

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

1. REQUISITION NO.  
36C255-22-AP-0737

PAGE 1 OF 118

2. CONTRACT NO. 3. AWARD/EFFECTIVE DATE 4. ORDER NO. 5. SOLICITATION NUMBER 6. SOLICITATION ISSUE DATE

10/13/2022 36C25522R0100 10-13-2022

7. FOR SOLICITATION INFORMATION CALL: a. NAME Mike Crader michael.crader@va.gov b. TELEPHONE NO. (No Collect Calls) 913-230-7042 8. OFFER DUE DATE/LOCAL TIME 11-14-2022 1300 CDT

9. ISSUED BY CODE 36C255  
 Department of Veterans Affairs  
 Network Contracting Office (NCO) 15  
 3450 S 4th Street Trafficway  
 Leavenworth KS 66048

10. THIS ACQUISITION IS  UNRESTRICTED OR  SET ASIDE: 100 % FOR:  
 SMALL BUSINESS  WOMEN-OWNED SMALL BUSINESS (WOSB) ELIGIBLE UNDER THE WOMEN-OWNED SMALL BUSINESS PROGRAM NAICS: 621610  
 HUBZONE SMALL BUSINESS  EDWOSB SIZE STANDARD: \$16.5 Million  
 SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS  8(A)

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

15. DELIVER TO CODE 16. ADMINISTERED BY CODE 36C255  
 See Schedule for Details  
 Department of Veterans Affairs  
 Network Contracting Office (NCO) 15  
 3450 S 4th Street Trafficway  
 Leavenworth KS 66048

17a. CONTRACTOR/OFFEROR CODE FACILITY CODE 18a. PAYMENT WILL BE MADE BY CODE 36C255  
 Department of Veterans Affairs  
 Financial Services Center  
 http://www.fsc.va.gov/einvoice.asp  
 Austin TX  
 PHONE: 877-353-9791 FAX: 512-460-5429

TELEPHONE NO. UEI: EFT:

17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER  18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED  SEE ADDENDUM

19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
	See CONTINUATION Page 1. VISN 15 VA Medical Centers Home Oxygen Services. Vendor shall provide designated experienced personnel, required training, equipment and labor for the setup, installation and management of Home Oxygen and Ventilation services to Veteran beneficiaries serviced by the VISN 15 VA Health Care System. See attached Performance Work Statement 2. It is anticipated the government will award a Fixed Price Indefinite Delivery, Indefinite Quantity (IDIQ) contract. 3. The contract will be for a five-year Period of Performance. Please see attached price spreadsheet. Each task order will be issued with individual obligation numbers referencing each VA Medical Center within the VISN 15 VA Health Care System. 4. Electronic proposal submittal is required. Please see instructions to offerors for details. (Use Reverse and/or Attach Additional Sheets as Necessary)				

25. ACCOUNTING AND APPROPRIATION DATA See CONTINUATION Page Funding will be placed on each task order. 26. TOTAL AWARD AMOUNT (For Govt. Use Only)

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

28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN 1 COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED  29. AWARD OF CONTRACT: REF. OFFER DATED YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN IS ACCEPTED AS TO ITEMS:

