

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 VA101-13-Q-0081		6. SOLICITATION ISSUE DATE 02-17-2013					
7. FOR SOLICITATION INFORMATION CALL:		a. NAME Maina Gakure				b. TELEPHONE NO. (No Collect Calls) (202) 461 6849		8. OFFER DUE DATE/LOCAL TIME 02-25-2013 9:00am					
9. ISSUED BY Department of Veterans Affairs Office of Asset Enterprise Management 810 Vermont Avenue, NW Washington DC 20420				CODE		10. THIS ACQUISITION IS <input type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> HUBZONE SMALL BUSINESS <input checked="" type="checkbox"/> SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS		<input type="checkbox"/> UNRESTRICTED OR <input checked="" type="checkbox"/> SET ASIDE: 100 % FOR: <input type="checkbox"/> WOMEN-OWNED SMALL BUSINESS (WOSB) ELIGIBLE UNDER THE WOMEN-OWNED SMALL BUSINESS PROGRAM <input type="checkbox"/> EDWOSB NAICS: 541330 SIZE STANDARD: \$14 Million					
11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED <input checked="" type="checkbox"/> SEE SCHEDULE		12. DISCOUNT TERMS				13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700) <input type="checkbox"/>		13b. RATING N/A					
15. DELIVER TO See Delivery Schedule				CODE		16. ADMINISTERED BY Department of Veterans Affairs Office of Asset Enterprise Management 810 Vermont Avenue, NW Washington DC 20420							
17a. CONTRACTOR/OFFEROR		CODE		FACILITY CODE		18a. PAYMENT WILL BE MADE BY Department of Veterans Affairs Financial Services Center PO Box 149971 Austin TX 78714-8971							
TELEPHONE NO.		DUNS:		DUNS+4:		PHONE: FAX:							
<input type="checkbox"/> 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER						18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED <input type="checkbox"/> SEE ADDENDUM							
19. ITEM NO.		20. See CONTINUATION Page SCHEDULE OF SUPPLIES/SERVICES				21. QUANTITY		22. UNIT		23. UNIT PRICE		24. AMOUNT	
		Title of Project: Combined Heat and Power (CHP) and Solar PV Commissioning											
		(Use Reverse and/or Attach Additional Sheets as Necessary)											
25. ACCOUNTING AND APPROPRIATION DATA								26. TOTAL AWARD AMOUNT (For Govt. Use Only)					
<input checked="" type="checkbox"/> 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4. FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA								<input checked="" type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED.					
<input type="checkbox"/> 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. FAR 52.212-5 IS ATTACHED. ADDENDA								<input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED					
<input type="checkbox"/> 28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN _____ COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED								<input type="checkbox"/> 29. AWARD OF CONTRACT; REF. _____ OFFER DATED _____. YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN IS ACCEPTED AS TO ITEMS:					
30a. SIGNATURE OF OFFEROR/CONTRACTOR						31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)							
30b. NAME AND TITLE OF SIGNER (TYPE OR PRINT)				30c. DATE SIGNED		31b. NAME OF CONTRACTING OFFICER (TYPE OR PRINT) Maina Gakure				31c. DATE SIGNED			

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SECTION B - CONTINUATION FROM STANDARD FORM 1449, BLOCK 18A

B.1 CONTRACT ADMINISTRATION DATA

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

a. CONTRACTOR:

b. GOVERNMENT: Contracting Officer
Department of Veterans Affairs
VA Central Office
Office of Asset Enterprise Management (044C)
810 Vermont Avenue, NW
Washington DC 20420

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 Central Contractor Registration, or

☐ 52.232-36, Payment by Third Party

3. INVOICES: Invoices shall be submitted in arrears:

a. Quarterly ☐

b. Semi-Annually ☐

c. Other ☒ per deliverable

4. GOVERNMENT INVOICE ADDRESS: All invoices from the contractor shall be mailed to the following address:

CERTIFIED INVOICES

Department of Veterans Affairs

Financial Services Center

PO Box 149971

Austin TX 78714-8971

ACKNOWLEDGMENT OF AMENDMENTS: The offeror acknowledges receipt of amendments to the Solicitation numbered and dated as follows: AMENDMENT NO DATE

Performance Work Statement for Combined Heat and Power (CHP) and Solar PV Commissioning

GENERAL INFORMATION

1. **Title of Project: Combined Heat and Power (CHP) and Solar PV Commissioning**
2. **Background** The Department of Veterans Affairs (VA) is in process of designing and installing solar photovoltaic (PV) and Combined Heat and Power systems at multiple facilities. These renewable energy systems will help the VA meet Executive Order requirements related to “greening the government”, sustainability planning, and energy security and independence, and the VA’s goal of increasing its renewable energy consumption to 15% by 2013.
3. **Scope:** The scope of this Firm Fixed Indefinite Delivery Indefinite Quantity (IDIQ) contract for services is to implement for the commissioning of CHP and solar PV projects which will consist of fixed-tilt and/or single axis-tracking systems and will be installed on rooftops and/or carport structures and/or ground mounted. The VA provided project documentation supporting the commissioning task will include pre-award feasibility and Environmental Assessment (EA) studies performed for each project location. The maximum amount is estimated at 2 million dollars over a two year performance period. The contract minimum is \$ 20,000. Contractor(s) must demonstrate they possess both general and specialized capability, knowledge, and skills.
4. **Objectives:** The objective of this agreement is to provide task-level commissioning agency support to the VA in the design, construction, and operation of Combined Heat and power (CHP) and PV system projects. This will be accomplished through a series of project documentation reviews, physical inspection, operational testing, and task-level technical analysis and reporting. The commissioning tasks to be completed for each project are summarized as follows:
 - a. Perform an off-site pre-design project documentation review (e.g. feasibility studies, design-build contracts, and other supporting project documentation as appropriate). The results and recommendations of this review will be reported in writing and be used to facilitate a design kickoff meeting with the VA project staff and the design-build (D-B) contractor. The points of discussion will be reported in writing and be used to support subsequent commissioning activities.
 - b. Perform two (2) off-site design and project management documentation reviews - the first at 50% completion and the second at 100% completion. The results and recommendations of these reviews will be reported in writing and be used to support subsequent commissioning activities.
 - c. Perform on-site physical inspections and operational testing for the measured and verified (M&V) acceptability of as-installed system along with concurrent as-built project documentation reviews. The results and recommendations of these inspections and reviews will be reported in writing and be used to support subsequent, as-needed commissioning activities.
 - d. Provide other as-needed technical support to the VA for the resolution of unusual or extraordinary issues encountered during or after commissioning process.

Period of Performance: Period of Performance for this contract is a base year plus one option year (total two years) from date of award.

- a. The estimated base year will extend from 24 February 2013 through 23 February 2014

- b. Option year one will start from 24 February 2014 through 23 February 2015
5. Type of Contract: This is anticipated to be a firm fixed contract. However, Time and Materials/Labor Hours task orders may be awarded under this contract, according to which type is most appropriate for each particular task order. Each Time and Material/Labor Hours task order will be supported by an approved Determination and Finding as per FAR Subpart 16.601. Orders will be generated with a detailed PWS and issued by a Contracting Officer at VA Central Office (Washington DC).
6. Place of Performance: The primary place of performance will be at the contractor's facilities; however, some task orders may require work to be performed at a Government facility. Any work at the Government site shall not take place on Federal holidays or weekends.

CONTRACT AWARD MEETING

The contractor shall not commence performance on the tasks in this Performance Work Statement until the CO has conducted a kick-off meeting or has advised the contractor that a kick-off meeting is waived.

GENERAL REQUIREMENTS

The following general requirements apply to all task orders issued under this contract:

1. The contractor shall identify their proposed technical approach in writing for every task order quoted. The contractor's task order quote shall include their proposed labor categories, rates and number of hours by task, together with associated delivery dates and sub milestone dates (if any), and proposed personnel résumés. The contractor shall include in each quote the résumés for all proposed professional and/or technical personnel who will perform the tasks in the task order. Résumés are not required for clerical personnel.
2. All written deliverables shall be phrased in layperson language. Statistical and other technical terminology shall not be used without providing a glossary of terms.
3. Unless otherwise specified in an individual task order, the following schedule requirements apply: Where a written milestone deliverable is required in draft form, the VA will complete their review of the draft deliverable within 12 calendar days from date of receipt. The contractor shall have 12 calendar days to deliver the final deliverable from date of receipt of the Government's comments.
4. The contractor shall provide, via email, minutes of all government-contractor meetings. The contractor shall provide these minutes within three calendar days after completion of the meeting.
5. Except for proprietary information in company quotes identified and marked in accordance with FAR 52.215-1(e), the contractor shall not deliver to the OAEM any proprietary products or information of any type in completing the requirements of each task order PWS. The contractor's internal development tools (that is, those development tools not developed for OAEM work and not required by OAEM to install, use, or revise the deliverables) are exempted from this requirement. If the contractor believes an exception to this requirement is necessary for the effective or efficient execution of a task order, the contractor shall request a specific exception, in writing, to the CO, and shall not use the proprietary tools or information in OAEM work until approval is received from the CO.
6. The contractor shall ensure contract employees maintain an open and professional communication with the staff at the VA facilities. Complaints validated by the COTR or VA staff will be reported in writing to the CO for action. If the contractor fails to correct validated complaints raised by the COTR and CO, it will be considered a failure in performance.
7. The CO may require the contractor to meet with the CO, contract administrator, and other Government personnel at least quarterly.

8. All SDVOSBs, must be registered and verified (visible) in the VetBiz.gov Vendor Information Pages (VIP) database, available at www.VetBiz.gov to be eligible for award.

AWARD

VA intends to award, under Federal Acquisition Requirements (FAR) PART 12 – Commercial Items, a multiple award for a firm-fixed-price, indefinite delivery indefinite quantity performance based task order contracts to Service-Disabled Veteran-Owned Small Business (SDVOSB) firms under the Public Law (PL) 109-461, and Information Letter (IL) 049-07-08, Veterans First Contracting Program. Pursuant to 38 U.S.C. § 8127(d), SDVOSB firms must complete 51 percent of the work (see VA ACQUISITION CIRCULAR Number 2008-01, dated December 8, 2009). VA also encourages SDVOSBs to create joint ventures under FAR Part 9 among one or more SDVOSB firms to help facilitate performing the tasks required and to subcontract where needed the appropriate percentage for needed expertise.

VA reserves the right to request after award documentation from the firms confirming their certification and eligibility. Any firm awarded found not in compliance with this requirement will not be allowed to continue on the contract and will be terminated for default, an option may not be executed and/or other appropriate actions may be taken by VA.

All work for this project will be executed through Task Orders. Required work for each task order will be initiated via a Task Order Request encapsulating the objectives outlined in this solicitation.

SPECIFIC MANDATORY TASKS AND ASSOCIATED DELIVERABLES

Description of Tasks and Associated Deliverables:

- 1) For each task order awarded under this IDIQ, the contractor shall provide the specific deliverables described in the task order PWS, within the performance period stated. Specific sub-tasks and associated deliverables will be identified in each task order placed under the IDIQ.
- 2) The selected prime contractor(s) shall have subject matter expertise that understand CHP and solar PV (the prime contractor role will not just be limited to management) and provide all resources necessary to perform the specific requirements as defined in the task orders.

