

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

1 REQUISITION NO. PAGE 1 OF 102

2 CONTRACT NO. **36W79719D0001** 3 AWARD/EFFECTIVE DATE **Nov 1, 2018** 4 ORDER NO. 5 SOLICITATION NUMBER **36W79718R0003** 6 SOLICITATION ISSUE DATE **12-15-2017**

7 FOR SOLICITATION INFORMATION CALL a NAME **Robert C. Mills, Sr. Contract Specialist** b TELEPHONE NO. (No Collect Calls) **708-786-5147** 8 OFFER DUE DATE/LOCAL TIME **02-01-2018 3:00 PM CST**

9 ISSUED BY Department of Veteran Affairs National Acquisition Center National Contract Services, Bldg 37 1st Avenue, One Block North of Cermak Hines, IL 60141  
 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 **311993**  HUBZONE SMALL BUSINESS  EDWOSB SIZE STANDARD  SERVICE DISABLED VETERAN OWNED SMALL BUSINESS  6(A) **500 Employees**

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

15 DELIVER TO CODE Direct to Government Facilities Refer to Attachment H 16 ADMINISTERED BY CODE Department of Veteran Affairs National Acquisition Center National Contract Services, Bldg 37 1st Avenue, One Block North of Cermak Hines, IL 60141

17a CONTRACTOR/OFFEROR CODE **795140433** FACILITY CODE U.S. Foods, Inc. 9399 WEST HIGGINS ROAD ROSEMONT, IL 60018 18a PAYMENT WILL BE MADE BY CODE Government Facilities Refer to Attachment A 18b SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED:  SEE ADDENDUM

19 ITEM NO	20 SCHEDULE OF SUPPLIES/SERVICES	21 QUANTITY	22 UNIT	23 UNIT PRICE	24 AMOUNT
	PSN 84 Subsistence Prime Vendor Program for all VA Medical Center (including Veteran Canteen Services retail food service) and participating Other Government Agencies.  Refer to Price Schedule (Attachment C) and Section E - Instructions to Offerors  (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) **\$ 1,264,000,000.00**

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 *[Signature]* 31a UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER) *[Signature]*

30b NAME AND TITLE OF SIGNER (TYPE OR PRINT) **STEVE GILBERMAN, EVP** 30c DATE SIGNED **2/1/2018** 31b NAME OF CONTRACTING OFFICER (TYPE OR PRINT) **Robert C. Mills Sr. Contract Specialist** 31c DATE SIGNED **OCT 4, 2018**

**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 36W79718R0003 6. SOLICITATION ISSUE DATE 15-Dec-17

7. FOR SOLICITATION INFORMATION CALL: a. NAME Robert C. Mills, Sr. Contract Specialist b. TELEPHONE NO. (No Collect Calls) 708-786-5147 8. OFFER DUE DATE/LOCAL TIME 1-Feb-18 @ 3:00PM CST

9. ISSUED BY Department of Veteran Affairs National Acquisition Center National Contract Services, Bldg 37 1st Avenue, One Block North of Cermak Hines, IL 60141 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: 311999  HUBZONE SMALL BUSINESS  EDWOSB SIZE STANDARD: 500 Employees  SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS  8(A)

11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED  SEE SCHEDULE 12. DISCOUNT TERMS Net 15 days 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 CODE Direct to Government Facilities Refer to Attachment A 16. ADMINISTERED BY CODE Department of Veteran Affairs National Acquisition Center National Contract Services, Bldg 37 1st Avenue, One Block North of Cermak Hines, IL 60141

17a. CONTRACTOR/OFFEROR CODE FACILITY CODE 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER  18a. PAYMENT WILL BE MADE BY CODE Government Facilities Refer to Attachment A PHONE: FAX:

18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED  SEE ADDENDUM

19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES See CONTINUATION Page	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
	FSC 89 - Subsistence Prime Vendor Program for all VA Medical Centers (including Veteran Canteen Services retail foodservice) and participating Other Government Agencies. Refer to Price Schedule (Attachment C) and Section E - Instructions to Offerors  (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 30b. NAME AND TITLE OF SIGNER (TYPE OR PRINT) 30c. DATE SIGNED 31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER) 31b. NAME OF CONTRACTING OFFICER (TYPE OR PRINT) Robert C. Mills Sr. Contract Specialist 31c. DATE SIGNED

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**SECTION B - CONTINUATION OF SF 1449 BLOCKS****Solicitation Definitions**

<b><u>TERM</u></b>	<b><u>DEFINITION</u></b>
<b>Branded Label Products</b>	Manufacturer labeled products; i.e. Kellogg's, Campbell's, Pillsbury, Stouffer's, Sara Lee, Dixie, Solo, etc.
<b>Contracting Officer (CO)</b>	Government officials with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The CO for this contract is located at the Department of Veterans Affairs, National Acquisition Center (NAC), in Hines Illinois. The CO serves as the liaison between the SPV and all customers participating under this program.
<b>Contracting Officer Technical Representative (COR )</b>	An individual, including a contracting officer's technical representative (COTR), designated and authorized in writing by the contracting officer to perform specific technical or administrative functions.; serves as a liaison between the SPV and the VA NAC Contracting Officer. The COR has no authority to make any changes to terms and conditions of this contract or commit the government.
<b>Commissary</b>	Consolidated Production Unit  Produces food for multiple serving sites.
<b>Electronic Data Interface (EDI)</b>	A technique for electronically transferring and storing formatted information between computers utilizing established and published formats and codes, as authorized by the applicable Federal Information Processing Standards.
<b>Electronic Fund Transfer (EFT)</b>	Any transfer of funds, other than a transaction originated by cash, check, or similar paper instrument, that is initiated through an electronic terminal, telephone, computer, or magnetic tape, for the purpose ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes Automated Clearing House transfers, Fedwire transfers, and transfers made at automatic teller machines and point-of-sale terminals. For purposes of compliance with 31 U.S.C. 3332 and implementing regulations at 31 CFR part 208, the term "electronic funds transfer" includes a Government- wide commercial purchase card transaction.
<b>Exclusive Brand Product</b>	Products marketed under trademarks owned or licensed by SPV contractor or its affiliates, including but not limited to products for which SPV contractor or its affiliates have exclusive marketing and/or sales authority, property rights in a proprietary product formula, or have supplied raw materials or packaging for the finished product.
<b>Hazard Analysis Critical Control Point (HACCP)</b>	Method of identifying processes and procedures that affect food safety. Website for further information: <a href="http://www.FSIS.USDA.gov">www.FSIS.USDA.gov</a>

<b><u>TERM</u></b>	<b><u>DEFINITION</u></b>
<b>Honor System Receiving</b>	Delivery is made to appropriate receiving site and facility documents number of cases received but delays checking product quality until after driver leaves. Facility must call PV within 24 hours to declare any product problems and obtain appropriate credit.
<b>IHS</b>	Indian Health Service – An Agency within the Department of Health and Human Services which is responsible for providing Federal Health Services to American Indians and Alaska Natives.
<b>Kill or Fill</b>	Terminology utilized to identify a line item in an order that must be provided at the requested quantity, or be cancelled. This terminology indicates that a partial order is not acceptable to the customer and that the line item must be completely cancelled if the full quantity is not going to be delivered.
<b>NFS</b>	VA Nutrition & Food Services – SPV Contract Program Office
<b>Ordering Officer (VA Only)</b>	Non-warranted federal employees designated in writing as ordering officers by the NAC contracting officer. Ordering Officers are authorized to place orders through the SPV contract and are precluded from negotiating prices, and precluded from negotiating/changing contract terms.
<b>Private Label Products</b>	Distributor develops product specifications and contracts with manufacturer to produce product to those specs and label products with distributor name.  Private labeled products are also known as Exclusive Brands.
<b>Product Categories</b>	SPV contract products categorized by type of storage and major commodity type. Categories in the SPV contract are used to refine product characteristics for the best pricing mechanism. The solicitation contains 11 SPV product categories.
<b>Product Standardization</b>	Special pricing agreements for SPV contract customers from manufacturer/supplier or VA Approved Supplier for SPV- committed purchase of manufacturer/supplier’s product line. Agreements are fixed prices or allowances that reduce product price before distribution price is added.
<b>SKUs</b>	Stock Keeping Units – general term that refers to the number of items stocked within a warehouse.
<b>SPV</b>	Subsistence Prime Vendor – A business concern that serves as the major provider of a broad range of food and foodservice products. A prime vendor is responsible for maintaining adequate inventory levels and delivering products to participating facilities. A Subsistence Prime Vendor is also referred to as “contractor” and/or “prime vendor”.
<b>Supplements (Dietary)</b>	Food products specially formulated and commercially prepared to be used to supplement or replace normally eaten meals. Includes oral and tube feeding products, spike sets, feeding pumps, and thickener products and pre- thickened beverages. Products and prices determined by separate VA National Contract.

<b><u>TERM</u></b>	<b><u>DEFINITION</u></b>
<b>Standardization User Group (SUG)</b>	A committee made up of dietitians throughout the VA representing each VISN. The SUG represents the VAMC customer base and is considered the Subject Matter Experts (SME) for the SPV program within the VA.
<b>Manufacturer/Supplier</b>	Is a manufacturer or supplier who takes possession or title of the product to further be supplied to the Prime Vendor. This is either the initial manufacturer of the product, or a 3rd party supplier in which Prime Vendor procures the product from.
<b>VA Approved Supplier</b>	Any “ <b>non-manufacturing supplier</b> ” who does not take possession or title of the product must first be approved by the NAC Contracting Officer as a valid supplier and listed in the contract in order for their price to be considered as a valid Landed Product Price (delivered selling price) to the SPV. (Refer to Statement of Work Section 14.A.1)
<b>Value Added Services</b>	Services offered by the Contractor which are not required by the contract but are offered to customers of the contract at no additional charge. These services may include, but are not limited to, educational materials or classes on proper food handling and sanitation, Chef presentations to staff on food production techniques, menu planning programs or suggestions and recipes, management programs that provide benchmarking costs and services, IT integrations with third party software, conducting food shows that help showcase manufacturer/supplier or VA Approved Supplier products and discount opportunities, educational programs that address Joint Commission recommendations for patient feeding, acting as a resource for food industry trends and changes, regional and national marketing, freight management, procurement leverage, consolidated warehousing, quality assurance, and performance-based product marketing.
<b>VCS</b>	Veterans Canteen Service – established by law as the VA provider of retail foodservice and other common use items.
<b>VISN</b>	Veterans Integrated Services Network – 18 regional, geographic areas of multiple healthcare facilities that provide services to Veterans.

### Price Factor Definitions

<u>TERM</u>	<u>DEFINITION</u>
<b>Allowances</b>	Deductions from product price lists or invoices.
<b>Cost Recovery Fee (CRF)</b>	Administrative fee for using the VA SPV contract. Collected by the SPV (included in Distribution price) from the SPV customers. It is equal to 0.5% of total purchases, and submitted quarterly to VA in accordance with the contract terms.
<b>Cost Avoidance</b>	The difference between the standard product price, without any deviated pricing agreements, and the deviated product price.
<b>Customer Rebate</b>	Credit offered by manufacturer/supplier or VA Approved Supplier to incentivize SPV customer to purchase particular products and/or increase volume of these products purchased. May be offered as price reductions “off invoice customer rebate allowance” for a period of time or as a coupon type program with rebate to customer after purchase period ends. A rebate that is reflected in the amounts shown on the face of the Supplier invoice (referred to as “Off-invoice Customer Rebate Allowances”) or designated by the manufacturer/supplier or VA Approved Supplier to be passed on to the Government is processed as an Off- Invoice Customer Rebate Allowance, a credit through PV or check from manufacturer/supplier or VA Approved Supplier to customer’s facility fund control point based on variety of circumstances; i.e. manufacturer pricing incentives, coupons, healthcare allowances, etc. Used to encourage purchase of specific product(s) or quantities.
<b>Delivered Price (DP) (calculation)</b>	Price from SPV to SPV contract customer.  Formula to be used by SPV that delineates the customer price. Landed Product Price + (LPP X DSF) = Delivered Price (DP)
<b>Distribution Fee (DSF)</b>	Fee, fixed percentage of product price based on product category, area of country (VISN), and period of performance (i.e. contract base or applicable option year). Pricing element offered and awarded under SPV contract.
<b>Deviated Pricing Agreements</b>	Discounted pricing agreements based on committed volume purchasing with manufacturer/suppliers for SPV customers through the PV. Also see product standardization.
<b>First Point of Distribution</b>	The warehouse owned by the PV and the point of receipt for products obtained from manufacturers and other suppliers that will be distributed to the customer. First Point of Distribution is considered to be the contractor’s basis for Landed Product Price. (Refer to Landed Product Price definition)
<b>Final Point of Distribution</b>	SPV’s local warehouse designated to service customer.

<b><u>TERM</u></b>	<b><u>DEFINITION</u></b>
<b>Landed Product Price (LPP)</b>	<p>Landed Product Price (LPP) shall be the manufacturer/supplier or VA Approved Supplier's delivered selling price to the SPV contractor's first point of distribution. If the supplier does not meet the definition of manufacturer/supplier then it must be approved by the NAC Contracting Officer and listed in the contract as a VA Approved Supplier in order to be a valid supplier.</p> <p>If the delivered selling price is other than FOB destination or the manufacturer/supplier's invoiced 3rd party freight charge, the SPV contractor may include a transportation fee (see definition) to the contractor's first point of distribution.</p>
<b>Off Invoice Customer Rebate Allowance</b>	Deduction shown on the face of the manufacturer/supplier's or VA Approved Supplier's invoice off product price as it is invoiced to the SPV (not the contract customer invoice).
<b>Off List Allowance – Deviated Pricing</b>	<p>List price is the manufacturer/supplier's product price list that incorporates all product production and distribution costs and is usually based on quantity purchased; i.e. truckload, pallet, case, etc. as delivered to distributors.</p> <p>Deviated pricing agreements with manufacturer/suppliers or VA Approved Suppliers are usually based on fixed prices or allowances off list price.</p>
<b>Product Price</b>	Price of product (per invoice) from manufacturer/supplier or VA Approved Supplier to the SPV's first point of distribution.
<b>Substantive Value</b>	<p>Products that require additional handling from manufactured state to customer use. They may be products that are repackaged to smaller sizes or different containers, or products altered in flavor or structure. Products that are considered to have substantive value may include but are not limited to: marinated or mixed products; sliced, diced, or ground meats or prepared fruits or salads; produce, meat or coffee beans that have been repackaged by SPV, or split cases of products; one gallon from case of four salad dressings, or one watermelon from crate, etc. Excludes but is not limited to additional marketing costs. NAC Contracting Officer must determine if price changes are warranted or if a non-manufacturing supplier is valid based on substantive value change.</p>
<b>Transportation Fee</b>	A transportation fee utilizing the SPV contractor's freight management systems may be added onto the Landed Product Price if the delivered selling price to the SPV by the manufacturer/supplier or VA Approved Supplier is other than FOB Destination or if the manufacturer/supplier includes a 3 <sup>rd</sup> party freight charge on its invoice to the SPV. Examples of freight management activities may include negotiated manufacturer/supplier or VA Approved Supplier pick-up allowances, backhauling allowances and 3rd party freight intermediary carriers.

## **SCOPE OF CONTRACT**

The Department of Veterans Affairs (VA) has identified a need for a national prime vendor contract for the purchase and distribution of subsistence commodities and ancillary supplies for all 168 VA Medical Centers (VAMC), 187 Veteran Canteen Service Retail Cafeterias (VCS), and some (121) Other Government Agencies (OGAs). Facilities may be added or removed during the performance period upon mutual agreement between the Government and the SPV contractor. An award will be made to the Contractor who offers and provides the best value for price and identified technical factors.

The Government intends to award a hybrid contract where contract purchases of certain product categories will be subject to the Requirements clause (FAR 52.216-21) and others will be subject to the Indefinite Delivery-Indefinite Quantity (IDIQ) clause (FAR 52.216-22). All prices awarded under the contract will be Firm Fixed-Price. For VA Medical centers only, this is a requirements type contract subject to FAR 52.216-21 for categories I – VI, and VIII, and an IDIQ type contract for categories VII, IX, X, and XI. For VCS and OGA customers, this is an IDIQ contract and FAR 52.216-22 applies to all product categories.

The estimated annual requirement value for the base year, product and distribution price included is approximately \$235,000,000. Total expected contract value for the base year and all four option years is \$1,264,000,000 with a minimum contract amount guaranteed of \$152,000 made under the product categories that are subject to FAR 52.216-22. Minimum and Maximum contract value does not apply to the categories that are subject to FAR 52.216-21.

VAMC and VCS purchases for FY2016, were approximately \$165,309,000 and OGA purchases were \$67,129,000, product and distribution price included. OGA customers include State Veteran Homes, Department of Defense (DoD) Healthcare facilities, Indian Health Service (IHS) facilities, Job Corp and other Federal Agencies. The contract maximum amount for all IDIQ product categories for VA and OGA sales under this contract shall not exceed \$2,000,000,000 for entire performance period, inclusive of the base year and all four option years.

The VA Medical Centers have been grouped into eighteen (18) geographical areas referred to as Veteran Integrated Service Networks (VISNs) (See Attachment A). OGAs are assigned to a VA VISN corresponding to their geographical location and are listed in a separate section of attachment A. All participating customers must be serviced by this contract and only one contract will be awarded for all VISNs. Offerors may use multiple distribution centers within a VISN however; a single distribution center for all facilities within a VISN is preferred. Each facility within a VISN must be serviced by only one distribution center unless otherwise mutually agreed to by the parties.

Attachment A lists each customer and shows amongst other things, Customer Name, Customer Type and the VISN each customer is currently assigned to; the attachment also indicates the average number of deliveries per week required for each facility. If a facility has “0 deliveries” that indicates less than one delivery per week. Deliveries have been minimized (1 to 3 per week for most facilities) in order to optimize contract pricing. A minimum value of \$1,000 per delivery is required for all but a few very small locations shown on Attachment A. Small locations are designated on Attachment A. The minimum value per delivery for smaller facilities is \$750. Smaller facilities may request every other week deliveries, if appropriate. Larger facilities may require additional deliveries (as listed in Attachment A) or may be incentivized to decrease the number of weekly deliveries, refer to Attachment C, Price

Schedule. Many VAMC and VCS locations utilize the same receiving dock for both food deliveries but are not designated on this attachment; therefore actual drops could be less than the number listed.

