

SOLICITATION, OFFER, AND AWARD (Construction, Alteration, or Repair)	1. SOLICITATION NUMBER	2. TYPE OF SOLICITATION	3. DATE ISSUED	PAGE OF PAGES
	36C77621B0017	<input checked="" type="checkbox"/> SEALED BID (IFB) <input type="checkbox"/> NEGOTIATED (RFP)	07-05-2022	1 of 67

IMPORTANT - The "offer" section on the reverse must be fully completed by offeror.

4. CONTRACT NUMBER	5. REQUISITION/PURCHASE REQUEST NUMBER	6. PROJECT NUMBER
		436-114
7. ISSUED BY Department of Veterans Affairs Program Contracting Activity Central  6150 Oak Tree Blvd, Suite 300 Independence OH 44131	CODE 36C776	8. ADDRESS OFFER TO Department of Veterans Affairs Program Contract Activity Central 6150 Oak Tree Blvd, Suite 300 Independence OH 44131
9. FOR INFORMATION CALL:	a. NAME Sharese McKinney	b. TELEPHONE NUMBER (Include area code) (NO COLLECT CALLS) 2164438700

#### SOLICITATION

NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder".

10. THE GOVERNMENT REQUIRES PERFORMANCE OF THE WORK DESCRIBED IN THESE DOCUMENTS (Title, identifying number, date)

In accordance with 38 U.S.C 8127 (Public Law 109-461), this project is a competitive Service-Disabled Veteran-Owned Small Business (SDVOSB) set-aside.

The contractor shall furnish all labor and materials and perform the work as required by the drawings and specifications for the Construct Outpatient Mental Health And Education Addition at the VA Montana Healthcare System

The project location is as follows:  
3687 Veterans Drive, Ft. Harrison, MT 59636

In accordance with VAAR 836.204, the magnitude of construction is between \$10,000,000 and \$20,000,000  
The NAICS code for this project is 236220 with a size standard of \$39,500,000.00

11. The Contractor shall begin performance within <u>10</u> calendar days and complete it within <u>1050</u> calendar days after receiving <input type="checkbox"/> award, <input checked="" type="checkbox"/> notice to proceed. This performance period is <input type="checkbox"/> mandatory <input type="checkbox"/> negotiable. (See <u>52.211-10</u> ).	
12a. THE CONTRACTOR MUST FURNISH ANY REQUIRED PERFORMANCE AND PAYMENT BONDS? (If "YES," indicate within how many calendar days after award in Item 12B.) <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	12b. CALENDAR DAYS 10

#### 13. ADDITIONAL SOLICITATION REQUIREMENTS:

- Sealed offers in original and 0 copies to perform the work required are due at the place specified in Item 8 by 10:30am EDT (hour) local time 08-08-2022 (date). If this is a sealed bid solicitation, offers must be publicly opened at that time. Sealed envelopes containing offers shall be marked to show the offeror's name and address, the solicitation number, the date and time offers are due.
- An offer guarantee ☒ is, ☐ is not required.
- All offers are subject to the (1) work requirements, and (2) other provisions and clauses incorporated in the solicitation in full text or by reference.
- Offers providing less than 90 days calendar days for Government acceptance after the date offers are due will not be considered and will be rejected.

**OFFER (Must be fully completed by offeror)**

14. NAME AND ADDRESS OF OFFEROR (Include ZIP Code)		15. TELEPHONE NUMBER (Include area code)
		16. REMITTANCE ADDRESS (Include only if different than Item 14.)
CODE	FACILITY CODE	

17. The offeror agrees to perform the work required at the prices specified below in strict accordance with the terms of the solicitation, if this offer is accepted by the Government in writing within \_\_\_\_\_ calendar days after the date offers are due. (Insert any number equal to or greater than the minimum requirement stated in Item 13d. Failure to insert any number means the offeror accepts the minimum in Item 13d.)

AMOUNTS

18. The offeror agrees to furnish any required performance and payment bonds.

**19. ACKNOWLEDGMENT OF AMENDMENTS**

(The offeror acknowledges receipt of amendments to the solicitation -- give number and date of each)

AMENDMENT NUMBER										
DATE.										

20a. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER  
(Type or print)

20b. SIGNATURE

20c. OFFER DATE

**AWARD (To be completed by Government)**

21. ITEMS ACCEPTED:

22. AMOUNT

23. ACCOUNTING AND APPROPRIATION DATA

24. SUBMIT INVOICES TO ADDRESS SHOWN IN  
(4 copies unless otherwise specified)

ITEM

25. OTHER THAN FULL AND OPEN COMPETITION PURSUANT TO  
☐ 10 U.S.C. 2304(c)( ) ☐ 41 U.S.C. 3304(a) ( )

26. ADMINISTERED BY

00076

Department of Veterans Affairs  
Department of Veterans Affairs  
  
6150 Oak Tree Blvd, Suite 300  
Independence OH 44131

27. PAYMENT WILL BE MADE BY VAFSC  
Department of Veterans Affairs  
Financial Services Center  
Invoices to be Submitted Electronically  
www.obl0.com/us/en/veterans-affairs/  
e-Invoice Setup Info Phone 877-489-6135  
PHONE: 877-353-9791 FAX: 512-460-5429

**CONTRACTING OFFICER WILL COMPLETE ITEM 28 OR 29 AS APPLICABLE**

☐ 28. NEGOTIATED AGREEMENT (Contractor is required to sign this document and return \_\_\_\_\_ copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all work requirements identified on this form and any continuation sheets for the consideration stated in this contract. The rights and obligations of the parties to this contract shall be governed by (a) this contract award, (b) the solicitation, and (c) the clauses, representations, certifications, and specifications incorporated by reference in or attached to this contract.

☐ 29. AWARD (Contractor is not required to sign this document.) Your offer on this solicitation is hereby accepted as to the items listed. This award consummates the contract, which consists of (a) the Government solicitation and your offer, and (b) this contract award. No further contractual document is necessary.

30a. NAME AND TITLE OF CONTRACTOR OR PERSON AUTHORIZED  
TO SIGN (Type or print)

31a. NAME OF CONTRACTING OFFICER (Type or print)  
Shon Johnson

30b. SIGNATURE

30c. DATE

31b. UNITED STATES OF AMERICA  
  
BY

31c. AWARD DATE

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## PRICE SCHEDULE

### CLIN 0001, BID ITEM I

**BASE BID:** Work includes general construction, alterations, walks, grading, drainage, necessary removal of existing structures and construction and certain other items per the drawings. The project has two phases. Phase 1 is construction of the Outpatient Mental Health Building. Phase 2 is the Education Renovation.

**CLIN 0001:** \$ \_\_\_\_\_

### CLIN 0002, BID ITEM II

#### **Deduct Alternate No. 1: Deductive Alternate #1**

Remove the Phase 2 Education Renovation portion of the scope of work in its entirety.

**CLIN 0002 (CLIN 0001 – Deduct Alternate No. 1):** \$ \_\_\_\_\_

### CLIN 0003, BID ITEM III

#### **Deduct Alternate No. 2: Deductive Alternate #2**

Revise sloped roof covering from metal standing seam to a “simulated-metal roof” TPO membrane system.

**CLIN 0003 (CLIN 0001 – Deduct Alternate No. 2):** \$ \_\_\_\_\_

### CLIN 0004, BID ITEM IV

#### **Deduct Alternate No. 3: Deductive Alternate #3**

Reduce site landscape plantings by 70% to reach 30% of current design cost.

**CLIN 0004 (CLIN 0001 – Deduct Alternate No. 3):** \$ \_\_\_\_\_

### CLIN 0005, BID ITEM V

#### **Deduct Alternate No. 4: Deductive Alternate #4**

Omit designated type AA1 post top light fixtures and associated concrete bases and circuitry. Reinstall relocated parking lot poles and luminaires on new concrete bases and extend existing circuitry as required for parking lot lighting power and controls. (Refer to drawing ES101-P1)

**CLIN 0005 (CLIN 0001 – Deduct Alternate No. 4):** \$ \_\_\_\_\_

### CLIN 0006, BID ITEM VI

#### **Deduct Alternate No. 5: Deductive Alternate #5**

Remove rough-in power for patient lift system in Simulation Lab #123.

**CLIN 0006 (CLIN 0001 – Deduct Alternate No. 5):** \$ \_\_\_\_\_

## NOTICE

1. CLIN 0001, ITEM I GENERAL CONSTRUCTION contains all the project work. Each CLIN DEDUCT ALTERNATE deletes a portion of the work.
2. The intent is to award CLIN 0001, BID ITEM I. However, if the bids for CLIN 0001 exceed the funds available, Deduct Alternate No. 1 will be applied, and pricing for CLIN 0002, BID ITEM II, will be evaluated.
3. Pricing for CLIN 0002 thru CLIN 0006 will be evaluated, and bid deduct alternates selected on an individual basis and applies as needed until the total cost of the bid no longer exceeds the funds available. Prioritizing of bid deduct alternates will align with the Facility's needs and with overall bid pricing.
4. Deduction of CLIN 0003 thru CLIN 0006 will not have any expected impact on the period of performance as the work described in each is not expected to be on a critical path and would be performed concurrently with other work remaining in the contract. Deduction of CLIN 0002 will have a significant reduction in total period of performance as this CLIN is defined by the entirety of work to be performed under Phase 2 of the construction package.
5. Bidders shall affix a price to each bid item. Failure to do so may render the bid as nonresponsive.
6. Pricing shall be submitted in **whole** dollar values. Please do **not** include pricing in cents.

### A.3 VAAR 852.236-92 NOTICE TO BIDDERS—ADDITIVE OR DEDUCTIVE BID LINE ITEMS (APR 2019)

(a) Additive or deductive line items in the bid schedule shall be evaluated to determine the low offeror and the items to be awarded. The evaluation shall be made as follows—

(1) Prior to the opening of bids, the Government will determine the amount of funds available for the project.

(2) The low bid shall be the Bidder that—

(i) Is otherwise eligible for award; and

(ii) Offers the lowest aggregate amount for the first or base line item, plus or minus (in the order stated in the list of priorities in the bid schedule) those additive or deductive line items that provide the most features within the funds determined available.

(3) All bids shall be evaluated on the basis of the same additive or deductive line items.

(i) If adding another item from the bid schedule list of priorities would make the award exceed the available funds for all offerors, the Contracting Officer will skip that item and go to the next item from the bid schedule of priorities; and

(ii) Add that next item if an award may be made that includes that line item and is within the available funds.

(b) The Contracting Officer will use the list of priorities in the bid schedule only to determine the low offeror. After determining the low offeror, an award may be made on any combination of items if—

(1) It is in the best interest of the Government;

(2) Funds are available at the time of award; and

(3) The low offeror's price for the combination to be awarded is less than the price offered by any other responsive, responsible offeror.

(c) Example: "The amount available is \$100,000. Offeror A's base bid and four additives (in the order stated in the list of priorities in the bid schedule) are \$85,000, \$10,000, \$8,000, \$6,000, and \$4,000. Offeror B's base bid and four additives are \$80,000, \$16,000, \$9,000, \$7,000, and \$4,000. Offeror A is the low offeror. The aggregate amount of offeror A's bid for purposes of award would be \$99,000, which includes a base bid plus the first and fourth additives. The second and third additives were skipped because each of them would cause the aggregate bid to exceed \$100,000."

(End of Clause)

## **INFORMATION REGARDING BIDDING MATERIAL, BID GUARANTEE AND BONDS**

### **1.1 BIDDING MATERIAL:**

Bidding materials consisting of drawings, specifications, and contract forms are included and/or attached as part of this Invitation for Bid. The VA will not provide printed copies of drawings or specifications. It is the responsibility of the offeror to obtain the bid materials in a time and manner sufficient to respond to this solicitation by the specified due date.

### **1.2 BID GUARANTEE:**

A Bid Guarantee, SF 24, is required in an amount not less than 20 percent of the bid price but shall not exceed \$3,000,000. Failure to furnish the required bid guarantee in the proper form and amount, by the time set for opening of bids, may require rejection of the bid in all cases except those listed in FAR 28.101-4. Copies of the SF 24 may be obtained from <http://www.gsa.gov/portal/forms/type/TOP>.

### **1.3 PAYMENT & PERFORMANCE BONDS:**

The bidder to whom award is made will be required to furnish two bonds, a Payment Bond, SF 25A, and a Performance Bond, SF 25, each in the penal sum as noted in the General Conditions of the Solicitation. Copies of SFs 25 and 25A may be obtained from <http://www.gsa.gov/portal/forms/type/TOP>.

### **1.4 DESCRIPTION OF WORK:**

Refer to description contained in **ATTACHMENT 19 – Final Specs - Section 1.2 General Intention (pg. 12)**.



## INSTRUCTIONS, CONDITIONS AND OTHER STATEMENTS TO BIDDERS/OFFERORS

### 2.1 AVAILABILITY OF SOLICITATION DOCUMENTS:

All solicitation related documents will be published to Contract Opportunities (beta.sam.gov) <https://beta.sam.gov/>.

### 2.2 INVITATION FOR BID:

This solicitation is being issued as an Invitation for Bid (IFB) in accordance with FAR Part 14, 19, and 36.

### 2.3 SDVOSB SET-ASIDE:

This procurement is 100% set-aside for Service-Disabled Veteran-Owned Small Business concerns. Offers received from other than Service-Disabled Veteran-Owned Small Business concerns will not be considered. All Service-Disabled Veteran-Owned Small Businesses must be listed as “verified” by the VA’s Center for Veterans Enterprises (CVE) (<http://www.vetbiz.gov>). Offerors must be verified by CVE and visible in the Vendor Information Portal (VIP) database at TIME OF SUBMISSION OF BIDS AND TIME OF AWARD. Failure to be BOTH visible and verified at the time of bid submission will result in the offeror’s bid being deemed non-responsive and ineligible for award.

### 2.4 TECHNICAL QUESTIONS:

Questions of a technical nature must be provided in writing and shall be submitted by the prospective offerors to **Sharese McKinney**. Questions shall be submitted only via e-mail to: [sharese.mckinney@va.gov](mailto:sharese.mckinney@va.gov). The subject line must read: ***Construct Outpatient Mental Health / Education Addition – Technical Questions***. Oral questions of a technical nature are not acceptable due to the possibility of misunderstanding or misinterpretation. **THE CUT-OFF DATE AND TIME FOR RECEIPT OF QUESTIONS IS July 18, 2022 at 2:00 PM (ET).**

### 2.5 AMENDMENTS:

Amendments to this solicitation will be posted at [Sam.gov](https://sam.gov). Paper copies of the amendments will NOT be individually mailed. No other notification of amendments will be provided. Potential offerors are advised that they are responsible for obtaining and acknowledging any amendments to the solicitation. Failure to acknowledge an amendment may result in your bid being considered non-responsive.