To respond to this RFQ, please use the Solar PV and CHP project requirement as listed below:

Solar PV commission task:

PV Sites	Capacity (kWp)	State
San Juan – VAMC	414 kW	PR
Salem	1,646	NC

Table 1: Site-System Summary

Task 1 - Acceptance Inspection, Testing and As-built Review (On-Site)

Each completed project will be supported with the final (100%) on-site physical and operational inspections and concurrent evaluations of the final as-built project documentation.

Task 1.1 - 100% construction complete - 2-3 days on-site

- Conduct physical inspection
- Perform operational testing
- Review as-built design documentation
- Provide final report documenting findings and recommendations

Task 2 - Technical Support (On-Site or Off-Site)

From time to time, the VA may need to request support beyond the PWS stipulated above. Examples of such as-needed technical support would be:

1. The resolution of an unusual or extraordinary contract or technical issue encountered during or after commissioning process.
2. Provide on-site O&M staff training and support.
3. Provide a programmatic review to VA directorate staff.

Accomplishment of the Task (1-2) activities listed above will be done in coordination with the VA-designated project POC. As appropriate, all on-site activities will be done in the presence of both VA facility and D-B contractor staff. The D-B contractor (or their D-B approved designate) will be required to assist the commissioning agents in the operation of their PV system during performance testing.

Task Deliverables:

Unless otherwise requested, all memos, reports and project documentation will be transmitted to the COTR and EM via email or similar electronic means. It is the intent of the commissioning agency to provide task-related reports containing advisory remarks for achieving compliance with applicable VA and industry standards. Additionally, whenever observed, the reports may also address existing facility issues of code compliances and/or other deficiencies that would adversely affect the PV system project. The project task deliverables schedules are summarized in Table 2 below:

Task	Deliverable	Completion Date
Task 1.1	Final Acceptance Report -100%	Site visit + 14 days
Task 2	Memo for record	TBD

Table 2: Task Deliverables Schedule

CHP commissioning Task

Task A: Design and feasibility review

A third-party commissioning agent will develop the CHP system commissioning project management plan and participate in design and technical review meetings. Each review will occur when the technical design is approximately 60% and 100% complete. The Agent will document the meetings and advise the VA of any additional design or technical feasibility work needed and where the design is consistent with the Request for Proposal Scope of Work based on the feasibility study and Design-Builders proposed work scope.

For those systems where design is already complete, limited review of the 100% Design will be completed to familiarize the agent with the site.

Deliverables: For each site:

- CHP system commissioning project management plan
- CHP System Request for Proposal Scope of Work based on the Feasibility Study and 60% Design Review comparison Summary Report
- CHP System 100% Design Review Summary Report

Site	Type of CHP System & Generator Prime Mover	RE Capacity (KW)	Type of Review
Togus	Biomass Fueled Steam Boilers & Steam Turbine	2000	Familiarization Design Review

Task B: Acceptance testing/commissioning

Represent the VA's interest in ensuring proper operation of the CHP system installations, acting as a Third Party Commissioning Agent (TPA), by

1. Participating in the development of acceptance testing and commissioning protocols during the design development process beginning with the 60% design submission
2. Participating in the onsite acceptance testing and commissioning processes for the installed CHP systems.

Provide technical expertise directly related to the operation of the installed systems; evaluating facility thermal and electric system operations for energy efficiency opportunities with the new CHP system, and verify applicable code,

Project Contract Documents and VA specification/Design Guideline compliances by project design review. The CHP installation should be reviewed to comply with applicable industry standards, best practices and the requirements set forth in the project contract documents. To complete this task, site visits to each installation will be necessary during the design phase, construction phase and commissioning phase for each project as necessary for the size, complexity and performance based commissioning requirements of each project. For each site, as required for the current state of each project, the Design/Builder's CxA (CxA) will perform the following tasks, with required additional support from the TPA:

1. Review Submittals and Shop Drawings:
 - a. TPA is not required to review submittals and shop drawings.
2. Maintain CxA's Master Issues Log:
 - a. TPA will oversee and help maintain an ongoing log of issues, their status, and final resolution to prevent issues being discussed and worked out between the Cx, Contractor, and A/E without the Owner's involvement.
3. Develop Component Verification Checklist:
 - a. TPA will review all checklists for completeness and applicability to ensure all aspects of the equipment/system installation; including physical access, support, vibration, acoustics, and all supporting disciplines (piping, electrical, controls, etc.) are addressed.
4. Verify Equipment Installation:
 - a. TPA will perform one trip, prior to Functional Performance Testing (FPT), to review installation and back check sample verification checklists in order to ensure the systems are ready for FPT.
5. Develop Functional Performance Test Scripts (FPT):
 - a. TPA will review FPT Scripts for completeness and applicability to ensure that systems are checked for proper operation under all different operating modes and at various points of load and capacity, and that these checks are comprehensive and thorough.
6. Witness Functional Performance Test Scripts (FPT):
 - a. TPA will witness and document FPT on site to verify FPT is properly executed and that the results are labeled Pass, Fail, or Conditionally Pass; requiring additional testing, if required.
7. Prepare O&M Manual/Systems Manual and Record Drawings (optional – to be evaluated individually on a case-by-case basis):
 - a. TPA will review O&M Manuals, Systems Manual, and Record Drawings for format, content, and completeness, as well as provide comments in order to ensure a readily accessible reference that is organized, complete, and easily referenced by facility personnel.
8. Perform Training/Curricula:
 - a. TPA will review proposed training curricula, resumes of trainers, and proposed training schedule, as well as provide comments in order to ensure systems are maintained in prime operating condition and operated at peak efficiency through the use of comprehensive operational training.
9. Issue CxA's Final Commissioning Report:

TPA will review a draft copy of the final Cx report prepared by the CxA and offer comments prior to its final edition in order to ensure the final Cx report is a compilation of all Cx activities with documentation organized and included in Appendices for future reference

This PWS reflects current VA policies and practices, allowing Offerors to propose and price a solution to known requirements. Specific commissioning requirements and resulting objectives may change over the life of this order. This will result in VA modifying the contract to incorporate in-scope changes. Throughout the life of this agreement, the Contractor is encouraged to continuously seek ways to incorporate innovative and emerging approaches that economically and efficiently improve services and/or generate revenue.

EVALUATED OPTIONAL TASKS AND ASSOCIATED DELIVERABLES.

Evaluated optional tasks and associated deliverables, if required, will be specified in each task order.

PERFORMANCE MEASURES

In accordance with Performance Based Service Contracts, Contractor(s) shall provide a Quality Assurance Plan ensuring that continued quality improvement to the program they are supporting is being made; a Metrics Plan shall also be provided demonstrating how Contractors will measure their performance identifying key factors that will be monitored by the Contractor and the Government. The Contractor is responsible for quality assurance of all services provided under the contract. Inspection by the Government does not relieve the Contractor of this responsibility. Contractors must also demonstrate how they will implement these plans and incorporate them into the local task orders they will receive from VA.

The Quality Assurance Plan should also include, as an option for VA consideration, the incentives and disincentives measures that can be taken by VA to reward exceptional performance and to also discipline vendors for less than satisfactory execution. Incentives and disincentives should be both monetary and non-monetary in nature. VA reserves the right to add and/or completely revise the submitted Quality Assurance, Metric, and incentive/disincentive plans that are to be included in the Contractors' submissions to this solicitation. The performance standards should at least include the following areas:

1. Management of price,
2. Schedule,
3. Technical quality,
4. Quality of project management, and
5. Relationship management.

PROGRAM MANAGEMENT

Upon completion of a task order, the ordering Contracting Officer is required to document a performance review of the contracted services. The Project Manager will also conduct a post-performance assessment upon completion of each task order. The Project Manager will document the performance discussion in writing and provide a copy to the Contracting Officer and the Contractor. The Government will address, at a minimum, the following areas in each task order assessment:

1. Quality of work performed,
2. Timeliness of work delivered,
3. Qualifications of staff providing services,
4. Management professionalism, and
5. Monitor actual costs versus contract cap based on required quarterly contract expenditure report from vendor(s).

The Contractor(s) shall provide a program management report on a quarterly basis to the VACO contracting officer's representative (COR) (who will be determined after award).

CONFLICT OF INTEREST PROVISION

(a) In responding to this solicitation, the Contractors' attention is directed to FAR Subpart 9.5 Organizational and Consultant Conflict of Interest.

(b) The contracting officer views a potential conflict of interest could exist if the contractor were to provide assistance under this contract for a particular site and then subsequently participated in any capacity with the proposed developer for the site.

(c) The contractor is therefore precluded from working with a developer on any site in which they provided services to VA, as described below.

(d) The terms of the clause and the application of this subpart to the contract are not negotiable.

CONFLICT OF INTEREST CLAUSE

(a) As a condition of award, the contractor's eligibility for future prime contract or subcontract awards will be restricted as follows:

The Contractor (to include principles, agents and employees) is prohibited from performing services in any capacity on future commercial development or redevelopment of VA real property, subject to a task order (or task orders) issued under this contract. This restriction is for a period of five years and shall expire at the end of the 5th year following expiration or termination of this contract.

CHANGES TO PERFORMANCE WORK STATEMENT

Any changes to this PWS shall be authorized and approved only through written correspondence from the CO.

Costs incurred by the contractor through the actions of parties other than the CO shall be borne by the contractor.

TRAVEL

As required by each task order, the contractor may be required to travel to Washington, D.C., or to other VA locations. Travel and per diem shall be reimbursed in accordance with VA/Federal Travel Regulations. Each contractor invoice must include copies of all receipts that support the travel costs claimed in the invoice. No General and Administrative (G&A) fees or costs, and no other fees or costs shall be added to travel expenses. Local travel within a 50-mile radius from the Contractor's facility is considered the cost of doing business and will not be reimbursed. This includes travel, subsistence, and associated labor charges for travel time. Travel performed for personal convenience and daily travel to and from work at the contractor's facility will not be reimbursed. Travel, subsistence, and associated labor charges for travel time for travel beyond a 50-mile radius of the Contractor's facility are authorized on a case-by-case basis and must be pre-approved by the COTR at least 30 calendar days in advance for the requested travel.

GOVERNMENT FURNISHED PROPERTY AND INFORMATION

Government Furnished Property and Information, if required, will be specified in each task order. Except for those items or services specifically stated to be Government furnished, the contractor shall furnish everything required to perform task orders. For contractors required at VA facilities, the Government will provide office space including a desk, telephone, and computer to perform the required work.

CONTRACTOR EXPERIENCE REQUIREMENTS—KEY PERSONNEL

These skilled experienced professional and/or technical personnel are essential for successful contractor accomplishment of the work to be performed under this contract and subsequent task orders and options. The contractor shall include in the technical proposal for each task order the résumés on all proposed professional and/or technical personnel who will perform the tasks in the task order. Résumés are not required on clerical personnel. The personnel whose résumés are submitted are defined as key personnel. The contractor agrees that

the key personnel listed below shall not be removed, diverted, or replaced from work without approval of the CO and COTR.

