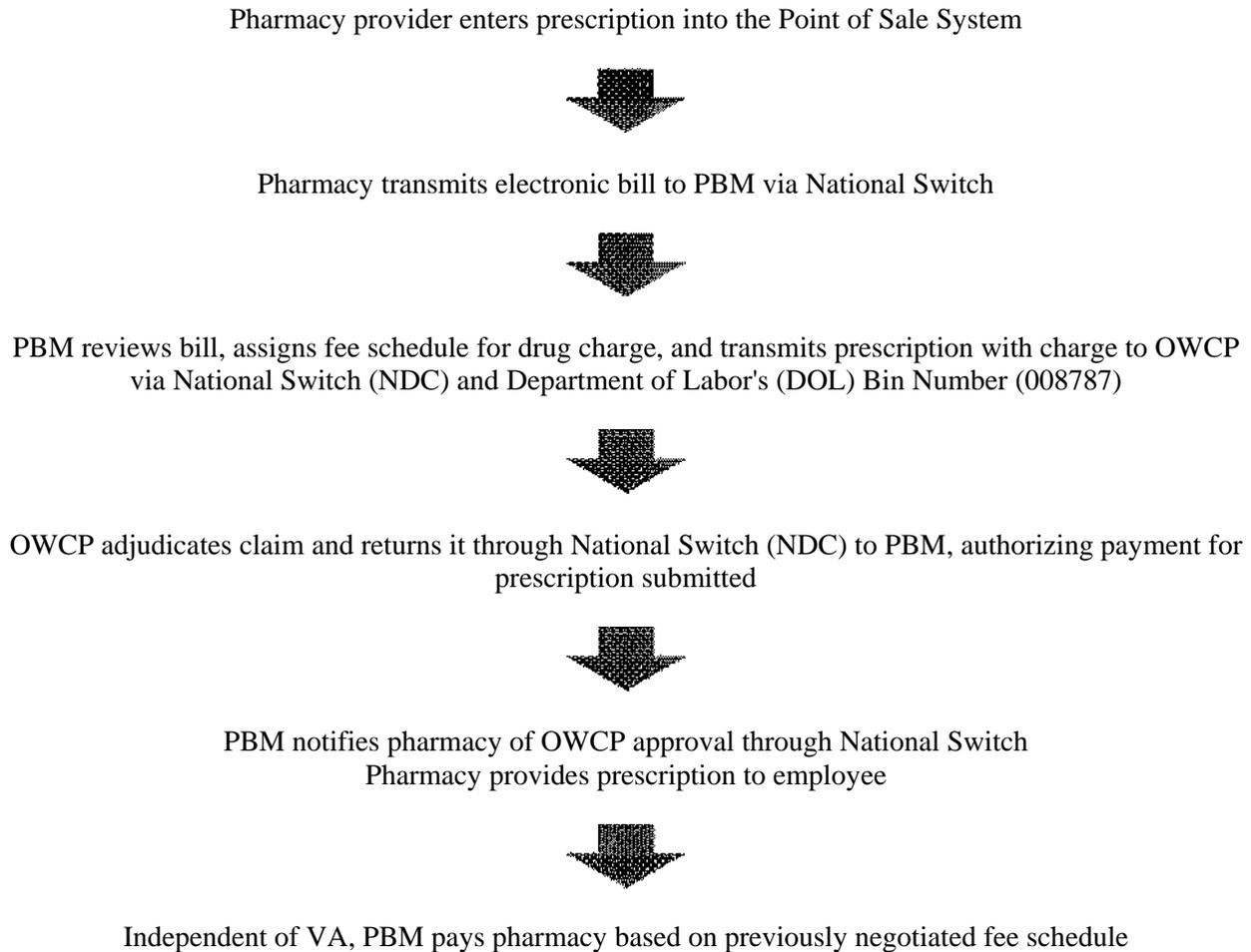
https://www.dol.gov/owcp/regs/feeschedule/fee/feeSept3017/Effective_September_30_2017_Read_Me_First.htm

22. Provide dedicated and security-cleared customer service representatives for VA job-injured employees to access 24/7 to enroll in the PBM, provide information regarding network pharmacies, claim, drug information, payments, and request authorizations for services via the ACS portal, etc.

23. Will institute performance metrics every 30 days, to measure the effectiveness of the contract.

24. Comply with The Health Insurance Portability and Accountability Act of 1996 (I-IIPAA), Public Law 104-191, and The Privacy Act of 1974 (Pub.L. 93-579, 88 Stat. 1896, enacted December 31, 1974, 5 U.S.C.. § 552a),

25. Able to provide a work flow like the one outlined below:



6. AGENCY RESPONSIBILITIES

Post Award Kick-Off Meeting

To better understand VA's organizational and cultural environment within five working days from the date of contract award, the VA will host a Post Award Kick-Off Meeting. The intent of the Post Award Kick-Off Meeting is not only to discuss the PWS, tasks and deliverables; accountability and responsibility to include the Quality Assurance Surveillance Plan (QASP) for each task and deliverable; risk identification and mitigation controls, but discuss how the Contractor will accomplish the tasks outlined in this Performance Work Statement, section 5.0 and 7.0. The VA will provide the Contractor with an orientation and briefing, as well as a range of documentation and material that will provide an overview of VA's organizational structure, mission, and goal, the assigned WC program staff, their locations, and their current duties and responsibilities.

This documentation will include:

- a. Organization charts, including the current roles and responsibilities for all the organizations within the Department, and
- b. Identification of the COR for technical program direction under the scope of work executed by contract.

Upon award of the contract, the agency will be responsible for the following:

- a. Notifying DOL OWCP within five days after contract award of the selected Contractor. The Contractor shall not perform Inherently Governmental Functions as prescribed in Federal Acquisition Regulation (FAR) 7.503.
- b. Except for the contract/discount price, such pharmacy services must be provided in accordance with OWCP rules for such services. No formularies or other restrictions can be imposed by VA or their contractor. VA bears responsibility to assist in the development of the claim; to assist the employee with the FECA claims process; and fully bears the ultimate responsibility for the entire financial costs of the FECA claim through the FECA chargeback process. The PBM program will be entirely voluntary for VA employees; VA will allow OWCP to review the program materials provided to employees and their claimants, and VA agrees to undertake the responsibility to provide claimants with information relative to the provision of the voluntary PBM program.