SPV customers utilize all varieties of food production and food service; from commissary cooking and shipping, blast chill and retherm cooking, convenience minimal preparation cooking, to cook serve preparation. Service may be in dining room setting, table or cafeteria style, preassembled tray delivery or room service. Menus are usually three week cycles offering set meals and a variety of selection capabilities. These varied systems mandate a wide variety of food types, packaging, and food service supplies.

Attachment A also lists the estimated dollar amount for annual purchases from this contract for each VAMC and VCS facility. These figures are based on actual dollars spent in FY 2016 for all food items, which includes the distribution price, except fresh bread, fresh milk and some produce plus approximately 50% of their non-food (flatware, china, serving utensils, disposable products, etc.) purchases.

Fresh bread is usually not available from a broadline food distributor so it is excluded from this contract. Fresh milk is optional from this contract, however can be purchased through the PV if local contracts are not available. The purchase of Fresh Milk are not subject to the requirements clause, however VA may elect to purchase through the PV. Attachment C, Price Schedule, includes an optional category for the offeror to propose pricing for fresh produce, as fresh produce is not always available for facilities to purchase locally.

Prices for the majority of the dietary supplement products included in this solicitation have been established separate from this solicitation through a national mandatory VA Dietary Supplement contract. Each of the Dietary Supplement contracts is available to all SPV customers at the established contract price with no change in terms and conditions based on customer type. The products and F.O.B Destination awarded prices will be provided to the SPV contractor directly by the dietary supplement contractors for distribution through this contract. Dietary Supplement contract holders will be required to establish their own agreements and bill back processes with the PV. It is the responsibility of the dietary supplement contract holders to report sales to the NAC contracting officer and submit the cost recovery fee to the VA. The SPV contractor shall not add the SPV distribution price (fee) or the additional cost recovery fee to the awarded Dietary Supplement items. Quarterly sales reporting for the Dietary Supplement products shall not be included in the SPV quarterly sales report to the NAC Contracting Officer.

For Category IX, products are made available through the GSA Janitorial and Sanitation Supplies (JanSan)Purchase Channel (a Strategic Sourcing program available to Federal agencies.) . VA facilities will be utilizing the PV as a back-up source if product is not available through the Jan/San program, Ability One, and a small vet-owned business as their primary source. See <https://www.gsa.gov/portal/category/107587> for more information. All purchases made from those programs/small businesses would be independent of the SPV program.

For Category X, products are made available through AbilityOne national Procurement List. See [http://www.abilityone.gov/procurement\\_list/index.html](http://www.abilityone.gov/procurement_list/index.html) for more information. All mandatory sources of supply products through either the GSA Janitorial and Sanitation program or the AbilityOne programs have their own ordering instructions and can be found on their respective websites. VA facilities will be utilizing the PV as a back-up source if product is not available through Ability One or a small vet-owned business as their primary source. All purchases of those products would be independent of the SPV program.

The VA encourages teaming arrangements for small and medium-size businesses. Teamed contractor groups must have one national coordinator/contact with contracting authority over disposition of this contract, have the ability to coordinate for the VA deviated pricing agreements with manufacturers and enforce implementation (stocking and pricing) of these agreements with all “teamed” offerors, and must be able to provide consolidated management reports (broken down by SPV customer type) of total purchases off this contract from all product manufacturers/suppliers. The “teamed” offeror must provide the same computer ordering system to all SPV customers. Each VISN must be serviced by one contractor. Each facility shall have contractor and distribution center identified in the proposal. (Attachment D) All contract requirements; technical, past performance, and pricing shall be provided for each contractor incorporated into a teamed proposal.

The initial base period of this contract will be from November 1, 2018 through October 31, 2019, with 4, one- year options. The contract effective date is November 1, 2018. Each customer facility will provide product usage data to the SPV at least sixty days prior to the contract starting date. All order guide development and electronic order procedure training for facility personnel must be completed by the SPV prior to the contract starting date. 90% of product requirements must be available to the facilities no less than 5 days prior to the contract effective date. Fill-rate requirements must be met within 90 days of the contract effective date.

## **STATEMENT OF WORK**

### **1. PRODUCT LINE AND AVAILABILITY**

Products being procured are commercially available products; no specific product characteristics are defined in this contract but the SPV contractor is expected to carry a full, commercial product catalog with detailed product descriptions and enough diversity and inventory to meet the healthcare needs and economic constraints of each facility. Products shall include but are not limited to:

- A variety of food types (i.e. shelf stable, refrigerated, frozen, raw, precooked) including nutrient modified (reduced/low fat and sugar, reduced sodium and increased fiber/whole grains), consistency modified (i.e. pureed, thickened foods, ground/diced meats, fruits and vegetables), allergy-free (i.e. free of wheat, dairy, soy, peanut, tree nut, egg, shellfish and fish) and sustainable (i.e. organic, antibiotic free and locally sourced) foods in all product categories.
- Multiple product choices for each food type and grade level, allowing for various price levels.
- A variety of both branded and private label products.
- A variety of pack sizes; individual portion packs, small/medium multi-serve packaging and large bulk pack.
- A broad inventory of supply products (paper, plastics, foil, etc.), chemicals (cleaning and sanitation), and small food service equipment (scoops, ladles, tongs, can openers, pans, trays, etc.) including those that support “Green” environmental practices.

The SPV contractor must be able to provide an uninterrupted source of supply in sufficient quantities to meet the estimated requirements for the base contract period and four option years, which may be exercised. Sixty days prior to the contract effective date, each participating customer will provide the SPV contractor a list of products and weekly/monthly usage requirements to ensure appropriate

inventory is available at start-up. This data will be provided to the SPV contractor whenever a facility implements a new menu cycle, generally with 30 day notice, and/or any other food production changes that would impact product purchases. The SPV contractor must be able to react to emergency situations with advanced additional orders and/or additional or replacement products as quickly as conditions allow.

Sufficient inventories (SKUs) shall be maintained by the SPV contractor to minimize the need for substitutes and/or “special orders”. When inventory is temporarily unavailable substitutions of appropriate (like) products shall be offered to the customer within the ordering process (customer may pre-select appropriate substitute if possible). No substitute shall be made without prior approval by the customer. Substituted items must be of equal or higher quality (i.e. same or better grade; nutritional value; pack size, etc.) and equal or lower in price whenever possible. Inventory that has been permanently discontinued shall be communicated within three days of when item is considered no longer available.

Any SPV customer can request stocking of any product they require with a usage of at least 12 cases per month. Usage minimum can be met by aggregate of all SPV customers serviced out of the designated warehouse. The SPV contractor shall bring into its warehouse new products (either part of standardization program or not) within thirty days of customer request if usage requirement is met.

If a 12 case/month customer usage is not possible, products from a deviated pricing agreement manufacturer/supplier or one who is an established customer to SPV contractor shall be processed as a “special order”. A simple, easily implemented, and timely process shall be in place to allow for special orders on a one time or continued need basis. Process shall include a tracking/communication mechanism that allows SPV contractor to communicate the order status to the customer. Order invoice shall be complete within ten days of receiving order unless otherwise agreed upon by the facility COR and SPV contractor. If the requested product manufacturer/supplier is new to the SPV contractor, the manufacturer/supplier must meet the PV’s requirements and certifications before any new product can be procured. This process shall not exceed 60 days without notification to the customer of reason for delay.

Monthly reoccurring special order products that do not meet the minimum stocking requirements shall be addressed at the customer quarterly business reviews to determine if any additional accommodations can be made between the PV and customer.

## **2. PRODUCT QUALITY & SAFETY**

All products offered must be in accordance with their designated quality level or specification as listed in the product description in the electronic catalog and on product labels. The SPV contractor must have an established process for verifying product quality level when received into stock and throughout the product life cycle. Food safety is a priority for healthcare foodservice and, as such, the SPV contractor shall maintain exacting policies and procedures that ensure all their suppliers and their own staff procure properly grown, manufactured, packaged and delivered products. Manufacturers/suppliers must certify via their corporate HACCP plan their manufacturing and distribution facilities comply with all applicable state and federal health regulations FDA Food Code Standards, and comply with Good Manufacturing Practices (GMPs) as outlined by the U.S. Food and Drug Administration and found in 21 CFR Part 110.

The SPV contractor shall have procedures in place for inspecting products according to HACCP (Hazard Analysis Critical Control Point) guidelines upon receipt from suppliers for quality, temperature, and any evidence of pest infestation or tampering. The SPV contractor shall warehouse and transport products in appropriate environments and under security precautions.

The SPV contractor shall have a process in place with product manufacturer/supplier for timely and complete reporting of any product quality or safety problems. Recall procedures of any problem products must be clear and easily acted upon and communicated by the SPV contractor to customer.

Product descriptions within the SPV contractor's product catalog must provide characteristic details, and be accurate and current to product numbers and inventory. Any products received by customers that do not comply with the product description will be returned for credit and/or replacement. Any repeated occurrences will be reported to the NAC Contracting Officer for further corrective action.

The SPV contractor shall ensure that products have adequate shelf-life upon delivery to customers as described herein. Products with limited shelf-life requirements such as refrigerated products, fresh salads, shell eggs, juices, bases, meats, etc. must have at least half of their normal shelf life remaining upon customer receipt. If a perishable product has a less than seven day normal shelf life, at least four days must be remaining upon delivery. Other food items shall have at least thirty days of remaining shelf-life upon delivery except for the nationally contracted nutritional supplements and tube feedings, which must have at least sixty days of shelf life remaining at time of delivery to the facility. Products with less than the expected shelf-life remaining may be offered to a facility to meet an emergent need; however, facility CORs will provide approval prior to delivery. The SPV contractor shall have a monitoring system to track product shelf-life including checking at time of order selection.

Facilities will contact the SPV contractor to return for credit any products that upon receipt (within 24 hours of delivery) or upon opening package, thawing, or cooking:

- are of unacceptable quality or temperature,
- are outdated or have insufficient shelf-life,
- have visible or concealed damage or odor
- have been recalled,
- were shipped in error (item or quantity),
- are from an unacceptable supplier or a manufacturer/supplier from a non-TAA country

CORs will coordinate with the SPV contractor whether to return rejected product to the SPV contractor on the next scheduled delivery or to destroy product. Any product not picked up by the SPV contractor by the agreed date will be destroyed by the customer and the SPV contractor will be billed for any charges incurred in the destruction of the rejected products.

The SPV contractor shall maintain product traceability from farm through manufacturer, and distributor to customer. This information is vital to the recall process for problematic products. The SPV contractor shall be able to provide country of origin and/or manufacturer of any given product ordered. The SPV contractor shall provide a listing of products available from local (defined by distributor and area of the country) suppliers and farmers upon request by the customer.

The SPV contractor will, where possible, incorporate a sustainability plan which may include recycling and availability of locally grown and organic products. The SPV contractor will, where possible, use packing materials which have the least impact on the environment when manufactured or disposed.

### **3. PROCUREMENT CAPABILITIES**

Best value acquisition of products is expected with SPV contractor forecasting requirements, monitoring markets for expected best pricing periods, utilizing full truckload product purchases to the greatest extent possible, and leveraging transportation costs (fleet management). Effective and efficient purchasing methods shall be utilized by the SPV contractor to minimize price increases and maximize price decreases. The SPV contractor must be able to demonstrate staffs experience and success in the procurement and distribution of healthcare food.

### **4. ELECTRONIC ORDERING SYSTEM**

The SPV contractor shall provide a real-time electronic ordering system that includes product information, purchase histories, invoice history, capability to link to other commercially available software used in the foodservice industry, and management reports. Prices displayed at time of order must be the prices listed on confirmed order and invoice except for variable weight products (meats, poultry, seafood and produce) where confirmed product price per pound would be the same but case weight of product may vary due to natural size or cut. Electronic ordering process shall be web-based, shall be user friendly and shall provide: full catalog access with detailed item descriptions (specifications and nutritional values), customized order guides, contract and deviated agreement pricing, identification of special VA priced products, substitution capabilities, and order confirmation immediately following order submission. Training of facility staff on the SPV contractor's electronic ordering process must be completed prior to the contract effective date. The SPV shall provide training on the electronic ordering process to facility employees upon request or for any SPV system enhancements during the contract period. No more than one (1) training per quarter shall be requested by each customer location. The SPV shall provide access to a manual for use at each facility. Updates to the system affecting ordering processes shall be relayed to designated CORs and to the NAC contracting officer prior to implementation.

The Prime Vendor must have the capability to interface with the foodservice software for both price files and orders, including Computrition. The Prime Vendor shall be able to provide a price file to the user for import into the foodservice software to interface updated product prices. The Prime Vendor shall also provide the capability to the user for the user to import an order export file from the foodservice software into the Prime Vendor's electronic ordering tool so that an order built in the foodservice software can be interfaced to the Prime Vendor where it can be submitted electronically.

The SPV contractor shall coordinate all order guide creation and updates with each facility. Timely price updates and product additions are necessary to streamline the ordering process. The SPV contractor shall provide all participating customers with alternate procedures for placing orders when the electronic ordering system is not functioning. Utilization reports of the online ordering system shall be kept by the PV and available upon request by the NAC Contracting Officer.

Just in time deliveries are required by customers to minimize facility inventory. Facilities may place orders one to five days in advance of delivery, with inventory reserved at time of order or not less than twenty-four hours prior to delivery, with additions or deletions possible up to 3:00 PM local time

the day prior to delivery. Normal order cut-off time can be no earlier than 3:00 PM local time; any earlier cut-off time will need to be mutually agreed upon between the SPV contractor and facility COR. If inventory is not reserved at time of order placement, shortages and potential substitutes must be reported to the ordering facility twenty-four hours prior to delivery. All orders shall be processed as “fill or kill”. Substitutions may be offered to the customer but must be accepted by the customer before delivery. No back orders for unfulfilled orders (out of stock, mispicks, or damaged product) are allowed.

## **5. MANAGEMENT REPORTS**

The SPV Contractor shall have a robust reporting system that allows for Individual Facilities, VISN Leaders, VCS & OGA Customer Managers and the NAC Contracting Officer the ability the analyze all aspects of SPV business operations. All reports shall be downloadable into an Excel format for customer use.

### Individual Customer Facility

Individual facilities shall, at a minimum, be able to generate the following monthly reports with capability to roll-up quarterly and annually as needed for their specific location.

- Invoice History
- Account Status
- Purchase History
- Credit History
- Cost Avoidance
- Deviated pricing program compliance
- Any report that supports a performance metric requirement

### VISN Leaders and VCS & OGA Customer Managers

SPV contractor shall have a process and timeline for delivering specialized management reports. VISN Leaders and VCS & OGA Customer Managers (Management) shall have, at a minimum, the ability to generate reports for each of the individual facilities that fall under their specific area of responsibility, i.e. VISNs, Canteen Locations, broad OGA Customer Type, etc., in order to ensure customer group is maintaining strong operational efficiency. In addition to having access to reports for each individual reports listed above, Management, shall have the ability to generate the following reports for their area of responsibility.

- Total sales
- Customer Purchases
- Total Cost Avoidance
- Product Pricing trends
- Product availability
- Program Pricing Program Compliance

### NAC Contracting Officer

The NAC Contracting Officer requires the ability to view and generate facility data reports stated above and roll-up reports for all SPV customers in a VISN by customer type, VAMC, VCS, or OGA. Additionally, the SPV Contractor shall provide the following quarterly and monthly reports:

Monthly: A Sales Report that shows total purchase dollars, cases, deviated pricing program purchases, and cost avoidance for each individual customer. The report shall be summarized with the ability to filter by customer type, facility and VISN.

Quarterly: On a quarterly basis, all reports that support any performance metric function is to be submitted, i.e. Fill Rate Report, etc. Additionally, a sales report and cost avoidance report shall be submitted that summarizes the same information as the monthly sales report.

Other additional reports should be made available on an ad hoc basis:

- Performance metrics per facility per month or quarter
- Deviated Pricing program information showing total products on the agreement
  
- Product Recall incidence report specific to SPV Customers
- Incentives report of savings
- Available warehouse third party sanitation score reports and corrective actions.
- Product standardization report highlighting deviated pricing agreement products that may be substituted for current purchases.
- Sustainable products available
- Local vendor products carried by Contractor
- Lists specific to any required food type; i.e. organic, antibiotic free, gluten free, etc.

## **6. QUALITY ASSURANCE**

Products delivered by product manufacturers/suppliers to the SPV contractor shall be inspected by the SPV contractor upon receipt for quality, temperature, and tampering. All deliveries from manufacturers/suppliers to the SPV shall include appropriate documentation to authenticate product, and source shall accompany product delivery. HACCP guidelines shall be used as basis for inspection, acceptance and storage of products in order to maintain product integrity.

## **7. DELIVERY SCHEDULE & PROCESS**

Most customers of this contract require one to three deliveries per facility per week. Larger facilities may require a five-day delivery schedule. "Attachment A" lists by facility, the average number of deliveries per week and drop sites per location. Deliveries shall be completed within a four hour window on scheduled days and if delayed more than 15 minutes beyond delivery time, the SPV contractor shall contact the facility to give an estimated revised delivery time. A specific delivery schedule and facility location shall be mutually established between each facility COR and the SPV contractor after award. Any changes in the delivery schedule during the contract period shall be communicated to facilities and mutually agreed upon before being implemented. No deliveries shall be made to facilities on Federal Holidays unless otherwise authorized by the individual facility. Delivery schedule adjustments shall be planned in advance to accommodate facilities requirements. Schedule changes as a result of local holidays or local altering circumstances will be communicated by the customer to the SPV contractor in advance or as soon as possible to meet the facility's requirements and SPV contractor's delivery schedule.

All products shall be assembled for delivery in an environment conducive to the products requirements; i.e. ambient, refrigerated, and freezer temperatures. Products shall be stacked according to fragility of product with most fragile on top and sturdier on bottom. Chemicals shall be separate from food products. SPV orders shall be palletized, stacked no higher than 60 inches, assembled and packaged so as to protect from damage (i.e. banded and or shrink wrapped). Some products may be stacked higher than 60 inches for truck utilization as long as product is not damaged in any way; however pallet shall be reduced to 60 inches for delivery into the customer's facility. SPV orders shall not be delivered on pallets with orders of any other customers.