Any personnel the contractor offers as substitutes shall have the ability and qualifications equal to or better than the key personnel that are being replaced. Requests to substitute personnel shall be approved by the COTR and the CO. All requests for approval of substitutions in personnel shall be submitted to the COTR and the CO within 30 calendar days prior to making any change in key personnel. The request shall be written and provide a detailed explanation of the circumstances necessitating the proposed substitution. The contractor shall submit a complete resume for the proposed substitute, any changes to the rate specified in the order (as applicable) and any other information requested by the CO needed to approve or disapprove the proposed substitution. The CO will evaluate such requests and promptly notify the contractor of approval or disapproval thereof in writing.

Note:

1. Personnel assigned by the Contractor to perform work on this IDIQ shall be acceptable to VA in terms of personal and professional conduct and technical knowledge. The Contracting Officer may notify the Contractor and request that a person be immediately removed from assignment on this contract should any contractor personnel be determined to be unacceptable in terms of technical competency or personal conduct during duty hours. The contractor shall immediately remove and replace the unacceptable on-site personnel at no additional costs to the Government. Replacement personnel qualifications shall be equal to or greater than those of the personnel being replaced. Employment and staffing difficulties shall not be justification for failure to meet established schedules.
2. Contractor personnel shall be fluent and communicate in the English language, both written and oral communication.
3. The contractor shall not employ any person who is an employee of the United States Government, if the employment of that person would create a conflict of interest.
4. The contractor shall verify employee eligibility through the E-Verify system

CAPABILITY MATURITY MODEL FOR SOFTWARE INTEGRATION

Not applicable.

ARCHITECTURAL GUIDELINES

Not applicable.

SECURITY REQUIREMENTS

1. The contractor shall follow the following contractor personnel security guidance:
 - a. The contractor and their personnel shall be subject to the same Federal laws, regulations, standards and VA policies as VA personnel, regarding information and information system security. These include, but are not limited to Federal Information Security Management Act (FISMA), Appendix III of OMB Circular A-130, and guidance and standards, available from the Department of Commerce's National Institute of Standards and Technology (NIST). This also includes the use of common security configurations available from NIST's Web site at:

<http://checklists.nist.gov>
 - b. To ensure that appropriate security controls are in place, Contractors must follow the procedures set forth in "VA Information and Information System Security/Privacy Requirements for IT Contracts" located at the following Web site: <http://www.iprm.oit.va.gov>.

c. These provisions shall apply to all contracts in which VA sensitive information is stored, generated, transmitted, or exchanged by VA, a contractor, subcontractor or a third-party, or on behalf of any of these entities regardless of format or whether it resides on a VA system or contractor/subcontractor's electronic information system(s) operating for or on the VA's behalf.

d. Clauses (a) and (b) shall apply to current and future contracts and acquisition vehicles including, but not limited to, job orders, task orders, letter contracts, purchase orders, and modifications. Contracts do not include grants and cooperative agreements covered by 31 U.S.C. §6301 et seq.

2. The required contractor employee Position Sensitivity level is Limited Risk and the level of Background Investigation is NACI for contractor employees who require access.
3. The COTR will provide the contractor a Background Investigation Request Worksheet within 2 days of task order award listing the place of performance, type of investigation requested, the VA sponsor and requesting the applicant's name, date of birth, social security number, company name and point of contact and other required data.

The contractor shall complete the Background Investigation Request worksheet and return it to the COTR within 5 days of receipt. The COTR will review the documents and forward them to the Security Investigations Center (SIC).

The CIS will send an email notification to the contractor identifying the website link that includes detailed instructions regarding completion of the background clearance application process and what level of background was requested. Upon receipt of required investigative documents, SIC will review the investigative documents for completion and initiate the background investigation by forwarding the investigative documents to OPM to conduct the background investigation.

The COTR will notify the contractor when the investigation has been favorably or unfavorably completed and adjudicated by the Government. The contractor, when notified of an unfavorable determination by the Government, shall withdraw the employee from consideration from working under the contract.

4. The contractor shall not commence performance prior to the initiation of the process that requests the appropriate investigative action be taken. During the time required to conduct the appropriate investigation, the contractor shall be responsible for the actions of its respective employees until official notification of a favorable determination is received from the Office of Security and Law Enforcement.
5. Failure to comply with the contractor personnel security requirements may result in termination of the contract for default.

CONFIDENTIALITY AND NONDISCLOSURE

It is agreed that:

1. The preliminary and final deliverables and all associated working papers, application source code, and other material deemed relevant by the VA which have been generated by the contractor in the performance of this task order are the exclusive property of the U.S. Government and shall be submitted to the COTR at the conclusion of the task order.
2. The CO will be the sole authorized official to release verbally or in writing, any data, the draft deliverables, the final deliverables, or any other written or printed materials pertaining to this task order. No information shall be released by the contractor. Any request for information relating to this task order presented to the contractor shall be submitted to the CO for response.

3. Press releases, marketing material or any other printed or electronic documentation related to this project, shall not be publicized without the written approval of the CO.

TASK ORDER INSTRUCTIONS

1. Fair opportunity.
 - a. The contracting officer must provide each awardee a fair opportunity to be considered for each order exceeding \$3,000 issued under multiple delivery-order contracts or multiple task-order contracts, except as provided for in paragraph (b)(2) of this section.
 - b. The contracting officer may exercise broad discretion in developing appropriate order placement procedures. The contracting officer should keep submission requirements to a minimum. Contracting officers may use streamlined procedures, including oral presentations. In addition, the contracting officer need not contact each of the multiple awardees under the contract before selecting an order awardee if the contracting officer has information available to ensure that each awardee is provided a fair opportunity to be considered for each order. The competition requirements in part 6 and the policies in subpart 15.3 do not apply to the ordering process. However, the contracting officer must--
 - (i) Develop placement procedures that will provide each awardee a fair opportunity to be considered for each order and that reflect the requirement and other aspects of the contracting environment;
 - (ii) Not use any method (such as allocation or designation of any preferred awardee) that would not result in fair consideration being given to all awardees prior to placing each order;
 - (iii) Tailor the procedures to each acquisition;
 - (iv) Include the procedures in the solicitation and the contract; and
 - (v) Consider price or cost under each order as one of the factors in the selection decision.
 - c. The contracting officer should consider the following when developing the procedures:
 - (1)
 - (a) Past performance on earlier orders under the contract, including quality, timeliness and cost control.
 - (b) Potential impact on other orders placed with the contractor.
 - (c) Minimum order requirements.
 - (d) The amount of time contractors need to make informed business decisions on whether to respond to potential orders.
 - (e) Whether contractors could be encouraged to respond to potential orders by outreach efforts to promote exchanges of information, such as—
 - (i) Seeking comments from two or more contractors on draft statements of work;
 - (ii) Using a multi-phased approach when effort required to respond to a potential order may be resource intensive (e.g., requirements are complex or need continued development), where all contractors are initially considered on price considerations (e.g., rough estimates), and other considerations as appropriate (e.g., proposed conceptual approach, past performance). The contractors most likely to submit the highest value solutions are then selected for one-on-one sessions with the Government to increase their understanding of the requirements, provide suggestions for refining requirements, and discuss risk reduction measures.
 - (2) Formal evaluation plans or scoring of quotes or offers are not required.
2. Exceptions to the fair opportunity process. The contracting officer shall give every awardee a fair opportunity to be considered for a delivery-order or task-order exceeding \$2,500 unless one of the following statutory exceptions applies:

- a. The agency need for the supplies or services is so urgent that providing a fair opportunity would result in unacceptable delays;
 - b. Only one awardee is capable of providing the supplies or services required at the level of quality required because the supplies or services ordered are unique or highly specialized;
 - c. The order must be issued on a sole-source basis in the interest of economy and efficiency as a logical follow-on to an order already issued under the contract, provided that all awardees were given a fair opportunity to be considered for the original order.
 - d. It is necessary to place an order to satisfy a minimum guarantee.
3. Pricing orders. If the contract did not establish the price for the supply or service, the task order contracting officer must establish prices for each order using the policies and methods in subpart 15.4.
4. Decision documentation for orders. The contracting officer shall document in the contract file the rationale for placement and price of each order, including the basis for award and the rationale for any tradeoffs among cost or price and non-cost considerations in making the award decision. This documentation need not quantify the tradeoffs that led to the decision. The contract file shall also identify the basis for using an exception to the fair opportunity process. If the agency uses the logical follow-on exception, the rationale shall describe why the relationship between the initial order and the follow-on is logical (e.g., in terms of scope, period performance, or value).
5. Task and Delivery Order Ombudsman. The head of the agency shall designate a task-order contract and delivery-order contract ombudsman. The ombudsman must review complaints from contractors and ensure they are afforded a fair opportunity to be considered, consistent with the procedures in the contract. The ombudsman must be a senior agency official who is independent of the contracting officer and may be the agency's competition advocate.

In accordance with paragraph (ii) paragraphs A and B above, task order requests issued from contract(s) awarded from this solicitation will take into account the requirements required of the individual medical center, VISN or Headquarters office and assess the qualifications of all the firms participating to ensure that the best solution is provided and that all participating firms have been provided a fair opportunity. All Task Orders will be competed among all contract awardees. Special requirements may dictate otherwise in some instances and will comply with the exemptions established in the fair opportunity clause in paragraph 2 and are to be documented by the issuing contracting officer with a copy forwarded to the VACO contracting officer and VACO contracting officer's technical representative (COTR).

SECTION C- CONTRACT CLAUSES

C.1 FSS RFQ INTRODUCTORY LANGUAGE

All clauses and provisions from the Federal Acquisition Regulation (FAR) and General Services Administration Regulation (GSAR) from the applicable FSC Group of the Multiple Award Schedule and Federal Supply Schedule Program, and the specific GSA Schedule contract referenced on the SF1449 in Block 2, are hereby incorporated by reference.