The VA COR will monitor contractor's performance to ensure quality, timeliness, and compliance with the contract terms. The contractor's performance will be reported on an annual basis to the Contractor Performance Assessment Reporting System (CPARS) by the VA COR and CO. Poor performance may result in issuance of a Contractor Discrepancy Report (CDR). The CO and COR will make use of information from CDRs, as well as any additional knowledge and information available to them with respect to the contractor's performance, to complete the CPARS.

The COR will review the progress reports and management information reports in comparison with bill pay file reports received from OWCP (bills that OWCP has approved/paid for VA claimants) to ensure all bills the contractor submits to OWCP for VA claimants are in accordance to the discounts and fees negotiated under this contract. Instances of over-payment due to incorrect billing or over-charges by the contractor shall be reported by the VA COR to OWCP and the CO immediately upon finding. Incorrect billing or over-charging will result in the issuance of a CDR to the contractor by the Contracting Officer, requiring a response from the contractor within the time period given in the CDR, and may impact assessment of the contractor's performance. The contractor agrees to correct and/or reimburse the Government for over-payments in a way determined appropriate by VA and OWCP.

7. PERFORMANCE OBJECTIVES TASK AND DELIVERABLES:

The Contractor shall provide the following tasks and deliverables in support of the Pharmacy Benefit Management Program contract:

Task 1: Post-Award Orientation and Kick-Off Meeting

The contractor shall work with the Government to coordinate and facilitate the kickoff meeting, provide meeting agenda and Work Plan that identifies all tasks, resources utilized (i.e., number, labor category, and description), deliverables to be completed, and the corresponding timetable/delivery dates.

Due: Within 10 business days after the contract award

Location: Department of Veterans Affairs Central Office, 810 Vermont, NW, Washington, DC 20420.

Tentative Participants: COR, Contracting Officer (CO)/Contract Specialist (CS), and/or VA's senior executives.

1a. Deliverable: Coordinate and facilitate the meeting, and provide meeting agenda within five business days after the contract has been awarded.

1b. Deliverable: Within five business days after the kick-off meeting, the Contractor shall submit the Work Plan in both hard-copy and electronic forms to the COR. Format requirements include

letter size paper (8 1/2" x 11"), Arial 12 font, created in a program compatible with Microsoft Office 2007 programs.

Task 2: Establishing a Contractor Program Manager

Appoint and electronically notify the COR of the name and contact information of its authorized Contractor Program Manager (PM) who shall be the primary interface with VA's COR on current PBM contract performance.

2a. Deliverable: Establish a Contractor Program Manager within 5 business days after contract award.

Task 3: Meetings with the VA COR/WC PM

Discuss the progress of the VA PBM with the VA COR, PM and VA management officials no less than quarterly, and as needed, per request by VA COR. These meetings will be scheduled by the COR. Scheduled meeting may take place in person, during on-site visits or via conference calls.

3a. Deliverable: Establish a meeting schedule within five business days after contract award.

Task 4: Quality Control

Develop and implement internal quality control procedures that produce timely, accurate, complete and relevant data that meets the full requirements of this performance work statement. An evaluation of the PBM system will be conducted will be conducted by the COR, as required to ensure that efficient and effective management processes remain in place and that data is handled in a secure manner and protected to meet all the FECA and Privacy Act requirements as well as VA information security requirements. Contractor shall ensure that the information is maintained consistent with all Privacy Act requirements, and shall ensure that its information security safeguards are consistent with OWCP policies and practices. Where applicable, the contractor shall ensure that data is handled in a manner that is compliant with security measures that HIPAA rules require.

4a. Deliverable: The Contractor shall develop and implement internal quality control procedures immediately upon award of contract. The Government will develop a Quality Assurance Surveillance Plan (QASP) after award.

Task 5: Progress Reports

Develop and provide monthly progress reports to the VA COR. The specific format and content of these reports shall be developed by the Contractor and approved by the VA COR. In general, the PBM reports should include summary information that enables VA management to make key decisions about the direction of the WC PBM. The scope, content, and format of these reports will be agreed upon between the VA COR and the Contractor Program Manager.

5a. Deliverable: The Contractor shall submit the management information reports in hard-copy and electronic final form to the COR monthly by the third Wednesday of the month. In the event of a holiday or closure due to an Executive Order, reports shall be due the next business day.

Task 6: Management Information Reports

Develop and provide monthly progress reports to VA COR submitted by the third Wednesday of the month. In the event of a holiday or closure due to an Executive Order, reports shall be due the next business day. The specific format and content of these reports shall be worked out by the VA COR and the Contractor's Program Manager.

In general, the Contractor shall include summary information that enables VA's management to make key decisions about the direction of the PBM Program. The Contractor shall submit a draft progress report template for review and approval by the VA COR. In addition to the monthly progress reports outlined above, the Contractor shall provide management information reports to the VA COR.

6a. Deliverable: Aggregate data and information on VA cases reflecting the number of cases in which PBM services were provided, clearly identifying the type of service (prescription, DME, or imaging).

6b. Deliverable: Periodic information on any cost savings achieved through the Contractor management of the PBM, including actual and cost avoidance savings on medical costs.

6c. Deliverable: Maintain, retain, and make available complete and accurate bill payment and financial reporting history.

6d. Deliverable: Provide timely and accurate reports including the tracking/monitoring of program utilization, cost savings, and performance metrics against program goals.

6e. Deliverable: Provide reports and statistics for quality reviews.

6f. Deliverables: Report cost savings and utilization at district and area level of the VA organization.

6g. Deliverable: Provide assigned staff to support the design, development, implementation, and enhancement of reports. Provide an Information System that includes at a minimum:

- a. Cost savings.
- b. Report or identification of unusual practices by treating providers.
- c. Proposed fee schedule revisions and actual cost savings.
- d. Comparative analysis of billed amount to paid amount.
- e. Produce hard copy and/or electronic format.
- f. Electronic transmission of reports to VA.
- g. Prepare non-standard reports if requested.

Task 7: Contractor Case Files Maintenance

7a Deliverable: Upon completion of the contract, all computer and paper files and records will be turned over to VA or destroyed at the direction of the VA COR.

Task 8: Help Desk

The Contractor shall provide dedicated and security-cleared customer service representatives for VA job-injured employees to access 24/7 to enroll in the PBM, provide information regarding network pharmacies, claim denials, claim, drug information, payments, and request authorizations for services via the Affiliated Computer Services (ACS), or other related portal.