Products are to be received by the facility in high quality condition and in accordance with all HACCP guidelines. Products labeled as: "Protect from Heat", "Chilled/Refrigerated", and "Frozen" food products shall be shipped and stored to maintain these products at optimal temperature to destination. Optimal temperature is based upon the latest edition of the FDA food code and specific to the food product category. At destination frozen product shall be hard frozen with no signs of defrosting and temperature of product shall not be above 0 degrees Fahrenheit. Mixed product loads must be in equipment capable of maintaining the products in their accepted safe temperature ranges from loading to destination.

All vehicles used in transportation will be subject to inspection at time of delivery by the facility's COR or designated alternate. Unsatisfactory results of any such truck inspections will be reported to the Contractor's representative. The SPV contractor's failure to have delivery trucks adequately secured and/or failure of any product to meet safety, temperature, or quality standards will result in rejection of products and will require appropriate replacement and/or credit.

When long distance distribution requires two trailers or a drop off trailer, security measures shall be in place to safe guard products and electronic temperature logs are essential.

The SPV contractor's drivers are responsible for unloading all products from trucks expeditiously and are required to deliver product to the customers' designated docks or storage areas. Unsecured products shall never be left unattended unless previously planned for and/or approved by mutual agreement of the facility's COR and Contractor.

Orders will be inspected upon receipt by facility personnel according to delivery invoice and food safety guidelines for product quality, shelf life, and temperature. All cases shall have labels designating source, recipient and purchase order data; (i.e. address, purchase order number, invoice number, and product description and quantity ordered). Products shall be packaged and packed in containers that offer protection from contamination and show no signs of breach or saturation.

Honor system receipting shall be mutually agreed upon between the facility CORs and the SPV contractor. Honor system receipting is when delivery is made to the appropriate receiving site and the facility documents the number of cases received but delays inspecting product quality until after the driver leaves. The facility will report any discrepancies to the SPV contractor within twenty-four hours of order delivery. Replacement of missing or damaged product shall be on the next scheduled delivery or at a mutually agreed upon time based on immediate need of the facility. Credits shall be provided as appropriate.

## **8. WAREHOUSE PRACTICES**

The Government reserves the right to conduct scheduled site visits of distribution centers to observe warehouse conditions, security procedures, and review HACCP monitors and/or sanitation inspection reports. Third party safety and sanitation inspections are required for all warehouses and SPV contractor shall provide scores to SPV customers and contracting officer annually or upon request.

## **9. PRODUCT QUALITY MONITORING SYSTEM**

Contractor shall have a quality monitoring program that routinely reviews all critical product quality measures and ensures systems are in place to control unacceptable deviations. Process must include corrective action and follow-up to document improvement.

All product recall notifications shall be communicated verbally and electronically to all affected facilities and to the NAC Contracting Officer within twenty-four hours of receipt of recall from manufacturer/supplier, FDA or USDA, regardless of the type, caliber, or status of the notice. The SPV contractor shall maintain records and traceability of all recall notices and provide the NAC Contracting Officer a recall status report of affected customers.

## **10. EMERGENCY READINESS PLAN**

The SPV contractor is required to have a detailed and a realistic Readiness Plan describing the procedures to be implemented shall there be a need to unexpectedly provide increased support to participating customers. The plan shall be specific to the area and the priority needs of the various customers participating in the subsequent contract. The plan shall be comprehensive, specific to all facilities and reviewed/updated annually with each facility for accuracy. The SPV contractor must have the capability to handle large increases in quantity for short periods of time. Surge, or the necessity to have larger than normal deliveries made on a single order, may result in delivery requirements that could be double or triple regular orders (item quantities) with less lead-time than normal requirements. Due to the nature of the customers, no prior notice is provided and surge can occur at any time. Distribution prices (fees) will not be re-negotiated as a result of surge. The SPV contractor must be able to react to emergency situations with advanced additional orders and/or additional or replacement products as quickly as conditions allow. The SPV contractor shall have alternate warehouses that back-up (capable of accepting orders and delivering needed products) other warehouse's involved in an emergency situation.

The SPV Contractor shall comply with any participating customers' additional security requirements and procedures for access to facilities.

OGAs on this contract may be located on military installations that may have cause to utilize an altered food inspection process which is incorporated into this contract as follows:

“As an increase in the Installation Force Protection Condition warrants; all food items shall be inspected at a central receiving point and approved by the Post Veterinarian Services before acceptance can be made and further distributed on the military installation/activity.”

“As an increase in the Installation Force Protection Condition warrants; the delivery vehicles used to deliver items under this contract shall be inspected at central designated receiving point prior to further distribution on the installation/activity. However, all delivery vehicles will also be subject to inspection at all times and at all places by the Contracting Officers Representative, Post Veterinarian, and/or Law Enforcement Officials at the installation receiving the delivery. Deliveries that are not

sealed and/or locked upon arrival to the central inspection point will be rejected without further inspection. Deliveries will obtain a certified stamp from the inspector at the central delivery point prior to departing that location. Deliveries will be resealed and/or locked from each drop off sight. Supplies transported in vehicles, which are not sanitary, or which are not equipped to maintain prescribed temperatures may be rejected without further inspection.”

Other changes to receiving and inspecting deliveries are specific to individual facilities and will be reviewed with the SPV contractor during the implementation period or as facilities are brought on to this contract. OGA facilities may have special identification requirements for drivers to comply with.

## **11. PERFORMANCE METRICS**

Monthly on-time delivery rates and fill rate > 98% including accepted substitutions shall be maintained for all facilities. The fill rate shall be calculated as: cases or issue units shipped divided by total cases or units ordered (including accepted substitutes). Cases ordered and delivered shall be on delivery invoice. The fill rate shall be reported by the SPV contractor to the facility COR at the quarterly business review. A fill rate less than 98% shall be discussed at the quarterly business review and a suitable remedy will be mutually chosen. If the fill rate is less than 98% the SPV contractor must be able (when requested) to provide documentation to the Government of its attempts to maintain product availability from the manufacturer/supplier. The supporting documentation requested by the Government could include, but is not limited to, documentation that supports the existence of an outstanding order between the SPV contractor and the product manufacturer/supplier for the requested products. Two consecutive quarters of fill rate less than 98% shall be grounds for corrective action by the NAC Contracting Officer. Failure to meet the fill rate in two consecutive quarters will be officially recorded as part of the SPV contractor performance in the Past Performance Information Review System (PPIRS) and may also be considered as grounds for Termination for Cause.

Other performance service measures that may be reviewed with the local Account Representative at the quarterly business review or as needed may include:

- Product Quality
- Incorrect Substitutes
- Product Recall
- Price accuracy
- Timeliness of credits (all credits must be processed within seven business days of when the credit request is communicated to the contractor)
- Order errors
- Mispicks
- Shorts
- Special Order Timeliness
- Timeliness of Deliveries
- Customer Service
- Sanitation Inspections

## **12. VALUE ADDED SERVICES**

The SPV contractor shall extend “value added services” which are offered to commercial customers to all customers eligible to purchase from this contract at no additional charge to the government.

### 13. PRICING

The Contractor shall furnish all supplies and perform all tasks associated with this contract in accordance with the terms, conditions, and specifications contained herein and according to the pricing definitions and calculations listed below. The contract pricing to be proposed by an Offeror is the distribution price (DSP) as defined on page 22, Paragraph A.3.

#### A. PRICING DEFINITIONS

1) Landed Product Price (LPP):

- a. Landed Product Price (LPP) shall be the manufacturer/supplier or VA Approved Supplier's delivered selling price to the SPV contractor's first point of distribution. If the supplier does not meet the definition of manufacturer/supplier then it must be approved by the NAC Contracting Officer and listed in the contract as a VA Approved Supplier in order to be a valid supplier.
- b. If the delivered selling price is other than FOB destination or the manufacturer/supplier's invoiced 3rd party freight charge, the SPV contractor may include a transportation fee (see definition) to the contractor's first point of distribution.
- c. The SPV contractor shall document any associated transportation fees and make them available for price audits – sales history file must clearly delineate any transportation/freight costs for each product that is not manufacturer/supplier invoice or FOB destination to show how landed product price is computed.
- d. Landed Product Price is either:
  - i. Manufacturer/Supplier invoice price FOB Destination to the SPV contractor's first point of distribution, or
  - ii. Manufacturer/Supplier invoice price plus actual transportation cost or transportation fee to the SPV contractor's first point of distribution, or
  - iii. VA Deviated Price includes:
    1. Fixed price inclusive of FOB Destination to the SPV contractor's first point of distribution, or
    2. Allowance off manufacturer/supplier's invoice price plus actual transportation cost, or transportation fee
  - iv. Manufacturer/Supplier invoice price minus any commercially available rebate, discount or allowance as defined in Section 13.E plus actual transportation cost or transportation fee, or SPV contractor's private label commercial list price. (Price is inclusive of FOB Destination to the SPV contractor's first point of distribution).

2) Distribution Fee:

- a. Fee, fixed percentage of product price based on product category, area of country (VISN), and period of performance. Pricing element offered and awarded under SPV contract.
- b. The distribution fee shall be added to the Landed Product Price to establish a firm fixed distribution price. The offeror shall propose the distribution fee as a fixed percentage markup of the LPP as defined above. The distribution fee represents all elements of the contractor's costs other than the landed product price. The distribution fee includes but is not limited to contractor's:
  - i. Projected General and Administrative overhead,

- ii. Profit,
  - iii. Packaging costs (pallets, shrink wrap),
  - iv. Transportation costs from point of distribution to the SPV customers' facilities.
- c. The Distribution Fee is specific to each of the eleven Product Categories and their associated products as listed in Attachment B and the eighteen geographical areas of the country (per VA VISN boundaries) as listed in Attachments A and C.

3) Distribution Price (DSP):

- a. Price from SPV to SPV contract customer before Cost Recovery Fee is applied.
- b. Calculation:  $\$LPP * (1+DF\%) = \$\text{Distribution Price}$

NOTE: If there are no distribution fees applied to the product (i.e., nationally contracted dietary supplement products) then the Distribution Price is equal to the Landed Product Price.

4) Cost Recovery Fee (CRF):

- a. Contractor is responsible for including and collecting on behalf of the VA an administrative cost recovery fee (CRF) from all participating facilities.
  - i. A 0.5% fee shall be added to all products sold through the contract holder, except as otherwise noted.
- b. To remit the CRF to VA the calculation would be:
  - i.  $\text{Delivered VA Price} * \text{Cost Recovery Rate} = \text{Remittance Fee}$ 
    - 1. Example:
      - a. If the delivered VA price was \$80.28 (from example below), the Cost Recovery Fee remitted would be calculated as follows:
        - b.  $(\$80.28 * 0.005) = \$0.401$  or \$0.40 rounded
- c. The total fee shall be remitted quarterly to VA within 60 days of end of quarter. Fee shall be submitted following the instructions provided in Addendum to FAR 52.212-4 Contract Terms and Conditions – Commercial Items page 52, Paragraph 2.
- d. A detailed quarterly report of total purchases and this fee must be submitted to the VA within 60 days of the end of quarter. Report shall be sorted for each VISN and customer type. Report shall include each facility name, location (city, state), total purchases for period and total fee collected.
- e. Upon award, lists of items that are exempt from Cost Recovery Fee calculation will be provided to the contract holder.
  - i. If a distribution fee is not part of the overall delivered price and not part of the exemption list, the contractor is still responsible for including and remitting the cost recovery fee for each individual item purchased through the SPV program. The only items that shall not have a CRF added to the product, is the nationally contracted Dietary Supplement products.

- 5) Delivered Price (DP): Delivered Price of all items purchased under this contract shall consist of three separate price components; Landed Product Price, Distribution Fee & Cost Recovery Fee. The delivered price to the VA customer shall be calculated as shown below and shall not

extend more than two places past the decimal point. Contractor will be audited during the contract period for adherence to product pricing definitions and calculations

a. The VA delivered price shall be computed as shown below:

i. Calculations:

1.  $\$LPP + \$DF + \$CRF = \$Delivered\ Price$
2. Alternate calculation:  $(\$LPP + \$DF) / (1 - CRF\%) = \$Delivered\ Price$
3. Example:
  - a. Landed Product Price is \$75.00
  - b. Awarded Distribution Fee (DF) for category and VISN = 6.5%
  - c. Cost Recovery Fee = 0.5%
  - d. Calculated dollar value of the Distribution Fee =  $(LPP * DF) = \$75.00 * 0.065 = \$4.875$
  - e. Calculated value of the Distribution Price (DSP) =  $\$75.00 + 4.875 = \$79.875$ ; or  
Alternate DSP Calculation  
 $\$75.00 * (1 + 0.065) = \$79.875$
  - f. Calculated value of the Cost Recovery Fee =  $(DSP / (1 - CRF)) - \$LPP + \$DF = \$79.875 / (1 - 0.005) - (\$79.875) = \$0.401$
  - g. Delivered VA Price (DP) =  $LPP + DF + CRF = \$75.00 + 4.875 + 0.401 = \$80.276$  or \$80.28 rounded  
Alternate Calculation:  
 $DP = DSP / (1 - CRF) = \$79.875 / 0.995 = \$80.276$

6) Cost Recover Fee Remittance Calculation

- a. Shall be calculated at the end of each quarter for total sales, less any sales for Dietary Supplements
- b. Calculation
  - i. Sales Price or Total Quarterly Sales \* Cost Recovery Fee = Remittance Amount
    1. Example:
      - a.  $\$80.276 * 0.005 = \$0.4014$
      - b. Should match the same CRF calculation component from above.

**A. PRODUCT CATEGORIES**

All items purchased under this contract will be assigned to one of the following product categories. (See Attachment B for examples of items included in each category)

Category	Product Type	Estimate of Category's % Total Purchases
Category I	Groceries, Dry & Canned	25%
Category II	Frozen Foods	16%

Category III	Meats: Beef & Pork (Fresh, Frozen & Precooked)	15%
Category IV	Poultry (Fresh, Frozen & Precooked)	8%
Category V	Fish & Seafood (Fresh, Frozen & Precooked)	3%
Category VI	Dietary Supplements (Not on VA National Dietary Supplement Contract)	4%
Category VII***	Fresh Produce	5%
Category VIII	Refrigerated Products	13%
Category IX**	Janitorial & Chemical (Optional VA only)	1%
Category X**	Paper, Plastics & Disposables (Optional VA only)	8%
Category XI*	Supplies and Small Equipment (Optional VA only)	2%

**For VA Medical Facilities Only:**

Under this contract, Categories I – VI, and VIII are subject to clause 52.216-21, Requirements and the SPV contract is a mandatory source for these categories. All other product categories for the VA medical facilities are subject to clause 52.216-22, Indefinite Quantity. Under Category I, a separate Blanket Purchase Agreement (BPA) has been established for Spices, these products can be found in Attachment I and is a mandatory source of supply for all VA Medical Facilities only. The Contractor shall obtain mandatory supplies or services to be provided for Government use under this contract from the specific sources indicated in Attachment I.

Categories VII, IX, X, and XI are IDIQ line items. VA Medical Centers will prioritize the purchase of the items under these categories from other sources, including but not limited to the GSA FSSI Jan/San program, the Ability One program, and from veteran-owned small businesses. The SPV will be a secondary source for VA.

\*\* For Category IX, many products are made available through the GSA Janitorial and Sanitation Supplies (Jan/San) Purchase Channel. See <https://www.gsa.gov/portal/category/107587> for more information, including ordering instructions.

\*\* For Category X, some products may be available through the Ability One national Procurement List. See [http://www.abilityone.gov/procurement\\_list/index.html](http://www.abilityone.gov/procurement_list/index.html) for more information.

\*\*\* Fresh produce is an IDIQ line item for this contract; however fresh produce is not always available for facilities to purchase locally.

**For VCS and OGA Customers Only:**

For VCS and OGA customers all product categories are subject to clause 52.216-22, Indefinite Quantity and are not subject to any other mandatory sources of supply.

The percentage listed by each category is provided as an estimate for offerors to use (reflective of potential product mix) when determining distribution fee proposal. It is an estimated average that reflects the category purchases' percentage of total purchases in FY2016.

Offerors shall propose a distribution fee, expressed as a percentage markup of unit price, for each product category, VISN, and base/option years. (See Attachment C)

Actual purchases for FY2016 (product and distribution price included) are provided for each facility, totaled by VISN in Attachment A. These estimates should be used as a guide for future purchase volume. When determining the Distribution fees that will be offered under the contract, offerors should consider the limited number of weekly deliveries and drop sites per facility, estimated purchases, and the minimum drop size of \$1,000 (except for those facilities identified on Attachment A as small locations, which are subject to a minimum drop size of \$750.)

Distribution fees proposed shall be identical for all facilities participating within a VISN.

## **B. WEEKLY AND MONTHLY FIXED PRICING**

All product prices, except the following specified market items, shall be fixed for a one-month period. Market/commodity items for this contract are: beef, cheese, shell eggs, fresh produce (optional category as defined in the Scope of Contract, Paragraph 8), coffee, orange juice, flour, sugar, rice, oils & shortening, veal, lamb, pork, poultry, seafood, mayonnaise and other items mutually deemed by contractor and the VA as a volatile commodity type product. Market/commodity items shall be fixed for a one-week period.

Delivered product price (unit price) shall be displayed on electronic ordering system at time order is placed. Same product price must appear on order confirmation report and delivered/billed invoice.

Adjustments made to the product price shall only reflect those changes in the manufacturer/suppliers' price that have taken effect during the previous month (or week for market/commodity items), and shall not reflect notices of future price adjustments. The price of products, which do not have negotiated deviations, allowances, discounts or rebates, shall be priced equal to or lower than prices offered to commercial customers for similar quantities under comparable terms and conditions.

When manufacturer/supplier price changes occur, increases or decreases to the contracted product price shall be effective on the first Monday of the following month or week (market items only) as applicable. The offeror may specify in its contract proposal, a different day of the week for effective price changes, however, this effective date shall remain unchanged throughout the life of the contract.