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

## Table of Contents

<b>SECTION A</b> .....	<b>1</b>
A.1 SF 1449 SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES.....	1
<b>SECTION B - CONTINUATION OF SF 1449 BLOCKS</b> .....	<b>4</b>
B.1 CONTRACT ADMINISTRATION DATA.....	4
B.2 PERFORMANCE WORK STATEMENT.....	6
B.3 PRICE/COST SCHEDULE – See attached Spreadsheet. ....	39
<b>SECTION C - CONTRACT CLAUSES</b> .....	<b>40</b>
C.1 52.212-4 CONTRACT TERMS AND CONDITIONS—COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES (NOV 2021).....	40
C.2 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998) .....	46
C.3 52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES (MAY 2022) .....	46
C.4 52.216-18 ORDERING (AUG 2020).....	54
C.5 52.216-19 ORDER LIMITATIONS (OCT 1995) .....	54
C.6 52.216-22 INDEFINITE QUANTITY (OCT 1995).....	55
C.7 52.217-2 CANCELLATION UNDER MULTI-YEAR CONTRACTS (OCT 1997) .....	55
C.8 52.222-43 FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT LABOR STANDARDS—PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS) (AUG 2018).....	57
C.9 52.222-55 MINIMUM WAGES FOR CONTRACTOR WORKERS UNDER EXECUTIVE ORDER 14026 (JAN 2022).....	58
C.10 52.232-19 AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR (APR 1984).....	62
C.11 52.237-3 CONTINUITY OF SERVICES (JAN 1991).....	63
C.12 VAAR 852.212-70 PROVISIONS AND CLAUSES APPLICABLE TO VA ACQUISITION OF COMMERCIAL ITEMS (APR 2020) .....	63
C.13 VAAR 852.219-10 VA NOTICE OF TOTAL SERVICE-DISABLED VETERAN- OWNED SMALL BUSINESS SET-ASIDE (JUL 2019) (DEVIATION).....	65
C.14 VAAR 852.219-74 LIMITATIONS ON SUBCONTRACTING—MONITORING AND COMPLIANCE (JUL 2018) .....	67
C.15 VAAR 852.219-77 VA NOTICE OF LIMITATIONS ON SUBCONTRACTING— CERTIFICATE OF COMPLIANCE FOR SERVICES AND CONSTRUCTION (SEP 2021) (DEVIATION).....	68
C.16 VAAR 852.219-78 VA NOTICE OF LIMITATIONS ON SUBCONTRACTING— CERTIFICATE OF COMPLIANCE FOR SUPPLIES AND PRODUCTS (SEP 2021) (DEVIATION).....	70
C.17 VAAR 852.242-71 ADMINISTRATIVE CONTRACTING OFFICER (OCT 2020).....	72
C.18 SUPPLEMENTAL INSURANCE REQUIREMENTS .....	72
C.19 MANDATORY WRITTEN DISCLOSURES.....	73
C.20 VA INFORMATION AND INFORMATION SYSTEM SECURITY/PRIVACY LANGUAGE FOR INCLUSION INTO CONTRACTS, AS APPROPRIATE.....	73

**SECTION D - CONTRACT DOCUMENTS, EXHIBITS, OR ATTACHMENTS .....84**

Quality Assurance Surveillance Plan .....84

WAGE DETERMINATIONS INCORPORATED BY REFERENCE .....84

PWS Supplement – Counties (see attached).....84

**SECTION E - SOLICITATION PROVISIONS.....88**

E.1 52.212-1 INSTRUCTIONS TO OFFERORS—COMMERCIAL ITEMS (JUN 2020)88

E.2 52.212-2 EVALUATION—COMMERCIAL ITEMS (OCT 2014).....92

E.3 52.212-2 Addendum – Proposal Instructions .....93

E.4 52.212-3 OFFEROR REPRESENTATIONS AND CERTIFICATIONS—  
COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES (MAY 2022) (JUL 2020)  
(DEVIATION).....96

E.5 52.204-24 REPRESENTATION REGARDING CERTAIN TELECOMMUNICATIONS  
AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (NOV 2021)..... 113

E.6 52.209-7 INFORMATION REGARDING RESPONSIBILITY MATTERS (OCT 2018)  
..... 116

E.7 52.216-1 TYPE OF CONTRACT (APR 1984).....117

E.8 52.233-2 SERVICE OF PROTEST (SEP 2006).....117

E.9 52.252-1 SOLICITATION PROVISIONS INCORPORATED BY REFERENCE (FEB  
1998).....118

## SECTION B - CONTINUATION OF SF 1449 BLOCKS

### B.1 CONTRACT ADMINISTRATION DATA

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

(a). CONTRACT ADMINISTRATION: All contract administration matters will be handled by the following individuals:

(1). CONTRACTOR: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
SAM UEI: \_\_\_\_\_  
\_\_\_\_\_  
Contact person name: \_\_\_\_\_  
Contact person email: \_\_\_\_\_  
Contact person telephone: \_\_\_\_\_  
\_\_\_\_\_

(2). GOVERNMENT: DEPT. OF VETERANS AFFAIRS  
Veterans' Health Administration  
Network Contracting Office (NCO) 15  
Contracting Officer: Mike Crader  
3450 S 4<sup>th</sup> St.  
Leavenworth KS 66048

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

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

(c). INVOICES: Invoices shall be submitted in arrears:

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

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

Department of Veterans Affairs  
Financial Services Center  
<http://www.fsc.va.gov/einvoice.asp>  
Austin TX

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

AMENDMENT NO	DATE

(e). GOVERNMENT INVOICE ADDRESS: Invoices will be provided in accordance with the requirements listed in FAR 52.212-4, Commercial Items – Terms and Conditions, (MAY 2014), (g) Invoice; and VAAR 852.232-72 Electronic Submission of Payment Request (NOV 2012); electronically to:

Department of Veterans Affairs  
 Financial Services Center  
<http://www.fsc.va.gov/einvoice.asp>  
 Austin TX

(f). REFERENCE NUMBERS: Please reference both the Task Order number (to be assigned) and the Obligation Number (to be assigned) on all correspondence and invoices.