8. INFORMATION SECURITY

The Contractor and its personnel shall be subject to the same Federal laws, regulations, standards, and VA policies as VA personnel regarding information and information system security. These include, but are not limited to, Federal Information Security Management Act (FISMA), Appendix III of the Office of Management and Budget Circular A-130, and guidance and standards available from the Department of Commerce's National Institute of Standards & Technology (NIST). This also includes the use of common

security configurations available from NIST's web site at <http://checklists.nist.gov>. To ensure that appropriate security controls are in place.

All information and material concerning Federal Workers' Compensation claims or data that the Contractor may acquire as a result of providing PBM services to VA, whether such claims or data are electronic, verbal or written, are covered by the Privacy Act System of Records (DOL/GOVT-1) and remain the property of DOL. The contractor must comply with all DOL rules and procedures regarding the protection of records in the DOL/GOVT-1 Privacy Act System of Records as published in the Federal Register. All information and material received from VA regarding claims or data shall be stored and maintained in the Contractor's secured system, separate from any other agency or company information.

The contractor shall not disclose, sell, market or utilize any information and material concerning Federal Workers' Compensation they acquire as a result of providing PBM services to the VA for any other purposes that are not explicitly included in this contract.

For any data not governed by the preceding two paragraphs, the contractor must also follow the procedures set forth in Section C.1 "VA Information and Information System Security/Privacy Requirements for IT Contracts".

9. APPLICABLE DOCUMENTATION, DEFINITIONS

All Contractor personnel shall follow and adhere to all the policies and procedures established by OWCP DOL Office of WC Programs for the Federal WC Program and Office of Occupational Safety and Health for the Federal OSH Program, contained in their regulations, in FECA, OSHA and in the Privacy Act. All technical terms used in this contract are as defined by DOL in its regulations or in the FECA and OSHA legislation. <http://www.dol.gov/owcp/dfec/procedure-manual.htm>

10. DELIVERABLE SCHEDULE

Task	Item Description	Quantity	Delivery Date
Task 1	Deliverable a: Coordination and Facilitation of Kick-Off Meeting and Meeting Agenda	One Kick-Off Meeting and Meeting Agenda.	Meeting agenda due within five business days after contract award. Kick-Off Meeting to be held within 10 business days after contract award.
Task 1	Deliverable b: Work Plan	One Work Plan in both hard-copy and electronic forms.	Work plan is due within five business days after the kick-off meeting.
Task 2	Deliverable a: Establish a Contractor Program Manager	One Contractor Program Manager Point of Contact	Identification of Contractor Program Manager is due within five business days after contract award.
Task 3	Deliverable a: Establish a Meeting Schedule	One Meeting Schedule.	Meeting schedule is due within five business days after contract award.
Task 4	Deliverable a: Quality Control Procedures	Quality Control Procedures	Contractor shall develop and implement quality control procedures immediately upon contract award.
Task 5	Deliverable a: Progress Reports	Twelve Reports	Due monthly to the COR by the third Wednesday of the month; next business day in event of holiday or closure.

Task 6	Deliverable a: Aggregate Data and Information on VA cases	As Requested	Due upon COR request.
Task 6	Deliverable b: Periodic Information on Cost Savings	As Requested	Due upon COR request.
Task 6	Deliverable c: Bill Payment and Reporting History	As Requested	Due upon COR request.
Task 6	Deliverable d: Tracking/Monitoring of Program Utilization, Cost Savings, and Performance Metrics Against Program Goals	As Requested	Due upon COR request.
Task 6	Deliverable e: Quality Review Reports and Statistics	As Requested	Due upon COR request.
Task 6	Deliverable f: Cost Savings and Utilization (District and Area Level of VA Organization)	As Requested	Due upon COR request.
Task 6	Deliverable g: Information System and Staff to Support Design, Development, Implementation, and Enhancement of Reports	One	Ongoing.
Task 7	Deliverable a: Turnover, or Destruction of Files	One	Due upon COR request.

11. KEY PERSONNEL

The Contractor shall assign sufficient experienced personnel who are qualified in the conduct of similar skills and who have a proven background and level of experience for the work required. Key project personnel include only those persons who will be assigned to this project and who will be the actual personnel responsible for management and performance in the event the proposal results in award. The contractor shall provide a full-time Program/Project manager to provide support the VA account; this PM must have at least five years' experience managing a PBM program. The Contractor shall designate a minimum of one other individual as key personnel, such as a clinical director, a head of reporting team, or VP which the Contractor deems essential to contract performance.

12. SUBSTITUTION OF KEY PERSONNEL

All Contractor requests for approval of substitutions hereunder shall be submitted in writing to the COR, and the CO at least 15 calendar days in advance of the effective date, whenever possible, and shall provide a detailed explanation of the circumstances necessitating the proposed substitution, a complete resume for the proposed substitute, and any other information requested by the CO necessary to approve or disapprove the proposed substitution. The résumés shall include the employee's education (including names of school and degree/certificate), specific experiences that are directly related to the requirements of this procurement, periods of employment, title and job descriptions, and level of responsibility. New personnel shall not commence work until all necessary security requirements have been fulfilled and resumes provided and accepted. The COR, and the CO will evaluate such requests and promptly notify the Contractor of approval or disapproval in writing. Any substituted personnel shall have the equivalent or better education, experience, and credentials than the personnel they may replace, subject to VA review and approval.

13. CONTRACTOR PERSONNEL

The Contractor shall be responsible for managing and overseeing the activities of all Contractor personnel, as well as sub-Contractor (if any) efforts used in performance of this effort. The Contractor's management responsibilities shall include all activities necessary to ensure the accomplishment of timely and effective support, performed in accordance with the requirements contained in the statement of work.

The CO, in consultation with the COR, will approve any request to substitute personnel to be used in conducting the review. Any proposed substitution shall be of personnel at comparable backgrounds as the person being replaced.

The CO may notify the Contractor and request immediate removal of any personnel assigned to the task order by the Contractor that are deemed to have a conflict of interest with the government or if the performance is deemed to be unsatisfactory. The reason for removal shall be documented and replacement personnel shall be identified within three business days of the notification. Employment and staffing difficulties shall not be justification for failure to meet established schedules.

SECTION C - CONTRACT CLAUSES

C.1 FAR 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)

C.2 FAR 52.212-4, Contract Terms and Conditions Commercial Items, ADDENDUM

This addendum is added to include tailored language to the basic clause. Substitute the following paragraph (l) for that in the basic clause.