Upon request, the SPV contractor shall furnish to the Government data, as required by the NAC Contracting Officer, to support Landed Product Price changes and to confirm that the landed product prices under this contract are fair and reasonable and are based on the catalog or market prices which it pays to its manufacturers/suppliers or VA Approved Supplier. This supporting documentation shall be in the form of manufacturer/supplier or VA Approved Supplier delivered price invoices and unit prices charged to the SPV contractor as well as manufacturers'/suppliers' quotations, or VA Approved Suppliers' quotations, invoices, catalogs, published price lists and any other information as required by the NAC Contracting Officer. In the event price verifications reveal any instances of overpricing, the SPV contractor shall reimburse the Government for that amount, including any potential penalties and

interest. Any amount due to the Government as a result of any review will be offset against any amounts owed to the Contractor.

For any product price changes not associated with the manufacturer/supplier or VA Approved Supplier's invoice, the change must be as a result of contractor's or subcontractors' substantive value change or product modification. (See Substantive Value Definition) Contractor shall be responsible for substantiating the fairness and reasonableness of price increases resulting from additional charges not associated with the invoice price from the manufacturer/supplier or VA Approved Supplier. Contractor shall obtain (at least 48 hours prior to Friday cut off time) the NAC Contracting Officer's approval for any additional charges prior to implementing any price changes. The NAC Contracting Officer will determine whether the price is fair and reasonable based on Contractor's information indicating substantive value of charge or product modification. Contractor shall be responsible for any additional charges not approved by the Contracting Officer. If the Contracting Officer cannot determine or negotiate a fair and reasonable price, the Contracting Officer may reject any requested price change and direct in writing that the item in question be removed from Contractor's Ordering Catalog, without liability to the Government. The Contracting Officer will advise the Contractor prior to Friday, 5 PM ET of the Contracting Officer's acceptance or rejection. If the Contracting Officer does not expressly accept a price change prior to Friday, 5 PM ET, Contractor shall consider the price change rejected and the Government shall be not liable for orders placed with the offered delivered price. The Contracting Officer may subsequently accept the proposed price change as fair and reasonable, but such determination shall be prospective only, running from the date of the Contracting Officer's written notice that the price has been accepted.

### **C. DEVIATED PRICING AGREEMENTS**

A deviated pricing agreement is defined as an agreement between the SPV contractor (with concurrence by the Government) and a specific manufacturer/supplier for a negotiated VA product price that shall be passed on by the SPV contractor to all participating customers, including any participating OGAs. If the SPV is acting as a teaming arrangement, all contractors in the team shall honor the agreements negotiated for the VA and all participating OGAs. These allowances or discounts apply only to the delivered/invoice price of the product. The deviated pricing agreements do not affect the SPV contractor's distribution fee and no additional handling fees for these products shall be applied by the SPV contractor. The SPV contractor shall deduct all applicable negotiated VA allowances or discounts prior to the inclusion of its distribution fee.

The SPV contractor shall work in partnership with the NAC Contracting Officer and/or designees in identifying cost savings initiatives, facilitating product evaluations, developing deviated pricing agreements with manufacturers/suppliers, and effectively implementing these programs in a timely manner. The SPV contractor will facilitate volume discounts from their manufacturer/supplier base or new manufacturers identified by the VA in exchange for committed volume purchases. Business reviews between the SPV Contracting Officer and the SPV contractor, product manufacturer/supplier and Government shall be held on a semi-annual or annual basis. This business review will be to meet with individual preferred suppliers, SPV contractor representatives, and SPV Contracting Officer to discuss such items as supplier performance, new products, new market trends, and other items necessary to maintain an effective partnership.

Deviated product pricing agreements shall be implemented within forty-five days of agreement by the SPV contractor. All products under deviated pricing agreements, that meet the twelve cases per month

minimum usage at a servicing warehouse, must be stocked by the SPV at all distribution centers servicing VA customers. If the twelve cases per month requirement cannot be met and supplier is an existing supplier to the Contractor, the requested product shall be brought in through the Special Order process. This may be a onetime purchase or continued special order requirement.

If, during the course of the contract, the SPV contractor enters into a deviated or standardized pricing agreement with a manufacturer on behalf of the Government, the SPV contractor agrees to charge the Government the manufacturer's deviated/standardized price as the Landed Product Price plus the awarded contracted distribution fee (the fixed percentage markup for the product category) and Cost Recovery fee as the delivered price for each such item. Deviated agreements may include but are not limited to; fixed prices (guaranteed sell price or guaranteed cost), off list (bracket, zone, area) price allowances, or off invoice allowances. Deviated pricing agreement cost savings shall be calculated as the difference between the Landed Product Price and the Deviated Fixed Price or allowance. Prompt payment discounts are not included.

The Contractor alone is prohibited from entering into any deviated pricing agreements on behalf of the Government. All agreements must be approved by the Contracting Officer prior and subsequent to any negotiations and/or implementations.

The Government reserves the right to periodically audit any deviated/standardized pricing agreements according to the terms and conditions specified in those agreements. Standard audit rights as provided in the solicitation shall also be adhered to.

#### **D. REBATES, DISCOUNTS AND INCENTIVE PROGRAMS**

The Contractor shall enroll the SPV participating facilities in all applicable commercially offered manufacturer/suppliers or VA Approved Supplier Customer rebates, food show rebates, allowances, discounts, sales incentives, promotions, and programs offered to other commercial customers with similar purchasing volume. Once the Contractor, on behalf of the SPV participation facilities, enrolls those facilities in such programs, customer rebates and discounts shall be made available to SPV customers in the form of an up-front price reduction.

The Government reserves the right to periodically audit Contractor's records as they pertain to the Contractor's rebate tracking program for those Customer rebates and/or off-invoice customer rebate allowances that are required to be passed along to the Government under the contract. The Contractor is not required to track rebates, allowances, incentives or monies that the Contractor is entitled to retain. Failure to pass along all applicable savings from rebates may result in the contractor being terminated for cause. (FAR 52.212-4)

#### **E. EDI/EFT PROCESSES**

To be considered a proper invoice, the following shall be provided: purchase order number, local facility purchase order number, date of delivery, item description, product number, quantity ordered, quantity shipped, identified if substitute item, delivered price by line item, Fuel Surcharge (if applicable) and total cost. Contract cost recovery fee shall be included in the delivered price as shown on page 22, Paragraph A.4. Purchase order numbers are essential for proper invoicing and payment. Special orders require a clearly defined process for order placement, receipt of invoices and payment processing. Due to variable delivery times these products require extra tracking to insure products are received and payments are made.

All credits shall be processed within seven business days and electronically including credit from food shows and incentive programs. All billing invoices and credits for VAMC and VCS customers shall be transmitted electronically (EDI) to Austin Finance Center the day of or next business day following delivery with any corrections having been made and credits issued. Payment will be processed through electronic fund transfer (EFT).

Some OGAs have electronic invoicing and payment capabilities and others do not. Procedures for invoicing and payment by participating OGAs will be addressed with the SPV Contractor during the contract implementation phase.

## **F. PERIODIC PRICE VERIFICATION**

The SPV contractor must maintain an audit trail for verification of all contract pricing and make it available to the Government for periodic auditing.

### **1. CONTRACT ADMINISTRATION**

#### **A. SPV CONTRACTOR CONTRACT MANAGEMENT RESPONSIBILITY**

- (a) The SPV contractor shall appoint an individual who will be the Contractor's Authorized Representative for this contract. The authorized representative shall be the single point of contact through which all Contractor/Government communications shall flow.
- (b) The authorized representative's responsibilities shall include but are not limited to coordinating the following:
  - Contract implementation plans with corporate office and distribution centers,
  - Training on ordering process and other contract procedures,
  - Corrective action plan for locally unresolved service issues,
  - Accurate pricing calculation applications,
  - Price verification audits,
  - Participation in national SPV training programs throughout contract period, and
  - Establishment and implementation of a VA SPV deviated pricing program with manufacturers.
- (c) All administrative support of the SPV contractor's personnel and all interactions with subcontractors, vendors, and suppliers used by the SPV contractor, in performance of this contract shall be the responsibility of the SPV contractor.
- (d) Each facility shall have a Contractor Representative to facilitate all contract services. This representative will provide all facilities with:
  - Consistent customer service,
  - Communication of operational changes that require mutual PV and facility agreement,
  - Problem resolution,
  - Product and service information (including identifying new products that meet changing facility needs, procurement of product samples or coordinating visits by product manufacturer representatives, and processing and tracking Special Orders),
  - Coordinating facility or VISN meetings that enhance use of standardized manufacturer products,
  - Quarterly business reviews and quality service reports, and

- Providing training for new facility staff on Contractor's web ordering system or system enhancements.

The SPV contractor Representative or designee shall respond to all facility calls within 24 hours. For the first 60 days of this contract and at the discretion of VA and OGA facilities, weekly visits or calls by this representative with each facility is required. The SPV contractor shall conduct monthly visits with participating facilities unless service problems dictate more frequent contact or if the designated COR and the SPV contractor's representative agree to a different schedule.

If multiple warehouses are used to service one VISN, Contractor must assign one person as primary contact for the SPV VISN Leaders. This representative will be assigned oversight responsibility for all facilities in the VISN regardless of warehouse. VISN Contractor Representative will communicate with the SPV VISN Leaders on a monthly basis to discuss contract activity and provide a quarterly business review of VISN facilities. This representative will also participate in monthly/quarterly conference calls at the discretion/invitation of the SPV VISN Leaders.

- (e) At time of contract award, a list of all Contractor personnel assigned to the VA for this contract must be provided to each facility with primary contact lists to SPV VISN Leaders and the Contracting Officer. (See Attachment D) Lists shall be updated as needed or at least annually as option years are exercised.
- (f) On-Site Business Reviews shall be conducted quarterly between the Contractor Representative and a facility representative at each individual customer location. Over the course of four consecutive quarters, beginning with the first quarter of the contract period, the PV shall maintain a 75% meeting rate or higher over a four quarter period. The Business Review shall be held on-site at the individual customer location and confirmation of the meeting must be in writing. Business Review formats will be agreed upon by the NAC Contracting Officer and the PV during the contract implementation period, including all record keeping and meeting confirmation procedures.
- (g) During implementation phase and throughout contract period, Contractor shall provide the VA Contracting Officer any updates to the Non-manufacturer Supplier List of companies doing business with the Contractor. (See Definitions for VA Approved Supplier)

## **B. VA CONTRACT ADMINISTRATION AUTHORITY**

- (a) The NAC Contracting Officer is the only person authorized to approve changes or modifications to the requirements under this contract on behalf of the Government.
- (b) In the event the Contractor makes any change(s) at the direction of any person other than the NAC Contracting Officer, any change shall be considered to have been made without authority and no adjustment in price shall be made in the contract to cover any increase in charges incurred as a result thereof.
- (c) Each facility will have a designated Contracting Officer's Representative (COR) who will serve as a point of contact for all matters pertaining to the technical aspects of the contract. At time of contract award, the Contractor will be furnished with a copy of the COR's appointment letter

specifying his/her identity, VA organization address, and scope of duties. COR's have limited authority and cannot make any commitment obligating the Government.

- (d) Each VISN will also have a SPV VISN Leaders designated. SPV VISN Leaders will assist facilities with contract performance issues and will provide information to the Contractor and/or the facilities on the VA standardization program and other contract issues. The SPV VISN Leaders will be given a quarterly business review of all facilities in the VISN by the Contractor.
- (e) For VA Medical facilities only, only VA personnel officially designated as Ordering Officers under the SPV contract may place orders under this contract. Ordering Officers do not have the authority to negotiate, make any commitments or changes that will affect the terms and conditions of this contract. Ordering Officer Designations pertain only to the VAMCs. VCS and OGA customers will place orders in accordance with their facility policies and procedures. A listing of all authorized Ordering Officers for VA Medical Center customers will be provided to the contractor before the effective date and whenever Ordering Officers are added or deleted.

### **C. CONTRACT ADMINISTRATION ACTIONS**

- (a) The SPV contractor shall submit all requests for modification of this contract and any inquiries pertaining to the administration of the contract to the NAC Contracting Officer responsible for administering the contract.
- (b) The SPV contractor shall provide a detailed monthly report to the NAC Contracting Officer of total contract purchases by the 10<sup>th</sup> day of each month covering the previous month's sales. The report shall be sorted for each VISN and customer type; VAMC, VCS, and OGA. The report shall include each facility name, customer number, location (city, state) and total purchases and deviated product price savings for the period.
- (c) The SPV contractor shall provide an option for the NAC Contracting Officer or designee to generate a report showing the current product delivered price to the SPV Customers and the product price for the last ten weeks. Generally, no more than 10-30 items per quarter will be selected randomly by the NAC Contracting Officer or designee from any of the SPV contractor's warehouse (servicing VA and OGA customers) catalogs. However, the Government reserves the right to expand that at any time.
- (d) The SPV contractor shall be able to provide the NAC Contracting Officer upon request
  - (i) a freight invoice from the manufacturer/supplier or VA Approved Supplier's actual freight documented invoice or their third party freight carriers ;
  - (ii) the manufacturer/supplier or VA Approved Supplier's normal freight charge quote or
  - (iii) a list of all quotes obtained from nationally recognized carriers which were used to determine the average freight price or
  - (iv) if the SPV's final warehouse is other than the first point of distribution, freight invoices shall be made available from the first warehouse to the final point of distribution.
- (e) The SPV contractor shall host and provide assistance with coordinating an annual SPV management meeting. The meeting will last no more than one week and is held to support

SPV contract training, standardization efforts and other administrative contract functions. The meeting will be hosted at a SPV contractor facility mutually agreed upon between the PV and NAC Contracting Officer. Members of the Standardization User Group (SUG), VCS, the NAC Contracting Officer, Customer Managers from the OGA customer base and other PV Contract Representatives generally attend such meeting.

- (f) The SPV contractor shall provide on a quarterly basis to the NAC Contracting Officer a transportation fee report which includes all elements of the transportation fee calculation and estimates the freight revenue, cost, and income and applicability retained by the Contractor applicable to VA and OGA purchases using the Contractor's existing information systems. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose.

Offerors shall provide the Contracting Officer with the proposed methodology for calculating the above reported items. The SPV contractor shall utilize the agreed upon methodology for every report within the contract period. If the methodology needs to be revised at any time during the contract period, the SPV contractor shall submit the new methodology to the NAC Contracting Officer for approval.

- (g) The Government reserves the right to conduct price verification audits on a periodic basis. The NAC Contracting Officer or designated representative will select a maximum of 30 items for review, however the Government reserves the right to increase that number at any time. The SPV contractor will be required to prepare a separate spreadsheet or grid for these items for each distribution center servicing the contract. The spreadsheet shall contain the following information: SPV and manufacturer/supplier's or VA Approved Supplier's product item numbers, product description, a breakdown of the delivered product price (manufacturer/supplier or VA Approved Supplier product price, actual freight or transportation fee, deviated price if applicable, allowance if applicable, distribution price, and the total delivered price to the facilities). In addition, the SPV contractor shall provide invoices supporting the manufacturer/supplier or VA Approved Supplier product price and transportation costs for all items listed in the spreadsheet. The contractor will have 30 calendar days to prepare and submit the spreadsheet and supporting documentation. If overcharges are identified by the SPV contractor, a report containing the following shall also be included: total cases sold to each facility, the number of previous months involved, and the difference between the correct price and the actual price invoiced. The SPV contractor **shall** promptly reimburse the total overcharges to the VA or OGA customer. The Government reserves the right to extend the scope of the price verification, without limitation or requiring additional justification, in accordance with clause 52.212-5 paragraph (d). The Government also reserves the right to request at any time, an audit performed by the VA Office of Inspector General for any or all transactions performed under this contract.

## **2. CONTRACT IMPLEMENTATION**

- (a) The contract resulting hereunder will be in effect for one year, plus four one-year option periods which may be exercised by the Government. The total possible contract period may run for five years if all four option periods are exercised. There are two anticipated implementation periods prior to the expected effective date of November 1, 2018.
  - a. The first implementation period is 120 days prior to the expected effective date. This implementation period is to ensure that all menu items are communicated to the PV and

all necessary items needed for normal operations is in stock and available for purchase by each individual customer.

- b. The second implementation period is 240 days prior to the expected effective date. This implementation period will run concurrently with the first implementation period and will ensure that all electronic ordering guides and PV software is compatible and successfully interfaces with the customer foodservice software found at each customer location.
  
- (b) Transition of VA facilities and participating OGA facilities to a new SPV Contract shall be done expeditiously and with mutually (Customer and Contractor) agreed upon goals and time frames within each implementation phase.

## **B.1 CONTRACT ADMINISTRATION DATA**

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

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

- a. CONTRACTOR: \_\_\_\_\_
- b. GOVERNMENT: Robert C. Mills, Contracting Officer, VA NAC (003A4C3 )

Department of Veteran Affairs

National Acquisition Center

National Contract Services, Bldg 37

1st Avenue, One Block North of Cermak

Hines, IL 60141

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

- 52.232-34, Payment by Electronic Funds Transfer—Other Than System For Award Management, or
- 52.232-36, Payment by Third Party

3. INVOICES: Invoices shall be submitted in arrears:

- a. Quarterly
- b. Semi-Annually
- c. Other  Upon Delivery

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.

Government Facilities

Refer to Attachment A

**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 FAR 52.219-4 Notice of Price Evaluation Preference for HubZone Small Business Concerns. 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 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.4 SUBCONTRACTING PLAN--MONITORING AND COMPLIANCE (JUN 2011)**

This solicitation includes FAR 52.219-9, Small Business Subcontracting Plan, and VAAR 852.219-9, VA Small Business Subcontracting Plan Minimum Requirement. 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 the contractor's compliance with the plan, including reviewing the contractor's accomplishments in achieving the subcontracting goals in the plan. 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 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 compliance with the subcontracting plan.

## 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, contract 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 contract 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 or implied warranty, the Contractor will not be liable in breach of warranty action 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.

#### 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:

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

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

##### **1.0 Economic Price Adjustment - Fuel Surcharge**

- (a) To the extent that contract fuel cost increases are provided for by this economic price adjustment clause, the Offeror warrants that the prices in this proposal for any option periods do not include any amount to protect against such contingent fuel cost increases.
- (b) The fuel cost index, for the purpose of price adjustment under this clause, shall be the "Weekly Retail On-Highway Diesel Prices Index", as contained in the "U.S. Energy Information Administration" website:

<http://www.eia.gov/petroleum/gasdiesel/>

All adjustments authorized under this clause shall be made using the most recently published average diesel price posted for the U.S. region.