### 2.6 PRE-BID SITE VISIT:

A formal site visit has been scheduled for this project for **July 11, 2022 @ 11:00 am MST**. This will be the only opportunity for potential bidders to visit the site. See FAR Clause 52.236-27 (page 16) of this solicitation for further information.

**All potential bidders, subcontractors and suppliers are strongly encouraged to attend this site visit.**

## 2.7 PREPARATION OF BIDS:

The Government will not pay for any costs incurred in preparation and submission of bids.

## 2.8 BID SUBMISSION:

### A. GENERAL:

- (a) Offerors shall submit their bids via email to: [sharese.mckinney@va.gov](mailto:sharese.mckinney@va.gov)
- (b) **Only** electronic bids will be accepted. **No** original or hard copies will be accepted.
- (c) An in person bid opening will **not** be facilitated due to the current health concerns surrounding the coronavirus.
- (d) Only one (1) electronic bid shall be submitted. Zero (0) copies shall be submitted.
- (e) The **bid bond** shall be submitted as part of the electronic submission. An **original** bid bond will be requested by the VA, from the “**apparent low bidder**”, after the bid opening.
- (f) Failure to provide electronic bids at the date and time set for bid opening, may deem the bid **Non-Responsive**.

### B. BID PACKAGE CONTENTS:

- (a) **Standard Form (SF) 1442 Solicitation, Offer and Award:**  
The Offeror shall complete & sign the “OFFER” section of the SF 1442. The Offeror shall submit separate prices for all items (if Applicable) indicated in Block 17.
- (b) **Acknowledgement of All Amendments:**  
The offeror shall acknowledge all amendments by either 1.) Completing block 19 of the SF 1442, or 2.) Returning the signed amendment form(s) with the submission.
- (c) **Pricing Schedule:**  
The Offeror shall complete the pricing schedule located on **page 6** of the solicitation.
- (d) **Bid Guarantee:**  
The Offeror shall furnish a bid guarantee (**FAR 52.228-1**).
- (e) **Representations & Certifications:**  
The offeror shall provide their Representations and Certifications **or** their response to FAR 52.204-8 (2) (i) or (ii) Annual Representations and Certifications.
- (f) **Information Regarding Responsibility Matters:**  
  
Offeror shall provide their response to FAR 52.209-7 (b) Information Regarding Responsibility Matters.
- (g) **Violation of Arms Controls Treaties or Agreements:**  
  
Offeror shall provide their response to FAR 52.209-13 (b) (1) or (2) Violation of Arms Controls Treaties or Agreements.
- (h) **Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment:**  
  
Offeror shall provide their response to FAR 52.204-24 (d) *Representation*.
- (i) **Post Award Small Business Program Representations:**  
  
Offeror shall provide their response to FAR 52.219-28 items **(h)(1), (h)(6), and (h)(7)**.

**(j) Experience Modification Rate:**

The Offeror shall include the Safety of Environmental Violations and Experience Modification Rating (EMR) Information, including filling out **ATTACHMENT 11 - CONTRACTOR SAFETY AND ENVIRONMENTAL RECORD EVALUATION FORM**.

- (1) Provide offeror's information pertaining to their past Safety and Environmental record. The information must contain a certification that the offeror has no more than three (3) serious, or one (1) repeat or one (1) willful OSHA or any EPA violation(s) in the past three years. If such certification cannot be made, a Offeror shall explain why and submit as much information as possible regarding the circumstances of its past safety and environmental record, including the number of EPA violations and/or the number of serious, repeat, and/or willful OSHA violations, along with a detailed description of those violations.
- (2) Provide offeror's information regarding their current EMR. This information shall be obtained from the Offeror's insurance carrier and be furnished on the insurance carrier's letterhead. If a Offeror's EMR is above 1.0, Offeror must submit a written explanation of the EMR from its insurance carrier furnished on the insurance carrier's letterhead, describing the reasons for the elevated EMR and the anticipated date the EMR may be reduced to 1.0 or below.
- (3) Self-insured contractors or other contractors that cannot provide their EMR rating on insurance letterhead must obtain a rating from the National Council on Compensation Insurance, Inc. (NCCI) by completing/submitting form ERM-6 and providing the rating on letterhead from NCCI. Note: Self-insured contractors or other contractors that cannot provide EMR rating on insurance letterhead from the states or territories of CA, DE, MI, NJ, ND, OH, PA, WA, WY, and PR shall obtain their EMR rating from their state run worker's compensation insurance rating bureau.
- (4) If the NCCI cannot issue an EMR because the Bidder/Offeror lacks insurance history, Bidder/Offeror shall submit a letter indicating so from its insurance carrier furnished on the insurance carrier's letterhead, and include a letter from the NCCI indicating that is has assigned Bidder/Offeror a Unity Rating of 1.0.
- (5) The above information, along with other information obtained from Government systems, such as the OSHA and EPA online inspection history databases, will be used to make an initial *Determination of Responsibility*.
- (6) This requirement is applicable to all subcontracting tiers, and prospective prime contractors are responsible for determining the responsibility of their prospective subcontractors.
- (7) Failure to provide the above documentation, may result in a determination that an Offeror is non-responsive and therefore ineligible for award.

**C. BID OPENING:**

- (a) Bids will be publicly read aloud. A **conference line** will be **announced via an amendment** to the solicitation approximately seven (7) calendar days prior to the receipt date for bids.

**2.9 DETERMINATION OF NON-RESPONSIVE:**

Bids received pertaining to this solicitation will be reviewed for responsiveness. Failure to provide documentation as outlined in the Bid Submission section of the solicitation, at the date and time set for bid opening, may deem the bid **Non-Responsive**.

**2.10 DETERMINATION OF RESPONSIBILITY:**

A Determination of Responsibility will be conducted for the apparent "low bidder/awardee" prior to award of the project. The above information, along with other information obtained from Government systems, such as, but not limited to the OSHA and EPA online inspection history databases, as well as any other information the Contracting Officer has determined to be valid,

will be used to make the Determination of Responsibility. NOTE: Any information received by the Government that would cause for a negative Determination of Responsibility may make the Offeror ineligible for award.

## **2.11 VETS 4214:**

Title 38, USC Section 4212(d), codified at 41 CFR Section 61-300, requires that federal contractors report, at least annually, the number and category of veterans who are within their workforce. Submission of the VETS-4212 reporting information can be done electronically at: <http://www.dol.gov/vets/vets4212.htm>. Award cannot be made unless the awardee has filed their VETS-4212 report. Therefore, all offerors are encouraged to file every year. The Contracting Officer may request a copy of the email confirmation of receipt notification, prior to awarding the project.

## **2.12 SYSTEM FOR AWARD MANAGEMENT (SAM):**

Federal Acquisition Regulations require that federal contractors register in the System for Award Management (SAM) database at <http://www.sam.gov> and enter all mandatory information into the system. Offerors are required to be registered in SAM at the time an offer is submitted in order to comply with the annual representations and certifications requirements.

## **2.13 CONTRACT AWARD:**

Award may only be made with the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the government, considering only price and the price-related factors announced in this solicitation (see **FAR 52.214-19**). The low price will be evaluated by the Contracting Officer prior to award to confirm that it is “a fair and reasonable price that offers the best value to the Government.”

## **2.14 REVIEW REQUIRED REGISTRATION WITH CONTRACTOR**

### **PERFORMANCE ASSESSMENT SYSTEM (CPARS):**

As prescribed in Federal Acquisition Regulation (FAR) Part 42.1502(e), the Department of Veterans Affairs (VA) evaluates contractor past performance on all construction contracts that exceed \$700,000, and shares those evaluations with other Federal Government contract specialists and procurement officials. The FAR requires that the contractor be provided an opportunity to comment on past performance evaluations prior to each report closing. To fulfill this requirement VA uses an online database, CPARS, which is maintained by the Naval Seal Logistics Center in Portsmouth, Virginia. CPARS has connectivity with the Past Performance Information Retrieval System (PPIRS) database, which is available to all Federal agencies. PPIRS is the system used to collect and retrieve performance assessment reports used in source selection determinations and completed CPARS report cards transferred to PPIRS. CPARS also includes access to the federal awardee performance and integrity information system (FAPIS). FAPIS is a web-enabled application accessed via CPARS for contractor responsibility determination information.

Each contractor whose contract award is estimated to exceed \$700,000 is required to register with CPARS database at the following web address: <http://www.cpars.gov/>. Help in registering can be obtained by contacting Customer Support Desk @ DSN: 684-1690 or COMM: 207- 438-

1690. Registration should occur no later than thirty days after contract award, and must be kept current should there be any change to the contractor's registered representative.

For contracts with a period of one year or less, the contracting officer will perform a single evaluation when the contract is complete. For contracts exceeding one year, the contracting officer will evaluate the contractor's performance annually. Interim reports will be filed each year until the last year of the contract, when the final report will be completed. The report shall be assigned in CPARS to the contractor's designated representative for comment. The contractor representative will have thirty days to submit any comments and re-assign the report to the VA contracting officer.

Failure to have a current registration in the CPARS database, or to re-assign the report to the VA contracting officer within those thirty days, will result in the Government's evaluation being placed on file in the database with a statement that the contractor failed to respond.

## **2.15 BACKGROUND INVESTIGATIONS AND SPECIAL AGREEMENT CHECKS:**

All contractor employees are subject to the same level of investigation as VA employees who have access to VA Sensitive Information. The level of background investigation commensurate with the level of access needed to perform the statement of work is: Low Risk. This requirement is applicable to all subcontractor personnel requiring the same access. As per VA Directive 0710, costs of background investigations will be borne by the contractor.

## **2.16 REFERENCES TO VA ENGINEER, RESIDENT ENGINEER OR PROJECT MANAGER:**

Any reference contained within the solicitation/contract specifications and/or drawings to the "VA Engineer," "Resident Engineer," or "Project Manager" or their abbreviations shall be replaced with "Contracting Officer's Representative (COR)."

<b><u>FAR Number</u></b>	<b><u>Title</u></b>	<b><u>Date</u></b>
52.214-31	FACSIMILE BIDS	DEC 1989

## **2.17 52.216-1 TYPE OF CONTRACT (APR 1984)**

The Government contemplates award of a Firm-Fixed-Price contract resulting from this solicitation.

(End of Provision)

## **2.18 52.222-5 CONSTRUCTION WAGE RATE REQUIREMENTS— SECONDARY SITE OF THE WORK (MAY 2014)**

(a)(1) The offeror shall notify the Government if the offeror intends to perform work at any secondary site of the work, as defined in paragraph (a)(1)(ii) of the FAR clause at 52.222-6, Construction Wage Rate Requirements, of this solicitation.

(2) If the offeror is unsure if a planned work site satisfies the criteria for a secondary site of the work, the offeror shall request a determination from the Contracting Officer.

(b)(1) If the wage determination provided by the Government for work at the primary site of the work is not applicable to the secondary site of the work, the offeror shall request a wage determination from the Contracting Officer.

(2) The due date for receipt of offers will not be extended as a result of an offeror's request for a wage determination for a secondary site of the work.

(End of Provision)

## **2.19 52.222-23 NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY FOR CONSTRUCTION (FEB 1999)**

(a) The offeror's attention is called to the Equal Opportunity clause and the Affirmative Action Compliance Requirements for Construction clause of this solicitation.

(b) The goals for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

<b>Goals for minority participation for each trade</b>	<b>Goals for female participation for each trade</b>
4.1 %	6.9 %

These goals are applicable to all the Contractor's construction work performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, the Contractor shall apply the goals established for the geographical area where the work is actually performed. Goals are published periodically in the Federal Register in notice form, and these notices may be obtained from any Office of Federal Contract Compliance Programs office.

(c) The Contractor's compliance with Executive Order 11246, as amended, and the regulations in 41 CFR 60-4 shall be based on (1) its implementation of the Equal Opportunity clause, (2) specific affirmative action obligations required by the clause entitled "Affirmative Action Compliance Requirements for Construction," and (3) its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade. The Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor, or from project to project, for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, Executive Order 11246, as amended, and the regulations in 41 CFR 60-4. Compliance with the goals will be measured against the total work hours performed.

(d) The Contractor shall provide written notification to the Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, within 10 working days following award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the—



- (1) Name, address, and telephone number of the subcontractor;
- (2) Employer's identification number of the subcontractor;
- (3) Estimated dollar amount of the subcontract;
- (4) Estimated starting and completion dates of the subcontract; and
- (5) Geographical area in which the subcontract is to be performed.

(e) As used in this Notice, and in any contract resulting from this solicitation, the "covered area" is

(End of Provision)

## **2.20 52.225-11 BUY AMERICAN—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (NOV 2021)**

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

*Caribbean Basin country construction material* means a construction material that—

- (1) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.

*Commercially available off-the-shelf (COTS) item*—

- (1) Means any item of supply (including construction material) that is—
  - (i) A commercial product (as defined in paragraph (1) of the definition of “commercial product” at Federal Acquisition Regulation (FAR) 2.101;
  - (ii) Sold in substantial quantities in the commercial marketplace; and
  - (iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
- (2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

*Component* means an article, material, or supply incorporated directly into a construction material.

*Construction material* means an article, material, or supply brought to the construction site by the Contractor or subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio

evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

*Cost of components* means—

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

*Designated country* means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, Ukraine, or United Kingdom);

(2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Oman, Panama, Peru, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

*Designated country construction material* means a construction material that is a WTO GPA country construction material, an FTA country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

*Domestic construction material* means—



(1) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if—

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 55 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic. Components of unknown origin are treated as foreign; or

(B) The construction material is a COTS item; or

(2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of foreign iron and steel constitutes less than 5 percent of the cost of all components used in such construction material. The cost of foreign iron and steel includes but is not limited to the cost of foreign iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the construction material and a good faith estimate of the cost of all foreign iron or steel components excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the definition of “cost of components”.

*Fastener* means a hardware device that mechanically joins or affixes two or more objects together. Examples of fasteners are nuts, bolts, pins, rivets, nails, clips, and screws.

*Foreign construction material* means a construction material other than a domestic construction material.

*Foreign iron and steel* means iron or steel products not produced in the United States. Produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, from the initial melting stage through the application of coatings, except metallurgical processes involving refinement of steel additives. The origin of the elements of the iron or steel is not relevant to the determination of whether it is domestic or foreign.

*Free Trade Agreement country construction material* means a construction material that—

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a FTA country into a new and different construction material distinct from the materials from which it was transformed.