(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. The Government reserves the right to terminate this contract due to the establishment of a mandatory national Workers' Compensation Pharmacy Benefits Management Program for Federal agencies by the Department of Labor (DOL), Office of Worker's Compensation Program (OWCP); if the Government is required to terminate this contract as a result, a notice of termination will be sent to the Contractor 30 days prior to the termination effective date. Subject to the terms of this contract, the Contractor shall be paid for any medical costs incurred by providers for fulfilling any orders prior to the termination effective date which the Contractor shall invoice to the Department of Labor (DOL)'s Office of Worker's Compensation Program (OWCP) in accordance with the contract invoicing instructions. The Government shall not be liable for any other costs or charges associated with the establishment of the contract, the performance of the contract, or the termination.

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.3 FAR 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 60 days.

(End of Clause)

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

(a) The Government may extend the term of this contract by written notice to the Contractor within 30 days; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 30 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 3 years.

(End of Clause)

C.5 VAAR 852.203-70 COMMERCIAL ADVERTISING (JAN 2008)

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

(End of Clause)

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

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

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

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

(End of Clause)

C.7 VAAR 852.215-71 EVALUATION FACTOR COMMITMENTS (DEC 2009)

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

(End of Clause)

C.8 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 Performance. 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.9 VAAR 852.270-1 REPRESENTATIVES OF CONTRACTING OFFICERS (JAN 2008)

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

(End of Provision)

C.10 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.

C.11 VA INFORMATION AND INFORMATION SYSTEM SECURITY/PRIVACY LANGUAGE

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 COTR.

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

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

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

c. Outsourcing (contractor facility, contractor equipment or contractor staff) of systems or network operations, telecommunications services, or other managed services requires certification and accreditation (authorization) (C&A) of the contractor's systems in accordance with VA Handbook 6500.3, Certification and Accreditation and/or the VA OCS Certification Program Office. Government-owned (government facility or government equipment) contractor-operated systems, third party or business partner networks require memorandums of understanding and interconnection agreements (MOU-ISA) which detail what data types are shared, who has access, and the appropriate level of security controls for all systems connected to VA networks.

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

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

f. VA prohibits the installation and use of personally-owned or contractor/subcontractor-owned equipment or software on VA's network. If non-VA owned equipment must be used to fulfill the requirements of a contract, it must be stated in the service agreement, SOW or contract. All of the security controls required for government furnished equipment (GFE) must

be utilized in approved other equipment (OE) and must be funded by the owner of the equipment. All remote systems must be equipped with, and use, a VA-approved antivirus (AV) software and a personal (host-based or enclave based) firewall that is configured with a VA approved configuration. Software must be kept current, including all critical updates and patches. Owners of approved OE are responsible for providing and maintaining the anti-viral software and the firewall on the non-VA owned OE.

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

5. 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 COTR 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.

6. 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 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.

7. SECURITY CONTROLS COMPLIANCE TESTING

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

8. TRAINING

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

- (1) Sign and acknowledge (either manually or electronically) understanding of and responsibilities for compliance with the *Contractor Rules of Behavior*, Appendix E relating to access to VA information and information systems;
- (2) Successfully complete the *VA Cyber Security Awareness and Rules of Behavior* training and annually complete required security training;
- (3) Successfully complete the appropriate VA privacy training and annually complete required privacy training; and
- (4) Successfully complete any additional cyber security or privacy training, as required for VA personnel with equivalent information system access.

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

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

C.12 FAR 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> (FAR) and
<http://www.va.gov/oal/library/vaar//index.asp> (VAAR)

FAR Number	Title	Date
52.203-17	CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS	APR 2014
52.204-16	COMMERCIAL AND GOVERNMENT ENTITY CODE REPORTING	JUL 2016
52.204-18	COMMERCIAL AND GOVERNMENT ENTITY CODE MAINTENANCE	JUL 2016
52.232-40	PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS	DEC 2013

(End of Addendum to 52.212-4)

C.13 FAR 52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (JAN 2018)

(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 (JAN 2018) (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)(i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Items (May 2008) (42 U.S.C.6962(c)(3)(A)(ii)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

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

(36) 52.223-11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (JUN 2016) (E.O. 13693).

(37) 52.223-12, Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (JUN 2016) (E.O. 13693).

(38)(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.

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

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

(40) 52.223-15, Energy Efficiency in Energy-Consuming Products (DEC 2007)(42 U.S.C. 8259b).

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

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

(42) 52.223-18, Encouraging Contractor Policies to Ban Text Messaging While Driving (AUG 2011)

(43) 52.223-20, Aerosols (JUN 2016) (E.O. 13693).

(44) 52.223-21, Foams (JUN 2016) (E.O. 13693).

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

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

(46) 52.225-1, Buy American—Supplies (MAY 2014) (41 U.S.C. chapter 83).

(47)(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.

(48) 52.225-5, Trade Agreements (OCT 2016) (19 U.S.C. 2501, et seq., 19 U.S.C. 3301 note).

(49) 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).

(50) 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).

(51) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (Nov 2007) (42 U.S.C. 5150).

(52) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov 2007) (42 U.S.C. 5150).

(53) 52.232-29, Terms for Financing of Purchases of Commercial Items (Feb 2002) (41 U.S.C. 4505, 10 U.S.C. 2307(f)).

(54) 52.232-30, Installment Payments for Commercial Items (JAN 2017) (41 U.S.C. 4505, 10 U.S.C. 2307(f)).

(55) 52.232-33, Payment by Electronic Funds Transfer—System for Award Management (Jul 2013) (31 U.S.C. 3332).

(56) 52.232-34, Payment by Electronic Funds Transfer—Other than System for Award Management (Jul 2013) (31 U.S.C. 3332).

(57) 52.232-36, Payment by Third Party (MAY 2014) (31 U.S.C. 3332).

(58) 52.239-1, Privacy or Security Safeguards (Aug 1996) (5 U.S.C. 552a).

(59) 52.242-5, Payments to Small Business Subcontractors (JAN 2017)(15 U.S.C. 637(d)(12)).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(x) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause 52.222-40.

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

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

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

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

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

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

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

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

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

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

(xix) 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).

(xx) 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.