(g). AUTHORIZATIONS:

(1). The Contracting Officer (CO) named in Section (a) above is responsible for the overall administration of this contract. Only the CO has the authority to make changes which affect:

- (A). Contract prices,
- (B). Quality,
- (C). Quantities, or
- (D). Delivery terms and conditions.

(2). Contracting Officer Representatives (COR) and Alternate Contracting Officer's Representatives (Alt-COR) may be assigned to this contract. The COR and Alt-COR shall be provided specific written delegated authority by the CO, a copy of which will be provided to the Contractor.

(h). CHANGES TO THE CONTRACT: No individual or activity has authority to ADD, DELETE, CHANGE, OR MODIFY this contract of issued orders except by the CO or by written authority specifically delegated by the CO.

(i). CONTRACT TIME PERIOD:

(1). The expected contract period of performance shall commence on or about **01/01/2023** and expires **12/31/2027**.

## B.2 PERFORMANCE WORK STATEMENT

### HOME OXYGEN SERVICES VISN 15

**SCOPE:** This Performance Work Statement (PWS) defines the effort required for the setup, installation, and management of Home Oxygen services and Ventilation, in accordance with National Accreditation standards (i.e. Joint Commission on Accreditation of Healthcare Organizations (JCAHO)) to Veteran beneficiaries serviced by VISN 15. This PWS includes the associated program management, human engineering, and logistic support planning requirements. The use of the terms “beneficiary”, “veterans”, “patients”, and “patient” are used interchangeably and refer to the recipient of required supplies, equipment and incidental services required under the contract.

**BACKGROUND:** The acquisition of home oxygen services is being initiated to provide Home Oxygen services to Veteran beneficiaries serviced by VISN 15. VISN 15 does not have the capacity to provide these services, so a contract has been sought for the provision of home oxygen and all associated products and services. As of January 2022, VISN 15 has approximately 5,300 beneficiaries on home oxygen and 113 on ventilators. The total number of patients fluctuates each month due to patients being added/removed from the program. Historical data indicates that the overall number of unique patients on home oxygen has minimally fluctuated from January 2020 (5,585) to January 2022 (5,303).

**1.1 LOCATIONS:** All services shall be performed in the veteran's place of residence. The area of service shall be all patients serviced by VISN 15, including counties of the catchment areas as well as additional counties identified in this contract. The equipment needs are subject to change as determined by the prescribing physician. Contractors shall have a facility or resources physically located in the geographic area in which they shall provide service. Non-territory requests shall be required from time to time and the Contractor shall accept these "non-territory" Veterans at that Contractor's awarded price. VA reserves the right to assign these patients to any contractor. The geographical boundaries described herein have been determined as the areas of responsibility/jurisdiction for each local VA Medical Center (see VISN 15 Facilities and Counties covered, attached).

Harry S. Truman - Veterans Affairs Medical Center – Columbia, MO. (CO) 800 Hospital Drive  
Columbia, MO. 65201 Estimated # of patients is 890.

Veterans Affairs Medical Center - Kansas City, MO. (KC) 4801 Linwood Blvd. Kansas City, MO.  
64128 Estimated # of patients is 960.

Dwight D. Eisenhower - Veterans Affairs Medical Center – Leavenworth, KS. (LE) 4101 S. 4<sup>th</sup> St.  
Leavenworth, KS.66048 Estimated # of patients is 350.

Veterans Affairs Medical Center – Marion, IL. (MA) 2401 West Main St. Marion, IL. 62959  
Estimated # of patients is 820.

John J. Pershing - Veterans Affairs Medical Center – Poplar Bluff, MO. (PB) 1500 N. Westwood  
Blvd. Poplar Bluff, MO. 63901 Estimated # of patients is 570.

Jefferson Barracks - Veterans Affairs Medical Center – St. Louis, MO. (SL) #1 Jefferson Barracks Dr. St. Louis, MO. 63125 Estimated # of patients is 1,110.