The full text of any FAR and GSA clauses which are incorporated by reference may be obtained at the following URLs:

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

GSAM: <http://www.acquisition.gov/GSAM/gsam.html>

C.2 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/oamm/oa/ars/policyreg/vaar/index.cfm>

(End of Clause)

FAR

NUMBER

TITLE

DATE

52.202-1 DEFINITIONS JUL 2004

52.203-3 GRATUITIES APR 1984

52.203-5 COVENANT AGAINST CONTINGENT FEES APR 1984

52.203-7 ANTI-KICKBACK PROCEDURES OCT 2010

52.203-8 CANCELLATION, RESCISSION, AND RECOVERY JAN 1997
OF FUNDS FOR ILLEGAL OR IMPROPER
ACTIVITY

52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR JAN 1997
IMPROPER ACTIVITY

52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE OCT 2010
CERTAIN FEDERAL TRANSACTIONS

52.204-4 PRINTED OR COPIED DOUBLE-SIDED AUG 2000
ON RECYCLED PAPER

52.204-9 PERSONAL IDENTTTY VERIFICATION OF SEP 2007
CONTRACTOR PERSONNEL

52.209-6 PROTECTING THE GOVERNMENT'S INTEREST SEP 2006
WHEN SUBCONTRACTING WITH CONTRACTORS
DEBARRED, SUSPENDED, OR PROPOSED FOR
DEBARMENT

52.211-5 MATERIAL REQUIREMENTS AUG 2000

52.215-2 AUDIT AND RECORDS--NEGOTIATION OCT 2010

52.215-8 ORDER OF PRECEDENCE--UNIFORM CONTRACT OCT 1997
FORMAT

52.215-14 INTEGRITY OF UNIT PRICES OCT 2010

52.219-4 NOTICE OF PRICE EVALUATION PREFERENCE JUL 2005
FOR HUBZONE SMALL BUSINESS CONCERNS

52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS MAY 2004

52.219-25 SMALL DISADVANTAGED BUSINESS APR 2008
PARTICIPATION PROGRAM--DISADVANTAGED
STATUS AND REPORTING

52.222-19 CHILD LABOR - COOPERATION WITH JUL 2010
AUTHORITIES AND REMEDIES

52.222-20 WALSH-HEALEY PUBLIC CONTRACTS ACT OCT 2010

52.222-21 PROHIBITION OF SEGREGATED FACILITIES FEB 1999

52.222-26 EQUAL OPPORTUNITY MAR 2007

52.222-35 EQUAL OPPORTUNITY FOR VETERANS SEP 2010

52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH OCT 2010
DISABILITIES

52.222-37 EMPLOYMENT REPORTS ON VETERANS SEP 2010

52.222-50 COMBATING TRAFFICKING IN PERSONS FEB 2009

52.223-6 DRUG-FREE WORKPLACE MAY 2001

52.223-15 ENERGY EFFICIENCY IN ENERGY-CONSUMING DEC 2007
PRODUCTS

52.225-1 BUY AMERICAN ACT--SUPPLIES FEB 2009

52.225-5 TRADE AGREEMENTS AUG 2009

52.225-13 RESTRICTIONS ON CERTAIN FOREIGN JUN 2008
PURCHASES

52.227-1 AUTHORIZATION AND CONSENT DEC 2007

52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT DEC 2007
AND COPYRIGHT INFRINGEMENT

52.229-3 FEDERAL, STATE, AND LOCAL TAXES APR 2003

52.232-1 PAYMENTS APR 1984

52.232-8 DISCOUNTS FOR PROMPT PAYMENT FEB 2002

52.232-11 EXTRAS APR 1984

52.232-17 INTEREST OCT 2010

52.232-23 ASSIGNMENT OF CLAIMS JAN 1986

52.232-25 PROMPT PAYMENT OCT 2008

52.232-34 PAYMENT BY ELECTRONIC FUNDS TRANSFER-- MAY 1999

OTHER THAN CENTRAL CONTRACTOR
REGISTRATION

52.233-1 DISPUTES JUL 2002
ALTERNATE I (DEC 1991)

52.233-3 PROTEST AFTER AWARD AUG 1996

52.233-4 APPLICABLE LAW FOR BREACH OF OCT 2004
CONTRACT CLAIM

52.236-9 PROTECTION OF EXISTING VEGETATION, APR 1984
STRUCTURES, EQUIPMENT, UTILITIES, AND
IMPROVEMENTS

52.236-10 OPERATIONS AND STORAGE AREAS APR 1984

52.242-13 BANKRUPTCY JUL 1995

52.243-1 CHANGES--FIXED-PRICE AUG 1987

52.244-2 SUBCONTRACTS OCT 2010

52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS OCT 2010

52.246-23 LIMITATION OF LIABILITY FEB 1997

52.246-25 LIMITATION OF LIABILITY--SERVICES FEB 1997

52.248-1 VALUE ENGINEERING OCT 2010

52.249-2 TERMINATION FOR CONVENIENCE OF THE MAY 2004
GOVERNMENT (FIXED-PRICE)

52.249-8 DEFAULT (FIXED-PRICE SUPPLY AND SERVICE) APR 1984

52.253-1 COMPUTER GENERATED FORMS JAN 1991

852.203-70 COMMERCIAL ADVERTISING JAN 2008

852.203-71 DISPLAY OF DEPARTMENT OF VETERANS DEC 1992
AFFAIRS HOTLINE POSTER

852.216-70 ESTIMATED QUANTITIES APR 1984

852.246-71 INSPECTION JAN 2008

End of Clause)

C.3 52.204-7 CENTRAL CONTRACTOR REGISTRATION (APRIL 2008)

(a) Definitions. As used in this clause—

“Central Contractor Registration (CCR) database” means the primary Government repository for Contractor information required for the conduct of business with the Government.

“Data Universal Numbering System (DUNS) number” means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities.

“Data Universal Numbering System+4 (DUNS+4) number” means the DUNS number means the number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion of the business concern to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see the FAR at Subpart 32.11) for the same concern.

“Registered in the CCR database” means that—

- (1) The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database; and
- (2) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS), and has marked the record “Active”. The Contractor will be required to provide consent for TIN validation to the Government as a part of the CCR registration process.

(b)

- (1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the CCR database prior to award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.
- (2) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation “DUNS” or “DUNS+4” followed by the DUNS or DUNS+4 number that identifies the offeror’s name and address exactly as stated in the offer. The DUNS number will be used by the Contracting Officer to verify that the offeror is registered in the CCR database.

(c) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.

(1) An offeror may obtain a DUNS number—

- (i) Via the internet at <http://fedgov.dnb.com/webform> or if the offeror does not have internet access, it may call Dun and Bradstreet at 1-866-705-5711 if located within the United States; or
- (ii) If located outside the United States, by contacting the local Dun and Bradstreet office. The offeror should indicate that it is an offeror for a U.S. Government contract when contacting the local Dun and Bradstreet office.

(2) The offeror should be prepared to provide the following information:

- (i) Company legal business name.
- (ii) Tradestyle, doing business, or other name by which your entity is commonly recognized.
- (iii) Company physical street address, city, state and Zip Code.
- (iv) Company mailing address, city, state and Zip Code (if separate from physical).
- (v) Company telephone number.
- (vi) Date the company was started.
- (vii) Number of employees at your location.
- (viii) Chief executive officer/key manager.

(ix) Line of business (industry).

(x) Company Headquarters name and address (reporting relationship within your entity).

(d) If the Offeror does not become registered in the CCR database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror.

(e) Processing time, which normally takes 48 hours, should be taken into consideration when registering. Offerors who are not registered should consider applying for registration immediately upon receipt of this solicitation.

(f) The Contractor is responsible for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR 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 CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(g)

(1)

(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 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 CCR database;

(B) Comply with the requirements of Subpart 42.12 of the FAR;

(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 (g)(1)(i) of this clause, or fails to perform the agreement at paragraph (g)(1)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR 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.

(2) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see FAR Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR 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.

(h) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the Internet at <http://www.ccr.gov> or by calling 1-888-227-2423, or 269-961-5757.

(End of Clause)

C.4 52.212-4 CONTRACT TERMS AND CONDITIONS--COMMERCIAL ITEMS (Feb 2012)

(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 the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). 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—Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer—Other Than Central Contractor Registration), 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 Section 611 of the Contract Disputes Act of 1978 (Public Law 95-563), 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 at fixed by the Secretary until the amount is paid.
- (ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.
- (iii) Final decisions. The Contracting Officer will issue a final decision as required by 33.211 if—
 - (A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days;
 - (B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or
 - (C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see 32.607-2).
- (iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.
- (v) Amounts shall be due at the earliest of the following dates:
 - (A) The date fixed under this contract.
 - (B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.
- (vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—
 - (A) The date on which the designated office receives payment from the Contractor;
 - (B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or
 - (C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.
- (vii) The interest charge made under this clause may be reduced under the procedures prescribed in 32.608-2 of the Federal Acquisition Regulation in effect on the date of this contract.

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

- (1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or
- (2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

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

(l) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice

of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

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

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

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

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

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

(r) *Compliance with laws unique to Government contracts.* The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 3701, *et seq.*, Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 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, and Compliance with Laws Unique to Government Contracts 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) Central Contractor Registration (CCR).

- (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 CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR 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 CCR database to ensure it is current, accurate and complete. Updating information in the CCR 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 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 CCR database;

(B) Comply with the requirements of Subpart 42.12 of the FAR;

(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 CCR 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 CCR record to reflect an assignee for the purpose of assignment of claims (see FAR Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor’s CCR 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 CCR accessed through <https://www.acquisition.gov> or by calling 1-888-227-2423, or 269-961-5757.

(End of Clause)

Alternate I (Aug 2012) When a time-and-materials or labor-hour contract is contemplated, substitute the following paragraphs (a), (e), (i), (l), and (m) for those in the basic clause.

(a) *Inspection/Acceptance.*

(1) The Government has the right to inspect and test all materials furnished and services performed under this contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. The Government may also inspect the plant or plants of the Contractor or any subcontractor engaged in contract performance. The Government will perform inspections and tests in a manner that will not unduly delay the work.

(2) If the Government performs inspection or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(3) Unless otherwise specified in the contract, the Government will accept or reject services and materials at the place of delivery as promptly as practicable after delivery, and they will be presumed accepted 60 days after the date of delivery, unless accepted earlier.

(4) At any time during contract performance, but not later than 6 months (or such other time as may be specified in the contract) after acceptance of the services or materials last delivered under this contract, the Government may require the Contractor to replace or correct services or materials that at time of delivery failed to meet contract requirements. Except as otherwise specified in paragraph (a)(6) of this clause, the cost of replacement or correction shall be determined under paragraph (i) of this clause, but the “hourly rate” for labor hours incurred in the replacement or correction shall be reduced to exclude that portion of the rate attributable to profit. Unless otherwise specified below, the portion of the “hourly rate” attributable to profit shall be 10 percent. The Contractor shall not tender for acceptance materials and services required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken. [*Insert portion of labor rate attributable to profit.*]

(5)

(i) If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, and if the replacement or correction can be performed within the ceiling price (or the ceiling price as increased by the Government), the Government may—

(A) By contract or otherwise, perform the replacement or correction, charge to the Contractor any increased cost, or deduct such increased cost from any amounts paid or due under this contract; or

(B) Terminate this contract for cause.

(ii) Failure to agree to the amount of increased cost to be charged to the Contractor shall be a dispute under the Disputes clause of the contract.

(6) Notwithstanding paragraphs (a)(4) and (5) above, the Government may at any time require the Contractor to remedy by correction or replacement, without cost to the Government, any failure by the Contractor to comply with the requirements of this contract, if the failure is due to--

(i) Fraud, lack of good faith, or willful misconduct on the part of the Contractor’s managerial personnel; or

(ii) The conduct of one or more of the Contractor’s employees selected or retained by the Contractor after any of the Contractor’s managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

(7) This clause applies in the same manner and to the same extent to corrected or replacement materials or services as to materials and services originally delivered under this contract.

(8) The Contractor has no obligation or liability under this contract to correct or replace materials and services that at time of delivery do not meet contract requirements, except as provided in this clause or as may be otherwise specified in the contract.

(9) Unless otherwise specified in the contract, the Contractor’s obligation to correct or replace Government-furnished property shall be governed by the clause pertaining to Government property.

(e) Definitions.

(1) The clause at FAR 52.202-1, Definitions, is incorporated herein by reference. As used in this clause—

(i) *Direct materials* means those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end product or service.

(ii) *Hourly rate* means the rate(s) prescribed in the contract for payment for labor that meets the labor category qualifications of a labor category specified in the contract that are—

(A) Performed by the contractor;

(B) Performed by the subcontractors; or

(C) Transferred between divisions, subsidiaries, or affiliates of the contractor under a common control.