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

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

(End of Clause)

SECTION D - CONTRACT DOCUMENTS, EXHIBITS, OR ATTACHMENTS

D.1 ATTACHMENT A: PAST PERFORMANCE QUESTIONNAIRE (PPQ)

Request for Proposal (RFP) No.: 36C10X18R0134

Title: Pharmacy Benefits Management Program

TO: Lindi Sylvester, Contracting Officer

AGENCY: VA, SAC-F

PHONE: 240-215-1685

E-MAIL: Lindi.Sylvester@va.gov

INFORMATION REQUEST: PAST PERFORMANCE

The Department of Veterans Affairs is currently in the process of awarding a competitive service contract. [CONTRACTOR NAME] has provided this Questionnaire to you for a reference regarding [CONTRACTOR NAME]'s record of past performance under Contract No. [CONTRACT #].

Send completed questionnaires to Lindi.Sylvester@va.gov and Brian.Kadel@va.gov.

NOTE TO OFFERORS: If the Questionnaire is provided for subcontractor's reference, the offeror's name below must include both the prime and subcontractor names (e.g. contractor X, who is a subcontractor to offeror Y for this solicitation).

Contractor's Name: _____

Name of Person Completing the Evaluation: _____

Telephone: _____ E-mail: _____

Title: _____

Company/Organization: _____

Please rate the contractor in each of the following areas. Note: there is room for comments where you deem remarks would be helpful to our evaluation.

- Not Applicable: N/A
- 1: Performance clearly below the contract performance standard or requirement
- 2: Performance occasionally does not meet minimum contract performance standard or requirement
- 3: Performance that meets the minimum contract performance standard or requirement
- 4: Performance that meets and occasionally exceeds the contract performance standard or requirement
- 5: Performance that almost always exceeds the contract performance standard or requirement

1. Overall quality/satisfaction	N/A <input type="checkbox"/>	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>
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Overall satisfaction with the Contractor's performance.

2. Delivery performance	N/A <input type="checkbox"/>	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>
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Delivery performance includes delivery consistency, on time performance, and flexibility in responding to emerging issues and implementing required solutions.

3. Satisfaction with the quality of service delivered	N/A <input type="checkbox"/>	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>
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Rate the effectiveness and applicability of the plans and strategies delivered and the actual implementation of those.

4. Satisfaction with problem resolution	N/A <input type="checkbox"/>	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>
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This includes the contractor's ability to solve problems, the speed in which they handle problems, and their effective delivery of resolutions.

5. Satisfaction with the quality of contractor personnel	N/A <input type="checkbox"/>	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>
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Rate the quality of the contractor's staff in executing the project work scope.

6. Have you issued a cure notice, show cause notice, suspension of progress payments or other letters directing the correction of a performance problem in the past 3 years?
 Yes No If Yes, please explain.
7. Have you terminated this contractor for default within the past 3 years, or are there any pending termination actions? Yes No If Yes, please explain.
8. Based on the contractor's overall performance, would you award them another contract?
 Yes No If No, please explain.
9. Have you discussed any adverse past performance problems with the Contractor and given them an opportunity to comment? Yes No Please explain.
10. Do you file past performance information in a database that the Contracting Officer may search?
Yes No Please explain.
11. If the contract had options, were those options exercised? Yes No Please explain.
12. What was the contract period of performance (i.e., when were services provided)?
13. What was the dollar value of the contract performed by the contractor?
14. Provide a brief description of the services provided by the contractor for this contract.

Please attach any past performance database reports or other material you deem appropriate to a full understanding of the Contractor's past performance by the evaluator. Please provide information on any adverse performance by the contractor and the corrective actions taken.

D.2 ATTACHMENT B: PRICE MODEL

See attached spreadsheet for Attachment B: Price Model.

D.3 ATTACHMENT C: CONTRACT DISCREPANCY REPORT

Contract/TO Number:	Contract/TO Section/Clause:	Date:
CO/COR Findings:		
CO/COR (sign and date):		
Contractor Response:		
Contractor Project Manager (sign and date):		
CO/COR Determination/Recommendation:		
CO/COR (sign and date):		
Contracting Officer Acknowledgement and Recommendation (sign and date):		

SECTION E - SOLICITATION PROVISIONS

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

In addition to information provided by FAR Clause 52.212-1 Instructions to Offerors – Commercial Items, the following instructions to offerors apply:

1. All proposal intentions, questions, and proposals shall be submitted via email to the Contracting Officer and the Contracting Specialist via email to lindi.sylvester@va.gov and brian.kadel@va.gov.
2. Offeror's intention to provide a proposal via email on or before close of business on the date specified on the SF1449, Block 20.
3. All questions from offerors regarding this solicitation shall be submitted on or before date/time specified on the SF1449, Block 20. Only written questions will be accepted. It is requested that all questions be combined into one Microsoft Word document per offeror.
4. Proposals shall be submitted to the Contracting Officer and the Contracting Specialist via email to Lindi.Sylvester@va.gov and Brian.Kadel@va.gov on or before date/time specified on the SF1449, Block 8. Proposals received after the due date/time will be considered late in accordance with FAR 52.212-1(f). **Failure to provide any of the required Volumes as indicated below will result in immediate elimination of the proposal from consideration.**

5. Format:

The submission shall be clearly indexed and logically assembled. Each volume shall be clearly identified and shall begin at the top of a page. All pages of each volume shall be appropriately numbered and identified by the complete company name, date and solicitation number in the header and/or footer.

Proposal page limitations are applicable to this procurement. The table below indicates the maximum page count (when applicable) for each volume of the offeror's proposal. All files will be submitted as a Microsoft Excel (.XLS), Microsoft Word (.doc, .docx), or Acrobat (PDF) file or compatible as indicated in the table. Page size shall be no greater than 8 1/2" x 11". The top, bottom, left and right margins shall be a minimum of one inch each. Font size shall be no smaller than 12-point. Times New Roman fonts are required. Characters shall be set at no less than normal spacing and 100% scale. Tables and illustrations may use a reduced font size not less than 8-point and may be landscape. Line spacing shall be set at no less than single space. Each paragraph shall be separated by at least one blank line. Page numbers, company logos, and headers and footers are not bound by the 12-point font requirement. Footnotes to text shall not be used. The use of hyperlinks in proposals is prohibited.

Pages in violation of these instructions, either by exceeding the margin, font or spacing restrictions or by exceeding the total page limit for a particular volume, will not be evaluated. Pages not evaluated due to violation of the margin, font or spacing restrictions will not count against the page limitations. The page count will be determined by counting the pages in the order they appear in the print layout view.

6. File Packaging:

All of the proposal files shall be submitted as individual files. Compressed (zipped) files shall not be accepted.