Colmery O'Neil - Veterans Affairs Medical Center – Topeka, KS. (TO) 2200 Gage Blvd. Topeka, KS. 66622 Estimated # of patients is 350.

Robert J. Doyle - Veterans Affairs Medical Center – Wichita, KS. (WI) 5500 E. Kellogg Drive Wichita, KS. 67218 Estimated # of patients is 350.

## **2. SERVICE SPECIFICATIONS:**

**2.1 VETERANS SERVED:** VISN 15 currently serves an estimated 5,300 oxygen-using beneficiaries and 113 ventilator beneficiaries. The volumes or amounts shown in the Contract Line-Item Numbers (CLINS) are estimates only and impose no obligation on the VA. The contract shall be for the actual requirements of the VA as ordered by the VA during the life of the contract. The Contracting Officer's Representative (COR) or designee shall provide (via encrypted email or fax) the contractor with notification to initiate individual patient service requirements, including the patient's oxygen prescription, equipment, supplies and services to be provided including date and place of delivery. The Contractor shall confirm receipt (via encrypted email or fax) of the request within one (1) working hour of notification. The COR or designee shall provide notification (via encrypted email or fax) to the contractor of VA initiated discontinuation of service. The discontinuation notifications shall be made (via encrypted email or fax) within 24 hours. The written documents shall include the authorizing official's signature, electronic or written.

## **2.2 INITIAL SETUPS:**

Initial set-ups are considered to be those beneficiaries who do not have a VA authorized oxygen therapy delivery system or ventilators.

A. Initial setup(s) for Home Oxygen Patients shall be performed by a certified trained technician familiar with the nature of the equipment involved and fully qualified under the laws of the State in which the services and supplies ordered under this contract or Certified Respiratory Therapist (CRT) or Registered Respiratory Therapist (RRT). The initial set-up will be conducted face-to-face at the place of delivery. If the set-up is performed by a certified technician a CRT or RRT will contact the patient by phone post setup within 72 hours of set up to review and document the plan of care, education and ensure all questions have been answered regarding the supply and service provided. Initial setups of Ventilator Patients shall be performed by a CRT or RRT. All CRTs and RRTs shall be licensed in accordance with the governing standards of where the services are to be provided:

Home visits shall be performed monthly by the RRT/CRT for all patients that utilize the ventilator either continuously, for nocturnal concerns, and/or for intermittent ventilation. A licensed Respiratory Therapist must be available 24 hours per day, 7 days a week.

Each home oxygen patient will be contacted by phone monthly by a qualified person (Certified Technician, CRT, or RRT) to review the plan of care with the patient/caregiver, ensure

patient compliance and discuss any issues pertaining to the provision of home oxygen. A report of contact will be forwarded to the referring facility. A follow-up home visit for all home oxygen patients shall be conducted quarterly by a qualified person (Certified Technician, CRT, RRT) (Example: Initial set up completed March 1st, patient must have a followup home visit no later than June 1st). If the patient does not receive a home visit every 3 months, documentation will be provided identifying the reason a home visit was not made. If a home visit is not conducted within 4 months the referring facility will be contacted by the contractor to determine appropriate action, based upon the documentation. Each home oxygen patient will be contacted by phone quarterly by a CRT or RRT to review the plan of care with the patient/caregiver, ensure patient compliance and discuss any issues pertaining to the provision of home oxygen. If any issues are found, the CRT or RRT will make a home visit within 24 hours. If Certified Technician finds that a home oxygen patient is found to be high risk for smoking, home environment or falls, a CRT or RRT will make a home visit within 24 hours and forward their report to the referring facility. If a Certified Technician finds that a patient is not compliant with their RX or not following proper infection control, a CRT or RRT will make contact with the patient by phone to reeducate the patient. A CRT or RRT will make a home visit when it is requested by the VA. A copy of their report will be sent to the referring facility. If the patient is found a second time not in compliance with RX or not following proper infection control, a CRT or RRT will make a home visit within 24 hours and forward their report to the referring facility. Home oxygen patients that have RX changes will be contacted by phone by a CRT or RRT to review their new RX.

Documentation of all contacts by phones and home visits shall be provided to the ordering facility's COR, documenting a thorough review of the patient's equipment, to include all equipment records, and any re-education of the patient and/or caregiver with the monthly billing. When an issue arises, during a set up or home visit, the COR or designee will be notified, when possible, during the setup/visit and followed up by written notification within 5 business days by encrypted e-mail or fax.