(1) The Base Fuel Cost, for the purpose of price adjustments under this clause, shall be the most recent Index Weekly Average Diesel Fuel Price per gallon published prior to the closing date for receipt of offers, or the due date for receipt of final proposal revisions if discussions are held.

- (a) For purposes of this clause, it will be conclusively presumed that a 15% increase or decrease of the Base Fuel Cost represents a reasonable fluctuation of diesel fuel prices. The Base Fuel Cost  $\pm$  15% price range will be determined for the base contract year and will remain constant throughout the life of the contract, including option years. Base Fuel Cost price range will be documented at time of contract award.
- (b) Increases (or decreases) in the diesel fuel costs (Base Fuel Cost  $\pm$  15%) as listed on the Index two weeks prior to the end of each calendar quarter can trigger a request from the Contractor to the Government (or from the Government to the Contractor) for cost adjustments. Notice must be in writing to the SPV Contracting Officer (or Contractor's representative) establishing intent of fuel price modification no later than 15th day of the affected quarter. If modification is executed after the beginning of quarter, retroactive price

credit/charges can be applied based on mutual understanding between the NAC Contracting Officer and the Contractor.

- (c) Since fuel cost is only a part of the SPV Contracted distribution cost, the adjustment will be made as a penny per delivered case for every ten cent fuel price per gallon increase or decrease to the Base Fuel Cost  $\pm$  15%. Difference will be rounded down to the nearest whole cent and will be added to last line of each invoice noted as "Fuel Adjustment".

**Example calculation of fuel price change:**

Awarded Baseline Fuel Price: \$2.50

At Contract Award Base (+ or -) 15% or \$2.88 - \$2.13

**Fuel Price Increase Example: \$3.05**

Calculation:  $\$3.05 - 2.88 = \$0.17$  (rounded down to \$0.10)

Add \$0.01 per delivered case to each invoice, starting first day of new quarter.

**Fuel Price Decrease Example: \$1.80**

Calculation:  $\$2.13 - 1.80 = \$0.33$  (rounded down to \$0.30)

Credit each invoice \$0.03 per delivered case, starting first day of new quarter.

- (a) Once approved, the date for contract fuel price adjustment will be the first day each quarter unless otherwise designated at time of contract award.
- (b) The Contracting Officer shall retain a copy of the Base Fuel Index establishing the Base Fuel Cost and the calculation of the price range incorporating the 15% adjustment in the contract file. All subsequent changes will be documented within the contract file and communicated to the Contractor and VA SPV customers via email one week prior to the fuel price adjustment implementation.
- (c) Any adjustments for fuel price changes will only be implemented if requested in writing, reviewed by both parties, and provided within the designated time frames. No retroactive cost adjustments will be made if written notice of intent is received after the 15th day of the new quarter. A contract modification will be issued at inception of contract award detailing the Base Fuel Cost, price range, and calculation of first fuel adjustment charge.
- (d) Adjustment will remain in effect for the duration of that specific quarter and not carry over into the next quarter. Each quarter the fuel calculation will be analyzed and notice will be sent in accordance with the time frame established in paragraph (d). If no intent has been delivered for the subsequent quarter, no fuel modification will be in effect.
- (e) In the event that "the Energy Information Administration, Department of Energy" discontinues, or alters substantially its method of calculating the national average diesel fuel prices cited herein, the parties shall mutually agree upon an appropriate substitute for determining the price adjustment described herein. If the contracting officer determines the Index consistently and substantially

fails to reflect market conditions, the contracting officer may modify the contract to specify use of an appropriate substitute Index, effective on the date the Index specified herein begins to consistently and substantially fail to reflect market conditions.

- (f) Any dispute arising under this clause shall be determined in accordance with and subject to the “Disputes” clause of the contract.

## **2.0 Cost Recovery Fee and Submission of Quarterly Sales Reports – Subsistence Prime Vendor**

- a) **Quarterly Sales Reports.** The Contractor shall report all contract sales under this contract and submit collected Cost Recovery Fees as follows:
1. The Contractor shall accurately report the dollar value, in U.S. dollars and rounded to the nearest whole dollar, of all sales made under this contract by calendar quarter (January 1–March 31, April 1– June 30, July 1–September 30, and October 1–December 31). A detailed quarterly report of total purchases from all authorized users and the Cost Recovery fee of 0.5% must be submitted to the VA within 60 calendar days of the end of quarter. Report shall be segmented by VISN and customer type. Report shall include each facility name, location (city, state), total purchases for period and total fee collected. The 0.5 % Cost Recovery Fee shall be imbedded in the delivery price for each product, unless otherwise agreed upon (e.g. a Cost Recovery Fee shall not be applied to nationally contracted Dietary Supplement products). Offered distribution fees submitted in response to this solicitation shall **NOT** include the Cost Recovery Fee as submitted in Attachment C, Price Schedule. The reported contract sales shall include the cost recovery fee and each quarterly report shall show the total cost recovery fee amount collected on the reported sales. The Contractor shall maintain a consistent accounting method of sales reporting, based on the Contractor’s established commercial accounting practice.
  2. Contract sales reports are due to the VA contracting officer within 60 calendar days following the completion of each reporting quarter or completion of the contract, whichever occurs first. A report is required even when no billings or invoices are issued or no orders are received during the contract period.
  3. The sales report signed by an authorized representative of the contractor shall be sent by mail or email to the NAC Contracting Officer. Mailed reports shall be sent to the address listed below.

Department of Veterans Affairs  
National Acquisition Center (003B6C4)  
P.O. Box 76  
First Avenue, 1 Block North of Cermak, Bldg  
37 Hines, IL 60141

- b) **Cost Recovery Fee.** The 0.5 % Cost Recovery Fee amount collected and due shall be paid either electronically or by check, and shall be addressed to the “Department of Veterans Affairs”.

To ensure that the payment is credited properly, the contractor shall identify the check or electronic transmission as a “Cost Recovery Fee” and include a copy of the applicable Sales Report. The Cost Recovery Fee payment is due to the Fiscal Division at the same

time the sales report is due to the N A C Contracting Officer, i.e., within 60 calendar days following the completion of each reporting quarter or completion of the contract.

- (1) Cost recovery fee payments made **electronically** shall include the following information:

Receiving Bank Name: Department of Treasury  
Receiving Bank Contact: Cash Link ACH Receiver  
Contact Phone: 301/887-6600

Receiving Bank City, State: Richmond, Virginia  
Receiving Bank Routing/Transit Number: 051036706  
Receiving Bank Capability: CCD+

Receiving Account Number: 220020

820 ACH Format used by Receiving Bank: Standard

Contract Number(s): *(Contractor shall insert the contract number, which will be assigned by the VA contracting officer at time of award.)*

- (2) Cost recovery fee payments made in **check form** shall be made to the attention of “Department of Veterans Affairs” and mailed to the following address:

Fiscal Division (901A)  
Attn: C.R. Agent  
Cashier  
P.O. Box 7005 Hines, IL  
60141

- c) The Government reserves the right to inspect without further notice, such records of the Contractor as pertain to sales under any contract resulting from this solicitation. Willful failure or refusal to furnish the required reports, or falsification thereof, shall constitute sufficient cause for terminating the contract under FAR 52.212-4(m), Contract Terms and Conditions - Commercial Items, Termination for Cause.
- d) Failure to remit the full amount of the Cost Recovery Fee within 60 calendar days after the end of the applicable reporting period constitutes a contract debt to the United States Government under the terms of Federal Acquisition Regulation (FAR) Subpart 32.6. The Government may exercise all rights under the Debt Collection Improvement Act of 1996, including withholding or setting off payments and interest on the debt (see FAR clause 52.212-4(i)(6), Interest). Should the Contractor fail to submit the required sales reports, falsify them, or fail to timely pay the Cost Recovery Fee, the Government shall have, in addition to the rights and remedies described in this clause, all other rights and remedies permitted by Federal law and statutes.

### 3.0 Audit and Records

- a) The VA Office of Inspector General (VA OIG) shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder, including, but not limited to, all records supporting the development of any contractor performance reports that are or may be required under the contract. As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.
- b) Availability. The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraph (a) of this clause, 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 Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition—
  - 1) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and
  - 2) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

## **C.2 VAAR 852.246-72 FROZEN PROCESSED FOODS (JAN 2008)**

The products delivered under this contract shall be in excellent condition, shall not show evidence of defrosting, refreezing, or freezer burn and shall be transported and delivered to the consignee at a temperature of 0 degrees Fahrenheit or lower.

## **C.3 VAAR 852.270-3 PURCHASE OF SHELLFISH (APR 1984)**

The bidder certifies that oysters, clams, and mussels will be furnished only from plants approved by and operated under the supervision of shell fish authorities of States whose certifications are endorsed currently by the U.S. Public Health Service, and the names and certificate numbers of those shell fish dealers must appear on current lists published by the U.S. Public Health Service. These items shall be packed and delivered in approved containers, sealed in such manner that tampering is easily discernible, and marked with packer's certificate number impressed or embossed on the side of such containers and preceded by the State abbreviation. Containers shall be tagged or labeled to show the name and address of the approved producer or shipper, the name of the State of origin, and the certificate number of the approved producer or shipper.

## **C.4 VAAR 852.232-72 ELECTRONIC SUBMISSION OF PAYMENT REQUESTS (NOV 2012) (Note: Applies to VA customers only)**

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

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

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

(3) *Electronic form* means an automated system transmitting information electronically according to the

Accepted electronic data transmission methods and formats identified in paragraph (c) of this clause. Facsimile, email, and scanned documents are not acceptable electronic forms for submission of payment requests.

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

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

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

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

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

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

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

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

(1) Awards made to foreign vendors for work performed outside the United States;

(2) Classified contracts or purchases when electronic submission and processing of payment requests could compromise the safeguarding of classified or privacy information;

(3) Contracts awarded by contracting officers in the conduct of emergency operations, such as responses to national emergencies;

(4) Solicitations or contracts in which the designated agency office is a VA entity other than the VA Financial Services Center in Austin, Texas; or

(5) Solicitations or contracts in which the VA designated agency office does not have electronic invoicing capability as described above.

### **C.5 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.

### **C.6 52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON POSTCONSUMER FIBER CONTENT PAPER (MAY 2011)**

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

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

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

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

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

### **C.7 52.216-18 ORDERING (OCT 1995)**

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule. Such orders may be issued from November 1, 2018 through October 31, 2019 and may be issued through October 31, 2023 if all options are exercised.

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

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

## **C.8 52.208-9 CONTRACTOR USE OF MANDATORY SOURCES OF SUPPLY OR SERVICES (MAY 2014)**

(a) Certain supplies or services to be provided under this contract for use by the Government are required by law to be obtained from nonprofit agencies participating in the program operated by the Committee for Purchase From People Who Are Blind or Severely Disabled (the Committee) under 41 U.S.C. 8504. Additionally, certain of these supplies are available from the Defense Logistics Agency (DLA), the General Services Administration (GSA), or the Department of Veterans Affairs (VA). The Contractor shall obtain mandatory supplies or services to be provided for Government use under this contract from the specific sources indicated in the contract schedule.

(b) The Contractor shall immediately notify the Contracting Officer if a mandatory source is unable to provide the supplies or services by the time required, or if the quality of supplies or services provided by the mandatory source is unsatisfactory. The Contractor shall not purchase the supplies or services from other sources until the Contracting Officer has notified the Contractor that the Committee or an AbilityOne central nonprofit agency has authorized purchase from other sources.

(c) Price and delivery information for the mandatory supplies is available from the Contracting Officer for the supplies obtained through the DLA/GSA/VA distribution facilities. For mandatory supplies or services that are not available from DLA/GSA/VA, price and delivery information is available from the appropriate central nonprofit agency. Payments shall be made directly to the source making delivery. Points of contact for AbilityOne central nonprofit agencies are:

(1) National Industries for the Blind  
1310 Braddock Place  
Alexandria, VA 22134-1691  
(703) 310-0500; and

(2) NISH  
8401 Old Courthouse Road  
Vienna, VA 22182  
(571) 226-4660

See Attachment I – Listing of Mandatory Supplies for specific product information.

## **C.9 52.216-19 ORDER LIMITATIONS (OCT 1995)**

(a) *Minimum order.* When the Government requires supplies or services covered by this contract in an amount of less than \$1,000 or \$750 (For small facilities as listed in Attachment A), the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.

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

(1) Any order for a single item in excess of \$5,000;

(2) Any order for a combination of items in excess of \$75,000; or

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

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

(d) Notwithstanding paragraphs (b) and (c) of this section, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within 24 hrs or 1 business days after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

### **C.10 52.216-21 REQUIREMENTS (OCT 1995)**

(a) This is a requirements contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies or services specified in the Schedule are estimates only and are not purchased by this contract. Except as this contract may otherwise provide, if the Government's requirements do not result in orders in the quantities described as "estimated" or "maximum" in the Schedule, that fact shall not constitute the basis for an equitable price adjustment.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. Subject to any limitations in the Order Limitations clause or elsewhere in this contract, the Contractor shall furnish to the Government all supplies or services specified in the Schedule and called for by orders issued in accordance with the Ordering clause. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(c) Except as this contract otherwise provides, the Government shall order from the Contractor all the supplies or services specified in the Schedule that are required to be purchased by the Government activity or activities specified in the Schedule.

(d) The Government is not required to purchase from the Contractor requirements in excess of any limit on total orders under this contract.

(e) If the Government urgently requires delivery of any quantity of an item before the earliest date that delivery may be specified under this contract, and if the Contractor will not accept an order providing for the accelerated delivery, the Government may acquire the urgently required goods or services from another source.

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

**NOTE: See Product Category section for which specific categories apply to this clause.**

### **C.11 52.216-22 INDEFINITE QUANTITY (OCT 1995)**

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

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

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

(d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; *provided*, that the Contractor shall not be required to make any deliveries under this contract after 15 days of the contract termination date of the contract.

NOTE: See Product Category section for which specific categories apply to this clause.

#### **C.12 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)**

(a) The Government may extend the term of this contract by written notice to the Contractor within 30 days; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed five (5) years.

#### **C.13 52.232-18 AVAILABILITY OF FUNDS (APR 1984)**

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

#### **C.14 52.232-37 MULTIPLE PAYMENT ARRANGEMENTS (MAY 1999)**

This contract or agreement provides for payments to the Contractor through several alternative methods. The applicability of specific methods of payment and the designation of the payment office(s) are either stated—

(a) Elsewhere in this contract or agreement; or

(b) In individual orders placed under this contract or agreement.

## **C.15 52.233-1 DISPUTES (MAY 2014) ALTERNATE I (DEC 1991)**

(a) This contract is subject to 41 U.S.C. chapter 71, Contract Disputes.

(b) Except as provided in 41 U.S.C. chapter 71, all disputes arising under or related to this contract shall be resolved under this clause.

(c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under 41 U.S.C. chapter 71 until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under 41 U.S.C. chapter 71. The submission may be converted to a claim under 41 U.S.C. chapter 71, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d)(1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2)(i) The Contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding \$100,000.

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am authorized to certify the claim on behalf of the Contractor."

(3) The certification may be executed by any person authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of \$100,000 or less, the contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the contractor appeals or files a suit as provided in 41 U.S.C. chapter 71.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.

(h) The Government shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in (FAR) 48 CFR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the ACT, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

#### **C.16 52.233-4 APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM (OCT 2004)**

United States law will apply to resolve any claim of breach of this contract.

#### **C.17 52.242-13 BANKRUPTCY (JUL 1995)**

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

#### **C.18 52.247-34 F.O.B. DESTINATION (NOV 1991)**

(a) The term "f.o.b. destination," as used in this clause, means—

(1) Free of expense to the Government, on board the carrier's conveyance, at a specified delivery point where the consignee's facility (plant, warehouse, store, lot, or other location to which shipment can be made) is located; and

(2) Supplies shall be delivered to the destination consignee's wharf (if destination is a port city and supplies are for export), warehouse unloading platform, or receiving dock, at the expense of the Contractor. The Government shall not be liable for any delivery, storage, demurrage, accessorial, or other charges involved before the actual delivery (or "constructive placement" as defined in carrier tariffs) of the supplies to the destination, unless such charges are caused by an act or order of the Government acting in its contractual capacity. If rail carrier is used, supplies shall be delivered to the specified unloading platform of the consignee. If motor carrier (including "piggyback") is used, supplies shall be delivered to truck tailgate at the unloading platform of the consignee, except when the supplies delivered meet the requirements of Item 568 of the National Motor Freight Classification for "heavy or bulky freight." When supplies meeting the requirements of the referenced Item 568 are delivered, unloading (including movement to the tailgate) shall be performed by the consignee, with assistance from the truck driver, if requested. If the contractor uses rail carrier or freight forwarder for less than carload shipments, the

contractor shall ensure that the carrier will furnish tailgate delivery, when required, if transfer to truck is required to complete delivery to consignee.

(b) The Contractor shall—

- (1)(i) Pack and mark the shipment to comply with contract specifications; or
  - (ii) In the absence of specifications, prepare the shipment in conformance with carrier requirements;
- (2) Prepare and distribute commercial bills of lading;
- (3) Deliver the shipment in good order and condition to the point of delivery specified in the contract;
- (4) Be responsible for any loss of and/or damage to the goods occurring before receipt of the shipment by the consignee at the delivery point specified in the contract;
- (5) Furnish a delivery schedule and designate the mode of delivering carrier; and
- (6) Pay and bear all charges to the specified point of delivery.

### **C.19 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.

### **C.20 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.

### **C.21 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)**

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

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

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

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

**C.22 VAAR 852.246-71 INSPECTION (2008) ALTERNATE I (JAN 2008)  
(TAILORED)**

The contractor shall remove rejected supplies at the next scheduled delivery after notice of rejection. Supplies determined to be unfit for human consumption will not be removed without permission of the local health authorities. Supplies not removed within the allowed time may be destroyed. The Department of Veterans Affairs will not be responsible for nor pay for products rejected. The contractor will be liable for costs incident to examination of rejected products.