7. Content Requirements:

All information shall be confined to the appropriate file. The offeror shall confine submissions to essential matters, sufficient to define the proposal and provide an adequate basis for evaluation. Offerors are responsible for including sufficient details, in a concise manner, to permit a complete and accurate evaluation of each proposal.

8. Proposals submitted in response to this solicitation shall contain the following in separate volumes:

Volume Number	Evaluation Factor	File Name	Page Limitations
Volume I	Technical Capability	[Offeror Name] Tech.doc/.docx/.pdf	Technical Capability:25 pages List of Pharmacies per state: None Résumé: 2 pages per résumé
Volume II	Performance Risk	[Offeror Name] Perf.doc/.docx/.pdf	8 pages, excluding Past Performance Questionnaires (PPQs)
Volume III	Socio-Economic Consideration	[Offeror Name] SocioCon.doc/.docx/.pdf	3 pages
Volume IV	Price and Fee Administration	[Offeror Name] PriceandFeeAdmin.doc/.docx/.pdf Attachment B: Price Model.xls/xlsx	Narrative: 3 pages; SF1449, D.2 Attachment B:Price Model, SF30s, & terms and conditions and/or assumptions will not be included in the page count

The cover page, table of contents, and/or a glossary of abbreviations or acronyms will not be included in the page count of any Volume. No advertising materials are to be included in any volume. **Under no circumstances shall any pricing be included in any non-Price volume.**

a. VOLUME I - FACTOR 1: TECHNICAL CAPABILITY

The offeror shall submit a Technical Capability volume which shall address in detail how the offeror proposes to accomplish each of the PWS tasks in Section 7 of PWS, and how the offeror will meet all requirement objectives in Section 5 of the PWS.

Key personnel are required in Section 11 of the PWS. Résumés shall be submitted for the two key personnel proposed and include the employee's education (including names of school and degree/certificate), specific experiences that are directly related to the requirements of this procurement, periods of employment, title and job descriptions, and level of responsibility. The résumés must meet the minimum requirements.

Additionally, the offeror shall describe in detail the company's ability to meet the following:

1. Geographic ability and penetration:
 - a. List major chains your firm does business with, grouped by State.
 - b. List all other network pharmacies you do business with grouped by State
 - c. Total # of pharmacies in network.
 - d. Total # of network providers for DME and Medical Imaging Facilities

2. Electronic prescription and bill processing:
 - a. Define how your prescription processing will meet our workflow requirements as described in the Performance Work Statement.
 - b. Outline how your firm will handle the prescription cards and card-less prescription system to support the injured workers prescription needs.
 - c. Outline your payment process and how you would capture duplicate billings as well as overcharges by OWCP or network pharmacy/providers.
 - d. Describe your method for tracking and reporting the cost of the prescription from the AWP cost basis to the VA cost basis. Example: AWP list price - OWCP cost (FECA fee schedule) - Network RX billed = VA cost.

3. Mail Order: Describe how your prescription mail order process works and what VA is to expect will be provided.

4. Utilization Management, Audits, and Reporting:
 - a. Define your methodology for determination of cost savings to VA.
 - b. Describe how you plan to substitute generic for brand when allowable.
 - c. Describe what your approach and system will be for Drug Utilization Review.
 - d. Describe how you would work to capture prescription activity at unaffiliated network pharmacies.
 - e. Describe your frequency, criteria, and reporting process for pharmacy audits for your network pharmacies.
 - f. Outline your online access abilities for viewing reports, audit, and other work in process information.

5. Help Desk:
 - a. Describe your help desk support hours, services you provide and response time frame indicators for daily outbound and inbound calls.
 - b. Outline the core processes for your customer service center and describe your methods for resolving processing problems.

b. VOLUME II – FACTOR 2: PERFORMANCE RISK

The offeror shall submit a list of the last three contracts completed during the past three years or currently being performed that are similar to the solicitation size, scope and complexity which will be used to evaluate experience (skill and knowledge gained by performing services) and past performance (the degree to which a contractor satisfied its customers and complied with laws and regulations). The Government will make the determination of relevance (based on size, scope, and complexity of requirement). Contracts listed may include those entered into with the Federal Government, agencies of state and local governments and commercial concerns. Offerors may also submit past performance information regarding predecessor companies, key personnel who have relevant experience or subcontractors that will perform major or critical aspects of the requirement when such information is relevant to the acquisition. For the purposes of this solicitation, a major subcontract is defined as 20% of the total contract effort. Data concerning the prime contractor shall be provided first, followed by each proposed major subcontractor, in alphabetical order. This volume shall include the following information for each contract and/or subcontract listed, organized by the Sections outlined below.

Section I: Contract Descriptions

- a. Name of Contracting Organization
- b. Contract Number and Task Order Number, if applicable (for subcontracts, provide the prime contract number and the subcontract number)
- c. Contract Type
- d. Awarded Price/Cost
- e. Final or Projected Final Price/Cost
- f. Period of Performance or Delivery Dates
- g. Description of Requirement (Include detail on how the effort and experience is relevant to the requirements of this solicitation.)
- h. Contracting Officer's Name and Telephone Number
- i. Program Manager's Name and Telephone Number
- j. North American Industry Classification System (NAICS) Code

Section II: Performance

The offeror shall provide information on problems encountered on the identified contracts and the offeror's corrective actions. For any contracts/task orders that did not/do not meet original cost, schedule, or technical performance requirements, provide a brief explanation of the reasons for the shortcomings and any corrective actions taken to avoid recurrence. The offeror shall list each time the delivery schedule was revised and provide an explanation of why the revision was necessary. The offeror shall indicate if any of the contracts listed were terminated and the reasons for the termination.

Section III: New Corporate Entities

New corporate entities may submit data on prior contracts involving its officers and employees. In addition to the other requirements in this section, the offeror shall discuss in detail the role performed by such persons in the prior contracts cited. Information should be included in the files described in the sections above.

The Government is not required to contact all references provided by the offeror. Also, references other than those identified by the offeror may be contacted by the Government to obtain additional information that will be used in the evaluation of the offeror's past performance. The Government may consider past performance information obtained through other sources which is reasonably available and determined to be relevant. Past performance information obtained will be used for both the responsibility determination and best value decision.