*Least developed country construction material* means a construction material that—

(1) Is wholly the growth, product, or manufacture of a least developed country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

*Predominantly of iron or steel or a combination of both* means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

*Steel* means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

*United States* means the 50 States, the District of Columbia, and outlying areas.

*WTO GPA country construction material* means a construction material that—

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) Construction materials.

(1) This clause implements 41 U.S.C. chapter 83, Buy American, by providing a preference for domestic construction material. In accordance with 41 U.S.C. 1907, the domestic content test of the Buy American statute is waived for construction material that is a COTS item, except that for construction material that consists wholly or predominantly of iron or steel or a combination of both, the domestic content test is applied only to the iron and steel content of the construction material, excluding COTS fasteners. (See FAR 12.505(a)(2)). In addition, the Contracting Officer has determined that the WTO GPA and Free Trade Agreements (FTAs) apply to this acquisition. Therefore, the Buy American restrictions are waived for designated country construction materials.

(2) The Contractor shall use only domestic or designated country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

(3) The requirement in paragraph (b)(2) of this clause does not apply to information technology that is a commercial product or to the construction materials or components listed by the Government as follows:

(4) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(3) of this clause if the Government determines that—

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the restrictions of the Buy American statute is unreasonable when the cost of such material exceeds the cost of foreign material by more than 20 percent;

(ii) The application of the restriction of the Buy American statute to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) Request for determination of inapplicability of the Buy American statute.

(1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including—

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to the Buy American statute applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a

domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American statute applies, use of foreign construction material is noncompliant with the Buy American statute.

(d) *Data.* To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Price Comparison

Construction Material Description	Unit of Measure	Quantity	Price (Dollars)*
Item 1:			
Foreign Construction Material			
Domestic Construction Material			
Item 2:			
Foreign Construction Material			
Domestic Construction Material			

*[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]*

*[Include other applicable supporting information.]*

*[\* Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).]*

(End of Clause)

## 2.21 52.225-12 NOTICE OF BUY AMERICAN REQUIREMENT— CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (MAY 2014)

(a) *Definitions.* "Commercially available off-the-shelf (COTS) item," "construction material," "designated country construction material," "domestic construction material," and "foreign construction material," as used in this provision, are defined in the clause of this solicitation entitled "Buy American—Construction Materials Under Trade Agreements" (Federal Acquisition Regulation (FAR) clause 52.225-11).

(b) *Requests for determination of inapplicability.* An offeror requesting a determination regarding the inapplicability of the Buy American statute should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause 52.225-11 in the request. If an offeror has not requested a determination regarding the inapplicability of the Buy American statute before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

(c) Evaluation of offers.

(1) The Government will evaluate an offer requesting exception to the requirements of the Buy American statute, based on claimed unreasonable cost of domestic construction materials, by adding to the offered price the appropriate percentage of the cost of such foreign construction material, as specified in paragraph (b)(4)(i) of FAR clause 52.225-11.

(2) If evaluation results in a tie between an offeror that requested the substitution of foreign construction material based on unreasonable cost and an offeror that did not request an exception, the Contracting Officer will award to the offeror that did not request an exception based on unreasonable cost.

(d) Alternate offers.

(1) When an offer includes foreign construction material, other than designated country construction material, that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause 52.225-11, the offeror also may submit an alternate offer based on use of equivalent domestic or designated country construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause 52.225-11 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause 52.225-11 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic or designated country construction material, and the offeror shall be required to furnish such domestic or designated country construction material. An offer based on use of the foreign construction material for which an exception was requested—

- (i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or
- (ii) May be accepted if revised during negotiations.

(End of Provision)

## **2.22 52.228-1 BID GUARANTEE (SEP 1996)**

(a) Failure to furnish a bid guarantee in the proper form and amount, by the time set for opening of bids, may be cause for rejection of the bid.

(b) The bidder shall furnish a bid guarantee in the form of a firm commitment, e.g., bid bond supported by good and sufficient surety or sureties acceptable to the Government, postal money order, certified check, cashier's check, irrevocable letter of credit, or, under Treasury Department regulations, certain bonds or notes of the United States. The Contracting Officer will return bid guarantees, other than bid bonds—

- (1) To unsuccessful bidders as soon as practicable after the opening of bids; and

(2) To the successful bidder upon execution of contractual documents and bonds (including any necessary coinsurance or reinsurance agreements), as required by the bid as accepted.

(c) The amount of the bid guarantee shall be 20 percent of the bid price or \$3,000,000.00 , whichever is less.

(d) If the successful bidder, upon acceptance of its bid by the Government within the period specified for acceptance, fails to execute all contractual documents or furnish executed bond(s) within 10 days after receipt of the forms by the bidder, the Contracting Officer may terminate the contract for default.

(e) In the event the contract is terminated for default, the bidder is liable for any cost of acquiring the work that exceeds the amount of its bid, and the bid guarantee is available to offset the difference.

(End of Provision)

## **2.23 52.228-17 INDIVIDUAL SURETY—PLEDGE OF ASSETS (BID GUARANTEE) (FEB 2021)**

(a) Offerors shall obtain from each person acting as an individual surety on a bid guarantee—

(1) A pledge of assets that meets the eligibility, valuation, and security requirements described in the Federal Acquisition Regulation (FAR) 28.203–1; and

(2) Standard Form 28, Affidavit of Individual Surety.

(b) The Offeror shall include with its offer the information required at paragraph (a) of this provision within the timeframe specified in the provision at FAR 52.228–1, Bid Guarantee, or as otherwise established by the Contracting Officer.

(c) The Contracting Officer may release the security interest on the individual surety's assets in support of a bid guarantee based upon evidence that the offer supported by the individual surety will not result in contract award.

(End of Provision)

## **2.24 52.233-2 SERVICE OF PROTEST (SEP 2006)**

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

Shon Johnson

Contracting Officer  
Hand-Carried Address:

6100 Oak Tree Blvd.

Suite 490

Independence OH 44131

Mailing Address:

Shon Johnson, Contracting Officer

Department of Veterans Affairs

6100 Oak Tree Blvd, Suite 490

Independence OH 44131

(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)

## **2.25 52.236-27 SITE VISIT (CONSTRUCTION) (FEB 1995) ALTERNATE I (FEB 1995)**

(a) The clauses at 52.236-2, Differing Site Conditions, and 52.236-3, Site Investigations and Conditions Affecting the Work, will be included in any contract awarded as a result of this solicitation. Accordingly, offerors or quoters are urged and expected to inspect the site where the work will be performed.

(b) An organized site visit has been scheduled for—

July 11, 2022 @ 11:00 AM MST

(c) Participants will meet at—

Fort Harrison, Montana VA Medical Center: Building 141; Room 208

(End of Provision)

## **2.26 52.252-1 SOLICITATION PROVISIONS INCORPORATED BY REFERENCE (FEB 1998)**

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at this/these address(es):

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

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

(End of Provision)

<u>FAR Number</u>	<u>Title</u>	<u>Date</u>
52.204-7	SYSTEM FOR AWARD MANAGEMENT	OCT 2018
52.204-16	COMMERCIAL AND GOVERNMENT ENTITY CODE REPORTING	AUG 2020
52.204-22	ALTERNATIVE LINE ITEM PROPOSAL	JAN 2017
52.211-6	BRAND NAME OR EQUAL	AUG 1999
52.214-3	AMENDMENTS TO INVITATIONS FOR BIDS	DEC 2016
52.214-4	FALSE STATEMENTS IN BIDS	APR 1984
52.214-5	SUBMISSION OF BIDS	DEC 2016
52.214-6	EXPLANATION TO PROSPECTIVE BIDDERS	APR 1984
52.214-7	LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF BIDS	NOV 1999
52.214-18	PREPARATION OF BIDS—CONSTRUCTION	APR 1984
52.214-19	CONTRACT AWARD—SEALED BIDDING— CONSTRUCTION	AUG 1996
52.214-34	SUBMISSION OF OFFERS IN THE ENGLISH LANGUAGE	APR 1991
52.214-35	SUBMISSION OF OFFERS IN U.S. CURRENCY	APR 1991

## **2.27 VAAR 852.228-72 ASSISTING SERVICE-DISABLED VETERAN-OWNED AND VETERAN-OWNED SMALL BUSINESSES IN OBTAINING BONDS (DEC 2009)**

Prime contractors are encouraged to assist service-disabled veteran-owned and veteran-owned small business potential subcontractors in obtaining bonding, when required. Mentor firms are encouraged to assist protégé firms under VA's Mentor-Protégé Program in obtaining acceptable bid, payment, and performance bonds, when required, as a prime contractor under a solicitation or contract and in obtaining any required bonds under subcontracts.

(End of Clause)

## **2.28 VAAR 852.233-71 ALTERNATE PROTEST PROCEDURE (OCT 2018)**

(a) As an alternative to filing a protest with the Contracting Officer, an interested party may file a protest by mail or electronically with: Executive Director, Office of Acquisition and Logistics, Risk Management and Compliance Service (003A2C), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or Email: [EDProtests@va.gov](mailto:EDProtests@va.gov).

(b) The protest will not be considered if the interested party has a protest on the same or similar issue(s) pending with the Contracting Officer.

(End of Provision)

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

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

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



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

<u>FAR Number</u>	<u>Title</u>	<u>Date</u>
852.223-70	INSTRUCTIONS TO OFFERORS—SUSTAINABLE ACQUISITION PLAN	SEP 2019

## **2.29 VAAR 852.233-70 PROTEST CONTENT/ALTERNATIVE DISPUTE RESOLUTION (OCT 2018)**

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

- (1) Include the name, address, fax number, email 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)

## REPRESENTATIONS AND CERTIFICATIONS

### 3.1 52.204-8 ANNUAL REPRESENTATIONS AND CERTIFICATIONS (JAN 2022) (JUL 2020) (DEVIATION)

(a)(1) The North American Industry Classification System (NAICS) code for this acquisition is 236220.

(2) The small business size standard is \$39.5 Million.

(3) The small business size standard for a concern that submits an offer, other than on a construction or service acquisition, but proposes to furnish an end item that it did not itself manufacture, process, or produce is 500 employees if the acquisition—

(i) Is set aside for small business and has a value above the simplified acquisition threshold;

(ii) Uses the HUBZone price evaluation preference regardless of dollar value, unless the offeror waives the price evaluation preference; or

(iii) Is an 8(a), HUBZone, service-disabled veteran-owned, economically disadvantaged women-owned, or women-owned small business set-aside or sole-source award regardless of dollar value.

(b)(1) If the provision at 52.204-7, System for Award Management, is included in this solicitation, paragraph (d) of this provision applies.

(2) If the provision at 52.204-7, System for Award Management, is not included in this solicitation, and the Offeror has an active registration in the System for Award Management (SAM), the Offeror may choose to use paragraph (d) of this provision instead of completing the corresponding individual representations and certifications in the solicitation. The Offeror shall indicate which option applies by checking one of the following boxes:

☐ (i) Paragraph (d) applies.

☐ (ii) Paragraph (d) does not apply and the offeror has completed the individual representations and certifications in the solicitation.

(c)(1) The following representations or certifications in SAM are applicable to this solicitation as indicated:

(i) 52.203-2, Certificate of Independent Price Determination. This provision applies to solicitations when a firm-fixed-price contract or fixed-price contract with economic price adjustment is contemplated, unless—

(A) The acquisition is to be made under the simplified acquisition procedures in Part 13;

(B) The solicitation is a request for technical proposals under two-step sealed bidding procedures; or

(C) The solicitation is for utility services for which rates are set by law or regulation.

(ii) 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions. This provision applies to solicitations expected to exceed \$150,000.

(iii) 52.203-18, Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements or Statements—Representation. This provision applies to all solicitations.

(iv) 52.204-3, Taxpayer Identification. This provision applies to solicitations that do not include the provision at 52.204-7, System for Award Management.

(v) 52.204-5, Women-Owned Business (Other Than Small Business). This provision applies to solicitations that—

(A) Are not set aside for small business concerns;

(B) Exceed the simplified acquisition threshold; and

(C) Are for contracts that will be performed in the United States or its outlying areas.

(vi) 52.204-26, Covered Telecommunications Equipment or Services—Representation. This provision applies to all solicitations.

(vii) 52.209-2, Prohibition on Contracting with Inverted Domestic Corporations—Representation.

(viii) 52.209-5, Certification Regarding Responsibility Matters. This provision applies to solicitations where the contract value is expected to exceed the simplified acquisition threshold.

(ix) 52.209-11, Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law. This provision applies to all solicitations.

(x) 52.214-14, Place of Performance—Sealed Bidding. This provision applies to invitations for bids except those in which the place of performance is specified by the Government.

(xi) 52.215-6, Place of Performance. This provision applies to solicitations unless the place of performance is specified by the Government.

(xii) 52.219-1, Small Business Program Representations (Basic, Alternates I, and II). This provision applies to solicitations when the contract will be performed in the United States or its outlying areas.

(A) The basic provision applies when the solicitations are issued by other than DoD, NASA, and the Coast Guard.

(B) The provision with its Alternate I applies to solicitations issued by DoD, NASA, or the Coast Guard.

(C) The provision with its Alternate II applies to solicitations that will result in a multiple-award contract with more than one NAICS code assigned.

(xiii) 52.219-2, Equal Low Bids. This provision applies to solicitations when contracting by sealed bidding and the contract will be performed in the United States or its outlying areas.

(xiv) 52.222-22, Previous Contracts and Compliance Reports. This provision applies to solicitations that include the clause at 52.222-26, Equal Opportunity.

(xv) 52.222-25, Affirmative Action Compliance. This provision applies to solicitations, other than those for construction, when the solicitation includes the clause at 52.222-26, Equal Opportunity.

(xvi) 52.222-38, Compliance with Veterans' Employment Reporting Requirements. This provision applies to solicitations when it is anticipated the contract award will exceed the simplified acquisition threshold and the contract is not for acquisition of commercial products or commercial services.

(xvii) 52.223-1, Biobased Product Certification. This provision applies to solicitations that require the delivery or specify the use of USDA-designated items; or include the clause at 52.223-2, Affirmative Procurement of Biobased Products Under Service and Construction Contracts.

(xviii) 52.223-4, Recovered Material Certification. This provision applies to solicitations that are for, or specify the use of, EPA-designated items.

(xix) 52.223-22, Public Disclosure of Greenhouse Gas Emissions and Reduction Goals--Representation. This provision applies to solicitations that include the clause at 52.204-7.)

(xx) 52.225-2, Buy American Certificate. This provision applies to solicitations containing the clause at 52.225-1.