(End of Addendum to 52.212-4)

**C.23 52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO  
IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS  
(NOV 2017)**

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

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

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

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

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

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

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

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

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

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

(5) [Reserved]

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

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

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

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

(10) [Reserved]

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

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

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

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

(13) [Reserved]

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

(ii) Alternate I (NOV 2011).

(iii) Alternate II (NOV 2011).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(35)(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.)

(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).

(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.)

(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.

(49) 52.225-5, Trade Agreements (OCT 2016) (19 U.S.C. 2501, et seq., 19 U.S.C. 3301 note).

(50) 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).

(5512) 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).

(52) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (Nov 2007) (42 U.S.C. 5150).

(53) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov 2007) (42 U.S.C. 5150).

(54) 52.232-29, Terms for Financing of Purchases of Commercial Items (Feb 2002) (41 U.S.C. 4505, 10 U.S.C. 2307(f)).

(55) 52.232-30, Installment Payments for Commercial Items (JAN 2017) (41 U.S.C. 4505, 10 U.S.C. 2307(f)).

(56) 52.232-33, Payment by Electronic Funds Transfer—System for Award Management (Jul 2013) (31 U.S.C. 3332).

(57) 52.232-34, Payment by Electronic Funds Transfer—Other than System for Award Management (Jul 2013) (31 U.S.C. 3332).

(58) 52.232-36, Payment by Third Party (MAY 2014) (31 U.S.C. 3332).

(59) 52.239-1, Privacy or Security Safeguards (Aug 1996) (5 U.S.C. 552a).

(60) 52.242-5, Payments to Small Business Subcontractors (JAN 2017)(15 U.S.C. 637(d)(12)).

(61)(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.

## **C.24 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.25 VAAR 852.219-9 VA SMALL BUSINESS SUBCONTRACTING PLAN  
MINIMUM REQUIREMENTS (DEC 2009)**

(a) This clause does not apply to small business concerns.

(b) If the offeror is required to submit an individual subcontracting plan, the minimum goals for award of subcontracts to service-disabled veteran-owned small business concerns and veteran-owned small business concerns shall be at least commensurate with the Department's annual service-disabled veteran-owned small business and veteran-owned small business prime contracting goals for the total dollars planned to be subcontracted.

(c) For a commercial plan, the minimum goals for award of subcontracts to service-disabled veteran-owned small business concerns and veteran-owned small businesses shall be at least commensurate with the Department's annual service-disabled veteran-owned small business and veteran-owned small business prime contracting goals for the total value of projected subcontracts to support the sales for the commercial plan.

(d) To be credited toward goal achievements, businesses must be verified as eligible in the Vendor Information Pages database. The contractor shall annually submit a listing of service-disabled veteran-owned small businesses and veteran-owned small businesses for which credit toward goal achievement is to be applied for the review of personnel in the Office of Small and Disadvantaged Business Utilization.

(e) The contractor may appeal any businesses determined not eligible for crediting toward goal achievements by following the procedures contained in 819.407.

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

SPV-5 Attachment A Customer Data

SPV-5 Attachment B Product Categories

SPV-5 Attachment C Price Schedule

SPV-5 Attachment D Distribution Centers

SPV-5 Attachment E Past Performance Reference Form

SPV-5 Attachment F Past Performance Questions

SPV-5 Attachment G SubK Plan Template

SPV-5 Attachment H Market Basket

SPV-5 Attachment I Mandatory Listing of Supplies

## **SECTION E - SOLICITATION PROVISIONS**

### **E.1 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 (FAPIIS) 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).

## **E.2 52.212-1 INSTRUCTIONS TO OFFERORS—COMMERCIAL ITEMS (JAN 2017)**

(a) *North American Industry Classification System (NAICS) code and small business size standard.* The NAICS code and small business size standard for this acquisition appear in Block 10 of the solicitation cover sheet (SF 1449). However, the small business size standard for a concern which submits an offer in its own name, but which proposes to furnish an item which it did not itself manufacture, is 500 employees.

(b) *Submission of offers.* Submit signed and dated offers to the office specified in this solicitation at or before the exact time specified in this solicitation. Offers may be submitted on the SF 1449, letterhead stationery, or as otherwise specified in the solicitation. As a minimum, offers must show—

- (1) The solicitation number;
- (2) The time specified in the solicitation for receipt of offers;
- (3) The name, address, and telephone number of the offeror;
- (4) A technical description of the items being offered in sufficient detail to evaluate compliance with the requirements in the solicitation. This may include product literature, or other documents, if necessary;
- (5) Terms of any express warranty;
- (6) Price and any discount terms;
- (7) "Remit to" address, if different than mailing address;
- (8) A completed copy of the representations and certifications at FAR 52.212-3 (see FAR 52.212-3(b) for those representations and certifications that the offeror shall complete electronically);
- (9) Acknowledgment of Solicitation Amendments;
- (10) Past performance information, when included as an evaluation factor, to include recent and relevant contracts for the same or similar items and other references (including contract numbers, points of contact with telephone numbers and other relevant information); and
- (11) If the offer is not submitted on the SF 1449, include a statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation. Offers that fail to furnish required representations or information, or reject the terms and conditions of the solicitation may be excluded from consideration.

(c) *Period for acceptance of offers.* The offeror agrees to hold the prices in its offer firm for 120 calendar days from the date specified for receipt of offers, unless another time period is specified in an addendum to the solicitation.

(d) *Product samples.* When required by the solicitation, product samples shall be submitted at or prior to the time specified for receipt of offers. Unless otherwise specified in this solicitation, these samples shall be submitted at no expense to the Government, and returned at the sender's request and expense, unless they are destroyed during preaward testing.

(e) *Multiple offers.* Offerors are encouraged to submit multiple offers presenting alternative terms and conditions, including alternative line items (provided that the alternative line items are consistent with subpart 4.10 of the Federal Acquisition Regulation), or alternative commercial items for satisfying the requirements of this solicitation. Each offer submitted will be evaluated separately.

(f) Late submissions, modifications, revisions, and withdrawals of offers.

(1) Offerors are responsible for submitting offers, and any modifications, revisions, or withdrawals, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that offers or revisions are due.

(2)(i) Any offer, modification, revision, or withdrawal of an offer received at the Government office designated in the solicitation after the exact time specified for receipt of offers is "late" and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and—

(A) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of offers; or

(B) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers; or

(C) If this solicitation is a request for proposals, it was the only proposal received.

(ii) However, a late modification of an otherwise successful offer, that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(3) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the offer wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(4) If an emergency or unanticipated event interrupts normal Government processes so that offers cannot be received at the Government office designated for receipt of offers by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation or other notice of an extension of the closing date, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(5) Offers may be withdrawn by written notice received at any time before the exact time set for receipt of offers. Oral offers in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before the exact time set for receipt of offers, subject to the conditions specified in the solicitation concerning facsimile offers. An offer may be withdrawn in person by an offeror or its authorized representative if, before the exact time set for receipt of offers, the identity of the person requesting withdrawal is established and the person signs a receipt for the offer.

(g) *Contract award (not applicable to Invitation for Bids)*. The Government intends to evaluate offers and award a contract without discussions with offerors. Therefore, the offeror's initial offer should contain the offeror's best terms from a price and technical standpoint. However, the Government reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary. The Government may reject any or all offers if such action is in the public interest; accept other than the lowest offer; and waive informalities and minor irregularities in offers received.

(h) *Multiple awards*. The Government may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in the Schedule, offers may not be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the offeror specifies otherwise in the offer.

(i) Availability of requirements documents cited in the solicitation.

(1)(i) The GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101-29, and copies of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained for a fee by submitting a request to—

GSA Federal Supply Service Specifications Section

Suite 8100 470 East L'Enfant Plaza, SW

Washington, DC 20407

Telephone (202) 619-8925

Facsimile (202) 619-8978.

(ii) If the General Services Administration, Department of Agriculture, or Department of Veterans Affairs issued this solicitation, a single copy of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained free of charge by submitting a request to the addressee in paragraph (i)(1)(i) of this provision. Additional copies will be issued for a fee.

(2) Most unclassified Defense specifications and standards may be downloaded from the following ASSIST websites:

(i) ASSIST (<https://assist.dla.mil/online/start/>);

(ii) Quick Search (<http://quicksearch.dla.mil/>);

(iii) ASSISTdocs.com (<http://assistdocs.com>).

(3) Documents not available from ASSIST may be ordered from the Department of Defense Single Stock Point (DoDSSP) by?

(i) Using the ASSIST Shopping Wizard (<https://assist.dla.mil/wizard/index.cfm>);

(ii) Phoning the DoDSSP Customer Service Desk (215) 697-2179, Mon-Fri, 0730 to 1600 EST; or

(iii) Ordering from DoDSSP, Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 19111-5094, Telephone (215) 697-2667/2179, Facsimile (215) 697-1462.

(4) Nongovernment (voluntary) standards must be obtained from the organization responsible for their preparation, publication, or maintenance.

(j) *Unique entity identifier.* (Applies to all offers exceeding \$3,500, and offers of \$3,500 or less if the solicitation requires the Contractor to be registered in the System for Award Management (SAM) database.) The Offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "Unique Entity Identifier" followed by the unique entity identifier that identifies the Offeror's name and address. The Offeror also shall enter its Electronic Funds Transfer (EFT) indicator, if applicable. The EFT indicator is a four-character suffix to the unique entity identifier. The suffix is assigned at the discretion of the Offeror to establish additional SAM records for identifying alternative EFT accounts (see subpart 32.11) for the same entity. If the Offeror does not have a unique entity identifier, it should contact the entity designated at [www.sam.gov](http://www.sam.gov) for unique entity identifier establishment directly to obtain one. The Offeror should indicate that it is an offeror for a Government contract when contacting the entity designated at [www.sam.gov](http://www.sam.gov) for establishing the unique entity identifier.

(k) *System for Award Management.* Unless exempted by an addendum to this solicitation, by submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the SAM database prior to award, during performance and through final payment of any contract resulting from this solicitation. If the Offeror does not become registered in the SAM database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror. Offerors may obtain information on registration and annual confirmation requirements via the SAM database accessed through <https://www.acquisition.gov>.

(l) *Debriefing.* If a post-award debriefing is given to requesting offerors, the Government shall disclose the following information, if applicable:

(1) The agency's evaluation of the significant weak or deficient factors in the debriefed offeror's offer.

(2) The overall evaluated cost or price and technical rating of the successful and the debriefed offeror and past performance information on the debriefed offeror.

(3) The overall ranking of all offerors, when any ranking was developed by the agency during source selection.

(4) A summary of the rationale for award;

(5) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror.

(6) Reasonable responses to relevant questions posed by the debriefed offeror as to whether source-selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.

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

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

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

**OVERVIEW:**

The Government is committed to applying Trade-Off Source Selection procedures as a means of selecting the most qualified SPV contractor to satisfy the needs of the Government at the best value. Trade-Off Source Selection allows the government to consider award to other than the lowest priced proposal on this procurement, the combination of all non-price factors is slightly more important than price.

Each offer submitted shall contain the Technical Proposal, Business Proposal and Pricing Proposal in the format provided herein. For proposals involving two or more companies combining capabilities to perform on any resulting contract, a legally binding agreement of the parties shall be submitted. Proposal Submission Requirements and Evaluation Criteria for Technical, Business and Pricing Volumes are provided below.

The Government will discontinue the evaluation of any proposal, if the offer is substantially incomplete and the offer clearly demonstrates a lack of understanding of the requirements.

Offerors shall submit proposals in three volumes in the format and quantities described below:

<b>Volume</b>	<b>Volume Title</b>	<b>Number Required</b>
<b>I</b>	Technical Proposal	Original + 6 Copies Printed + 1 Copy on CD
<b>II</b>	Business Proposal	Original + 2 Copies Printed + 1 Copy on CD
<b>III</b>	Pricing Proposal	Original + 2 Copies Printed + 1 Copy on CD

For partnerships and teaming arrangements 2 Copies of the legally binding agreement of the parties shall be submitted in Volume II, Business Proposal. A legally binding agreement of the parties is required to

demonstrate the relationship and responsibilities of offerors entering into a joint venture/teaming arrangement.

Each volume shall be bound separately, labeled appropriately and provided in a 3-ring binder. The original for each volume must be identified as the original. Information improperly submitted will **not** be evaluated and could negatively impact overall rating. Cover page of each volume is required to contain:

- 1) Solicitation Number
- 2) Name and address of offeror
- 3) Name, telephone number and e-mail address for authorized negotiator(s)

Offeror's may provide additional information that will enhance the proposal; however overly elaborate proposals that contain information not pertinent to this acquisition are not recommended. The Government reserves the right to verify any information presented in the offeror's proposal.

### PROPOSAL CHECKLIST

Completion of the Technical, Business and Pricing Proposal as described in Paragraphs 2 – 6 below.

Submission of product catalogs from all designated warehouses in a Microsoft Excel format and provide on CD with searchable properties. Each warehouses catalog shall be provided separately. Catalogs may be separated by tabs within a workbook. Also, one hard copy catalog shall be submitted for the five smallest proposed warehouses.

Proposals are due on the date specified in Block 8 of the Standard Form 1449. Offerors are encouraged to review the requirements for the proposal submission thoroughly. Major omissions may result in disqualification of proposal. Proposals received after the due date will not be accepted and will result in the proposal being rejected.

Pursuant to the requirements of Public Law 95-507, all large business concerns are required to have an approved subcontracting plan for contracts valued over \$700,000 before the Government can award a contract (see FAR 52.219-9 for more details). Offerors must submit a currently approved commercial plan or a new plan for review and approval. Attachment G – Small Business Subcontract Template includes the subcontracting plan elements required to be addressed and is included to facilitate the submission of a subcontracting plan.

## OUTLINE OF TECHNICAL, BUSINESS AND PRICING PROPOSALS

### **VOLUME I: TECHNICAL PROPOSAL**

#### **A. TECHNICAL EXCELLENCE**

- Attachment D – Distribution Centers
- Detailed responses to questions in Paragraph 2 below titled Technical Excellence.
- Instruction manual for online ordering system (for information purposes only, will not be used for evaluation)
- User ID and Password or an Interactive CD for online ordering system (for information purposes only, will not be used for evaluation)

#### **B. PAST PERFORMANCE**

- Attachment E – Past Performance Reference Form
- Attachment F – Past Performance Questions
- Detailed responses to questions in Paragraph 3 below titled Past Performance/Corporate Experience.

C. SOCIOECONOMIC PARTICIPATION

- Attachment G – Small Business Subcontracting Template
- Detailed responses to questions in Paragraph 4 below titled Socioeconomic Participation.

**VOLUME II: BUSINESS PROPOSAL**

A. COMPLETED PROPOSAL, Refer to Paragraph 5 below titled Business Proposal

**VOLUME III: PRICING PROPOSAL**

A. PROPOSED PRICING: Attachment C – Price Schedule

**I. TECHNICAL EXCELLENCE**

The Offeror is responsible for submitting a technical proposal. The technical proposal consists of the completion of Attachment D – Distribution Centers; detailed responses to the questions listed herein Paragraph 2, and a complete listing of proposed suppliers (non-manufacturers). Offerors shall also submit an instruction manual for use of the electronic ordering system as well as a user ID and password or an interactive CD that allows for viewing and trialing of the electronic ordering system.

*Instructions for written proposal:*

Offeror should detail all existing processes and future plans to successfully implement this contract. Submitted documents should be well organized and responses appropriately titled for reference purposes. Offeror's shall provide detailed responses and are encouraged to provide additional documentation to support answers to the Technical Excellence questions listed herein Paragraph 2. All manuals, catalogs, supporting documentation, or "Value Added" illustrative materials shall be submitted with this written proposal.

**A. CAPABILITY TO PERFORM NATIONWIDE**

1. Complete Attachment D – Distribution Centers.
2. Assign a warehouse for all facilities and a Healthcare Account Manager with authority to implement this contract for each VISN.
3. Based on the location of each customer, provide a maximum number of deliveries per week that each facility would have available to them.
4. For any states that do not have current facility customers per Attachment D, (e.g. Alaska, Hawaii), provide delivery capabilities. Fee proposal in Attachment C for Alaska and/or Hawaii is optional.
5. Provide distance in miles from warehouse to each customer, unique entity identifier (e.g. DUNS number, Tax ID number, etc.) and cage code information for each division as required in Attachment D.

\*\* Teamed Effort Offerors

1. Describe organizational structure, authority, processes, and procedures for joint activity.

2. Describe ability to implement performance work statements nationwide.
3. Indicate single point of contact for contract and extent of authority to act on contract issues

## **B. PROCUREMENT CAPABILITIES AND INFORMATION SYSTEMS**

### **PROCUREMENT CAPABILITIES**

1. Explain the special order process.
  - a. Once a special order is placed by a customer, provide the average duration it takes for the product to get to the end user.
2. Provide the total number of SKUs available to current healthcare customers for each of the product categories found in Attachment B.
3. Provide the total number of SKUs of Private Label products for each of the product categories found in Attachment B.
4. Provide the total number of SKUs that are specifically marketed to Healthcare Foodservice customers, e.g., no anti-biotic ever, low sodium,
5. Provide your capabilities and supporting functions that you provide commercial customers that would be available to the government as it relates to maintaining favored supplier pricing agreements, standardization efforts, and product diversification.
6. Provide information on intercompany transfer of products between servicing divisions.

### **INFORMATION SYSTEMS**

1. Provide a listing of management reports that are available, that can be accessed by the end user and would assist in improving operational procedures.
2. Provide a listing of third-party foodservice software that your internal information systems are compatible with.

## **C. QUALITY ASSURANCE, EMERGENCY MANAGEMENT AND VALUE ADDED SERVICES**

### **PRODUCT QUALITY & SAFETY**

1. How do you ensure that private label products are equal to the established quality level or specifications?
2. List and identify private label quality levels.
3. How do you ensure commercially branded products meet their specification?
4. Describe your process for determining supplier's capabilities and compliance with GMPs, USDA, and State and federal regulations.
5. What HACCP guidelines do you have in place for product receipt and storage?
  - a. How do you inspect incoming product?
  - b. How do you ensure and track product integrity from manufacturer to warehouse?
6. Describe your requirements for manufacturers to communicate any product problems or recalls.
7. Describe your product shelf-life guidelines and process for monitoring these timeframes.
8. Describe product return policy.
  - a. Explain product tracking system from farm to customer and if local warehouse staff provide country of origin information?
9. Do warehouses maintain local procurement information and identify these products to customers?
10. Describe your food recall procedures, capabilities and process.

