

SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, & 30						1. REQUISITION NO.		PAGE 1 OF	
2. CONTRACT NO.		3. AWARD/EFFECTIVE DATE		4. ORDER NO.		5. SOLICITATION NUMBER  36C25618Q9844		6. SOLICITATION ISSUE DATE	
7. FOR SOLICITATION INFORMATION CALL:		a. NAME LaTonya Mack				b. TELEPHONE NO. (No Collect Calls) 601-919-5196		8. OFFER DUE DATE/LOCAL TIME 07-13-2018 1pm	
9. ISSUED BY Department of Veterans Affairs G.V. (Sonny) Montgomery VAMC  1500 E. Woodrow Wilson Dr. Jackson MS 39216				CODE 00586		10. THIS ACQUISITION IS <input type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> HUBZONE SMALL BUSINESS <input checked="" type="checkbox"/> SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS <input type="checkbox"/> UNRESTRICTED OR <input checked="" type="checkbox"/> SET ASIDE: 100 % FOR: <input type="checkbox"/> WOMEN-OWNED SMALL BUSINESS (WOSB) ELIGIBLE UNDER THE WOMEN-OWNED SMALL BUSINESS PROGRAM NAICS: 621512 <input type="checkbox"/> EDWOSB <input type="checkbox"/> 8(A) SIZE STANDARD: \$15 Million			
11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED <input type="checkbox"/> SEE SCHEDULE		12. DISCOUNT TERMS		<input type="checkbox"/> 13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)		13b. RATING N/A		14. METHOD OF SOLICITATION <input checked="" type="checkbox"/> RFQ <input type="checkbox"/> IFB <input type="checkbox"/> RFP	
15. DELIVER TO Department of Veterans Affairs G.V. Sonny Montgomery VAMC Deliver To: Radiology- Miles 2200 Fort Roots Drive North Little Rock AR 72114				CODE 00586		16. ADMINISTERED BY Department of Veterans Affairs G.V. (Sonny) Montgomery VAMC A&MM Service (90C) 715 South Pear Orchard Road Ridgeland MS 39157			
17a. CONTRACTOR/OFFEROR CODE		FACILITY CODE		18a. PAYMENT WILL BE MADE BY CODE Department of Veterans Affairs Financial Service Center PO Box 149971 Austin TX 78714 9971 PHONE: FAX:					
TELEPHONE NO.		DUNS:		DUNS+4:		18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED <input type="checkbox"/> SEE ADDENDUM			
<input type="checkbox"/> 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER									
19. ITEM NO.	20. See CONTINUATION Page SCHEDULE OF SUPPLIES/SERVICES				21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT	
(Use Reverse and/or Attach Additional Sheets as Necessary)									
25. ACCOUNTING AND APPROPRIATION DATA See CONTINUATION Page						26. TOTAL AWARD AMOUNT (For Govt. Use Only)			
<input type="checkbox"/> 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4. FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA <input type="checkbox"/> 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. FAR 52.212-5 IS ATTACHED. ADDENDA <input type="checkbox"/> 28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN _____ COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED						<input type="checkbox"/> 29. AWARD OF CONTRACT: REF. _____ OFFER DATED _____. YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN IS ACCEPTED AS TO ITEMS:			
30a. SIGNATURE OF OFFEROR/CONTRACTOR					31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)				
30b. NAME AND TITLE OF SIGNER (TYPE OR PRINT)			30c. DATE SIGNED		31b. NAME OF CONTRACTING OFFICER (TYPE OR PRINT)			31c. DATE SIGNED	

## Table of Contents

<b>SECTION A.....</b>	<b>Error! Bookmark not defined.</b>
A.1 SF 1449 SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS.....	<b>Error!</b>
<b>Bookmark not defined.</b>	
<b>SECTION B - CONTINUATION OF SF 1449 BLOCKS .....</b>	<b>3</b>
B.1 CONTRACT ADMINISTRATION DATA.....	3
B.2 LIMITATIONS ON SUBCONTRACTING-- MONITORING AND COMPLIANCE (JUN 2011) .....	4
B.3 PRICE/COST SCHEDULE .....	4
ITEM INFORMATION .....	4
B.4 DELIVERY SCHEDULE .....	4
<b>SECTION C - CONTRACT CLAUSES .....</b>	<b>5</b>
C.1 52.212-4 CONTRACT TERMS AND CONDITIONS—COMMERCIAL ITEMS (JAN 2017) .....	9