(xxi) 52.225-4, Buy American—Free Trade Agreements—Israeli Trade Act Certificate. (Basic, Alternates II and III.) This provision applies to solicitations containing the clause at 52.225-3.

(A) If the acquisition value is less than \$50,000, the basic provision applies.

(B) If the acquisition value is \$50,000 or more but is less than \$92,319, the provision with its Alternate II applies.

(C) If the acquisition value is \$92,319 or more but is less than \$100,000, the provision with its Alternate III applies.

(xxii) 52.225-6, Trade Agreements Certificate. This provision applies to solicitations containing the clause at 52.225-5.

(xxiii) 52.225-20, Prohibition on Conducting Restricted Business Operations in Sudan—Certification. This provision applies to all solicitations.

(xxiv) 52.225-25, Prohibition on Contracting with Entities Engaging in Certain Activities or Transactions Relating to Iran—Representation and Certifications. This provision applies to all solicitations.

(xxv) 52.226-2, Historically Black College or University and Minority Institution Representation. This provision applies to solicitations for research, studies, supplies, or services of the type normally acquired from higher educational institutions.

(A) Solicitations for research, studies, supplies, or services of the type normally acquired from higher educational institutions; and

(B) For DoD, NASA, and Coast Guard acquisitions, solicitations that contain the clause at 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns.

(2) The following representations or certifications are applicable as indicated by the Contracting Officer:

☒ (i) 52.204-17, Ownership or Control of Offeror.

☒ (ii) 52.204-20, Predecessor of Offeror.

☐ (iii) 52.222-18, Certification Regarding Knowledge of Child Labor for Listed End Products.

☐ (iv) 52.222-48, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Certification.

☐ (v) 52.222-52, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services—Certification.

☐ (vi) 52.223-9, with its Alternate I, Estimate of Percentage of Recovered Material Content for EPA-Designated Products (Alternate I only).

☐ (vii) 52.227-6, Royalty Information.

☐ (A) Basic.

☐ (B) Alternate I.

☐ (viii) 52.227-15, Representation of Limited Rights Data and Restricted Computer Software.

(d) The Offeror has completed the annual representations and certifications electronically in SAM accessed through <https://www.sam.gov>. After reviewing the SAM information, the Offeror verifies by submission of the offer that the representations and certifications currently posted electronically that apply to this solicitation as indicated in paragraph (c) of this provision have been entered or updated within the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer and are incorporated in this offer by reference (see FAR 4.1201); except for the changes identified below [*offeror to insert changes, identifying change by clause number, title, date*]. These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.

FAR Clause #	Title	Date	Change

Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted on SAM.

(End of Provision)

### 3.2 52.204-24 REPRESENTATION REGARDING CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (NOV 2021)

The Offeror shall not complete the representation at paragraph (d)(1) of this provision if the Offeror has represented that it “does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument” in paragraph (c)(1) in the provision at 52.204–26, Covered Telecommunications Equipment or Services—Representation, or in paragraph (v)(2)(i) of the provision at 52.212–3, Offeror Representations and Certifications—Commercial Products and Commercial Services. The Offeror shall not complete the representation in paragraph (d)(2) of this provision if the Offeror has represented that it “does not use covered telecommunications equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services” in paragraph (c)(2) of the provision at 52.204–26, or in paragraph (v)(2)(ii) of the provision at 52.212–3.

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

*Backhaul, covered telecommunications equipment or services, critical technology, interconnection arrangements, reasonable inquiry, roaming, and substantial or essential component* have the meanings provided in the clause 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) *Prohibition.* (1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Nothing in the prohibition shall be construed to—

(i) Prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract or extending or renewing a contract with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract. Nothing in the prohibition shall be construed to—

(i) Prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(c) *Procedures.* The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal awards for “covered telecommunications equipment or services.”

(d) *Representations.* The Offeror represents that—

(1) It [ ] will, [ ] will not provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract or other contractual instrument resulting from this solicitation. The Offeror shall provide the additional disclosure information required at paragraph (e)(1) of this section if the Offeror responds “will” in paragraph (d)(1) of this section; and

(2) After conducting a reasonable inquiry, for purposes of this representation, the Offeror represents that—

It [ ] does, [ ] does not use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services. The Offeror shall provide the additional disclosure information required at paragraph (e)(2) of this section if the Offeror responds “does” in paragraph (d)(2) of this section.

(e) *Disclosures.* (1) Disclosure for the representation in paragraph (d)(1) of this provision. If the Offeror has responded “will” in the representation in paragraph (d)(1) of this provision, the Offeror shall provide the following information as part of the offer:

(i) For covered equipment—

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the original equipment manufacturer (OEM) or a distributor, if known);

(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

(ii) For covered services—

(A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model

number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the Product Service Code (PSC) of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

(2) Disclosure for the representation in paragraph (d)(2) of this provision. If the Offeror has responded “does” in the representation in paragraph (d)(2) of this provision, the Offeror shall provide the following information as part of the offer:

(i) For covered equipment—

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known);

(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

(ii) For covered services—

(A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the PSC of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

(End of Provision)

### **3.3 52.209-7 INFORMATION REGARDING RESPONSIBILITY MATTERS (OCT 2018)**

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

"Administrative proceeding" means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative Proceedings, Civilian Board of Contract Appeals Proceedings, and Armed Services Board of Contract Appeals Proceedings). This includes administrative proceedings at the Federal and State level but only in connection with performance of a Federal contract or



grant. It does not include agency actions such as contract audits, site visits, corrective plans, or inspection of deliverables.

"Federal contracts and grants with total value greater than \$10,000,000" means—

- (1) The total value of all current, active contracts and grants, including all priced options; and
- (2) The total value of all current, active orders including all priced options under indefinite-delivery, indefinite-quantity, 8(a), or requirements contracts (including task and delivery and multiple-award Schedules).

"Principal" means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division or business segment; and similar positions).

(b) The offeror [ ] has [ ] does not have current active Federal contracts and grants with total value greater than \$10,000,000.

(c) If the offeror checked "has" in paragraph (b) of this provision, the offeror represents, by submission of this offer, that the information it has entered in the Federal Awardee Performance and Integrity Information System (FAPIS) is current, accurate, and complete as of the date of submission of this offer with regard to the following information:

(1) Whether the offeror, and/or any of its principals, has or has not, within the last five years, in connection with the award to or performance by the offeror of a Federal contract or grant, been the subject of a proceeding, at the Federal or State level that resulted in any of the following dispositions:

- (i) In a criminal proceeding, a conviction.
- (ii) In a civil proceeding, a finding of fault and liability that results in the payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more.
- (iii) In an administrative proceeding, a finding of fault and liability that results in—
  - (A) The payment of a monetary fine or penalty of \$5,000 or more; or
  - (B) The payment of a reimbursement, restitution, or damages in excess of \$100,000.

(iv) In a criminal, civil, or administrative proceeding, a disposition of the matter by consent or compromise with an acknowledgment of fault by the Contractor if the proceeding could have led to any of the outcomes specified in paragraphs (c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this provision.

(2) If the offeror has been involved in the last five years in any of the occurrences listed in (c)(1) of this provision, whether the offeror has provided the requested information with regard to each occurrence.

(d) The offeror shall post the information in paragraphs (c)(1)(i) through (c)(1)(iv) of this provision in FAPIS as required through maintaining an active registration in the System for Award Management, which can be accessed via <https://www.sam.gov> (see 52.204-7).

(End of Provision)

### 3.4 52.209-13 VIOLATION OF ARMS CONTROL TREATIES OR AGREEMENTS—CERTIFICATION (NOV 2021)

(a) This provision does not apply to acquisitions at or below the simplified acquisition threshold or to acquisitions of commercial products and commercial services as defined in Federal Acquisition Regulation 2.101.

(b) *Certification.* [Offeror shall check either (1) or (2).]

\_\_\_\_\_ (1) The Offeror certifies that—

(i) It does not engage and has not engaged in any activity that contributed to or was a significant factor in the President's or Secretary of State's determination that a foreign country is in violation of its obligations undertaken in any arms control, nonproliferation, or disarmament agreement to which the United States is a party, or is not adhering to its arms control, nonproliferation, or disarmament commitments in which the United States is a participating state. The determinations are described in the most recent unclassified annual report provided to Congress pursuant to section 403 of the Arms Control and Disarmament Act (22 U.S.C. 2593a). The report is available at <https://www.state.gov/bureaus-offices/under-secretary-for-arms-control-and-international-security-affairs/bureau-of-arms-control-verification-and-compliance/>; and

(ii) No entity owned or controlled by the Offeror has engaged in any activity that contributed to or was a significant factor in the President's or Secretary of State's determination that a foreign country is in violation of its obligations undertaken in any arms control, nonproliferation, or disarmament agreement to which the United States is a party, or is not adhering to its arms control, nonproliferation, or disarmament commitments in which the United States is a participating state. The determinations are described in the most recent unclassified annual report provided to Congress pursuant to section 403 of the Arms Control and Disarmament Act (22 U.S.C. 2593a). The report is available at <https://www.state.gov/bureaus-offices/under-secretary-for-arms-control-and-international-security-affairs/bureau-of-arms-control-verification-and-compliance/>; or

\_\_\_\_\_ (2) The Offeror is providing separate information with its offer in accordance with paragraph (d)(2) of this provision.

(c) Procedures for reviewing the annual unclassified report (see paragraph (b)(1) of this provision). For clarity, references to the report in this section refer to the entirety of the annual unclassified report, including any separate reports that are incorporated by reference into the annual unclassified report.

(1) Check the table of contents of the annual unclassified report and the country section headings of the reports incorporated by reference to identify the foreign countries listed there. Determine whether the Offeror or any person owned or controlled by the Offeror may have engaged in any activity related to one or more of such foreign countries.

(2) If there may have been such activity, review all findings in the report associated with those foreign countries to determine whether or not each such foreign country was determined to be in violation of its obligations undertaken in an arms control, nonproliferation, or disarmament

agreement to which the United States is a party, or to be not adhering to its arms control, nonproliferation, or disarmament commitments in which the United States is a participating state. For clarity, in the annual report an explicit certification of noncompliance is equivalent to a determination of violation. However, the following statements in the annual report are not equivalent to a determination of violation:

- (i) An inability to certify compliance.
- (ii) An inability to conclude compliance.
- (iii) A statement about compliance concerns.

(3) If so, determine whether the Offeror or any person owned or controlled by the Offeror has engaged in any activity that contributed to or is a significant factor in the determination in the report that one or more of these foreign countries is in violation of its obligations undertaken in an arms control, nonproliferation, or disarmament agreement to which the United States is a party, or is not adhering to its arms control, nonproliferation, or disarmament commitments in which the United States is a participating state. Review the narrative for any such findings reflecting a determination of violation or non-adherence related to those foreign countries in the report, including the finding itself, and to the extent necessary, the conduct giving rise to the compliance or adherence concerns, the analysis of compliance or adherence concerns, and efforts to resolve compliance or adherence concerns.

(4) The Offeror may submit any questions with regard to this report by email to *NDAA1290Cert@state.gov*. To the extent feasible, the Department of State will respond to such email inquiries within 3 business days.

(d) Do not submit an offer unless—

(1) A certification is provided in paragraph (b)(1) of this provision and submitted with the offer; or

(2) In accordance with paragraph (b)(2) of this provision, the Offeror provides with its offer information that the President of the United States has—

(i) Waived application under U.S.C. 2593e(d) or (e); or

(ii) Determined under 22 U.S.C. 2593e(g)(2) that the entity has ceased all activities for which measures were imposed under 22 U.S.C.2593e(b).

(e) *Remedies*. The certification in paragraph (b)(1) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly submitted a false certification, in addition to other remedies available to the Government, such as suspension or debarment, the Contracting Officer may terminate any contract resulting from the false certification.

(End of Provision)

<u>FAR</u> <u>Number</u>	<u>Title</u>	<u>Date</u>
52.229-11	TAX ON CERTAIN FOREIGN PROCUREMENTS—NOTICE	JUN 2020

AND REPRESENTATION

## GENERAL CONDITIONS

### 4.1 52.203-14 DISPLAY OF HOTLINE POSTER(S) (NOV 2021)

(a) *Definition.*

*United States*, as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

(b) *Display of fraud hotline poster(s).* Except as provided in paragraph (c)—

(1) During contract performance in the United States, the Contractor shall prominently display in common work areas within business segments performing work under this contract and at contract work sites—

(i) Any agency fraud hotline poster or Department of Homeland Security (DHS) fraud hotline poster identified in paragraph (b)(3) of this clause; and

(ii) Any DHS fraud hotline poster subsequently identified by the Contracting Officer.

(2) Additionally, if the Contractor maintains a company website as a method of providing information to employees, the Contractor shall display an electronic version of the poster(s) at the website.

(3) Any required posters may be obtained as follows:

Poster(s)	Obtain From
VA Hotline Poster	<a href="http://www.va.gov/oig/hotline/default.asp">http://www.va.gov/oig/hotline/default.asp</a>

(c) If the Contractor has implemented a business ethics and conduct awareness program, including a reporting mechanism, such as a hotline poster, then the Contractor need not display any agency fraud hotline posters as required in paragraph (b) of this clause, other than any required DHS posters.

(d) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (d), in all subcontracts that exceed the threshold specified in Federal Acquisition Regulation 3.1004(b)(1) on the date of subcontract award, except when the subcontract—

(1) Is for the acquisition of a commercial product or commercial service; or

(2) Is performed entirely outside the United States.

(End of Clause)

### 4.2 52.204-19 INCORPORATION BY REFERENCE OF REPRESENTATIONS AND CERTIFICATIONS (DEC 2014)

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

(End of Clause)

#### 4.3 52.204-23 PROHIBITION ON CONTRACTING FOR HARDWARE, SOFTWARE, AND SERVICES DEVELOPED OR PROVIDED BY KASPERSKY LAB AND OTHER COVERED ENTITIES (NOV 2021)

(a) *Definitions.* As used in this clause—*Covered article* means any hardware, software, or service that—

- (1) Is developed or provided by a covered entity;
- (2) Includes any hardware, software, or service developed or provided in whole or in part by a covered entity; or
- (3) Contains components using any hardware or software developed in whole or in part by a covered entity.

*Covered entity* means—

- (1) Kaspersky Lab;
- (2) Any successor entity to Kaspersky Lab;
- (3) Any entity that controls, is controlled by, or is under common control with Kaspersky Lab; or
- (4) Any entity of which Kaspersky Lab has a majority ownership.