(iii) *Materials* means—

(A) Direct materials, including supplies transferred between divisions, subsidiaries, or affiliates of the contractor under a common control;

(B) Subcontracts for supplies and incidental services for which there is not a labor category specified in the contract;

(C) Other direct costs (*e.g.*, incidental services for which there is not a labor category specified in the contract, travel, computer usage charges, etc.);

(D) The following subcontracts for services which are specifically excluded from the hourly rate: *[Insert any subcontracts for services to be excluded from the hourly rates prescribed in the schedule.]*; and

(E) Indirect costs specifically provided for in this clause.

(iv) *Subcontract* means any contract, as defined in FAR Subpart 2.1, entered into with a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract including transfers between divisions, subsidiaries, or affiliates of a contractor or subcontractor. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

(i) Payments.

(1) *Work performed.* The Government will pay the Contractor as follows upon the submission of commercial invoices approved by the Contracting Officer:

(i) Hourly rate.

(A) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the contract by the number of direct labor hours performed. Fractional parts of an hour shall be payable on a prorated basis.

(B) The rates shall be paid for all labor performed on the contract that meets the labor qualifications specified in the contract. Labor hours incurred to perform tasks for which labor qualifications were specified in the contract will not be paid to the extent the work is performed by individuals that do not meet the qualifications specified in the contract, unless specifically authorized by the Contracting Officer.

(C) Invoices may be submitted once each month (or at more frequent intervals, if approved by the Contracting Officer) to the Contracting Officer or the authorized representative.

(D) When requested by the Contracting Officer or the authorized representative, the Contractor shall substantiate invoices (including any subcontractor hours reimbursed at the hourly rate in the schedule) by evidence of actual payment, individual daily job timecards, records that verify the employees meet the qualifications for the labor categories specified in the contract, or other substantiation specified in the contract.

(E) Unless the Schedule prescribes otherwise, the hourly rates in the Schedule shall not be varied by virtue of the Contractor having performed work on an overtime basis.

(1) If no overtime rates are provided in the Schedule and the Contracting Officer approves overtime work in advance, overtime rates shall be negotiated.

(2) Failure to agree upon these overtime rates shall be treated as a dispute under the Disputes clause of this contract.

(3) If the Schedule provided rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Contracting Officer.

(ii) Materials.

(A) If the Contractor furnishes materials that meet the definition of a commercial item at FAR 2.101, the price to be paid for such materials shall not exceed the Contractor's established catalog or market price, adjusted to reflect the--

(1) Quantities being acquired; and

(2) Any modifications necessary because of contract requirements.

(B) Except as provided for in paragraph (i)(1)(ii)(A) and (D)(2) of this clause, the Government will reimburse the Contractor the actual cost of materials (less any rebates, refunds, or discounts received by the contractor that are identifiable to the contract) provided the Contractor—

(1) Has made payments for materials in accordance with the terms and conditions of the agreement or invoice; or

(2) Makes these payments within 30 days of the submission of the Contractor's payment request to the Government and such payment is in accordance with the terms and conditions of the agreement or invoice.

(C) To the extent able, the Contractor shall—

(1) Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and

(2) Give credit to the Government for cash and trade discounts, rebates, scrap, commissions, and other amounts that are identifiable to the contract.

(D) *Other Costs.* Unless listed below, other direct and indirect costs will not be reimbursed.

(1) *Other direct Costs.* The Government will reimburse the Contractor on the basis of actual cost for the following, provided such costs comply with the requirements in paragraph (i)(1)(ii)(B) of this clause: [Insert each element of other direct costs (e.g., travel, computer usage charges, etc. Insert "None" if no reimbursement for other direct costs will be provided. If this is an indefinite delivery contract, the Contracting Officer may insert "Each order must list separately the elements of other direct charge(s) for that order or, if no reimbursement for other direct costs will be provided, insert 'None'."]

(2) *Indirect Costs* (Material handling, Subcontract Administration, etc.). The Government will reimburse the Contractor for indirect costs on a pro-rata basis over the period of contract performance at the following fixed price: [Insert a fixed amount for the indirect costs and payment schedule. Insert "\$0" if no fixed price reimbursement for indirect costs will be provided. (If this is an indefinite delivery contract, the Contracting Officer may insert "Each order must list separately the fixed amount for the indirect costs and payment schedule or, if no reimbursement for indirect costs, insert 'None'."]

(2) *Total cost.* It is estimated that the total cost to the Government for the performance of this contract shall not exceed the ceiling price set forth in the Schedule and the Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within such ceiling price. If at any time the Contractor has reason to believe that the hourly rate payments and material costs that will accrue in performing this contract in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 85 percent of the ceiling price in the Schedule, the Contractor shall notify the Contracting Officer giving a revised estimate of the total price to the Government for performing this contract with supporting reasons and documentation. If at any time

during the performance of this contract, the Contractor has reason to believe that the total price to the Government for performing this contract will be substantially greater or less than the then stated ceiling price, the Contractor shall so notify the Contracting Officer, giving a revised estimate of the total price for performing this contract, with supporting reasons and documentation. If at any time during performance of this contract, the Government has reason to believe that the work to be required in performing this contract will be substantially greater or less than the stated ceiling price, the Contracting Officer will so advise the Contractor, giving the then revised estimate of the total amount of effort to be required under the contract.

(3) *Ceiling price.* The Government will not be obligated to pay the Contractor any amount in excess of the ceiling price in the Schedule, and the Contractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Schedule, unless and until the Contracting Officer notifies the contractor in writing that the ceiling price has been increased and specifies in the notice a revised ceiling that shall constitute the ceiling price for performance under this contract. When and to the extent that the ceiling price set forth in the Schedule has been increased, any hours expended and material costs incurred by the Contractor in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.

(4) *Access to records.* At any time before final payment under this contract, the Contracting Officer (or authorized representative) will have access to the following (access shall be limited to the listing below unless otherwise agreed to by the Contractor and the Contracting Officer):

(i) Records that verify that the employees whose time has been included in any invoice met the qualifications for the labor categories specified in the contract.

(ii) For labor hours (including any subcontractor hours reimbursed at the hourly rate in the schedule), when timecards are required as substantiation for payment—

(A) The original timecards (paper-based or electronic);

(B) The Contractor's timekeeping procedures;

(C) Contractor records that show the distribution of labor between jobs or contracts; and

(D) Employees whose time has been included in any invoice for the purpose of verifying that these employees have worked the hours shown on the invoices.

(iii) For material and subcontract costs that are reimbursed on the basis of actual cost—

(A) Any invoices or subcontract agreements substantiating material costs; and

(B) Any documents supporting payment of those invoices.

(5) *Overpayments/Underpayments.* Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices, that are found by the Contracting Officer not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. The Contractor shall promptly pay any such reduction within 30 days unless the parties agree otherwise. The Government within 30 days will pay any such increases, unless the parties agree otherwise. The Contractor's payment will be made by check. If the Contractor becomes aware of a duplicate invoice payment or that the Government has otherwise overpaid on an 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)

(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 section 611 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, and then at the rate applicable for each six month period as established 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 in a timely manner;

(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 FAR 32.60702).

(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.

(viii) Upon receipt and approval of the invoice designated by the Contractor as the “completion invoice” and supporting documentation, and upon compliance by the Contractor with all terms of this contract, any outstanding balances will be paid within 30 days unless the parties agree otherwise. The completion invoice, and supporting documentation, shall be submitted by the Contractor as promptly as practicable following completion of the work under this contract, but in no event later than 1 year (or such longer period as the Contracting Officer may approve in writing) from the date of completion.

(7) *Release of claims.* The Contractor, and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, a release discharging the Government, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions.

(i) Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible to exact statement by the Contractor.

(ii) Claims, together with reasonable incidental expenses, based upon the liabilities of the Contractor to third parties arising out of performing this contract, that are not known to the Contractor on the date of the execution of the release, and of which the Contractor gives notice in writing to the Contracting Officer not more than 6 years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier.

(iii) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable incidental expenses, incurred by the Contractor under the terms of this contract relating to patents.

(8) *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.

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

(10) *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 that appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(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 an amount for direct labor hours (as defined in the Schedule of the contract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the contract, less any hourly rate payments already made to the Contractor plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system that 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 that 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 written request, with adequate assurances of future performance. Subject to the terms of this contract, the Contractor shall be paid an amount computed under paragraph (i) Payments of this clause, but the "hourly rate" for labor hours expended in furnishing work not delivered to or accepted by the Government shall be reduced to exclude that portion of the rate attributable to profit. Unless otherwise specified in paragraph (a)(4) of this clause, the portion of the "hourly rate" attributable to profit shall be 10 percent. In the event of termination for cause, 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.

End of clause

C5. 52.212-5 -- Contract Terms and Conditions Required to Implement Statutes or Executive Orders -- Commercial Items (Jan 2013).

(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) 52.222-50, Combating Trafficking in Persons (FEB 2009) (22 U.S.C. 7104(g)).

___ Alternate I (AUG 2007) of 52.222-50 (22 U.S.C. 7104(g)).

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

(3) 52.233-4, Applicable Law for Breach of Contract Claim (OCT 2004) (Pub. L. 108-77, 108-78).

(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:

[Contracting Officer check as appropriate.]

☒ (1) 52.203-6, Restrictions on Subcontractor Sales to the Government (Sept 2006), with Alternate I (Oct 1995) (41 U.S.C. 253g and 10 U.S.C. 2402).

☒ (2) 52.203-13, Contractor Code of Business Ethics and Conduct (Apr 2010) (Pub. L. 110-252, Title VI, Chapter 1 (41 U.S.C. 251 note)).

☒ (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 (Aug 2012) (Pub. L. 109-282) (31 U.S.C. 6101 note).

☒ (5) 52.204-11, American Recovery and Reinvestment Act—Reporting Requirements (Jul 2010) (Pub. L. 111-5).

☒ (6) 52.209-6, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (Dec 2010) (31 U.S.C. 6101 note).

___ (7) 52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters (Feb 2012) (41 U.S.C. 2313).

___ (8) 52.209-10, Prohibition on Contracting with Inverted Domestic Corporations (May 2012) (section 738 of Division C of Public Law 112-74, section 740 of Division C of Pub. L. 111-117, section 743 of Division D of Pub. L. 111-8, and section 745 of Division D of Pub. L. 110-161).

___ (9) 52.219-3, Notice of HUBZone Set-Aside or Sole-Source Award (Nov 2011) (15 U.S.C. 657a).

___ (10) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Jan 2011) (if the offeror elects to waive the preference, it shall so indicate in its offer)(15 U.S.C. 657a).