Patient or caregiver education shall be performed on the proper utilization for the issued equipment to include the following:

- Proper equipment usage
- Equipment function and operation system
- Equipment knobs, controls, buttons, outlets, and inlets
- Equipment power source: electric, battery, compressor air, oxygen, and UL approved
- Proper utilization of oxygen with the prescribed ventilator
- Troubleshooting the equipment and system alarms
- Equipment and equipment settings that have been prescribed
- Proper equipment exchange/replacement, for example: ventilator tubing/circuit
- Proper utilization of a Passy Muir Valve (PMV) Speaking Valve while in use with the ventilator

How to attach the resuscitation bag to the oxygen source

How to complete the home ventilator monitor record

Emergency Procedures and how to respond to:

Power failure

Equipment failure

Ventilator users and their caregivers must be prepared for equipment failure, disconnects, and power outages, especially if using 24-hour ventilation

Practicing regular safety drills helps prepare for emergencies

Keeping a manual resuscitator, such as a bag valve mask (Ambu bag).

Infection control and patient supply storage

Cleaning or exchanging the oxygen tubing, ventilator tubing/circuits, and humidifier

Cleaning or exchange of the resuscitation bag and supplies

Cleaning or exchange of all equipment and accessories

Provide continuing education in use as needed or directed by a licensed and privileged Department of Veteran Affairs Physician.

All education material provided by the Contractor shall be initially reviewed and approved by the Veteran's Affairs contract evaluation team. Any changes to educational materials shall need to be reapproved prior to providing the aforementioned documentation to patients.

The Contractor shall provide a signed document with the monthly billing, to the ordering facility COR verifying the following:

Patient has a safe home environment in accordance with National Accreditation standards.

Patient received proper education and instructions.

Competency has been accomplished with the patient and caregiver on the proper use of the ventilator, oxygen equipment, and other home medical equipment upon initial set up, and re-verified annually.

B. All equipment shall contain an adhesive type of label containing the vendor's name and emergency 24-hour toll-free phone number. This label shall be placed on the equipment in an area that is viewable to patients and/or caregivers at all times. Patient shall be given a document listing toll-free phone number for routine resupply of oxygen cylinders and supplies.

C. The Contractor shall provide and post on all entrances into the residence, a sign stating, "Warning Oxygen in Use, No Smoking" or other verbiage that No Smoking is allowed due to oxygen being present and document that the patient/care giver is instructed in the safe use of oxygen and equipment per OSHA regulations. Specified sign shall be no smaller than 4" X 6".

D. The Contractor shall provide the initial set-up the same day when the prescription is received by 3:00 PM Central Standard Time to include weekends and holidays; this shall also apply to service calls. The VAMC reserves the right to obtain the supplies and service from another source and to charge the contractor with any excess cost which shall result there from, if the contractor is unable to meet required response time.

E. The Contractor shall be required to provide initial setup within 24 hours when prescription is received after 3:00 PM Central Standard Time to include weekends and holidays. This shall also apply to service calls. Contractor may be required to do an initial set up on the same day on a prescription is received after 3:00 PM, in which case an emergency set-up fee will be authorized.

F. The Contractor shall have a staffed branch office within 35 miles of each medical center. A staffed branch office shall not be required near the Topeka VAMC, provided there is an office within 35 miles of the Leavenworth VAMC.

G. Setup of Home Oxygen includes setting up and ensuring the appropriate oxygen system is operational, equipment instruction and training of patient, and/or caregiver and home environment safety check. Failure to deliver within the required time shall result in the VA obtaining oxygen from another source. Any costs in excess of contract pricing for services provided shall be billed to contractor or credited to next invoice at the discretion of the ordering facility (Reference 52.212-4(d) Disputes).

H. If any modifications or preparations need to be made to equipment, these changes shall be coordinated with patient caregiver and made before the patient arrives home from the hospital. Other items that shall be prepared ahead of time include:

Establishing designated Customer Service support phone line for patients to call for in home assistance

Posting all emergency numbers by each telephone

Marking the circuit breakers and fuses

### **2.3 ENSURE HOME REQUIREMENTS ARE PRESENT:**

1. Upon initial setup the contractor is responsible for ensuring the home and electrical system shall support all requirements of the equipment being provided including:

Proper electrical requirements are present.