(b) *Prohibition.* Section 1634 of Division A of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115–91) prohibits Government use of any covered article. The Contractor is prohibited from—

- (1) Providing any covered article that the Government will use on or after October 1, 2018; and
- (2) Using any covered article on or after October 1, 2018, in the development of data or deliverables first produced in the performance of the contract.

(c) *Reporting requirement.* (1) In the event the Contractor identifies a covered article provided to the Government during contract performance, or the Contractor is notified of such by a subcontractor at any tier or any other source, the Contractor shall report, in writing, to the Contracting Officer or, in the case of the Department of Defense, to the website at <https://dibnet.dod.mil>. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at <https://dibnet.dod.mil>.

(2) The Contractor shall report the following information pursuant to paragraph (c)(1) of this clause:

(i) Within 1 business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; brand; model number (Original Equipment Manufacturer (OEM) number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the report pursuant to paragraph (c)(1) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of a covered article, any reasons that led to the use or submission of the covered article, and any additional efforts that will be incorporated to prevent future use or submission of covered articles.

(d) *Subcontracts*. The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts including subcontracts for the acquisition of commercial products or commercial services.

(End of Clause)

#### **4.4 52.209-9 UPDATES OF PUBLICLY AVAILABLE INFORMATION REGARDING RESPONSIBILITY MATTERS (OCT 2018)**

(a) The Contractor shall update the information in the Federal Awardee Performance and Integrity Information System (FAPIS) on a semi-annual basis, throughout the life of the contract, by posting the required information in the System for Award Management via <https://www.sam.gov>.

(b) As required by section 3010 of the Supplemental Appropriations Act, 2010 (Pub. L. 111-212), all information posted in FAPIS on or after April 15, 2011, except past performance reviews, will be publicly available. FAPIS consists of two segments—

(1) The non-public segment, into which Government officials and the Contractor post information, which can only be viewed by—

(i) Government personnel and authorized users performing business on behalf of the Government; or

(ii) The Contractor, when viewing data on itself; and

(2) The publicly-available segment, to which all data in the non-public segment of FAPIS is automatically transferred after a waiting period of 14 calendar days, except for—

(i) Past performance reviews required by subpart 42.15;

(ii) Information that was entered prior to April 15, 2011; or

(iii) Information that is withdrawn during the 14-calendar-day waiting period by the Government official who posted it in accordance with paragraph (c)(1) of this clause.

(c) The Contractor will receive notification when the Government posts new information to the Contractor's record.

(1) If the Contractor asserts in writing within 7 calendar days, to the Government official who posted the information, that some of the information posted to the nonpublic segment of FAPIIS is covered by a disclosure exemption under the Freedom of Information Act, the Government official who posted the information must within 7 calendar days remove the posting from FAPIIS and resolve the issue in accordance with agency Freedom of Information procedures, prior to reposting the releasable information. The contractor must cite 52.209-9 and request removal within 7 calendar days of the posting to FAPIIS.

(2) The Contractor will also have an opportunity to post comments regarding information that has been posted by the Government. The comments will be retained as long as the associated information is retained, i.e., for a total period of 6 years. Contractor comments will remain a part of the record unless the Contractor revises them.

(3) As required by section 3010 of Pub. L. 111-212, all information posted in FAPIIS on or after April 15, 2011, except past performance reviews, will be publicly available.

(d) Public requests for system information posted prior to April 15, 2011, will be handled under Freedom of Information Act procedures, including, where appropriate, procedures promulgated under E.O. 12600.

(End of Clause)

#### **4.5 52.211-10 COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK (APR 1984)**

The Contractor shall be required to (a) commence work under this contract within 10 calendar days after the date the Contractor receives the notice to proceed, (b) prosecute the work diligently, and (c) complete the entire work ready for use not later than 1050 days after receipt of notice to proceed. The time stated for completion shall include final cleanup of the premises.

(End of Clause)

#### **4.6 52.219-28 POST-AWARD SMALL BUSINESS PROGRAM REREPRESENTATION (SEP 2021)**

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

*Long-term contract* means a contract of more than five years in duration, including options. However, the term does not include contracts that exceed five years in duration because the period of performance has been extended for a cumulative period not to exceed six months under the clause at 52.217-8, Option to Extend Services, or other appropriate authority.

*Small business concern*—

(1) Means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (d) of this clause. Such a concern is “not dominant in its field of operation” when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether



dominance exists, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

(2) *Affiliates*, as used in this definition, means business concerns, one of whom directly or indirectly controls or has the power to control the others, or a third party or parties control or have the power to control the others. In determining whether affiliation exists, consideration is given to all appropriate factors including common ownership, common management, and contractual relationships. SBA determines affiliation based on the factors set forth at 13 CFR 121.103.

(b) If the Contractor represented that it was any of the small business concerns identified in 19.000(a)(3) prior to award of this contract, the Contractor shall rerepresent its size and socioeconomic status according to paragraph (f) of this clause or, if applicable, paragraph (h) of this clause, upon occurrence of any of the following:

(1) Within 30 days after execution of a novation agreement or within 30 days after modification of the contract to include this clause, if the novation agreement was executed prior to inclusion of this clause in the contract.

(2) Within 30 days after a merger or acquisition that does not require a novation or within 30 days after modification of the contract to include this clause, if the merger or acquisition occurred prior to inclusion of this clause in the contract.

(3) For long-term contracts—

(i) Within 60 to 120 days prior to the end of the fifth year of the contract; and

(ii) Within 60 to 120 days prior to the date specified in the contract for exercising any option thereafter.

(c) If the Contractor represented that it was any of the small business concerns identified in 19.000(a)(3) prior to award of this contract, the Contractor shall rerepresent its size and socioeconomic status according to paragraph (f) of this clause or, if applicable, paragraph (h) of this clause, when the Contracting Officer explicitly requires it for an order issued under a multiple-award contract.

(d) The Contractor shall rerepresent its size status in accordance with the size standard in effect at the time of this rerepresentation that corresponds to the North American Industry Classification System (NAICS) code(s) assigned to this contract. The small business size standard corresponding to this NAICS code(s) can be found at <https://www.sba.gov/document/support-table-size-standards>.

(e) The small business size standard for a Contractor providing an end item that it does not manufacture, process, or produce itself, for a contract other than a construction or service contract, is 500 employees if the acquisition—

(1) Was set aside for small business and has a value above the simplified acquisition threshold;

(2) Used the HUBZone price evaluation preference regardless of dollar value, unless the Contractor waived the price evaluation preference; or

(3) Was an 8(a), HUBZone, service-disabled veteran-owned, economically disadvantaged women-owned, or women-owned small business set-aside or sole-source award regardless of dollar value.

(f) Except as provided in paragraph (h) of this clause, the Contractor shall make the representation(s) required by paragraph (b) and (c) of this clause by validating or updating all its representations in the Representations and Certifications section of the System for Award Management (SAM) and its other data in SAM, as necessary, to ensure that they reflect the Contractor's current status. The Contractor shall notify the contracting office in writing within the timeframes specified in paragraph (b) of this clause, or with its offer for an order (see paragraph (c) of this clause), that the data have been validated or updated, and provide the date of the validation or update.

(g) If the Contractor represented that it was other than a small business concern prior to award of this contract, the Contractor may, but is not required to, take the actions required by paragraphs (f) or (h) of this clause.

(h) If the Contractor does not have representations and certifications in SAM, or does not have a representation in SAM for the NAICS code applicable to this contract, the Contractor is required to complete the following rerepresentation and submit it to the contracting office, along with the contract number and the date on which the rerepresentation was completed:

(1) The Contractor represents that it [ ] is, [ ] is not a small business concern under NAICS Code 236220 assigned to contract number .

(2) *[Complete only if the Contractor represented itself as a small business concern in paragraph (h)(1) of this clause.]* The Contractor represents that it [ ] is, [ ] is not, a small disadvantaged business concern as defined in 13 CFR 124.1002.

(3) *[Complete only if the Contractor represented itself as a small business concern in paragraph (h)(1) of this clause.]* The Contractor represents that it [ ] is, [ ] is not a women-owned small business concern.

(4) Women-owned small business (WOSB) concern eligible under the WOSB Program. *[Complete only if the Contractor represented itself as a women-owned small business concern in paragraph (h)(3) of this clause.]* The Contractor represents that—

(i) It [ ] is, [ ] is not a WOSB concern eligible under the WOSB Program, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and

(ii) It [ ] is, [ ] is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (h)(4)(i) of this clause is accurate for each WOSB concern eligible under the WOSB Program participating in the joint venture. *[The Contractor shall enter the name or names of the WOSB concern eligible under the WOSB Program and other small businesses that are participating in the joint venture: \_\_\_\_\_.]* Each WOSB concern eligible

under the WOSB Program participating in the joint venture shall submit a separate signed copy of the WOSB representation.

(5) Economically disadvantaged women-owned small business (EDWOSB) concern.  
*[Complete only if the Contractor represented itself as a women-owned small business concern eligible under the WOSB Program in (h)(4) of this clause.]* The Contractor represents that—

(i) It ☐ is, ☐ is not an EDWOSB concern eligible under the WOSB Program, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and

(ii) It ☐ is, ☐ is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (h)(5)(i) of this clause is accurate for each EDWOSB concern participating in the joint venture. *[The Contractor shall enter the name or names of the EDWOSB concern and other small businesses that are participating in the joint venture: \_\_\_\_\_.]* Each EDWOSB concern participating in the joint venture shall submit a separate signed copy of the EDWOSB representation.

(6) *[Complete only if the Contractor represented itself as a small business concern in paragraph (h)(1) of this clause.]* The Contractor represents that it ☐ is, ☐ is not a veteran-owned small business concern.

(7) *[Complete only if the Contractor represented itself as a veteran-owned small business concern in paragraph (h)(6) of this clause.]* The Contractor represents that it ☐ is, ☐ is not a service-disabled veteran-owned small business concern.

(8) *[Complete only if the Contractor represented itself as a small business concern in paragraph (h)(1) of this clause.]* The Contractor represents that—

(i) It ☐ is, ☐ is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material changes in ownership and control, principal office, or HUBZone employee percentage have occurred since it was certified in accordance with 13 CFR part 126; and

(ii) It ☐ is, ☐ is not a HUBZone joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (h)(8)(i) of this clause is accurate for each HUBZone small business concern participating in the HUBZone joint venture. *[The Contractor shall enter the names of each of the HUBZone small business concerns participating in the HUBZone joint venture: \_\_\_\_\_.]* Each HUBZone small business concern participating in the HUBZone joint venture shall submit a separate signed copy of the HUBZone representation.

*[Contractor to sign and date and insert authorized signer's name and title.]*

(End of Clause)

#### **4.7 52.222-35 EQUAL OPPORTUNITY FOR VETERANS (JUN 2020)**

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

“Active duty wartime or campaign badge veteran,” “Armed Forces service medal veteran,” “disabled veteran,” “protected veteran,” “qualified disabled veteran,” and “recently separated veteran” have the meanings given at Federal Acquisition Regulation (FAR) 22.1301.

(b) *Equal opportunity clause.* The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-300.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified protected veterans, and requires affirmative action by the Contractor to employ and advance in employment qualified protected veterans.

(c) *Subcontracts.* The Contractor shall insert the terms of this clause in subcontracts valued at or above the threshold specified in FAR 22.1303(a) on the date of subcontract award, unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

(End of Clause)

#### **4.8 52.222-40 NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (DEC 2010)**

(a) During the term of this contract, the Contractor shall post an employee notice, of such size and in such form, and containing such content as prescribed by the Secretary of Labor, in conspicuous places in and about its plants and offices where employees covered by the National Labor Relations Act engage in activities relating to the performance of the contract, including all places where notices to employees are customarily posted both physically and electronically, in the languages employees speak, in accordance with 29 CFR 471.2(d) and (f).

(1) Physical posting of the employee notice shall be in conspicuous places in and about the Contractor's plants and offices so that the notice is prominent and readily seen by employees who are covered by the National Labor Relations Act and engage in activities related to the performance of the contract.

(2) If the Contractor customarily posts notices to employees electronically, then the Contractor shall also post the required notice electronically by displaying prominently, on any Web site that is maintained by the Contractor and is customarily used for notices to employees about terms and conditions of employment, a link to the Department of Labor's Web site that contains the full text of the poster. The link to the Department's Web site, as referenced in (b)(3) of this section, must read, "Important Notice about Employee Rights to Organize and Bargain Collectively with Their Employers."

(b) This required employee notice, printed by the Department of Labor, may be—

(1) Obtained from the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-5609, Washington, DC 20210, (202) 693-0123, or from any field office of the Office of Labor-Management Standards or Office of Federal Contract Compliance Programs;

(2) Provided by the Federal contracting agency if requested;

(3) Downloaded from the Office of Labor-Management Standards Web site at <http://www.dol.gov/olms/regs/compliance/EO13496.htm>; or

(4) Reproduced and used as exact duplicate copies of the Department of Labor's official poster.

(c) The required text of the employee notice referred to in this clause is located at Appendix A, Subpart A, 29 CFR Part 471.

(d) The Contractor shall comply with all provisions of the employee notice and related rules, regulations, and orders of the Secretary of Labor.

(e) In the event that the Contractor does not comply with the requirements set forth in paragraphs (a) through (d) of this clause, this contract may be terminated or suspended in whole or in part, and the Contractor may be suspended or debarred in accordance with 29 CFR 471.14 and subpart 9.4. Such other sanctions or remedies may be imposed as are provided by 29 CFR part 471, which implements Executive Order 13496 or as otherwise provided by law.

(f) Subcontracts.

(1) The Contractor shall include the substance of this clause, including this paragraph (f), in every subcontract that exceeds \$10,000 and will be performed wholly or partially in the United States, unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 3 of Executive Order 13496 of January 30, 2009, so that such provisions will be binding upon each subcontractor.

(2) The Contractor shall not procure supplies or services in a way designed to avoid the applicability of Executive Order 13496 or this clause.

(3) The Contractor shall take such action with respect to any such subcontract as may be directed by the Secretary of Labor as a means of enforcing such provisions, including the imposition of sanctions for noncompliance.

(4) However, if the Contractor becomes involved in litigation with a subcontractor, or is threatened with such involvement, as a result of such direction, the Contractor may request the United States, through the Secretary of Labor, to enter into such litigation to protect the interests of the United States.

(End of Clause)

#### **4.9 52.223-2 AFFIRMATIVE PROCUREMENT OF BIOBASED PRODUCTS UNDER SERVICE AND CONSTRUCTION CONTRACTS (SEP 2013)**

(a) In the performance of this contract, the contractor shall make maximum use of biobased products that are United States Department of Agriculture (USDA)-designated items unless—

(1) The product cannot be acquired—

(i) Competitively within a time frame providing for compliance with the contract performance schedule;

(ii) Meeting contract performance requirements; or

(iii) At a reasonable price.