### **QUALITY ASSURANCE**

1. Provide corporate HACCP guidelines and policies, and provide the full HACCP plan for largest distribution center; size based on total number of unique SKUs.
2. Describe your process to ensure compliance with your prescribed corporate HACCP guidelines.

### **EMERGENCY READINESS**

1. Describe your emergency preparedness plans and recovery procedures.

#### VALUE ADDED SERVICES

1. Define and describe in detail the “Value Added Services” you will offer customers of this contract at no additional charges. See definitions for further guidance.
2. Quantify the advantages of these services if utilized by participating customers.

### II. PAST PERFORMANCE

1. Offeror shall submit a separate completed Attachment E – Past Performance Reference Form for each of your five most recent healthcare prime vendor or program accounts. If offeror is applying as a teamed effort, three completed copies of Attachment E – Past Performance Reference Form are required from each Contractor.
2. Additional past performance information shall be documented on Attachment F – Past Performance Questions with additional pages as needed.
3. Offeror shall define the extent of healthcare and prime vendor experience by the following factors:
  - a. Customer Name, number of locations, average annual sales;
  - b. Significant Comments, Achievements, from the Contract;
  - c. Average Fill Rate during the previous 4 quarters of the contract term;
  - d. Average duration of special orders from time product was ordered and delivered to customer;
  - e. Average number of business reviews conducted each year.
4. If proposing a teamed effort, offeror shall describe the organizational structure and past experience with teamed efforts.
  - a. **TEAMED EFFORT ACCOMPLISHMENTS** (if applicable)
    - i. Teamed effort organizational structure
    - ii. Extent of previous teamed efforts.
    - iii. Annual sales from teamed efforts.
    - iv. Describe how oversight manager has functioned in other-like teamed efforts. What authority has manager implored to administer a teamed effort?
    - v. Small business involvement or support from teamed effort participants.

### III. SOCIOECONOMIC PARTICIPATION

Large business offerors shall establish a Small Business Subcontracting Plan and identify sales goals for purchases or work completed by disabled Veteran-owned (SDVOB), Veteran-owned (VOSB) If SDVOB or VOSB, provide certificate of registration in Vendor Information Pages (VIP) database (<http://www.VetBiz.gov>)

Subcontracting opportunities include work directly involved in the manufacturing or distribution of food service products and indirectly such as janitorial, administrative or other work for the corporation. These plans should document opportunities and special initiatives planned to facilitate growth of these small business groups. Sales goals and plans should reflect the intent of those of the Secretary of Veterans Affairs. Large businesses associated with teamed efforts shall also provide a Small Business Subcontracting Plan. Refer to **Attachment G – Small Business Subcontracting Template** for more details on Socioeconomic Plans and Goals. Provide a brief description of the proposed subcontracts and the approximate dollar values of the proposed subcontracts.

NOTE: VA expects contractors to advertise subcontracting opportunities at: <http://www.sba.gov/subnet>. Contractors should also search the Vendor Information Pages (VIP) Database at the Vetbiz.gov web portal (<http://www.vip.vetbiz.gov/default.asp>), to ensure maximum practicable consideration in subcontracting

with Veteran-Owned and Service-Disabled Veteran-Owned Small Businesses. NOTE: The proposed subcontractors must be registered and verified in the VetBiz.gov VIP database.

For those offerors claiming SDVOSB or VOSB preference: to receive credit under the Service-Disabled Veteran-Owned Small Business (SDVOSB) and Veteran-Owned Small Business (VOSB) Participation Factor, the offeror must be registered and verified in Vender Information Pages (VIP) database. (<http://www.VetBiz.gov>)

Offerors should note that addressing the extent of VOSB/SDVOSB participation is not in any way intended to be a substitute for submission of the subcontracting plan. Non-veteran offerors proposing to use SDVOSBs or VOSBs must provide 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. The proposed subcontractors must be registered and verified in the VetBiz.gov VIP database (<http://www.VetBiz.gov>). 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.

Offeror's shall provide responses and are encouraged to provide additional documentation to support answers to the Socio-economic questions listed below.

State whether or not your firm qualifies as a Service-Disabled Veteran-Owned Small Business (SDVOSB); a Veteran-Owned Small Business (VOSB).

If your firm does not qualify under one of these small business categories, indicate whether your firm will commit to subcontracting with any SDVOSB, VOSB, or SDBs in the performance of this contract. Identify the firms you will subcontract with, the products or services they will provide, and the estimated value of the subcontracts.

If your firm is a large business that performed under a federal contract within the past 3 years where a small business subcontracting plan was required, provide a copy of the Individual Subcontract Report (ISR) or Summary Subcontract Reports (SSR) that was submitted under the plan. If your company is a participant of the VA Mentor-Protégé Program, provide a copy of a signed letter issued by the VA Office of Small and Disadvantaged Business Utilization approving your Mentor-Protégé Agreement.

Describe any special initiatives used or planned to support small businesses; such as mentor-protégé programs, joint ventures, technical assistance, training programs, etc.

## **BUSINESS PROPOSAL**

A completed business proposal shall include the following:

Standard Form 1449 (page 1 of solicitation) must be dated and have the original signature of the firm's authorized representative. If authorized representative is other than one of the firm's Executive Officers or

other than a company member listed in the company's directory, submit letter of authorization signed by one of the firm's Executive Officers. For companies acting in the capacity of a joint venture/teaming arrangement submitting one proposal, the original signatures of authorized representatives of each firm is required on the Standard Form 1449. Offeror shall complete blocks 7a (include Unique Entity Identifier) 12, 30a, 30b and 30c.

Completion of following provisions within this solicitation:

52.209-5 Certification Regarding Responsibility Matters;

52.209-7 Information Regarding Responsibility Matters;

Contact for Contract Administration, and;

Authorized Negotiators.

Completion of Representations and Certifications as listed under FAR 52.212-3. Per FAR 4.11

Prospective contractors shall be registered in the SAM database prior to award of a contract or agreement.

The electronic record will serve as an alternative to completing provision 52.212-3 Offeror Representation and Certifications – Commercial Items. However, offerors still must read and complete 52.212-3(b) and any other sections of 52.212-3 as applicable to this procurement.

Standard Form 30, Amendment(s) to solicitation. In the case where amendments to the solicitation are issued, it is the responsibility of the offeror to submit one copy of each issued SF 30 and shall contain the original signatures of authorized representative of the offeror and dated. For companies acting in the capacity of a joint venture/teaming arrangement submitting on proposal, the original signatures of authorized representatives of each firm is required on the SF 30.

## **PRICE FACTOR**

### **I. DISTRIBUTION PRICING PROPOSAL**

A detailed Price Proposal shall be submitted separately from the Technical Proposal on Attachment C – Price Schedule, identifying the proposed distribution price (fee) for the base year and the potential option years of the awarded contract for each VISN and product category. A proposed distribution price (fee) for the Produce category is optional, but encouraged. The distribution price shall be expressed as a fixed percentage markup of product cost. The proposed distribution price shall NOT include the Cost Recovery Fee of 0.5%.

Attachment C – Price Schedule can be expanded as needed. Offeror should edit document header of Attachment C – Price Schedule to include Contractor name and date of proposal. Proposals received which do not propose a distribution price (fee) for the base year and option years for each VISN and product category will be rejected and will receive no further consideration.

Distribution prices should be predicated on the FY 2016 actual purchases from the VA facilities and on a minimum drop size of \$1,000.00 except for those facilities listed as “minimum drop size of \$750” on Attachment A – Customer Data. Product category data provided in Attachment B – Product Categories should be used to tailor distribution prices to usual product mix.

It is recognized that the product prices may differ from one distribution center to another, however the distribution prices proposed per product category must be identical for all facilities within a VISN.

A market basket provided in “Attachment H – Market Basket” of selected line items shall be completed as follows:

Offers must fully complete the Attachment H – Market Basket document. This document is made up of 255 products that have historically been high volume items in each category. The items are for both branded items and non-branded/exclusive brand products.

A market basket must be completed for the largest volume customer for each of the 18 total VISNs, which have been provided. Within each VISN, the largest customer has been designated and the Landed Product Price for each location is to be based on division/warehouse that would service that specific location. The name and location of that servicing location must be noted on each tab as well as the VISN Breakdown tab within the document.

Instructions on completing the Market Basket can be found on the Instructions Market Basket tab.

Offeror’s shall only provide manufacturer/supplier invoice price. No deviations shall be submitted and no application of the proposed distribution fee shall be included.

\* The NAC Contracting Officer may request invoices to verify offeror’s submitted Landed Product Price and Transportation Fee (if applicable)

Offeror shall describe calculation methodology for report on freight revenue, freight cost, and freight income which is associated with all “Applicable Freight” charges. This quarterly report shall be provided to the NAC Contracting Officer 60 days after each calendar quarter. The report shall include totals for freight revenue, costs, and income. Data shall be applied to SPV purchases or cases to reflect estimated cost impact.

Other Pricing Issues: Offerors are encouraged to propose pricing for additional incentives in the Price Schedule, Attachment C – Price Schedule.

**CONTACT FOR CONTRACT ADMINISTRATION**

Offerors are requested to designate a person to be contacted for prompt contract Administration.

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY, STATE, ZIP CODE: \_\_\_\_\_

PHONE NUMBER: \_\_\_\_\_

FAX NUMBER: \_\_\_\_\_

EMAIL ADDRESS: \_\_\_\_\_

**AUTHORIZED NEGOTIATORS**

The offeror or quoter represents that the following persons are authorized to negotiate on its behalf with the Government in connection with this request for proposal or quotations: (list names, titles, email address and telephone numbers of the authorized negotiations)

NAME	TITLE	EMAIL ADDRESS	PHONE NUMBER


(End of Addendum to 52.212-1)

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

The Government contemplates award of a hybrid Indefinite Delivery/Indefinite Quantity and Indefinite Delivery/Requirements type contract. Prices are Fixed Price with an Economic Price Adjustment for diesel fuel.

### **E.4 52.232-38 SUBMISSION OF ELECTRONIC FUNDS TRANSFER INFORMATION WITH OFFER (JUL 2013)**

The offeror shall provide, with its offer, the following information that is required to make payment by electronic funds transfer (EFT) under any contract that results from this solicitation. This submission satisfies the requirement to provide EFT information under paragraphs (b)(1) and (j) of the clause at 52.232-34, Payment by Electronic Funds Transfer—Other than System for Award Management.

- (1) The solicitation number (or other procurement identification number).
- (2) The offeror's name and remittance address, as stated in the offer.
- (3) The signature (manual or electronic, as appropriate), title, and telephone number of the offeror's official authorized to provide this information.
- (4) The name, address, and 9-digit Routing Transit Number of the offeror's financial agent.
- (5) The offeror's account number and the type of account (checking, savings, or lockbox).
- (6) If applicable, the Fedwire Transfer System telegraphic abbreviation of the offeror's financial agent.
- (7) If applicable, the offeror shall also provide the name, address, telegraphic abbreviation, and 9-digit Routing Transit Number of the correspondent financial institution receiving the wire transfer payment if the offeror's financial agent is not directly on-line to the Fedwire and, therefore, not the receiver of the wire transfer payment.

### **E.5 52.233-2 SERVICE OF PROTEST (SEP 2006)**

Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the Government Accountability Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from:

Contracting Officer (003B4C4)

National Acquisition Center  
Hand-Carried Address:

OA&L / National Acquisition Center  
Building 37  
1st Avenue, One Block North of Cermak  
Hines IL 60141  
Mailing Address:

OA&L / National Acquisition Center  
Building 37  
1st Avenue, One Block North of Cermak  
Hines IL 60141

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

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

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

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

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

#### **E.7 CLASS DEVIATION FROM FEDERAL ACQUISITION REGULATION PROVISION 52.209-5 Certification Regarding Responsibility Matters (APR 2010)**

##### **Class Deviation:**

Contracting officers (CO) shall include the following provision in all solicitations that will use funds made available by Division H, sections 8124 and 8125 of P.L. 112-74 and sections 738 and 739 of P.L. 112-55, including solicitations for acquisition of commercial items under FAR Part 12.

**REPRESENTATION BY CORPORATIONS REGARDING AN UNPAID TAX LIABILITY OR A FELONY CONVICTION UNDER ANY FEDERAL LAW (DEVIATION) (MARCH 2012)**

(a) In accordance with Division H, sections 8124 and 8125 of P.L. 112-74 and sections 738 and 739 of P.L. 112-55 none of the funds made available by either Act may be used to enter into a contract with any corporation that—

(1) Has an unpaid federal tax liability, unless the agency has considered suspension or debarment of the corporation and the Suspension and Debarment Official has made a determination that this action is not necessary to protect the interests of the Government.

(2) Has a felony criminal violation under any Federal or State law within the preceding 24 months, unless the agency has considered suspension or debarment of the corporation and Suspension and Debarment Official has made a determination that this action is not necessary to protect the interests of the Government.

(b) The Offeror represents that—

(1) The offeror does  does not  have any unpaid Federal tax liability that has been assessed and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

(2) The offeror, its officers or agents acting on its behalf have  have not  been convicted of a felony criminal violation under a Federal or State law within the preceding 24 months.

(End of provision)

## **E.8 VAAR 852.233-70 PROTEST CONTENT/ALTERNATIVE DISPUTE RESOLUTION (JAN 2008)**

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

- (1) Include the name, address, fax number, and telephone number of the protester;
- (2) Identify the solicitation and/or contract number;
- (3) Include an original signed by the protester or the protester's representative and at least one copy;
- (4) Set forth a detailed statement of the legal and factual grounds of the protest, including a description of resulting prejudice to the protester, and provide copies of relevant documents;
- (5) Specifically request a ruling of the individual upon whom the protest is served;
- (6) State the form of relief requested; and
- (7) Provide all information establishing the timeliness of the protest.

(b) Failure to comply with the above may result in dismissal of the protest without further consideration.

(c) Bidders/offerors and contracting officers are encouraged to use alternative dispute resolution (ADR) procedures to resolve protests at any stage in the protest process. If ADR is used, the Department of Veterans Affairs will not furnish any documentation in an ADR proceeding beyond what is allowed by the Federal Acquisition Regulation.

## **E.9 VAAR 852.233-71 ALTERNATE PROTEST PROCEDURE (JAN 1998)**

As an alternative to filing a protest with the contracting officer, an interested party may file a protest with the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Administration Team, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, or for solicitations issued by the Office of Construction and Facilities Management, the Director, Office of Construction and Facilities Management, 810 Vermont Avenue, NW., Washington, DC 20420.

36W79719D0001

The protest will not be considered if the interested party has a protest on the same or similar issues pending with the contracting officer.

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

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

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

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

#### **E.10 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.

#### **E.11 52.214-34 SUBMISSION OF OFFERS IN THE ENGLISH LANGUAGE (APR 1991)**

Offers submitted in response to this solicitation shall be in the English language. Offers received in other than English shall be rejected.

#### **E.12 52.214-35 SUBMISSION OF OFFERS IN U.S. CURRENCY (APR 1991)**

Offers submitted in response to this solicitation shall be in terms of U.S. dollars. Offers received in other than U.S. dollars shall be rejected.

#### **E.13 52.212-2 EVALUATION—COMMERCIAL ITEMS (OCT 2014)**

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

The Government will consider the offeror's adherence to the terms and conditions specified in the solicitation. Offerors are cautioned about taking exception to any of the terms in this solicitation. Normally, award may not be made to an offeror that takes exception to any term. If any exception does not meet the minimum requirements of the solicitation, the offeror's proposal may be eliminated from award consideration. The Government reserves the right to conduct discussions but intends to make award on initial proposals. Offeror's may not have the opportunity to submit a revised proposal removing exceptions to terms.

The following factors shall be used to evaluate offers:

Non-priced evaluation factors consisting of Technical Excellence, Past Performance and Socioeconomic Consideration are listed below.

Technical Excellence is more important than Past Performance and Socioeconomic Consideration combined. Past Performance is slightly more significant than Socioeconomic Consideration. The first two factors in Technical Excellence of Procurement Capabilities and Information Systems and Quality Assurance Emergency Management and Value Added Services are weighted equally. The 3rd subfactor Capability to Perform Nationwide is of lesser importance. Non-Priced Factors, when combined, are slightly more important than price.

**I. NON-PRICED FACTORS**

**A. TECHNICAL EXCELLENCE**

- 1) **Procurement Capabilities and Information Systems** – This subfactor will consider offeror’s purchasing system controls; product pricing; the ordering process and electronic system; and management report capabilities.
- 2) **Quality Assurance, Emergency Management and Value Added Services** – This subfactor will consider warehouse and inventory management; processes for product delivery; product quality assurance; emergency readiness plans; performance metrics and qualitative assessment of value added services.
- 3) **Capability to Perform Nationwide** – This subfactor will consider the location of warehouse sites; the offeror’s product line and availability; and product quality and safety.

**B. PAST PERFORMANCE**

**C. SOCIOECONOMIC PARTICIPATION**

**II. PRICE FACTORS Factor A is significantly more important than factor b in Price**

**A. DISTRIBUTION FEE BY VISN, PRODUCT CATEGORY FOR BASE AND OPTION YEARS**

**B. SPECIAL PRICING CONSIDERATIONS**

**Evaluation of Technical Excellence**

The government will evaluate the offeror’s ability to perform as a full line food distributor/prime vendor supplier. The government will evaluate the offeror’s experience and ability to provide support as a prime vendor supplier in the geographic areas cited in the solicitation. For this solicitation, Alaska and Hawaii are optional regions.

**Evaluation of Past Performance**

Evaluation of past performance will be a subjective assessment based on consideration of all relevant facts and circumstances. The Government may use information received from the references provided by the offeror in Attachment E, information provided in Attachment F responses to questions provided in the Addendum to FAR 52.212-1, Paragraph 3, ‘Past Performance’ of the solicitation, any additional data provided within the proposal as it relates to performance and corporate experience, information from the Government’s files or information from any other source the Government deems appropriate. Information requested by the offeror’s references will include record of product availability, fill-rates, timely deliveries, product price accuracy and management information systems, and customer service. The offeror will be evaluated for information accuracy and performance on commercial and government accounts.