___ (11) [Reserved]

☒ (12) (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).
- ___ (13) (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.
- _x_ (14) 52.219-8, Utilization of Small Business Concerns (Jan 2011) (15 U.S.C. 637(d)(2) and (3)).
- ___ (15) (i) 52.219-9, Small Business Subcontracting Plan (Jan 2011) (15 U.S.C. 637 (d)(4).)
- ___ (ii) Alternate I (Oct 2001) of 52.219-9.
- ___ (iii) Alternate II (Oct 2001) of 52.219-9.
- ___ (iv) Alternate III (July 2010) of 52.219-9.
- ___ (16) 52.219-13, Notice of Set-Aside of Orders (Nov 2011) (15 U.S.C. 644(r)).
- ___ (17) 52.219-14, Limitations on Subcontracting (Nov 2011) (15 U.S.C. 637(a)(14)).
- ___ (18) 52.219-16, Liquidated Damages—Subcontracting Plan (Jan 1999) (15 U.S.C. 637(d)(4)(F)(i)).
- ___ (19) (i) 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (Oct 2008) (10 U.S.C. 2323) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).
- ___ (ii) Alternate I (June 2003) of 52.219-23.
- ___ (20) 52.219-25, Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting (Dec 2010) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
- ___ (21) 52.219-26, Small Disadvantaged Business Participation Program—Incentive Subcontracting (Oct 2000) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
- _x_ (22) 52.219-27, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (Nov 2011) (15 U.S.C. 657f).
- _x_ (23) 52.219-28, Post Award Small Business Program Rerepresentation (Apr 2012) (15 U.S.C. 632(a)(2)).
- ___ (24) 52.219-29, Notice of Set-Aside for Economically Disadvantaged Women-Owned Small Business (EDWOSB) Concerns (Apr 2012) (15 U.S.C. 637(m)).
- ___ (25) 52.219-30, Notice of Set-Aside for Women-Owned Small Business (WOSB) Concerns Eligible Under the WOSB Program (Apr 2012) (15 U.S.C. 637(m)).
- ___ (26) 52.222-3, Convict Labor (June 2003) (E.O. 11755).
- ___ (27) 52.222-19, Child Labor—Cooperation with Authorities and Remedies (Mar 2012) (E.O. 13126).
- _x_ (28) 52.222-21, Prohibition of Segregated Facilities (Feb 1999).
- _x_ (29) 52.222-26, Equal Opportunity (Mar 2007) (E.O. 11246).
- _x_ (30) 52.222-35, Equal Opportunity for Veterans (Sep 2010) (38 U.S.C. 4212).
- ___ (31) 52.222-36, Affirmative Action for Workers with Disabilities (Oct 2010) (29 U.S.C. 793).
- _x_ (32) 52.222-37, Employment Reports on Veterans (Sep 2010) (38 U.S.C. 4212).
- _x_ (33) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496).

x (34) 52.222-54, Employment Eligibility Verification (Jul 2012). (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in 22.1803.)

___ (35) (i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Items (May 2008) (42 U.S.C. 6962(c)(3)(A)(ii)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

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

x (36) 52.223-15, Energy Efficiency in Energy-Consuming Products (Dec 2007) (42 U.S.C. 8259b).

___ (37) (i) 52.223-16, IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products (Dec 2007) (E.O. 13423).

___ (ii) Alternate I (Dec 2007) of 52.223-16.

x (38) 52.223-18, Encouraging Contractor Policies to Ban Text Messaging while Driving (Aug 2011).

___ (39) 52.225-1, Buy American Act--Supplies (Feb 2009) (41 U.S.C. 10a-10d).

___ (40) (i) 52.225-3, Buy American Act--Free Trade Agreements--Israeli Trade Act (Nov 2012) (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, Pub. L. 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 (Mar 2012) of 52.225-3.

___ (iii) Alternate II (Mar 2012) of 52.225-3.

___ (iv) Alternate III (Nov 2012) of 52.225-3.

___ (41) 52.225-5, Trade Agreements (Nov 2012) (19 U.S.C. 2501, *et seq.*, 19 U.S.C. 3301 note).

x (42) 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).

___ (43) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (Nov 2007) (42 U.S.C. 5150).

___ (44) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov 2007) (42 U.S.C. 5150).

___ (45) 52.232-29, Terms for Financing of Purchases of Commercial Items (Feb 2002) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).

___ (46) 52.232-30, Installment Payments for Commercial Items (Oct 1995) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).

___ (47) 52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration (Oct. 2003) (31 U.S.C. 3332).

x (48) 52.232-34, Payment by Electronic Funds Transfer—Other Than Central Contractor Registration (May 1999) (31 U.S.C. 3332).

___ (49) 52.232-36, Payment by Third Party (Feb 2010) (31 U.S.C. 3332).

___ (50) 52.239-1, Privacy or Security Safeguards (Aug 1996) (5 U.S.C. 552a).

___ (51) (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:

[Contracting Officer check as appropriate.]

___ (1) 52.222-41, Service Contract Act of 1965 (Nov 2007) (41 U.S.C. 351, *et seq.*).

___ (2) 52.222-42, Statement of Equivalent Rates for Federal Hires (May 1989) (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).

___ (3) 52.222-43, Fair Labor Standards Act and Service Contract Act -- Price Adjustment (Multiple Year and Option Contracts) (Sep 2009) (29 U.S.C.206 and 41 U.S.C. 351, *et seq.*).

___ (4) 52.222-44, Fair Labor Standards Act and Service Contract Act -- Price Adjustment (Sep 2009) (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).

___ (5) 52.222-51, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment--Requirements (Nov 2007) (41 U.S.C. 351, *et seq.*).

___ (6) 52.222-53, Exemption from Application of the Service Contract Act to Contracts for Certain Services--Requirements (Feb 2009) (41 U.S.C. 351, *et seq.*).

___ (7) 52.222-17, Nondisplacement of Qualified Workers (Jan 2013) (E.O. 13495).

___ (8) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations. (Mar 2009) (Pub. L. 110-247).

___ (9) 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 (Apr 2010) (Pub. L. 110-252, Title VI, Chapter 1 (41 U.S.C. 251 note)).
- (ii) 52.219-8, Utilization of Small Business Concerns (Dec 2010) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$650,000 (\$1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.
- (iii) 52.222-17, Nondisplacement of Qualified Workers (Jan 2013) (E.O. 13495). Flow down required in accordance with paragraph (1) of FAR clause 52.222-17.
- (iv) 52.222-26, Equal Opportunity (Mar 2007) (E.O. 11246).
- (v) 52.222-35, Equal Opportunity for Veterans (Sep 2010) (38 U.S.C. 4212).
- (vi) 52.222-36, Affirmative Action for Workers with Disabilities (Oct 2010) (29 U.S.C. 793).
- (vii) 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.
- (viii) 52.222-41, Service Contract Act of 1965, (Nov 2007), (41 U.S.C. 351, *et seq.*)
- (ix) 52.222-50, Combating Trafficking in Persons (Feb 2009) (22 U.S.C. 7104(g)).

— Alternate I (Aug 2007) of 52.222-50 (22 U.S.C. 7104(g)).

- (x) 52.222-51, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment--Requirements (Nov 2007) (41 U.S.C. 351, *et seq.*)
- (xi) 52.222-53, Exemption from Application of the Service Contract Act to Contracts for Certain Services--Requirements (Feb 2009) (41 U.S.C. 351, *et seq.*)
- (xii) 52.222-54, Employment Eligibility Verification (Jul 2012).
- (xiii) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations. (Mar 2009) (Pub. L. 110-247). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6.
- (xiv) 52.247-64, Preference for Privately-Owned U.S. Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx 1241(b) and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

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

(End of Clause)

Alternate I (Feb 2000). As prescribed in 12.301(b)(4)(i), delete paragraph (d) from the basic clause, redesignate paragraph (e) as paragraph (d), and revise the reference to “paragraphs (a), (b), (c), or (d) of this clause” in the redesignated paragraph (d) to read “paragraphs (a), (b), and (c) of this clause”.

Alternate II (Jul 2012). As prescribed in 12.301(b)(4)(ii), substitute the following paragraphs (d)(1) and (e)(1) for paragraphs (d)(1) and (e)(1) of the basic clause as follows:

(d)

(1) The Comptroller General of the United States, an appropriate Inspector General appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), or an authorized representative of either of the foregoing officials shall have access to and right to—

- (i) Examine any of the Contractor's or any subcontractors' records that pertain to, and involve transactions relating to, this contract; and
- (ii) Interview any officer or employee regarding such transactions.

(e)

(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), and (c), of this clause, the Contractor is not required to flow down any FAR clause in a subcontract for commercial items, other than—

- (i) *Paragraph (d) of this clause.* This paragraph flows down to all subcontracts, except the authority of the Inspector General under paragraph (d)(1)(ii) does not flow down; and
- (ii) *Those clauses listed in this paragraph (e)(1).* Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—

- (A) 52.203–13, Contractor Code of Business Ethics and Conduct (Apr 2010) (Pub. L. 110–252, Title VI, Chapter 1 (41 U.S.C. 251 note)).
- (B) 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub. L. 111-5).
- (C) 52.219–8, Utilization of Small Business Concerns (Dec 2010) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$650,000 (\$1.5 million for construction of any public facility), the subcontractor must include 52.219–8 in lower tier subcontracts that offer subcontracting opportunities.
- (D) 52.222–26, Equal Opportunity (Mar 2007) (E.O. 11246).
- (E) 52.222–35, Equal Opportunity for Veterans (Sept 2010) (38 U.S.C. 4212).
- (F) 52.222–36, Affirmative Action for Workers with Disabilities (Oct 2010) (29 U.S.C. 793).
- (G) 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.
- (H) 52.222–41, Service Contract Act of 1965 (Nov 2007) (41 U.S.C. 351, *et seq.*).
- (I) 52.222–50, Combating Trafficking in Persons (Feb 2009) (22 U.S.C. 7104(g)).
- (J) 52.222–51, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (Nov 2007) (41 U.S.C. 351, *et seq.*).
- (K) 52.222–53, Exemption from Application of the Service Contract Act to Contracts for Certain Services--Requirements (Feb 2009) (41 U.S.C. 351, *et seq.*).
- (L) 52.222–54, Employment Eligibility Verification (Jul 2012).
- (M) 52.226–6, Promoting Excess Food Donation to Nonprofit Organizations. (Mar 2009) (Pub. L. 110–247). Flow down required in accordance with paragraph (e) of FAR clause 52.226–6.
- (N) 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.

[Class Deviation- 2009-O0005, Commercial Item Omnibus Clauses for Acquisitions Using the Standard Procurement System. This clause deviation is effective on May 1, 2009, and remains in effect until April 30, 2014, or until otherwise rescinded.

**FAR 52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR
EXECUTIVE ORDERS--COMMERCIAL ITEMS (Jan 2013) (DEVIATION)**

(a) *Comptroller General Examination of Record.* The Contractor shall comply with the provisions of this paragraph (a) 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.

(b)

(1) Notwithstanding the requirements of any other clause in this contract, the Contractor is not required to flow down any FAR clause, other than those in this paragraph (b)(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 (Apr 2010) (Pub. L. 110-252, Title VI, Chapter 1 (41 U.S.C. 251 note)).

(iii) 52.219-8, Utilization of Small Business Concerns (Dec 2010) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$650,000 (\$1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities

(v) [Reserved]

(iv) 52.222-26, Equal Opportunity (Mar 2007) (E.O. 11246).

(v) 52.222-35, Equal Opportunity for Veterans (Sep 2010) (38 U.S.C. 4212).

(vi) 52.222-36, Affirmative Action for Workers with Disabilities (Oct 2010) (29 U.S.C. 793).

(vii) 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.

(viii) 52.222-41, Service Contract Act of 1965, (Nov 2007), (41 U.S.C. 351, *et seq.*)

(ix) 52.222-50, Combating Trafficking in Persons (Feb 2009) (22 U.S.C. 7104(g)).

— Alternate I (Aug 2007) of 52.222-50 (22 U.S.C. 7104(g)).