(2) The product is to be used in an application covered by a USDA categorical exemption (see 7 CFR 3201.3(e)). For example, all USDA-designated items are exempt from the preferred procurement requirement for the following:

(i) Spacecraft system and launch support equipment.

(ii) Military equipment, i.e., a product or system designed or procured for combat or combat-related missions.

(b) Information about this requirement and these products is available at <http://www.biopreferred.gov>.

(c) In the performance of this contract, the Contractor shall—

(1) Report to <http://www.sam.gov>, with a copy to the Contracting Officer, on the product types and dollar value of any USDA-designated biobased products purchased by the Contractor during the previous Government fiscal year, between October 1 and September 30; and

(2) Submit this report no later than—

(i) October 31 of each year during contract performance; and

(ii) At the end of contract performance.

(End of Clause)

#### 4.10 52.223-20 AEROSOLS (JUN 2016)

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

*Global warming potential* means how much a given mass of a chemical contributes to global warming over a given time period compared to the same mass of carbon dioxide. Carbon dioxide's global warming potential is defined as 1.0.

*High global warming potential hydrofluorocarbons* means any hydrofluorocarbons in a particular end use for which EPA's Significant New Alternatives Policy (SNAP) program has identified other acceptable alternatives that have lower global warming potential. The SNAP list of alternatives is found at 40 CFR part 82, subpart G, with supplemental tables of alternatives available at (<http://www.epa.gov/snap/>).

*Hydrofluorocarbons* means compounds that contain only hydrogen, fluorine, and carbon.

(b) Unless otherwise specified in the contract, the Contractor shall reduce its use, release, or emissions of high global warming potential hydrofluorocarbons, when feasible, from aerosol propellants or solvents under this contract. When determining feasibility of using a particular alternative, the Contractor shall consider environmental, technical, and economic factors such as—

- (1) In-use emission rates, energy efficiency;
- (2) Safety, such as flammability or toxicity;
- (3) Ability to meet technical performance requirements; and
- (4) Commercial availability at a reasonable cost.

(c) The Contractor shall refer to EPA's SNAP program to identify alternatives. The SNAP list of alternatives is found at 40 CFR part 82, subpart G, with supplemental tables available at <http://www.epa.gov/snap/>.

(End of Clause)

#### 4.11 SUPPLEMENTAL INSURANCE REQUIREMENTS

In accordance with FAR 28.307-2 and FAR 52.228-5, the following minimum coverage shall apply to this contract:

(a) Workers' compensation and employers liability: Contractors are required to comply with applicable Federal and State workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the employer's liability section of the insurance policy, except when contract operations are so commingled with a Contractor's commercial operations that it would not be practical to require this coverage. Employer's liability coverage of at least \$100,000 is required, except in States with exclusive or monopolistic funds that do not permit workers' compensation to be written by private carriers.

(b) General Liability: \$500,000.00 per occurrences.

(c) Automobile liability: \$200,000.00 per person; \$500,000.00 per occurrence and \$20,000.00 property damage.

(d) The successful bidder must present to the Contracting Officer, prior to award, evidence of general liability insurance without any exclusionary clauses for asbestos that would void the general liability coverage.

(End of Clause)

#### 4.12 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

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

<http://www.acquisition.gov/far/index.html>  
<http://www.va.gov/oal/library/vaar/>

(End of Clause)

**FAR**

**Title**

**Date**

<b><u>Number</u></b>		
52.202-1	DEFINITIONS	JUN 2020
52.203-3	GRATUITIES	APR 1984
52.203-5	COVENANT AGAINST CONTINGENT FEES	MAY 2014
52.203-6	RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT	JUN 2020
52.203-7	ANTI-KICKBACK PROCEDURES	JUN 2020
52.203-8	CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY	MAY 2014
52.203-10	PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY	MAY 2014
52.203-12	LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS	JUN 2020
52.203-13	CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT	NOV 2021
52.203-17	CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS	JUN 2020
52.203-19	PROHIBITION ON REQUIRING CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS OR STATEMENTS	JAN 2017
52.204-4	PRINTED OR COPIED DOUBLE-SIDED ON POSTCONSUMER FIBER CONTENT PAPER	MAY 2011
52.204-9	PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL	JAN 2011
52.204-10	REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS	JUN 2020
52.204-13	SYSTEM FOR AWARD MANAGEMENT MAINTENANCE	OCT 2018
52.204-14	SERVICE CONTRACT REPORTING REQUIREMENTS	OCT 2016
52.204-18	COMMERCIAL AND GOVERNMENT ENTITY CODE MAINTENANCE	AUG 2020
52.204-25	PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT	NOV 2021
52.209-6	PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT	NOV 2021
52.209-10	PROHIBITION ON CONTRACTING WITH INVERTED DOMESTIC CORPORATIONS	NOV 2015
52.210-1	MARKET RESEARCH	NOV 2021
52.214-26	AUDIT AND RECORDS—SEALED BIDDING	JUN 2020
52.214-27	PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA—MODIFICATIONS—SEALED BIDDING	JUN 2020
52.214-28	SUBCONTRACTOR CERTIFIED COST OR PRICING DATA—MODIFICATIONS—SEALED BIDDING	JUN 2020
52.219-8	UTILIZATION OF SMALL BUSINESS CONCERNS	OCT 2018
52.222-3	CONVICT LABOR	JUN 2003
52.222-4	CONTRACT WORK HOURS AND SAFETY STANDARDS—OVERTIME COMPENSATION	MAY 2018
52.222-6	CONSTRUCTION WAGE RATE REQUIREMENTS	AUG 2018
52.222-7	WITHHOLDING OF FUNDS	MAY 2014
52.222-8	PAYROLLS AND BASIC RECORDS	JUL 2021
52.222-9	APPRENTICES AND TRAINEES	JUL 2005
52.222-10	COMPLIANCE WITH COPELAND ACT REQUIREMENTS	FEB 1988



52.222-11	SUBCONTRACTS (LABOR STANDARDS)	MAY 2014
52.222-12	CONTRACT TERMINATION—DEBARMENT	MAY 2014
52.222-13	COMPLIANCE WITH CONSTRUCTION WAGE RATE REQUIREMENTS AND RELATED REGULATIONS	MAY 2014
52.222-14	DISPUTES CONCERNING LABOR STANDARDS	FEB 1988
52.222-15	CERTIFICATION OF ELIGIBILITY	MAY 2014
52.222-21	PROHIBITION OF SEGREGATED FACILITIES	APR 2015
52.222-26	EQUAL OPPORTUNITY	SEP 2016
52.222-27	AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION	APR 2015

#### 4.13 52.222-36 EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES (JUN 2020)

(a) *Equal opportunity clause.* The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-741.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by the Contractor to employ and advance in employment qualified individuals with disabilities.

(b) *Subcontracts.* The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of the threshold specified in Federal Acquisition Regulation (FAR) 22.1408(a) on the date of subcontract award, unless exempted by rules, regulations, or orders of the Secretary, so that such provisions will be binding upon each subcontractor or vendor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs of the U.S. Department of Labor, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

(End of Clause)

<u>FAR Number</u>	<u>Title</u>	<u>Date</u>
52.222-37	EMPLOYMENT REPORTS ON VETERANS	JUN 2020
52.222-50	COMBATING TRAFFICKING IN PERSONS	NOV 2021
52.222-54	EMPLOYMENT ELIGIBILITY VERIFICATION	MAY 2022
52.222-55	MINIMUM WAGES FOR CONTRACTOR WORKERS UNDER EXECUTIVE ORDER 14026	JAN 2022
52.222-62	PAID SICK LEAVE UNDER EXECUTIVE ORDER 13706	JAN 2022
52.223-5	POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION ALTERNATE I (MAY 2011)	MAY 2011
52.223-6	DRUG-FREE WORKPLACE	MAY 2001
52.223-15	ENERGY EFFICIENCY IN ENERGY-CONSUMING PRODUCTS	MAY 2020
52.223-17	AFFIRMATIVE PROCUREMENT OF EPA-DESIGNATED ITEMS IN SERVICE AND CONSTRUCTION CONTRACTS	AUG 2018
52.223-18	ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING	JUN 2020

#### 4.14 52.223-21 FOAMS (JUN 2016)

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

*Global warming potential* means how much a given mass of a chemical contributes to global warming over a given time period compared to the same mass of carbon dioxide. Carbon dioxide's global warming potential is defined as 1.0.

*High global warming potential hydrofluorocarbons* means any hydrofluorocarbons in a particular end use for which EPA's Significant New Alternatives Policy (SNAP) program has identified other acceptable alternatives that have lower global warming potential. The SNAP list of alternatives is found at 40 CFR part 82, subpart G, with supplemental tables of alternatives available at <http://www.epa.gov/snap/>.

*Hydrofluorocarbons* means compounds that contain only hydrogen, fluorine, and carbon.

(b) Unless otherwise specified in the contract, the Contractor shall reduce its use, release, and emissions of high global warming potential hydrofluorocarbons and refrigerant blends containing hydrofluorocarbons, when feasible, from foam blowing agents, under this contract. When determining feasibility of using a particular alternative, the Contractor shall consider environmental, technical, and economic factors such as—

- (1) In-use emission rates, energy efficiency, and safety;
- (2) Ability to meet performance requirements; and
- (3) Commercial availability at a reasonable cost.

(c) The Contractor shall refer to EPA's SNAP program to identify alternatives. The SNAP list of alternatives is found at 40 CFR part 82, subpart G, with supplemental tables available at <http://www.epa.gov/snap/>.

(End of Clause)

<b><u>FAR Number</u></b>	<b><u>Title</u></b>	<b><u>Date</u></b>
52.225-13	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES	FEB 2021
52.227-1	AUTHORIZATION AND CONSENT	JUN 2020
52.227-2	NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT	JUN 2020
52.227-4	PATENT INDEMNITY—CONSTRUCTION CONTRACTS	DEC 2007
52.228-2	ADDITIONAL BOND SECURITY	OCT 1997
52.228-5	INSURANCE—WORK ON A GOVERNMENT INSTALLATION	JAN 1997
52.228-11	INDIVIDUAL SURETY—PLEDGE OF ASSETS	FEB 2021
52.228-12	PROSPECTIVE SUBCONTRACTOR REQUESTS FOR BONDS	MAY 2014
52.228-14	IRREVOCABLE LETTER OF CREDIT	NOV 2014
52.228-15	PERFORMANCE AND PAYMENT BONDS— CONSTRUCTION	JUN 2020
52.229-3	FEDERAL, STATE, AND LOCAL TAXES	FEB 2013
52.229-12	TAX ON CERTAIN FOREIGN PROCUREMENTS	FEB 2021
52.232-5	PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS	MAY 2014
52.232-17	INTEREST	MAY 2014
52.232-23	ASSIGNMENT OF CLAIMS	MAY 2014

52.232-27	PROMPT PAYMENT FOR CONSTRUCTION CONTRACTS	JAN 2017
52.232-33	PAYMENT BY ELECTRONIC FUNDS TRANSFER— SYSTEM FOR AWARD MANAGEMENT	OCT 2018
52.232-39	UNENFORCEABILITY OF UNAUTHORIZED OBLIGATIONS	JUN 2013
52.232-40	PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS	NOV 2021
52.233-1	DISPUTES	MAY 2014
52.233-3	PROTEST AFTER AWARD	AUG 1996
52.233-4	APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM	OCT 2004
52.236-2	DIFFERING SITE CONDITIONS	APR 1984
52.236-3	SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK	APR 1984
52.236-5	MATERIAL AND WORKMANSHIP	APR 1984
52.236-6	SUPERINTENDENCE BY THE CONTRACTOR	APR 1984
52.236-7	PERMITS AND RESPONSIBILITIES	NOV 1991
52.236-8	OTHER CONTRACTS	APR 1984
52.236-9	PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS	APR 1984
52.236-10	OPERATIONS AND STORAGE AREAS	APR 1984
52.236-11	USE AND POSSESSION PRIOR TO COMPLETION	APR 1984
52.236-12	CLEANING UP	APR 1984
52.236-13	ACCIDENT PREVENTION	NOV 1991

#### 4.15 52.236-14 AVAILABILITY AND USE OF UTILITY SERVICES (APR 1984)

(a) The Government shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and supplies, as specified in the contract. Unless otherwise provided in the contract, the amount of each utility service consumed shall be charged to or paid for by the Contractor at prevailing rates charged to the Government or, where the utility is produced by the Government, at reasonable rates determined by the Contracting Officer. The Contractor shall carefully conserve any utilities furnished without charge.

(b) The Contractor, at its expense and in a workmanlike manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges. Before final acceptance of the work by the Government, the Contractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

(End of Clause)

<u>FAR Number</u>	<u>Title</u>	<u>Date</u>
52.236-15	SCHEDULES FOR CONSTRUCTION CONTRACTS	APR 1984
52.236-17	LAYOUT OF WORK	APR 1984
52.236-21	SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION ALTERNATE I (APR 1984)	FEB 1997
52.236-26	PRECONSTRUCTION CONFERENCE	FEB 1995
52.242-13	BANKRUPTCY	JUL 1995
52.242-14	SUSPENSION OF WORK	APR 1984
52.243-4	CHANGES	JUN 2007
52.243-6	CHANGE ORDER ACCOUNTING	APR 1984
52.244-6	SUBCONTRACTS FOR COMMERCIAL PRODUCTS AND	JAN 2022

	COMMERCIAL SERVICES	
52.246-12	INSPECTION OF CONSTRUCTION	AUG 1996
52.246-21	WARRANTY OF CONSTRUCTION ALTERNATE I (APR 1984)	MAR 1994
52.248-3	VALUE ENGINEERING—CONSTRUCTION	OCT 2020
52.249-2	TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED PRICE) ALTERNATE I (SEPT 1996)	APR 2012
52.249-10	DEFAULT (FIXED-PRICE CONSTRUCTION)	APR 1984
52.253-1	COMPUTER GENERATED FORMS	JAN 1991

#### **4.16 852.219-10DEV VA NOTICE OF TOTAL SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS SET-ASIDE (JUL 2019) (NOV 2020) (DEVIATION)**

(a) Definition. For the Department of Veterans Affairs, “Service-disabled Veteran-owned small business concern or SDVOSB”:

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled Veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled Veterans or eligible surviving spouses (see VAAR 802.201, Surviving Spouse definition);

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

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

(iv) The business has been verified for ownership and control pursuant to 38 CFR part 74 and is listed in VA’s Vendor Information Pages (VIP) database; and

(v) The business will comply with VAAR subpart 819.70 and Small Business Administration (SBA) regulations regarding small business size and government contracting programs at 13 CFR part 121 and 125, provided that any reference therein to a service-disabled veteran-owned small business concern (SDVO SBC), is to be construed to apply to a VA verified and VIP-listed SDVOSB unless otherwise stated in this clause.