### **Evaluation of Socioeconomic Participation**

In an effort to achieve socioeconomic small business goals, the Government will evaluate proposed participation in performance of the contract by the following types of business concerns: Service-Disabled Veteran-Owned Small Business (SDVOSB); Veteran-Owned Small Business (VOSB); and Small Disadvantaged Business (SDB) concerns. This factor takes into consideration an offeror's status as a SDVOSB, VOSB, or SDB and/or its proposed use of eligible SDVOSB, VOSB, and/or SDB concerns as subcontractors. Socio-Economic Consideration will give preference in the following order of relative importance.

- 1) Service-Disabled Veteran-Owned Small Business (SDVOSB) performing as the prime contractor;
- 2) Veteran-Owned Small Business (VOSB) performing as the prime contractor;
- 3) Non-SDVOSB, VOSB or SDB Business committing to subcontract with these types of small businesses in the performance of the contract;
- 4) Large business with a past performance history of meeting or exceeding its SDVOSB, VOSB, and SDB goals in small business subcontracting plans as stated in 852.219-71 in the solicitation.

The Government will evaluate large businesses based on the level of all small business commitment demonstrated in their proposal (Attachment G, if applicable), prior level of commitment to utilizing small businesses in performance of prior contracts, and responses to questions provided in the Addendum to FAR 52.212-1, Paragraph 4 "Socioeconomic Participation" of the solicitation.

### **Evaluation of Price**

The Government will evaluate offers for award purposes on a calculated aggregate score. The government will take the submitted Landed Product Price submitted by offerors in "Attachment H" and will add in the offeror's proposed distribution fee. This calculation will be performed for each product found in Attachment H Market Basket in each VISN and each proposed option year. All calculations will be totaled. The lowest calculated aggregate value will be evaluated as the lowest overall price to the Government.

The base year pricing will be compared with the prices offered by other offerors and will also be compared to current year pricing utilizing actual VISN purchases in each category from FY16 to determine cost reasonableness. Option year prices will be evaluated in the aggregate value and will be compared to other offerors for cost reasonableness. The Government may determine that an offer is unacceptable if any product category prices in the base year or option year prices are significantly unbalanced.

Special pricing incentives are optional for offerors and are highly encouraged. Offered pricing incentives will not be evaluated as part of the pricing proposal but will be taken into consideration when determining the overall best value of proposals.

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

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

#### **E.14 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—

*Administrative merits determination* means certain notices or findings of labor law violations issued by an enforcement agency following an investigation. An administrative merits determination may be final or be subject to appeal or further review. To determine whether a particular notice or finding is covered by this definition, it is necessary to consult section II.B. in the DOL Guidance.

*Arbitral award or decision* means an arbitrator or arbitral panel determination that a labor law violation occurred, or that enjoined or restrained a violation of labor law. It includes an award or decision that is not final or is subject to being confirmed, modified, or vacated by a court, and includes an award or decision resulting from private or confidential proceedings. To determine whether a particular award or decision is covered by this definition, it is necessary to consult section II.B. in the DOL Guidance.

*Civil judgment means—*

(1) In paragraph (h) of this provision: A judgment or finding of a civil offense by any court of competent jurisdiction.

(2) In paragraph (s) of this provision: Any judgment or order entered by any Federal or State court in which the court determined that a labor law violation occurred, or enjoined or restrained a violation of labor law. It includes a judgment or order that is not final or is subject to appeal. To determine whether a particular judgment or order is covered by this definition, it is necessary to consult section II.B. in the DOL Guidance.

*DOL Guidance* means the Department of Labor (DOL) Guidance entitled: “Guidance for Executive Order 13673, ‘Fair Pay and Safe Workplaces’ “. The DOL Guidance, dated August 25, 2016, can be obtained from [www.dol.gov/fairpayandsafeworkplaces](http://www.dol.gov/fairpayandsafeworkplaces).

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

*Enforcement agency* means any agency granted authority to enforce the Federal labor laws. It includes the enforcement components of DOL (Wage and Hour Division, Office of Federal Contract Compliance

Programs, and Occupational Safety and Health Administration), the Equal Employment Opportunity Commission, the Occupational Safety and Health Review Commission, and the National Labor Relations Board. It also means a State agency designated to administer an OSHA-approved State Plan, but only to the extent that the State agency is acting in its capacity as administrator of such plan. It does not include other Federal agencies which, in their capacity as contracting agencies, conduct investigations of potential labor law violations. The enforcement agencies associated with each labor law under E.O. 13673 are—

(1) Department of Labor Wage and Hour Division (WHD) for—

- (i) The Fair Labor Standards Act;
- (ii) The Migrant and Seasonal Agricultural Worker Protection Act;
- (iii) 40 U.S.C. chapter 31, subchapter IV, formerly known as the Davis-Bacon Act;
- (iv) 41 U.S.C. chapter 67, formerly known as the Service Contract Act;
- (v) The Family and Medical Leave Act; and
- (vi) E.O. 13658 of February 12, 2014 (Establishing a Minimum Wage for Contractors);

(2) Department of Labor Occupational Safety and Health Administration (OSHA) for—

- (i) The Occupational Safety and Health Act of 1970; and
- (ii) OSHA-approved State Plans;

(3) Department of Labor Office of Federal Contract Compliance Programs (OFCCP) for—

- (i) Section 503 of the Rehabilitation Act of 1973;
- (ii) The Vietnam Era Veterans' Readjustment Assistance Act of 1972 and the Vietnam Era Veterans' Readjustment Assistance Act of 1974; and

(iii) E.O. 11246 of September 24, 1965 (Equal Employment Opportunity);

(4) National Labor Relations Board (NLRB) for the National Labor Relations Act; and

(5) Equal Employment Opportunity Commission (EEOC) for—

- (i) Title VII of the Civil Rights Act of 1964;
- (ii) The Americans with Disabilities Act of 1990;
- (iii) The Age Discrimination in Employment Act of 1967; and
- (iv) Section 6(d) of the Fair Labor Standards Act (Equal Pay Act).

*Forced or indentured child labor* means all work or service—

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

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

*Highest-level owner* means the entity that owns or controls an immediate owner of the offeror, or that owns or controls one or more entities that control an immediate owner of the offeror. No entity owns or exercises control of the highest level owner.

*Immediate owner* means an entity, other than the offeror, that has direct control of the offeror. Indicators of control include, but are not limited to, one or more of the following: Ownership or interlocking management, identity of interests among family members, shared facilities and equipment, and the common use of employees.

*Inverted domestic corporation* means a foreign incorporated entity that meets the definition of an inverted domestic corporation under 6 U.S.C. 395(b), applied in accordance with the rules and definitions of 6 U.S.C. 395(c).

*Labor compliance agreement* means an agreement entered into between a contractor or subcontractor and an enforcement agency to address appropriate remedial measures, compliance assistance, steps to resolve issues to increase compliance with the labor laws, or other related matters.

*Labor laws* means the following labor laws and E.O.s:

- (1) The Fair Labor Standards Act.
- (2) The Occupational Safety and Health Act (OSHA) of 1970.
- (3) The Migrant and Seasonal Agricultural Worker Protection Act.
- (4) The National Labor Relations Act.
- (5) 40 U.S.C. chapter 31, subchapter IV, formerly known as the Davis-Bacon Act.
- (6) 41 U.S.C. chapter 67, formerly known as the Service Contract Act.
- (7) E.O. 11246 of September 24, 1965 (Equal Employment Opportunity).
- (8) Section 503 of the Rehabilitation Act of 1973.
- (9) The Vietnam Era Veterans' Readjustment Assistance Act of 1972 and the Vietnam Era Veterans' Readjustment Assistance Act of 1974.
- (10) The Family and Medical Leave Act.
- (11) Title VII of the Civil Rights Act of 1964.
- (12) The Americans with Disabilities Act of 1990.
- (13) The Age Discrimination in Employment Act of 1967.
- (14) E.O. 13658 of February 12, 2014 (Establishing a Minimum Wage for Contractors).

(15) Equivalent State laws as defined in the DOL Guidance. (The only equivalent State laws implemented in the FAR are OSHA-approved State Plans, which can be found at [www.osha.gov/dcsp/osp/approved\\_state\\_plans.html](http://www.osha.gov/dcsp/osp/approved_state_plans.html)).

*Labor law decision* means an administrative merits determination, arbitral award or decision, or civil judgment, which resulted from a violation of one or more of the laws listed in the definition of “labor laws”.

*Manufactured end product* means any end product in product and service codes (PSCs) 1000-9999, except—

- (1) PSC 5510, Lumber and Related Basic Wood Materials;
- (2) Product or Service Group (PSG) 87, Agricultural Supplies;
- (3) PSG 88, Live Animals;
- (4) PSG 89, Subsistence;
- (5) PSC 9410, Crude Grades of Plant Materials;
- (6) PSC 9430, Miscellaneous Crude Animal Products, Inedible;
- (7) PSC 9440, Miscellaneous Crude Agricultural and Forestry Products;
- (8) PSC 9610, Ores;
- (9) PSC 9620, Minerals, Natural and Synthetic; and
- (10) PSC 9630, Additive Metal Materials.

*Place of manufacture* means the place where an end product is assembled out of components, or otherwise made or processed from raw materials into the finished product that is to be provided to the Government. If a product is disassembled and reassembled, the place of reassembly is not the place of manufacture.

*Predecessor* means an entity that is replaced by a successor and includes any predecessors of the predecessor.

*Restricted business operations* means business operations in Sudan that include power production activities, mineral extraction activities, oil-related activities, or the production of military equipment, as those terms are defined in the Sudan Accountability and Divestment Act of 2007 (Pub. L. 110-174). Restricted business operations do not include business operations that the person (as that term is defined in Section 2 of the Sudan Accountability and Divestment Act of 2007) conducting the business can demonstrate—

- (1) Are conducted under contract directly and exclusively with the regional government of southern Sudan;
- (2) Are conducted pursuant to specific authorization from the Office of Foreign Assets Control in the Department of the Treasury, or are expressly exempted under Federal law from the requirement to be conducted under such authorization;

(3) Consist of providing goods or services to marginalized populations of Sudan;

(4) Consist of providing goods or services to an internationally recognized peacekeeping force or humanitarian organization;

(5) Consist of providing goods or services that are used only to promote health or education; or

(6) Have been voluntarily suspended.

“Sensitive technology”—

(1) Means hardware, software, telecommunications equipment, or any other technology that is to be used specifically—

(i) To restrict the free flow of unbiased information in Iran; or

(ii) To disrupt, monitor, or otherwise restrict speech of the people of Iran; and

(2) Does not include information or informational materials the export of which the President does not have the authority to regulate or prohibit pursuant to section 203(b)(3) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)(3)).

*Service-disabled veteran-owned small business concern*—

(1) Means a small business concern—

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

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

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

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

*Small disadvantaged business concern*, consistent with 13 CFR 124.1002, means a small business concern under the size standard applicable to the acquisition, that—

(1) Is at least 51 percent unconditionally and directly owned (as defined at 13 CFR 124.105) by—

(i) One or more socially disadvantaged (as defined at 13 CFR 124.103) and economically disadvantaged (as defined at 13 CFR 124.104) individuals who are citizens of the United States; and

(ii) Each individual claiming economic disadvantage has a net worth not exceeding \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(2) The management and daily business operations of which are controlled (as defined at 13.CFR 124.106) by individuals, who meet the criteria in paragraphs (1)(i) and (ii) of this definition.

*Subsidiary* means an entity in which more than 50 percent of the entity is owned—

- (1) Directly by a parent corporation; or
- (2) Through another subsidiary of a parent corporation.

*Successor* means an entity that has replaced a predecessor by acquiring the assets and carrying out the affairs of the predecessor under a new name (often through acquisition or merger). The term “successor” does not include new offices/divisions of the same company or a company that only changes its name. The extent of the responsibility of the successor for the liabilities of the predecessor may vary, depending on State law and specific circumstances.

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

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

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

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

- (1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
- (2) Whose management and daily business operations are controlled by one or more women.

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

(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:

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(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.

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[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
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_____	_____
_____	_____
_____	_____

[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
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_____	_____
_____	_____
_____	_____

[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](mailto:CISADA106@state.gov).

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

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

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

(iii) Certifies that the offeror, and any person owned or controlled by the offeror, does not knowingly engage in any transaction that exceeds \$3,500 with Iran's Revolutionary Guard Corps or any of its officials, agents, or affiliates, the property and interests in property of which are blocked pursuant to the

International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (see OFAC's Specially Designated Nationals and Blocked Persons List at <http://www.treasury.gov/ofac/downloads/t11sdn.pdf>).

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

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

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

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

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

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

Immediate owner CAGE code: \_\_\_\_\_.

Immediate owner legal name: \_\_\_\_\_.

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

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

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

Highest-level owner CAGE code: \_\_\_\_\_.

Highest-level owner legal name: \_\_\_\_\_.

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

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

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

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

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

(2) The Offeror represents that—

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

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

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

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

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

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

Predecessor legal name: \_\_\_\_.

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

(s) *Representation regarding compliance with labor laws (Executive Order 13673).* If the offeror is a joint venture that is not itself a separate legal entity, each concern participating in the joint venture shall separately comply with the requirements of this provision.

(1)(i) For solicitations issued on or after October 25, 2016 through April 24, 2017: The Offeror  does  does not anticipate submitting an offer with an estimated contract value of greater than \$50 million.

(ii) For solicitations issued after April 24, 2017: The Offeror  does  does not anticipate submitting an offer with an estimated contract value of greater than \$500,000.

(2) If the Offeror checked “does” in paragraph (s)(1)(i) or (ii) of this provision, the Offeror represents to the best of the Offeror's knowledge and belief [Offeror to check appropriate block]:

(i) There has been no administrative merits determination, arbitral award or decision, or civil judgment for any labor law violation(s) rendered against the offeror (see definitions in paragraph (a) of this section) during the period beginning on October 25, 2015 to the date of the offer, or for three years preceding the date of the offer, whichever period is shorter; or

(ii) There has been an administrative merits determination, arbitral award or decision, or civil judgment for any labor law violation(s) rendered against the Offeror during the period beginning on

October 25, 2015 to the date of the offer, or for three years preceding the date of the offer, whichever period is shorter.

(3)(i) If the box at paragraph (s)(2)(ii) of this provision is checked and the Contracting Officer has initiated a responsibility determination and has requested additional information, the Offeror shall provide--

(A) The following information for each disclosed labor law decision in the System for Award Management (SAM) at [www.sam.gov](http://www.sam.gov), unless the information is already current, accurate, and complete in SAM. This information will be publicly available in the Federal Awardee Performance and Integrity Information System (FAPIIS):

(1) The labor law violated.

(2) The case number, inspection number, charge number, docket number, or other unique identification number.

(3) The date rendered.

(4) The name of the court, arbitrator(s), agency, board, or commission that rendered the determination or decision;

(B) The administrative merits determination, arbitral award or decision, or civil judgment document, to the Contracting Officer, if the Contracting Officer requires it;

(C) In SAM, such additional information as the Offeror deems necessary to demonstrate its responsibility, including mitigating factors and remedial measures such as offeror actions taken to address the violations, labor compliance agreements, and other steps taken to achieve compliance with labor laws. Offerors may provide explanatory text and upload documents. This information will not be made public unless the contractor determines that it wants the information to be made public; and

(D) The information in paragraphs (s)(3)(i)(A) and (s)(3)(i)(C) of this provision to the Contracting Officer, if the Offeror meets an exception to SAM registration (see FAR 4.1102(a)).

(ii)(A) The Contracting Officer will consider all information provided under (s)(3)(i) of this provision as part of making a responsibility determination.

(B) A representation that any labor law decision(s) were rendered against the Offeror will not necessarily result in withholding of an award under this solicitation. Failure of the Offeror to furnish a representation or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.

(C) The representation in paragraph (s)(2) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous representation, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation in accordance with the procedures set forth in FAR 12.403.

(4) The Offeror shall provide immediate written notice to the Contracting Officer if at any time prior to contract award the Offeror learns that its representation at paragraph (s)(2) of this provision is no longer accurate.

(5) The representation in paragraph (s)(2) of this provision will be public information in the Federal Awardee Performance and Integrity Information System (FAPIIS).

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

(t) *Public Disclosure of Greenhouse Gas Emissions and Reduction Goals.* Applies in all solicitations that require offerors to register in SAM (52.212-1(k)).

(1) This representation shall be completed if the Offeror received \$7.5 million or more in contract awards in the prior Federal fiscal year. The representation is optional if the Offeror received less than \$7.5 million in Federal contract awards in the prior Federal fiscal year.

(2) Representation. [Offeror to check applicable block(s) in paragraph (t)(2)(i) and (ii)]. (i) The Offeror (itself or through its immediate owner or highest-level owner) [ ] does, [ ] does not publicly disclose greenhouse gas emissions, i.e., makes available on a publicly accessible Web site the results of a greenhouse gas inventory, performed in accordance with an accounting standard with publicly available and consistently applied criteria, such as the Greenhouse Gas Protocol Corporate Standard.

(ii) The Offeror (itself or through its immediate owner or highest-level owner) [ ] does, [ ] does not publicly disclose a quantitative greenhouse gas emissions reduction goal, i.e., make available on a publicly accessible Web site a target to reduce absolute emissions or emissions intensity by a specific quantity or percentage.

(iii) A publicly accessible Web site includes the Offeror's own Web site or a recognized, third-party greenhouse gas emissions reporting program.

(3) If the Offeror checked "does" in paragraphs (t)(2)(i) or (t)(2)(ii) of this provision, respectively, the Offeror shall provide the publicly accessible Web site(s) where greenhouse gas emissions and/or reduction goals are reported: \_\_\_\_\_.

(u)(1) In accordance with section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions), Government agencies are not permitted to use appropriated (or otherwise made available) funds for contracts with an entity that requires employees or subcontractors of such entity seeking to report waste, fraud, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

(2) The prohibition in paragraph (u)(1) of this provision does not contravene requirements applicable to Standard Form 312 (Classified Information Nondisclosure Agreement), Form 4414 (Sensitive Compartmented Information Nondisclosure Agreement), or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

(3) Representation. By submission of its offer, the Offeror represents that it will not require its employees or subcontractors to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting waste,

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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).