## SECTION B - CONTINUATION OF SF 1449 BLOCKS

### B.1 CONTRACT ADMINISTRATION DATA

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

a. CONTRACTOR:

b. GOVERNMENT: Contracting Officer 36C256

Department of Veterans Affairs  
G.V. (Sonny) Montgomery VAMC  
1500 E. Woodrow Wilson Dr.  
Jackson MS 39216

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

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

3. INVOICES: Invoices shall be submitted in arrears:

- a. Quarterly ☐  
b. Semi-Annually ☐  
c. Other ☐

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

Department of Veterans Affairs  
Financial Service Center  
PO Box 149971  
Austin TX 78714 9971

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

AMENDMENT NO	DATE

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

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

## B.3 PRICE/COST SCHEDULE

### ITEM INFORMATION

ITEM NUMBER	DESCRIPTION OF SUPPLIES/SERVIC ES	QUANTIT Y	UNI T	UNIT PRICE	AMOUNT
0001		1.00	EA		
	100222 Upgrades CV LOCAL STOCK NUMBER: 100222 CV				
				<b>GRAND TOTAL</b>	

## B.4 DELIVERY SCHEDULE

ITEM NUMBER	QUANTITY	DELIVERY DATE
-------------	----------	------------------

0001

1.00

**STATEMENT OF WORK (SOW)**

as of July 12, 2018

<b>Contract Number:</b>	<i>(completed by the CO at time of award)</i>
<b>Task Order Number:</b>	<i>(completed by the CO at time of award if a TO)</i>
<b>IFCAP Tracking Number:</b>	586-18-3-047-0119
<b>Follow-on to Contract and Task Order Number:</b>	<i>Not Applicable</i>

**1. GENERAL INFORMATION:****a. Contracting Officer Representative (COR):**

Name:	<i>(completed by the CO at time of award)</i>
Section:	<b>DIAGNOSTIC SERVICES (114)</b>
Address:	<b>1500 E. WOODROW WILSON DR.</b>
Phone Number:	<b>601-364-1332</b>
Fax Number:	<b>601-364-1589</b>
E-Mail Address:	<i>(completed by the CO at time of award)</i>

**b. Contract Title:**

Dual Fluoro Flat detector system for current Interventional Radiology in E-7.

**c. Background:**

Diagnostic Services at the Jackson VAMC needs a dual fluoro option for our Philips FD 20 Interventional Imaging equipment. This option allows Interventional Radiologists better image interpretation and positioning capabilities that we currently have. Several IR procedures could be enhanced with this option.

**d. Scope:**

The contractor shall enable the license that allow this feature to work and all supporting software and hardware to activate the dual fluoro option.

The Contractor shall provide all necessary training to the designated VA employees on how to use the installed equipment after completion of installation. The equipment, all of its accessories, and supplies that come with the

equipment shall be brand new. The equipment, all necessary services related to removal, mobile unit usage, setup, configuration, installation, and training services are hereinafter collectively referred as "Deliverables"..

- e. **DATE REQUIRED:** No later than 45 Days after Receipt of Order (ARO) from the Contracting Officer.

## 2. PRODUCT SPECIFICATIONS AND FEATURES:

This option provides an additional fluoro channel in parallel to the default fluoro channel. The Dual fluoroscopy mode is selected via the Xper module. The trace subtracted fluoro image will be displayed on the exam monitor, the non-subtracted fluoro image is displayed on the reference monitor. In Dual Fluoro mode, The fluoroscopy image on the exam monitor can be zoomed digitally with a factor 2, providing a larger view of the region of interest for complex interventions. The fluoro zoom function is controlled via the Xper module.

## 3. DELIVERY, SHIPPING AND HANDLING, WORK HOURS, COORDINATION, SETUP AND TRAINING with Jackson VAMC 586 Medical Center – Safe Patient Handling & Mobility Coordinator with Clinic Staff for Setup and Training Services:

- Delivery Timeframe: All Deliverables shall be completed based on a schedule of work provided after award, within 45 Days of Contractor's Receipt of Order from the Contracting Officer.
- Shipping and Handling: Contractor shall be responsible for the shipping and handling of all the equipment.
- Coordination: The Contractor shall be required to coordinate with Jackson (586) VAMC: Coordinator at 601-364-1332 immediately after award to coordinate installation. Failure to do so may delay payment.
- Setup and Training: The Contractor shall be required to coordinate with Jackson (586) VAMC: Coordinator at 601-364-1332 immediately after award to coordinate scheduling the setup and training services.

## 4. SECURITY REQUIREMENT:

The contractor is expected to follow security protocol to include personnel security, property security and facility security.