(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).

(3) The term “small business concern” has the meaning given that term under section 3 of the Small Business Act (15 U.S.C. 632).

(4) The term “small business concern owned and controlled by Veterans with service-connected disabilities” has the meaning given the term “small business concern owned and controlled by service-disabled Veterans” under section 3(q)(2) of the Small Business Act (15

U.S.C. 632(q)(2)), except that for a VA contract the firm must be listed in the VIP database (see paragraph (a)(1)(iv) above).

(b) *General.*

(1) Offers are solicited only from VIP-listed SDVOSBs. Offers received from entities that are not VIP-listed SDVOSBs at the time of offer shall not be considered.

(2) Any award resulting from this solicitation shall be made to a VIP-listed SDVOSB who is eligible at the time of submission of offer(s) and at the time of award.

(3) The requirements in this clause apply to any contract, order or subcontract where the firm receives a benefit or preference from its designation as an SDVOSB, including set-asides, sole source awards, and evaluation preferences.

(c) *Representation.* Pursuant to 38 U.S.C. 8127(e), only VIP-listed SDVOSBs are considered eligible to receive award of a resulting contract. By submitting an offer, the prospective contractor represents that it is an eligible SDVOSB as defined in this clause, 38 CFR part 74, and VAAR subpart 819.70.

(d) *Agreement.* When awarded a contract action, including orders under multiple award contracts, an SDVOSB agrees that in the performance of the contract, the SDVOSB shall comply with requirements in VAAR subpart 819.70 and SBA regulations on small business size and government contracting programs at 13 CFR part 121 and part 125, including the non-manufacturer rule and limitations on subcontracting requirements in 13 CFR 121.406(b) and 125.6. Unless otherwise stated in this clause, a requirement in 13 CFR part 121 and 125 that applies to an SDVO SBC, is to be construed to also apply to a VIP-listed SDVOSB. For the purpose of limitations on subcontracting, only VIP-listed SDVOSBs (including independent contractors) shall be considered eligible and/or "similarly situated" (i.e., a firm that has the same small business program status as the prime contractor). An otherwise eligible firm further agrees to the following:

(1) *Services.* In the case of a contract for services (except construction), it will not pay more than 50% of the amount paid by the government to it to firms that are not VIP listed SDVOSBs.

(2) *Supplies or products.*

(i) In the case of a contract for supplies or products (other than from a nonmanufacturer of such supplies), it will not pay more than 50% of the amount paid by the government to it to firms that are not VIP-listed SDVOSBs.

(ii) In the case of a contract for supplies from a non-manufacturer, it will supply the product of a domestic small business manufacturer or processor, unless a waiver as described in 13 CFR 121.406(b)(5) has been granted.

(3) *General construction.* In the case of a contract for general construction, it will not pay more than 85% of the amount paid by the government to it to firms that are not VIP-listed SDVOSBs.

(4) *Special trade construction contractors.* In the case of a contract for special trade contractors, no more than 75% of the amount paid by the government to the prime may be paid to firms that are not VIP-listed SDVOSBs.

(5) *Subcontracting.* An SDVOSB must meet the NAICS size standard assigned by the prime contractor and be listed in VIP to count as similarly situated. Any work that a first tier VIP-listed SDVOSB subcontractor further subcontracts will count towards the percent of subcontract amount that cannot be exceeded. For contracts referenced in (d)(2), (3), and (4) the cost of materials is excluded and are not considered to be subcontracted. When a contract includes both services and supplies, the 50 percent limitation shall apply only to the service portion of the contract. Other direct costs may be excluded to the extent they are not the principal purpose of the acquisition and small businesses do not provide them. For additional information and more specific requirements on the limitations on subcontracting, refer to 13 CFR 125.6.

(e) *Required limitations on subcontracting compliance measurement period.* An SDVOSB shall comply with the limitations on subcontracting as follows:

[Contracting Officer check as appropriate.]

[(I\$VARIABLE)] By the end of the base term of the contract or order, and then by the end of each subsequent option period; or

[(I\$VARIABLE)] By the end of the performance period for each order issued under the contract.

(f) *Joint ventures.* A joint venture may be considered eligible as an SDVOSB if the joint venture is listed in VIP and complies with the requirements in 13 CFR 125.18(b), provided that any requirement therein that applies to an SDVO SBC is to be construed to apply to a VIP-listed SDVOSB. A joint venture agrees that, in the performance of the contract, the applicable percentage specified in paragraph (d) of this clause will be performed by the aggregate of the joint venture participants.

(g) *Precedence.* Any inconsistencies between the requirements of the SBA Program for SDVO SBCs, and the VA Veterans First Contracting Program, as defined in VAAR subpart 819.70 and this clause, the VA Veterans First Contracting Program takes precedence.

(h) *Misrepresentation.* Pursuant to 38 USC 8127(g), any business concern, including all its principals, that is determined by VA to have willfully and intentionally misrepresented a company's SDVOSB status is subject to debarment from contracting with the Department for a period of not less than five years (see VAAR 809.406, Debarment).

(End of Clause)

#### **4.17 VAAR 852.219-74 LIMITATIONS ON SUBCONTRACTING— MONITORING AND COMPLIANCE (JUL 2018)**

(a) This solicitation includes VAAR 852.219-10 VA Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside.



(b) Accordingly, any contract resulting from this solicitation is subject to the limitation on subcontracting requirements in 13 CFR 125.6, or the limitations on subcontracting requirements in the FAR clause, as applicable. The Contractor is advised that in performing contract administration functions, the Contracting Officer may use the services of a support contractor(s) retained by VA to assist in assessing the Contractor's compliance with the limitations on subcontracting or percentage of work performance requirements specified in the clause. To that end, the support contractor(s) may require access to Contractor's offices where the Contractor's business records or other proprietary data are retained and to review such business records regarding the Contractor's compliance with this requirement.

(c) All support contractors conducting this review on behalf of VA will be required to sign an "Information Protection and Non-Disclosure and Disclosure of Conflicts of Interest Agreement" to ensure the Contractor's business records or other proprietary data reviewed or obtained in the course of assisting the Contracting Officer in assessing the Contractor for compliance are protected to ensure information or data is not improperly disclosed or other impropriety occurs.

(d) Furthermore, if VA determines any services the support contractor(s) will perform in assessing compliance are advisory and assistance services as defined in FAR 2.101, Definitions, the support contractor(s) must also enter into an agreement with the Contractor to protect proprietary information as required by FAR 9.505-4, Obtaining access to proprietary information, paragraph (b). The Contractor is required to cooperate fully and make available any records as may be required to enable the Contracting Officer to assess the Contractor's compliance with the limitations on subcontracting or percentage of work performance requirement.

(End of Clause)

#### **4.18 VAAR 852.219-77 VA NOTICE OF LIMITATIONS ON SUBCONTRACTING—CERTIFICATE OF COMPLIANCE FOR SERVICES AND CONSTRUCTION (SEP 2021) (DEVIATION)**

(a) Pursuant to 38 U.S.C. 8127(k)(2), the offeror certifies that—

(1) If awarded a contract (see FAR 2.101 definition), it will comply with the limitations on subcontracting requirement as provided in the solicitation and the resultant contract, as follows:

(i) ☐ Services. In the case of a contract for services (except construction), the contractor will not pay more than 50% of the amount paid by the government to it to firms that are not VIP-listed SDVOSBs as set forth in 852.219-10 or VOSBs as set forth in 852.219-11. Any work that a similarly situated VIP-listed subcontractor further subcontracts will count towards the 50% subcontract amount that cannot be exceeded. Other direct costs may be excluded to the extent they are not the principal purpose of the acquisition and small business concerns do not provide the service as set forth in 13 CFR 125.6.

(ii) ☒ General construction. In the case of a contract for general construction, the contractor will not pay more than 85% of the amount paid by the government to it to firms that are not VIP-listed SDVOSBs as set forth in 852.219-10 or VOSBs as set forth in 852.219-11. Any work that a similarly situated VIP-listed subcontractor further subcontracts will count towards the 85%

subcontract amount that cannot be exceeded. Cost of materials are excluded and not considered to be subcontracted.

(iii) ☐ Special trade construction contractors. In the case of a contract for special trade contractors, the contractor will not pay more than 75% of the amount paid by the government to it to firms that are not VIP-listed SDVOSBs as set forth in 852.219-10 or VOSBs as set forth in 852.219-11. Any work that a similarly situated subcontractor further subcontracts will count towards the 75% subcontract amount that cannot be exceeded. Cost of materials are excluded and not considered to be subcontracted.

(2) The offeror acknowledges that this certification concerns a matter within the jurisdiction of an Agency of the United States. The offeror further acknowledges that this certification is subject to Title 18, United States Code, Section 1001, and, as such, a false, fictitious, or fraudulent certification may render the offeror subject to criminal, civil, or administrative penalties, including prosecution.

(3) If VA determines that an SDVOSB/VOSB awarded a contract pursuant to 38 U.S.C. 8127 did not act in good faith, such SDVOSB/VOSB shall be subject to any or all of the following:

- (i) Referral to the VA Suspension and Debarment Committee;
- (ii) A fine under section 16(g)(1) of the Small Business Act (15 U.S.C. 645(g)(1)); and
- (iii) Prosecution for violating section 1001 of title 18.

(b) The offeror represents and understands that by submission of its offer and award of a contract it may be required to provide copies of documents or records to VA that VA may review to determine whether the offeror complied with the limitations on subcontracting requirement specified in the contract. The Contracting Officer may, at their discretion, require the Contractor to demonstrate its compliance with the limitations on subcontracting at any time during performance and upon completion of a contract if the information regarding such compliance is not already available to the Contracting Officer. Evidence of compliance includes, but is not limited to, invoices, copies of subcontracts, or a list of the value of tasks performed.

(c) The offeror further agrees to cooperate fully and make available any documents or records as may be required to enable VA to determine compliance with the limitations on subcontracting requirement. The offeror understands that failure to provide documents as requested by VA may result in remedial action as the Government deems appropriate.

(d) Offeror completed certification/fill-in required. The formal certification must be completed, signed, and returned with the offeror's bid, quotation, or proposal. The Government will not consider offers for award from offerors that do not provide the certification, and all such responses will be deemed ineligible for evaluation and award.

Certification:

I hereby certify that if awarded the contract, *[insert name of offeror]* will comply with the limitations on subcontracting specified in this clause and in the resultant contract. I further certify that I am authorized to execute this certification on behalf of *[insert name of offeror]*.



Printed Name of Signee: \_\_\_\_\_

Printed Title of Signee: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Company Name and Address: \_\_\_\_\_

\_\_\_\_\_

(End of Clause)

#### **4.19 VAAR 852.232-70 PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS (WITHOUT NAS– CPM) (NOV 2018)**

The clause FAR 52.232–5, Payments Under Fixed-Price Construction Contracts, is implemented as follows:

(a) Retainage.

(1) The Contracting Officer may retain funds—

(i) Where performance under the contract has been determined to be deficient or the Contractor has performed in an unsatisfactory manner in the past; or

(ii) As the contract nears completion, to ensure that deficiencies will be corrected and that completion is timely.

(2) Examples of deficient performance justifying a retention of funds include, but are not restricted to, the following—

(i) Unsatisfactory progress as determined by the Contracting Officer;

(ii) Failure to meet schedule in Schedule of Work Progress;

(iii) Failure to present submittals in a timely manner; or

(iv) Failure to comply in good faith with approved subcontracting plans, certifications, or contract requirements.

(3) Any level of retention shall not exceed 10 percent either where there is determined to be unsatisfactory performance, or when the retainage is to ensure satisfactory completion. Retained amounts shall be paid promptly upon completion of all contract requirements, but nothing contained in this paragraph (a)(3) shall be construed as limiting the Contracting Officer's right to withhold funds under other provisions of the contract or in accordance with the general law and regulations regarding the administration of Government contracts.

(b) The Contractor shall submit a schedule of cost to the Contracting Officer for approval within 30 calendar days after date of receipt of notice to proceed. Such schedule will be signed and submitted in

triplicate. The approved cost schedule will be one of the bases for determining progress payments to the Contractor for work completed. This schedule shall show cost by the work activity/event for each building or unit of the contract, as instructed by the resident engineer.

(1) The work activities/events shall be subdivided into as many sub-activities/events as are necessary to cover all component parts of the contract work.

(2) Costs as shown on this schedule must be true costs and the resident engineer may require the Contractor to submit the original estimate sheets or other information to substantiate the detailed makeup of the schedule.

(3) The sums of the sub-activities/events, as applied to each work activity/event, shall equal the total cost of such work activity/event. The total cost of all work activities/events shall equal the contract price.

(4) Insurance and similar items shall be prorated and included in the cost of each branch of the work.

(5) The cost schedule shall include separate cost information for the systems listed in the table in this paragraph (b)(5). The percentages listed in the following table are proportions of the cost listed in the Contractor's cost schedule and identify, for payment purposes, the value of the work to adjust, correct and test systems after the material has been installed. Payment of the listed percentages will be made only after the Contractor has demonstrated that each of the systems is substantially complete and operates as required by the contract.

VALUE OF ADJUSTING, CORRECTING, AND TESTING SYSTEM	
System	Percent
Pneumatic tube system.....	10
Incinerators (medical waste and trash).....	5
Sewage treatment plant equipment.....	5
Water treatment plant equipment.....	5
Washers (dish, cage, glass, etc.).....	5
Sterilizing equipment.....	5
Water distilling equipment.....	5
Prefab temperature rooms (cold, constant temperature).....	5
Entire air-conditioning system (Specified under 600 Sections).....	5
Entire boiler plant system (Specified under 700 Sections).....	5
General supply conveyors.....	10

Food service conveyors.....	10
Pneumatic soiled linen and trash system.....	10
Elevators and dumbwaiters.....	10
Materials transport system.....	10
Engine-generator system.....	5
Primary switchgear.....	5
Secondary switchgear.....	5
Fire alarm system.....	5
Nurse call system.....	5
Intercom system.....	5
Radio system.....	5
TV (entertainment) system.....	5

(c) In addition to this cost schedule, the Contractor shall submit such unit costs as may be specifically requested. The unit costs shall be those used by the Contractor in preparing its bid and will not be binding as pertaining to any contract changes.