(x) 52.222-51, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment--Requirements (Nov 2007) (41 U.S.C. 351, *et seq.*).

- (xi) 52.222-53, Exemption from Application of the Service Contract Act to Contracts for Certain Services--Requirements (Feb 2009) (41 U.S.C. 351, *et seq.*)
- (xii) 52.222-54, Employment Eligibility Verification (Jan 2009).
- (xiii) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations. (Mar 2009) (Pub. L. 110-247). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6.
- (xiv) 52.247-64, Preference for Privately-Owned U.S.- Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx 1241(b) and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

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

(End of Clause)

Alternate I (Feb 2000) (Deviation). As prescribed in 12.301(b)(4), delete paragraph (a) from the basic clause, redesignate paragraph (b)(1) as paragraph (a), and redesignate paragraphs (b)(1)(i) through (b)(1)(xiv) as paragraphs (a)(1) through (a)(14) and redesignate paragraph (b)(2) as paragraph (b).

Alternate II (Dec 2010) (Deviation). As prescribed in 12.301(b)(4)(ii), substitute the following paragraphs (a)(1) and (b)(1) for paragraphs (a)(1) and (b)(1) of the basic clause as follows:

(a)

(1) The Comptroller General of the United States, an appropriate Inspector General appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), or an authorized representative of either of the foregoing officials shall have access to and right to—

(i) Examine any of the Contractor's or any subcontractors' records that pertain to, and involve transactions relating to, this contract; and

(ii) Interview any officer or employee regarding such transactions.

(b)

(1) Notwithstanding the requirement of any other clause in this contract, the Contractor is not required to flow down any FAR clause in a subcontract for commercial items, other than—

(i) *Paragraph (a) of this clause.* This paragraph flows down to all subcontracts, except the authority of the Inspector General under paragraph (a)(1)(ii) does not flow down; and

(ii) *Those clauses listed in this paragraph (b)(1).* Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—

(A) 52.203-13, Contractor Code of Business Ethics and Conduct (Apr 2010) (Pub. L. 110-252, Title VI, Chapter 1 (41 U.S.C. 251 note)).

(B) 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub. L. 111-5).

(C) 52.219-8, Utilization of Small Business Concerns (Dec 2010) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$650,000 (\$1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(D) 52.222-26, Equal Opportunity (Mar 2007) (E.O. 11246).

(E) 52.222-35, Equal Opportunity for Veterans (Sep 2010) (38 U.S.C. 4212).

(F) 52.222-36, Affirmative Action for Workers with Disabilities (Oct 2010) (29 U.S.C. 793).

- (G) 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.
- (H) 52.222-41, Service Contract Act of 1965 (Nov 2007) (41 U.S.C. 351, *et seq.*).
- (I) 52.222-50, Combating Trafficking in Persons (Feb 2009) (22 U.S.C. 7104(g)).
- (J) 52.222-51, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, of Repair of Certain Equipment-Requirements (Nov 2007) (41 U.S.C. 351, *et seq.*).
- (K) 52.222-53, Exemption from Application of the Service Contract Act to Contracts for Certain Services-Requirements (Feb 2009) (41 U.S.C. 351, *et seq.*).
- (L) 52.222-54, Employment Eligibility Verification (Jan 2009).
- (M) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations. (Mar 2009) (Pub. L. 110-247). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6.
- (N) 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.

(End of Clause)

C.6 52.216-18 ORDERING (OCT 1995)

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule. Such orders may be issued from the date of award through the expiration of the final option year exercised by the Government.

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

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

End of clause

C.7 52.216-19 ORDER LIMITATIONS.

As prescribed in 16.506(b), insert a clause substantially the same as follows:

ORDER LIMITATIONS (OCT 1995)

(a) *Minimum order.* When the Government requires supplies or services covered by this contract in an amount of less than 3000 [insert dollar figure or quantity], 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 400000 [insert dollar figure or quantity];
- (2) Any order for a combination of items in excess of 400000 [insert dollar figure or quantity]; or
- (3) A series of orders from the same ordering office within 10 days that together call for quantities exceeding the limitation in paragraph (b)(1) or (2) of this section.

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

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

(End of clause)

C.8 52.216-22 INDEFINITE QUANTITY.

As prescribed in 16.506(e), insert the following clause:

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 6 months.

(End of clause)

C.9 52.217-2 CANCELLATION UNDER MULTI-YEAR CONTRACTS.

As prescribed in 17.109(a), insert the following clause:

CANCELLATION UNDER MULTI-YEAR CONTRACTS (OCT 1997)

(a) "Cancellation," as used in this clause, means that the Government is canceling its requirements for all supplies or services in program years subsequent to that in which notice of cancellation is provided. Cancellation shall occur by the date or within the time period specified in the Schedule, unless a later date is agreed to, if the Contracting Officer—

- (1) Notifies the Contractor that funds are not available for contract performance for any subsequent program year; or
- (2) Fails to notify the Contractor that funds are available for performance of the succeeding program year requirement.

(b) Except for cancellation under this clause or termination under the Default clause, any reduction by the Contracting Officer in the requirements of this contract shall be considered a termination under the Termination for Convenience of the Government clause.

(c) If cancellation under this clause occurs, the Contractor will be paid a cancellation charge not over the cancellation ceiling specified in the Schedule as applicable at the time of cancellation.

(d) The cancellation charge will cover only—

(1) Costs—

(i) Incurred by the Contractor and/or subcontractor;

(ii) Reasonably necessary for performance of the contract; and

(iii) That would have been equitably amortized over the entire multi-year contract period but, because of the cancellation, are not so amortized; and

(2) A reasonable profit or fee on the costs.

(e) The cancellation charge shall be computed and the claim made for it as if the claim were being made under the Termination for Convenience of the Government clause of this contract. The Contractor shall submit the claim promptly but no later than 1 year from the date—

(1) Of notification of the nonavailability of funds; or

(2) Specified in the Schedule by which notification of the availability of additional funds for the next succeeding program year is required to be issued, whichever is earlier, unless extensions in writing are granted by the Contracting Officer.

(f) The Contractor's claim may include—

(1) Reasonable nonrecurring costs (see Subpart 15.4 of the Federal Acquisition Regulation) which are applicable to and normally would have been amortized in all supplies or services which are multi-year requirements;

(2) Allocable portions of the costs of facilities acquired or established for the conduct of the work, to the extent that it is impracticable for the Contractor to use the facilities in its commercial work, and if the costs are not charged to the contract through overhead or otherwise depreciated;

(3) Costs incurred for the assembly, training, and transportation to and from the job site of a specialized work force; and

(4) Costs not amortized solely because the cancellation had precluded anticipated benefits of Contractor or subcontractor learning.

(g) The claim shall not include—

(1) Labor, material, or other expenses incurred by the Contractor or subcontractors for performance of the canceled work;

(2) Any cost already paid to the Contractor;

(3) Anticipated profit or unearned fee on the canceled work; or

(4) For service contracts, the remaining useful commercial life of facilities. "Useful commercial life" means the commercial utility of the facilities rather than their physical life with due consideration given to such factors as location of facilities, their specialized nature, and obsolescence.

(h) This contract may include an Option clause with the period for exercising the option limited to the date in the contract for notification that funds are available for the next succeeding program year. If so, the Contractor agrees not to include in option quantities any costs of a startup or nonrecurring nature that have been fully set forth in the contract. The Contractor further agrees that the option quantities will reflect only those recurring costs and a reasonable profit or fee necessary to furnish the additional option quantities.

(i) Quantities added to the original contract through the Option clause of this contract shall be included in the quantity canceled for the purpose of computing allowable cancellation charges.

(End of clause)

C.10 52.217-8 OPTION TO EXTEND SERVICES (NOV 1999)

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor.

The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within 60 days before the IDIQ expires.

(End of Clause)

C.11 52.217-9.1 OPTION TO EXTEND THE TERM OF THE CONTRACT

As prescribed in 17.208(g), insert a clause substantially the same as the following:

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 *[insert the period of time within which the Contracting Officer may exercise the option]*; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 45 days *[60 days unless a different number of days is inserted]* 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 2 (years).

(End of clause)

C.12 52.224-1 PRIVACY ACT NOTIFICATION (APR 1984)

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

(End of clause)

C.13 52.224-2 PRIVACY ACT (APR 1984)

(a) The Contractor agrees to—

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

(i) The systems of records; and

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

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

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

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

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

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

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

(End of clause)

C.14 52.232-19 AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR (Apr. 1984)

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

(End of clause)

C.15 VAAR 852.203-70 COMMERCIAL ADVERTISING (JAN 2008)

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

(End of Clause)

C.16 VAAR 852.203-71 DISPLAY OF VA 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, VA Hotline posters prepared by the VA Office of the Inspector General.

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

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

(End of Clause)

C.17 VAAR 852.219-10 VA NOTICE OF TOTAL SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS SET-ASIDE.

As prescribed in 819.7009, insert the following clause:

VA NOTICE OF TOTAL SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS SET-ASIDE (DEC 2009)

(a) Definition. For the Department of Veterans Affairs, “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 (or eligible surviving spouses);

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

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

(iv) The business has been verified for ownership and control and is so listed in the Vendor Information Pages database, (<http://www.VetBiz.gov>).

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

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

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

(c) Agreement. A service-disabled veteran-owned small business concern agrees that in the performance of the contract, in the case of a contract for:

(1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other eligible service-disabled veteran-owned small business concerns;

(2) Supplies (other than acquisition from a nonmanufacturer of the supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other eligible service-disabled veteran-owned small business concerns;

(3) General construction, at least 15 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other eligible service-disabled veteran-owned small business concerns; or

(4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other eligible service-disabled veteran-owned small business concerns.

(d) A joint venture may be considered a service-disabled veteran owned small business concern if—

(1) At least one member of the joint venture is a service-disabled veteran-owned small business concern, and makes the following representations: That it is a service-disabled veteran-owned small business concern, and that it is a small business concern under the North American Industry Classification Systems (NAICS) code assigned to the procurement;

(2) Each other concern is small under the size standard corresponding to the NAICS code assigned to the procurement; and

(3) The joint venture meets the requirements of paragraph 7 of the explanation of Affiliates in 19.101 of the Federal Acquisition Regulation.

(4) The joint venture meets the requirements of 13 CFR 125.15(b).

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

(End of Clause)

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C.18 VAAR 852.237-70 CONTRACTOR RESPONSIBILITIES (APR 1984)

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

(End of Clause)

C.19 VAAR 852.273-75 SECURITY REQUIREMENTS FOR UNCLASSIFIED INFORMATION TECHNOLOGY RESOURCES.

As prescribed in 839.201, insert the following clause:

SECURITY REQUIREMENTS FOR UNCLASSIFIED INFORMATION TECHNOLOGY RESOURCES (Interim - OCT 2008)

(a) The contractor and their personnel shall be subject to the same Federal laws, regulations, standards and VA policies as VA personnel, regarding information and information system security. These include, but are not limited to Federal Information Security Management Act (FISMA), Appendix III of OMB Circular A-130, and guidance and standards, available from the Department of Commerce's National Institute of Standards and Technology (NIST). This also includes the use of common security configurations available from NIST's Web site at: <http://checklists.nist.gov/>.