## 5. TESTING AND CERTIFICATION:

Upon completing installation of the system, the Contractor shall notify the COR in writing that the system is ready for acceptance testing, and that it meets all requirements as specified. Submission of this notification of system readiness shall be accomplished by the contractor prior to the beginning of the scheduled Government Acceptance Test.

## **6. GOVERNMENT ACCEPTANCE TEST:**

Contractor shall perform the Government Acceptance Test in the presence of the COR for proof-of-performance. The Government Acceptance Test shall be performed at a mutually agreed date and time. Upon completing the Government Acceptance Test successfully, Contractor shall document the success of this Government Acceptance Test and furnish a copy to the COR before Contractor's Representative departs the VA premises. Payments can be withheld until final acceptance by the Government.

- 7. WARRANTY REPAIR SERVICE:** See specific criteria for equipment items included in this SOW. The contractor shall provide a two year warranty on all parts and labor. The warranty shall include all travel and shipping costs associated with any warranty repair. The contractor shall provide a plan reflecting availability of vendor for follow-up, to include but not limited to: repairs, adjustment, sling replacement after installation is complete; and address after hours and weekend response during warranty period. Availability should be within a 48 hour time span.

- B. EQUIPMENT MANUALS:** The Contractor shall furnish User and ~~service~~ Manuals and reference guides for equipment items included in this SOW.

## **9. PRODUCT MODIFICATION, REMOVAL OR RECALL:**

If any product awarded under this requirement requires modification, is removed or recalled by the Contractor or manufacturer, or if any required modification, removal or recall is suggested or mandated by a regulatory or official agency, the following steps will immediately be taken by the Contractor or manufacturer:

- a. Notify the Contracting Officer, in writing, by the most expeditious manner possible. Provide two copies of the notification which shall include, but not be limited to the following:
  - (1) Complete item description and/or identification, order numbers from customers, and the contract number assigned as a result of an award on this Statement of Work.
  - (2) Reasons for modifications, removal or recall.

- (3) Necessary instructions for return for credit, replacement or corrective action.
- b. Provide the above information to all agencies and VA Facilities who purchased the product. The Contracting Officer shall be provided a copy of the notification in b. above, and a list of all agencies and/or VA facilities notified
- c. Contractor shall be responsible for any costs associated with the above.

#### 10. OTHER PERTINENT INFORMATION OR SPECIAL CONSIDERATIONS:

- **Business Hours:** All work and delivery shall take place during clinical hours (Monday through Friday, 8:00 am to 4:30 pm excluding weekends and federal holidays). Federal holidays include the following: New Year's Day, Washington's Birthday, Martin Luther King's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving, Christmas, and any days declared by the Government as holidays.
- **Use of Cell Phones:** The use of cellular phones is permitted within certain areas of the medical center. All contractors are required to ask the Contracting Officer (CO) if there is doubt in the usage of cellular phones.
- **Smoke Free Facility:** The Overton Brooks VA Medical Center is a smoke free facility. Smoking is prohibited inside any building except the smoking shelter on the facility grounds. Smokers are allowed to smoke outside the 25 foot boundaries from every entrance/exit. Violators shall be removed from the premises permanently.

#### 11. INVOICE AND PAYMENT:

Contractor shall invoice the Jackson (586) VA Medical Center in arrears only after the completion and acceptance of all Deliverables identified in this Statement of Work. Invoice shall be properly prepared and sent to the VA Financial Service Center at: P.O. Box 149971. Austin, Texas 78714- 8971.

The invoice shall be properly prepared in accordance with FAR 52.212-4, contain sufficient details, and at a minimum, include the following details: (1) IFCAP Obligation Number (2) Contract Number (3) Description of the supply/service rendered (4) Billing period/date when the supply/services were rendered and (5) Invoice number and date

Payments will be made in accordance with the Prompt Payment Act out of the Government annual appropriated funds obligated in an order which will be issued after the contract is awarded.



## SECTION C - CONTRACT CLAUSES

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

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

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

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

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

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

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

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

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

(g) *Invoice.*

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

(i) Name and address of the Contractor;

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

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

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

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

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

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

(i) *Payment.*—

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

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

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

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

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

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

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

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

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

(D) Contractor point of contact.

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

(6) *Interest.*

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

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

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

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

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

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

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

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

(A) The date fixed under this contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The schedule of supplies/services.

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

(3) The clause at 52.212-5.

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

(5) Solicitation provisions if this is a solicitation.

(6) Other paragraphs of this clause.

(7) The Standard Form 1449.

(8) Other documents, exhibits, and attachments

(9) The specification.

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

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

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

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

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

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

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

(u) *Unauthorized Obligations.*

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

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

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

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

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

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

(End of Clause)

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

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

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