(d) The Contracting Officer will consider for monthly progress payments material and/or equipment procured by the Contractor and stored on the construction site, as space is available, or at a local approved location off the site, under such terms and conditions as the Contracting Officer approves, including but not limited to the following—

- (1) The materials or equipment are in accordance with the contract requirements and/or approved samples and shop drawings;
- (2) The materials and/or equipment are approved by the resident engineer;
- (3) The materials and/or equipment are stored separately and are readily available for inspection and inventory by the resident engineer;
- (4) The materials and/or equipment are protected against weather, theft and other hazards and are not subjected to deterioration; and
- (5) The Contractor obtains the concurrence of its surety for off-site storage.

(e) The Government reserves the right to withhold payment until samples, shop drawings, engineer's certificates, additional bonds, payrolls, weekly statements of compliance, proof of title, nondiscrimination compliance reports, or any other requirements of this contract, have been submitted to the satisfaction of the Contracting Officer.

(f) The Contracting Officer will notify the Contractor in writing within 10 calendar-days of exercising retainage against any payment in accordance with FAR clause 52.232-5(e). The notice shall disclose the

amount of the retainage in value and percent retained from the payment, and provide explanation for the retainage.

(End of Clause)

#### **4.20 VAAR 852.232-72 ELECTRONIC SUBMISSION OF PAYMENT REQUESTS (NOV 2018)**

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

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

(2) *Designated agency office* means the office designated by the purchase order, agreement, or contract to first receive and review invoices. This office can be contractually designated as the receiving entity. This office may be different from the office issuing the payment;

(3) *Electronic form* means an automated system transmitting information electronically according to the accepted electronic data transmission methods and formats identified in paragraph (c) of this clause. Facsimile, email, and scanned documents are not acceptable electronic forms for submission of payment requests;

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

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

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

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

(1) VA's Electronic Invoice Presentment and Payment System at the current website address provided in the contract.

(2) Any system that conforms to the X12 electronic data interchange (EDI) formats established by the Accredited Standards Center (ASC) and chartered by the American National Standards Institute (ANSI).

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

(e) *Exceptions.* If, based on one of the circumstances in this paragraph (e), the Contracting Officer directs that payment requests be made by mail, the Contractor shall submit payment requests by mail through the United States Postal Service to the designated agency office. Submission of payment requests by mail may be required for—

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

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

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

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

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

(End of Clause)

#### **4.21 VAAR 852.236-71 SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (APR 2019)**

The clause entitled “Specifications and Drawings for Construction” in FAR 52.236– 21 is supplemented as follows:

(a) The Contracting Officer’s interpretation of the drawings and specifications will be final, subject to the Disputes clause.

(b) The Contractor shall—

(1) Check all drawings and specifications furnished immediately upon receipt;

(2) Compare all drawings and the specifications, and verify the figures before laying out the work;

(3) Promptly notify the Contracting Officer of any discrepancies;

(4) Be responsible for any errors that might have been avoided by complying with this paragraph (b); and

(5) Reproduce and print contract drawings and specifications as needed.

(c) In general—

(1) Drawings of greater detail shall govern over drawings of lesser detail unless specifically noted otherwise; and

(2) Figures and numerical quantities noted on drawings govern over scale measurements.

(d) Omissions from the drawings or specifications or the misdescription of details of work that are manifestly necessary to carry out the intent of the drawings and specifications, or that are customarily performed, shall not relieve the Contractor from performing such omitted or misdescribed details of the work. The Contractor shall perform such details as if fully and correctly set forth and described in the drawings and specifications.

(e) The work shall conform to the specifications and the contract drawings identified on the following index of drawings:

Title  
See attachment 19

File

Drawing No.

(End of Clause)

#### **4.22 VAAR 852.236-79 CONTRACTOR PRODUCTION REPORT (APR 2019)**

(a) The Contractor shall furnish to the resident engineer, for each workday, a consolidated report for the preceding workday. Reporting shall begin from date of mobilization until the date of final acceptance except for authorized holidays. VA Form 10101, Contractor Production Report, or a Contractor generated form containing the same type of information shall be signed, dated and submitted by the Contractor superintendent.

(b) Each report shall include and specifically identify at least one safety topic germane to the jobsite that day.

(End of Clause)

#### **4.23 VAAR 852.236-80 SUBCONTRACTS AND WORK COORDINATION (APR 2019)**

(a) Nothing contained in this contract shall be construed as creating any contractual relationship between any subcontractor and the Government. Divisions or sections of specifications are not intended to control the Contractor in dividing work among subcontractors, or to limit work performed by any trade.

(b) The Contractor shall be responsible to the Government for acts and omissions of his/her own employees, and of the subcontractors and their employees. The Contractor shall also be responsible for coordination of the work of the trades, subcontractors, and material suppliers.

(c) The Government or its representatives will not undertake to settle any differences between the Contractor and subcontractors or between subcontractors.

(d) The Government reserves the right to refuse to permit employment on the work, or require dismissal from the work, of any subcontractor or subcontractor employee who, by reason of previous unsatisfactory work on Department of Veterans Affairs projects or for any other reason, is considered by the Contracting Officer to be incompetent, careless, or otherwise objectionable.

(End of Clause)

#### **4.24 VAAR 852.242-70 GOVERNMENT CONSTRUCTION CONTRACT ADMINISTRATION (OCT 2020)**

(a) Contract administration functions set forth in FAR 42.302 are hereby delegated to:

Department of Veterans Affairs  
Program Contracting Activity Central

6150 Oak Tree Blvd, Suite 490  
Independence, OH 44131

(b) The following functions will be retained by the Contracting Officer or Administrative Contracting Officer (ACO) and are not redelegable to Resident Engineers:

(1) Award of contract modifications either through supplemental agreements or change orders that exceed the ACO's appointed warrant limitations.

(2) Issuance of default letters.

(3) Issuance of Cure or Show-Cause Notices.

(4) Suspension of work letters and/or modifications.

(5) Issuance of Contracting Officer final determination letters.

(6) Issuance of termination notices.

(7) Authorization of final payment.

(c) The work will be under the direction of a Department of Veterans Affairs Contracting Officer, who may designate another VA employee to act as resident engineer at the construction site who possesses limited warranted authority.

(d) Except as provided below, the resident engineer's directions will not conflict with or change contract requirements. Within the limits of any specific authority delegated by the Contracting Officer, the resident engineer may, by written direction, make changes in the work. The Contractor shall be advised of the extent of such authority prior to execution of any work under the contract.

(e) The Contracting Officer or an Administrative Contracting Officer identified in paragraph (a) may further delegate limited authority and specialized support services responsibilities below to the following warranted Resident Engineer personnel on site, not to exceed the dollar value and threshold of their warrant:

N/A

,  
(1) Conduct post-award orientation conferences.

(2) Issue administrative changes (see FAR 43.101) correcting errors or omissions, contractor address, facility or activity code, remittance address, computations which do not required additional contract funds, and other such changes.

(3) For actions not to exceed \$0.00 negotiate and execute supplemental agreements resulting from change orders issued under the Changes clause.

(4) Negotiate and execute supplemental agreements changing contract delivery schedules where the time extension does not exceed 0 calendar days.

(End of Clause)

#### **4.25 VAAR 852.243-70 CONSTRUCTION CONTRACT CHANGES— SUPPLEMENT (SEP 2019)**

The FAR clauses 52.236-2, Differing Site Conditions; 52.243-4, Changes; and 52.243-5, Changes and Changed Conditions, are supplemented as follows:

(a) Submission of request for equitable adjustment proposals. When directed by the Contracting Officer or requested by the Contractor, the Contractor shall, in accordance with FAR 15.403-5, submit proposals for changes in the work exceeding \$500,000 in writing to the Contracting Officer or Administrative Contracting Officer (ACO), and to the resident engineer.

(1) The Contractor must provide an itemized breakdown for changes exceeding the micro-purchase threshold (see FAR 2.101).

(2) The itemized breakdown shall include materials, quantities, unit prices, labor costs (separated into trades), construction equipment, etc. Labor costs shall be identified with specific material placed or operation performed.

(3) Proposals shall be submitted to the Contracting Officer or ACO and the resident engineer as expeditiously as possible, but not later than calendar days, after receipt of a written change order by the Contracting Officer.

(4) Proposals shall be signed by each subcontractor participating in the change.

(5) The Contracting Officer will consider issuing a settlement by determination to the contract if the Contractor's proposal required by paragraph (a)(3) of this clause is not received within the time period specified in paragraph (a)(3), or if agreement has not been reached.

(b) Paragraphs (a)(1) through (5) of this clause and the following paragraphs (b)(1) and (2) apply to proposals for changes in the work \$500,000 or less:

(1) As a basis for negotiation, allowances not to exceed 10 percent each for overhead and profit for the party performing the work will be based on the value of labor, material, and equipment required to accomplish the change. As the value of the change increases, a declining scale will be used in negotiating the percentage of overhead and profit. This declining scale will also be used to negotiate the prime Contractor's or upper-tier subcontractor's fee when work is performed by lower-tier subcontractors (to a maximum of three tiers) and will be based on the net increased cost to the prime or upper-tier subcontractor, as applicable. Profit (fee) shall be computed by multiplying the profit percentage by the sum of the direct costs and computed overhead costs. Allowable percentages on changes will not exceed the following:

(i) 10 percent overhead and/or 10 percent profit (fee) on the first \$20,000.



(ii) 7.5 percent overhead and/or 7.5 percent profit (fee) on the next \$30,000.

(iii) 5 percent overhead and/or 5 percent profit (fee) on a balance over \$50,000.

(2) The Contracting Officer will consider issuing a settlement by determination to the contract if the Contractor's proposal required by paragraph (3) is not received within 30 calendar days, or if agreement has not been reached.

(c)(1) Overhead and Contractor's fee percentages shall be considered to include insurance other than mentioned herein, field and office supervisors and assistants, security police, use of small tools, incidental job burdens, and general home office expenses and no separate allowance will be made. Assistants to office supervisors include all clerical, stenographic and general office help. Incidental job burdens include, but are not necessarily limited to, office equipment and supplies, temporary toilets, telephone and conformance to OSHA requirements. Items such as, but not necessarily limited to, review and coordination, estimating and expediting relative to contract changes are associated with field and office supervision and are considered to be included in the Contractor's overhead and/or fee percentage.

(2) Where the Contractor's or subcontractor's portion of a change involves credit items, such items must be deducted prior to adding overhead and profit for the party performing the work. The Contractor's fee is limited to the net increase to Contractor or subcontractors' portions of cost computed in accordance with this clause.

(3) Where a change involves credit items only, a proper measure of the amount of downward adjustment in the contract price is the reasonable cost to the Contractor if it had performed the deleted work. A reasonable allowance for overhead and profit are properly includable as part of the downward adjustment for a deductive change. The amount of such allowance is subject to negotiation.

(End of Clause)

#### **4.26 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 Clause)

#### **4.27 MANDATORY WRITTEN DISCLOSURES**

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

#### **4.28 VAAR 852.204-70 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (MAY 2020)**

(a) The Contractor shall comply with current Department of Veterans Affairs policy for personal identity verification of all employees performing under this contract when frequent and continuing access to VA facilities or information systems is required.

(b) The Contractor shall insert this clause in all subcontracts when the subcontractor's employees will require frequent and continuing access to VA facilities or information systems.

(End of Clause)

#### **4.29 VAAR 852.203-70 COMMERCIAL ADVERTISING (MAY 2018)**

The Contractor shall not make reference in its commercial advertising to Department of Veterans Affairs contracts in a manner that states or implies the Department of Veterans Affairs approves or endorses the Contractor's products or services or considers the Contractor's products or services superior to other products or services.

(End of Clause)

#### **4.30 VAAR 852.228-70 BOND PREMIUM ADJUSTMENT (JAN 2008)**

When net changes in original contract price affect the premium of a Corporate Surety Bond by \$5 or more, the Government, in determining the basis for final settlement, will provide for bond premium adjustment computed at the rate shown in the bond.

(End of Clause)

<u><b>FAR Number</b></u>	<u><b>Title</b></u>	<u><b>Date</b></u>
852.242-71	ADMINISTRATIVE CONTRACTING OFFICER	OCT 2020

#### **4.31 OTHER ATTACHMENTS**

See attached document: Attachment 1- Drawing 1 of 16 PGS 1-4 PN 100PCT GENERAL.

See attached document: Attachment 2 - Drawing PGS 5-18 100PCT CIVIL.

See attached document: Attachment 3 - Drawing 2 of 16 PGS 19-29 100PCT LANDSCAPE.

See attached document: Attachment 4 - Drawing 3 of 16 PGS 30-50 100PCT STRUCTURAL.

See attached document: Attachment 5 - Drawing 4 of 16 PGS 51-52 100PCT GENERAL.

See attached document: Attachment 6 - Drawing 5 of 16 PGS 53-78 100PCT ARCH.

See attached document: Attachment 7 - Drawing 6 of 16 PGS 79-80 100PCT FIRE.

See attached document: Attachment 8 - Drawing 7 of 16 PGS 81-85 100PCT PLUMBING.

See attached document: Attachment 9 - Drawing 8 of 16 PGS 86-100 100PCT MECHANICAL.

See attached document: Attachment 10 - Drawing 9 of 16 PGS 101-120 100PCT ELECTRICAL.

See attached document: Attachment 11 - Drawing 10 of 16 PGS 121-123 100PCT P2 GENERAL.

See attached document: Attachment 12 - Drawing 11 of 16 PGS 124 100PCT P2 STRUCTURAL.

See attached document: Attachment 13 - Drawing 12 of 16 PGS 125-134 100PCT P2 ARCH.

See attached document: Attachment 14 - Drawing 13 of 16 PGS 135-136 100PCT P2 FIRE.

See attached document: Attachment 15 - Drawing 14 of 16 PGS 137-140 100PCT P2 PLUMBING.

See attached document: Attachment 16 - Drawing 15 of 16 PGS 141-146 100PCT P2 MECHANICAL.

See attached document: Attachment 17 - Drawing 16 of 16 PGS 147-166 100PCT P2 ELECTRICAL.

See attached document: Attachment 18 - Page ES101-P1 from PN 436-114 100PCT - Drawings.

See attached document: Attachment 19 - Final Specs.

See attached document: Attachment 20 Contractor Safety and Environmental Record Evaluation Form.

See attached document: Attachment 21 - DBA Wage Determination Lewis and Clark County - Ft Harrison, MT 02.

See attached document: Attachment 22 - VHA Supplemental Contract Requirements for Combatting COVID-19.

See attached document: Attachment 23 - Limitations on Subcontracting - Construction.

End of Document