(b) To ensure that appropriate security controls are in place, Contractors must follow the procedures set forth in "*VA Information and Information System Security/Privacy Requirements for IT Contracts*" located at the following Web site: <http://www.iprm.oit.va.gov/>.

(End of Clause)

SECTION D - CONTRACT PROVISION

D.1 52.212-1 INSTRUCTIONS TO OFFERORS—COMMERCIAL ITEMS (JUNE 2008)

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

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

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

(c) *Period for acceptance of offers.* The offeror agrees to hold the prices in its offer firm for 30 calendar days from the date specified for receipt of offers, unless another time period is specified in an addendum to the solicitation.

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

(e) *Multiple offers.* Offerors are encouraged to submit multiple offers presenting alternative terms and conditions or 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 (<http://assist.daps.dla.mil>).
- (ii) Quick Search (<http://assist.daps.dla.mil/quicksearch>).
- (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 (<http://assist.daps.dla.mil/wizard>);
- (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) *Data Universal Numbering System (DUNS) Number.* (Applies to all offers exceeding \$3,000, and offers of \$3,000 or less if the solicitation requires the Contractor to be registered in the Central Contractor Registration (CCR) database.) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation “DUNS” or “DUNS+4” followed by the DUNS or DUNS+4 number that identifies the offeror’s name and address. The DUNS+4 is the DUNS number plus a 4-character suffix that may be assigned at the discretion of the offeror to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see FAR Subpart 32.11) for the same concern. If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one. An offeror within the United States may contact Dun and Bradstreet by calling 1-866-705-5711 or via the internet at <http://fedgov.dnb.com/webform>. An offeror located outside the United States must contact the local Dun and Bradstreet office for a DUNS number. The offeror should indicate that it is an offeror for a Government contract when contacting the local Dun and Bradstreet office.

(k) *Central Contractor Registration.* 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 CCR 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 CCR 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 internet at <http://www.ccr.gov> or by calling 1-888-227-2423 or 269-961-5757.

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

- (1) The agency’s evaluation of the significant weak or deficient factors in the debriefed offeror’s offer.
- (2) The overall evaluated cost or price and technical rating of the successful and the debriefed offeror and past performance information on the debriefed offeror.
- (3) The overall ranking of all offerors, when any ranking was developed by the agency during source selection.
- (4) A summary of the rationale for award;
- (5) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror.
- (6) Reasonable responses to relevant questions posed by the debriefed offeror as to whether source-selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.

(End of provision)

D.2 52.216-28 SINGLE OR MULTIPLE AWARDS.

As prescribed in 16.506(f), insert the following provision:

SINGLE OR MULTIPLE AWARDS (OCT 1995)

The Government may elect to award a single delivery order contract or task order contract or to award multiple delivery order contracts or task order contracts for the same or similar supplies or services to two or more sources under this solicitation.

(End of provision)

D.3 52.216-31 Time-and-Materials/Labor-Hour Proposal Requirements—Commercial Item Acquisition.

As prescribed in 16.601(e)(3), insert the following provision:

TIME-AND-MATERIALS/LABOR-HOUR PROPOSAL REQUIREMENTS—COMMERCIAL ITEM ACQUISITION (FEB 2007)

(a) The Government contemplates award of a Time-and-Materials or Labor-Hour type of contract resulting from this solicitation.

(b) The offeror must specify fixed hourly rates in its offer that include wages, overhead, general and administrative expenses, and profit. The offeror must specify whether the fixed hourly rate for each labor category applies to labor performed by—

- (1) The offeror;
- (2) Subcontractors; and/or
- (3) Divisions, subsidiaries, or affiliates of the offeror under a common control.

(End of provision)

D.4 VAAR 852.209-70 ORGANIZATIONAL CONFLICTS OF INTEREST (JAN 2008)

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

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

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

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

(End of Provision)

D.5 VAAR 852.233-2 SERVICE OF PROTEST (SEPT 2006)

(a) Protests, as defined in section 31.101 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

Department of Veterans Affairs

VA Central Office

Office of Asset Enterprise Management (044C)

810 Vermont Avenue, NW

Washington DC 20420

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

(End of provision)

D.6 VAAR 852.233-70 PROTEST CONTENT/ALTERNATIVE DISPUTE RESOLUTION (JAN 2008)

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

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

(End of Provision)

D.7 VAAR 852.233-71 ALTERNATE PROTEST PROCEDURE (JAN 1998)

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

(End of Provision)

D.8 VAAR 852.270-1 REPRESENTATIVES OF CONTRACTING OFFICERS (JAN 2008)

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

(End of Provision)

Evaluation Factors

Quotations will be reviewed and evaluated in accordance with the evaluation criteria explained below. The following description summarizes the relationship of the factors to each other. The evaluation factors in order of precedence are:

1. Technical Approach which is comprised of the following subfactors in descending order of importance:
 - A. Personnel—Qualifications and Experience,
 - B. Understanding of the Requirements, and
 - C. Corporate Experience and Capability
2. Past Performance
3. Cost/Price

The technical approach factor is significantly more important than past performance, and past performance is significantly more important than price. All non-price factors when combined are significantly more important than price.

Offerors' quotations will be written submissions and will consist of two volumes.

Volume number	Content	Maximum number of pages
N/A	Cover Letter	2 pages
Volume I a	Technical Approach	50 pages
Volume I b	Past Performance	10 Pages
Volume II	Solicitation/RFP with completed Schedules of Prices and associated tables; completed fill-ins in Contract Administration Data; Representations, Certifications, and Other Statements of Offerors	No page limit

1. TECHNICAL APPROACH:

The Technical Approach factor which is comprised of the following subfactors in descending order of importance:

- A. Personnel—Qualifications and Experience,
- B. Understanding of the Requirements, and
- C. Corporate Experience and Capability

A. Personnel—Qualifications and Experience:

The quotation must identify and provide résumés on all proposed key personnel and must identify the status of those personnel at the time of the quotation. To identify status the quotation must clearly state whether each proposed person is currently a full time or part time employee of the firm or someone who has agreed to join the firm if the quotation is selected for award. Résumés of all personnel who are not currently employees must be accompanied by a signed and notarized statement that the person has agreed to the use of his or her resume in the quotation package.

- (1) Documentation demonstrates the ability of the prime SDVOSB to obtain, retain, and provide adequate licensed and experienced staff (solar and CHP commissioning experience) with the capability and knowledge to support the PWS

(2) Documentation demonstrates that professional experts, senior personnel and other members of the prime team have training and education and experience with performing (1) Solar PV commissioning, (2) CHP commissioning, (3) managing projects

(3) Documentation demonstrates that selected project managers and/or team leads and team members have training and experience in maintaining renewable energy, Mechanical and Electrical projects such as those listed in the PWS.

(4) Documentation demonstrates that professional experts have training and/or education, and experience in project management and/or program management, including use of work breakdown schedules and risk management.

B. Understanding of the Requirement

The prime contractor will demonstrate their understanding of the PWS requirements (both for CHP and Solar PV) as demonstrated by the rationale and completeness of elements that will promote VA initiatives such as (1) scope and complexity and knowledge and skill area as they relate to the required services of the PWS, (2) demonstrate a project management approach to commissioning of Solar PV and CHP projects, (3) demonstrate methodologies and systems that are state-of-the-art and appropriate, (4) developer selection approach, (5) methods of communication with the Office of Asset Enterprise Management, (6) and demonstrate an understanding of the VA or similar environment and VA's current and upcoming challenges to achieve the PWS requirements.

Note: (If the firm has multiple divisions and locations, limit the description and documentation to only the division(s) and location(s) proposed to do the work).

C. Corporate Experience and Capability

Documentation demonstrates that the Contractor(s) has the longevity, size, scope, reputation, and financial stability to maintain capability and perform the requirements throughout the entire period of the contract.

Note: (If the firm has multiple divisions and locations, limit the description and documentation to only the division(s) and location(s) proposed to do the work).

Note: Overall Factor Rating for Technical Approach

During evaluation, VA intends to give credit for exceeding the minimum requirements, as explained in the table below:

Rating	Equivalence	Definition
Blue	Outstanding	The factor clearly meets and consistently exceeds the Government's stated requirements in all areas in a manner beneficial to the Government. The information provided suggests a very low risk of less than satisfactory performance on the part of the offeror.
Green	Excellent	The factor meets the Government's stated requirements in all areas, and in some areas the offeror exceeds the Government's stated requirements in a manner beneficial to the Government. The information provided suggests a low risk of less than satisfactory performance on the part of the offeror.
Yellow	Good	The factor meets the Government's stated requirements in all areas. The information provided suggests a moderate risk of less than satisfactory performance on the part of the offeror.
Red	Poor	The factor fails to meet at least one of the Government's stated requirements. The information provided suggests a very substantial

		risk of less than satisfactory on part of the offeror.
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2. PAST PERFORMANCE

The Offeror will be evaluated on their past performance. Offeror shall submit three references (provide an email and telephone number of point of reference and also the project title and contract number) for recent (from the past three years) and relevant experience (i.e., experience in providing the services as described by the Performance Work Statement contained in the solicitation and services that are similar in scope). For Past Performance, the information used shall consist of reference data provided by the Offeror in their proposal submission, information in both Government and commercial databases, , and other information available as VA determines is reasonable in order to determine the performance risk level.

Offerors shall also submit three references from each entity listed in the proposal, to include: joint ventures and partnership.

<i>Color</i>	<i>Definition</i>
Neutral	No relevant past performance available for evaluation. Contractor has asserted that it has no directly related or similar relevant past performance experience.
Blue	Based on the Contractor's record of past performance, no issues, concerns, or risks are associated with receiving quality timely services and contract performance. The Contractor's experiences (recent and relevant experience providing services described in the RFQ) indicate that there is very little risk that the Contractor will meet the requirements of the orders issued under the contract.
Green	The Contractor's record of past performance indicates there is little risk associated with receiving quality, timely services and work products, and full contract performance.
Yellow	The Offer's record of past performance indicates that there is risk associated with receiving quality, timely services, and contract performance, and the Government may have to expend additional resources to ensure successful performance.
Red	The Contractor's record of past performance indicates that there is significant risk it will be to perform successfully.

3. COST/PRICE

This Volume shall be organized in such a manner to address and/or provide sufficient details in price breakdown of the quotation. Information must be detailed enough to clearly document that the proposed mix of labor categories, the IDIQ labor category rates, and the discounted rates offered are accurate, realistic, complete and consistent with the proposed technical volume and with the requirements of the PWS. Documentation shall also explain any description of any assumption of terms and conditions as well as a specific description of any pricing and technical assumptions that the response is predicated on. (All rates are loaded).

Quotations which are unrealistic in terms of technical commitment or unrealistically low in price will be deemed to show an inherent lack of technical competence or failure to comprehend the complexity and risk of the contract requirements. This may be grounds for the rejection of the quotation. The Government may reject any quotation that is unreasonable or materially unbalanced as to prices. An unbalanced quotation is one that incorporates prices significantly less than cost for some items and/or prices that are significantly overstated for other items.

The Government intends to award without discussions on the basis of initial offers; however, it reserves the right to hold discussions and solicit final revised quotation if deemed necessary. This may be awarded as a single or multiple awards.

Proposals will not be accepted from those contractors that are installers of solar and CHP systems (for VA/OAEM/NEBC) or are currently supporting OAEM green team projects.