Section IV: Past Performance Questionnaires (PPQs)

The offeror may submit a maximum of three Past Performance Questionnaires (PPQs) (See attachment A of this solicitation). The offeror shall distribute the PPQ found in the solicitation to a point of contact (POC) for each of the past performance references found in the above mentioned narrative. The Government will accept only one completed PPQ per reference and a maximum of five completed PPQs. The offeror shall instruct the POC at the referenced entity to return a copy of the completed PPQ directly to the CO and the CS at lindi.sylvester@va.gov; brian.kadel@va.gov NO LATER THAN THE CLOSING DATE OF THE SOLICITATION (inclusive of any closing date extensions granted via amendment).

c. VOLUME III – FACTOR 3: SOCIOECONOMIC CONSIDERATION

Contractors shall submit documentation demonstrating their socioeconomic status.

The order of preference will be:

- a) Service-Disabled Veteran-Owned Small Business (SDVOSB)
- b) Veteran-Owned Small Business (VOSB)
- c) Non-Veteran Owned business proposing to utilize SDVOSBs or VOSBs as subcontractors

1) Substantiating documents such as teaming agreements, mentor protégé agreements, and the like must be submitted with the quote. To receive credit as an SDVOSB or VOSB, a contractor must be listed as verified in the Vendor Information Pages (VIP) database at www.vip.vetbiz.gov/ at the time of submission of offer/proposal to receive contract awards under the Veterans First Contracting Program, in accordance with Veterans Affairs Acquisition Regulation (VAAR) 804.1103-70, and registered in System for Award Management (SAM) to verify the contractor has represented it meets the size standard for the North American Industry Classification System (NAICS) code applicable to the acquisition, as required by Federal Acquisition Regulation (FAR) 4.1103, to be eligible to participate in VA VOSB prime contracting and subcontracting opportunities programs to receive new contract awards.

2) Non-Veteran Owned contractors must state in their quotes the names of the SDVOSBs and VOSBs with whom they intend to subcontract and provide a brief description of the proposed subcontracts and the approximate dollar values of the proposed subcontracts. In addition, the proposed subcontractors must be registered in SAM as required by 48 CFR Subpart 4.11, to be eligible to participate in VA VOSB prime contracting and subcontracting opportunities programs to receive new contract awards.

3) To the maximum extent feasible, the contractor and any subcontractors shall comply with VA's VOSB, SDVOSB, socioeconomic, and other small business goals, including, but not limited to, 38 U.S.C. §8127.

4) The contractor shall agree, if awarded a contract, to use the SDVOSB or VOSBs proposed as subcontractors or to substitute one or more SDVOSBs or VOSBs for subcontract work of the same or similar value.

d. VOLUME IV – FACTOR 4: PRICE AND FEE ADMINISTRATION

There will be no funds obligated under this contract. The contractor shall be responsible for providing generic and brand-named drugs, DME, and diagnostic services at a rate that is below the FECA fee schedule and conducting fee practices in compliance with Federal Employees Compensation Act (FECA) schedule (see Section B.1 – CONTRACT ADMINISTRATION, paragraph #3 above).

Offerors shall complete and submit Attachment B: Price Model to include proposed discounts off the FECA Fee Schedule as overall rates for generic and brand-named drugs, DME, and diagnostic services. Offerors shall also submit a narrative which certifies the offeror will be compliant with all laws, regulations, and policies related to FECA, including the FECA Fee Schedule, state any dispensing fees, address any other relevant information regarding fee practices and proposed discounts. Attachment B: Price Model will be incorporated into the successful offeror's contract.

Offerors shall include signed SF 1449 and amendment(s) (SF 30s), if any, in the Volume IV. An authorized official of the prime contractor shall sign the SF 1449, amendment(s) and all certifications requiring signature. Additionally, any proposed terms and conditions and/or assumptions upon which the proposal is predicated shall be included in the Price volume. Offerors are hereby advised that any offeror-imposed terms and conditions and/or assumptions which deviate from the Government's material terms and conditions established by the solicitation, may render the offeror's proposal unacceptable, and thus ineligible for award.

E.2 FAR 52.212-2 EVALUATION-COMMERCIAL ITEMS (OCT 2014)

(a) The Government will award a single contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government.

1. BASIS FOR AWARD

The Government will award the contract resulting from this solicitation based on the best overall proposal that is determined to be the most beneficial to the Government (i.e., best value). For each proposal received, the Government will evaluate the following factors, where the non-price factors are listed in descending order of importance and when combined, are more important than price:

None-price:

- Technical Capability;
- Performance Risk; and
- Socio-Economic Consideration

Price:

- Price and Fee Administration.

Award will be using a trade-off process by the Contracting Officer between and among the factors to determine best value. Price and Fees will be evaluated for reasonableness of the total discounted prices and to the extent of verifying the offeror certifies compliance with Federal Employees Compensation Act (FECA) schedule and consideration of the proposed overall discounts off the FECA schedule, as outlined in Attachment B Price Model, for this contract. Offerors that do not comply with FECA schedule will not be determined acceptable or eligible for award.

Contents of the written proposals will be evaluated to determine the degree and extent to which the requirements set forth in the RFP are satisfied or exceeded. A proposal that is determined to be incomplete or fails to fully meet any material requirement may render a proposal unacceptable, thus ineligible for award. In addition, the evaluators will determine the degree to which the proposal exceeds the Government's requirements or offers additional benefits to VA and those proposals will be rated more highly.

The Government reserves the right to award with or without discussions based upon the initial evaluation of proposals. As such, offerors are encouraged to submit their best proposal upon initial submission.

2. TECHNICAL CAPABILITY EVALUATION

The Government will evaluate Technical Capability to determine the offerors ability to meet all requirement objectives in Section 5 of the PWS and accomplish each of the tasks in Section 7 of the PWS. In addition, the evaluation will consider the offeror's methods and approach to meeting the items detailed in the Technical Volume section above, including: Geographic ability and penetration; Electronic prescription and bill processing; Mail Order; Utilization Management, Audits, Clinical Expertise, and Reporting; and Help Desk.

The proposed key personnel will be evaluated to ensure that the offeror has proposed the required key personnel and that the résumés demonstrate experience consistent with the requirements of the PWS. Exceeding the requirements of the solicitation or providing specialized experience or qualifications relevant to the required services will be considered advantageous and be rated more highly.

3. PERFORMANCE RISK EVALUATION

This factor will include a separate evaluation of both Experience and Past Performance using the information provided in the Performance Risk volume. The evaluation will only consider references which are timely (defined as services performed within the last three years) and relevant (defined as services which, when considered as a whole, meet much of the size, scope and/or complexity compared to the PWS of this requirement). The Government will consider experience and past performance for the proposed prime contractor to be significantly more important than experience and past performance submitted for any other member of the contractor structure. For the purposes of evaluating prime contractor experience and past performance, the prime contractor is defined as the contractor identified in Block 17a of the SF 1449. Projects performed by contractors other than the contractor, such as teaming partners or subcontractors, will not be evaluated as prime contractor experience or past performance, unless those other contractors are part of a joint venture contractor as demonstrated by a signed joint venture agreement. For past performance which is timely and relevant, the evaluation will consider the following:

- a. Experience – Experience is the skill and knowledge gained by performing services. The information provided will be evaluated to determine the extent to which the contractor has previously provided relevant services which would meet or exceed the needs of this procurement. The Government will consider the level of risk associated with the contractor’s experience.
- b. Past Performance – Past performance is a measure of the degree to which a contractor satisfied its customers in the past and complied with Federal, State, and local laws and regulations. The Government will evaluate Past Performance Questionnaires (PPQs) to determine the quality of services previously provided, including aspects of cost, schedule and performance, such as quality of product or service, timeliness of performance or adherence to delivery schedules, and effectiveness in program management. The Government reserves the right to evaluate any other information available to the Government through the PPQs or other available resources. The Government will consider the level of risk associated with the contractor’s past performance. A contractor without a record of relevant past performance or for whom information on past performance is not available; the contractor may not be evaluated favorably or unfavorably on past performance.

The offerors’ proposal will be evaluated to determine the extent to which their performance demonstrates the likelihood of successful performance in providing requirements similar in size, scope, and complexity to this solicitation. The Government may choose to evaluate publicly available reports, and/or data from the Contractor Performance Assessment Reporting System (CPARS). The Government may use present and/or past performance data obtained from a variety of sources, not just those contracts identified by the offeror.

4. SOCIO-ECONOMIC CONSIDERATION EVALUATION

In accordance with VAAR 852.215-70, SDVOSB, and VOSB Evaluation Factors, the Government will assign full evaluation credit for an offeror (prime contractor) which is a SDVOSB or partial credit for a VOSB. Non-Veteran owned firms proposing to subcontract 10% or more of the contract value to a SDVOSB or 12% or more of the contract value to VOSB will also receive evaluation credit.

5. PRICE AND FEE ADMINISTRATION EVALUATION

The Government will evaluate prices, fees, and net discounted rates provided in Attachment B: Price Model and the accompanying narrative to verify the offeror certifies compliance with Federal Employees Compensation Act (FECA) schedule and consider the proposed discounts off the FECA schedule, including the total discount price proposed for each option period to determine if it is considered fair and

reasonable. Prices will be evaluated for completeness and reasonableness using techniques in FAR 15.404-1(b)(2). Greater net discounts off the FECA schedule will be considered more favorably.

(b) Options. The Government will evaluate prices, fees, and net discounted rates for all option periods, which includes rates applied to FAR clause 52.217-8 Option to Extend Services. As stated in the clause, if exercised, the continued performance of any services must be within the limits and at the rates specified in the contract, with the total extension of performance not to exceed 6 months; the evaluation of all rates within specified optional period thereby constitutes the evaluation of rates for this extension of services option. Evaluation of options shall not obligate the Government to exercise the option(s). The contractor agrees that should the Department of Labor (DOL), Office of Worker's Compensation Program (OWCP), establish a mandatory national Workers' Compensation Pharmacy Benefits Management Program for Federal agencies, the VA will be unable to exercise any remaining option periods.

(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.

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.

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

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

E.3 VAAR 852.215-70 SERVICE-DISABLED VETERAN-OWNED AND VETERAN-OWNED SMALL BUSINESS EVALUATION FACTORS (JUL 2016)(DEVIATION)

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

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

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

(End of Provision)

E.4 FAR 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 FAPIIS 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.5 FAR 52.216-1 TYPE OF CONTRACT (APR 1984)

The Government contemplates award of a single fixed price contract resulting from this solicitation.

(End of Provision)

(End of Addendum to 52.212-1)

E.6 FAR 52.212-3 OFFEROR REPRESENTATIONS AND CERTIFICATIONS— COMMERCIAL ITEMS (NOV 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—

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.

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).

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.

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

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

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

TIN: _____.

TIN has been applied for.

TIN is not required because:

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

Offeror is an agency or instrumentality of a foreign government;

Offeror is an agency or instrumentality of the Federal Government.

(4) *Type of organization*.

Sole proprietorship;

Partnership;

Corporate entity (not tax-exempt);

Corporate entity (tax-exempt);

Government entity (Federal, State, or local);

Foreign government;

International organization per 26 CFR 1.6049-4;

Other _____.

(5) *Common parent.*

Offeror is not owned or controlled by a common parent;

Name and TIN of common parent:

Name _____.

TIN _____.

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

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

(1) Government agencies are not permitted to use appropriated (or otherwise made available) funds for contracts with either an inverted domestic corporation, or a subsidiary of an inverted domestic corporation, unless the exception at 9.108-2(b) applies or the requirement is waived in accordance with the procedures at 9.108-4.

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

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

(ii) It is, is not a subsidiary of an inverted domestic corporation.

(o) *Prohibition on contracting with entities engaging in certain activities or transactions relating to Iran.*

(1) The offeror shall email questions concerning sensitive technology to the Department of State at CISADA106@state.gov.

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

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

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

(iii) Certifies that the offeror, and any person owned or controlled by the offeror, does not knowingly engage in any transaction that exceeds \$3,500 with Iran's Revolutionary Guard Corps or any of its officials, agents, or affiliates, the property and interests in property of which are blocked pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (see OFAC's Specially Designated Nationals and Blocked Persons List at <http://www.treasury.gov/ofac/downloads/t11sdn.pdf>).

(3) The representation and certification requirements of paragraph (o)(2) of this provision do not apply if—

(i) This solicitation includes a trade agreements certification (*e.g.*, 52.212–3(g) or a comparable agency provision); and

(ii) The offeror has certified that all the offered products to be supplied are designated country end products.

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

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

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

Immediate owner CAGE code: ____.

Immediate owner legal name: ____.

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

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

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

Highest-level owner CAGE code: ____.

Highest-level owner legal name: ____.

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

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

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

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

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

(2) The Offeror represents that—

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

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

(r) *Predecessor of Offeror.* (Applies in all solicitations that include the provision at 52.204-16, Commercial and Government Entity Code Reporting.)

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

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

Predecessor CAGE code: ____ (or mark “Unknown”).

Predecessor legal name: ____.

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

(s) [Reserved]

(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)