Appropriate heating and/or air conditioning, if applicable

Hot and cold running water

Spaces for cleaning and storing equipment

General conditions and cleanliness

Adequate door size

Steps, need for ramps, or other access needs

Availability of ambulance/paramedics and hospital

Availability of a telephone

Presence of operational smoke detector(s)

Presence of operational fire extinguisher(s)

Presence of fire evacuation plan

2. The Contractor shall be responsible for notifying the COR or their designee by telephone while in the patient's home, if any alteration to the patient's home is necessary to accommodate the oxygen equipment, including electrical work. If the patient's home electrical system is not sufficient, the Contractor shall facilitate alternative oxygen system, if deemed appropriate by the COR or their designee. Any alteration to the Veteran's residence shall be the responsibility of the Veteran.

#### **2.4 PERIODIC EQUIPMENT EVALUATION:**

The Contractor shall have a CRT/RRT visit the patient to reassess equipment compliance, educational needs, and other patient needs for home oxygen patients at least annually and once every 30 days for patients on ventilators. All home oxygen patients will receive a monthly phone follow-up by a qualified individual (therapist, certified technician, etc.) and a home visit every 90 days by a (therapist, certified technician, etc.)

A report shall be developed, signed and dated by the contractor staff and the VA

patient/care giver and a copy shall be left with the patient. The reports shall be legible and attached to the monthly invoice. The written report shall include at a minimum the following data:

Name and Patient ID to be assigned by facility of patient using the equipment.

Monitor compliance on prescription (LPM, hours per day)

Type of concentrator and hours on concentrator

Inspection results of liter flow rate in monitoring patient compliance (as compared to prescription).

Inspection compliance of filters (exchange or clean by patient) according to manufacturer's guidelines

Follow-up education and/or reinforcement of compliance documented.

Revised plan of service as needed.

Calculated number of expected usage hours and the actual usage hours.

B. If the patient does not receive a reassessment of equipment every 90 days, documentation shall be provided (via encrypted email or fax) to the COR or designee identifying the reason a home visit was not made (Example: Initial set up completed March 1<sup>st</sup>, patient shall have a follow-up home visit no later than June 1<sup>st</sup>).

If, in the Government's discretion, the Contractor has not made valid and documented attempts to contact the patient for set up and/or deliveries, the Government reserves the right to call in third party to provide said setups and/or deliveries in the Contractor's place, and shall bill the Contractor all excess costs for covering the missed requirement, if the contractor fails to perform for any due month (reference FAR 52.212-4(d) Disputes).

C. Serial Numbers for the rented equipment shall be the vendor's responsibility and kept on file in contractor's office.

## **2.5 EMERGENCY SERVICES:**

Emergency services are for medical equipment provided to patients when an equipment malfunction or natural disaster may threaten a patient's health. The Contractor shall provide to the Contracting Officer a written emergency management plan, in compliance with National Accreditation standards. This emergency action plan shall address continuity of services for all patients in the affected region.

The Contractor shall provide emergency maintenance 24 hours/7 days a week. A document listing the emergency telephone number shall be provided to the patient at the time of set up.

The patient shall first call the Contractor in an emergency equipment situation as described in the previous sentence. The Contractor shall have a well-established communication system, providing 24- hour emergency services and the ability to provide services at the patient's home within two (2) hours of a call, but in no case to exceed six (6) hours of a call.

The Contractor shall ensure all patients have at minimum a non-electrical oxygen supply to last twenty-four 24 hours. The minimum supply shall take into account each patient's prescription flowrate and distance from the Contractors location, actual supply levels may differ from patient to patient, as long as each patient has oxygen supply to last a minimum of 24 hours. If the Contractor is unable to respond to an emergency service call within six (6) hours, the Contractor shall be responsible for making arrangements with another supplier, who meets all National Accreditation standards, to provide oxygen at the Contractor's expense. A written explanation (via encrypted email or fax) of why the Contractor was unable to respond to the emergency shall be provided to the COR or designee within two (2) business days. The cost of backup systems, backup oxygen, and backup equipment shall be borne by the Contractor. If H or M size oxygen cylinder is used for backup, the Contractor shall furnish an H or M size oxygen cylinder stand for each H or M size oxygen cylinder. Liquid oxygen supply shall be considered backup oxygen; however, the oxygen supply shall be maintained at the minimum of 24 hours.

In the event of disaster, natural or otherwise, the Contractor shall notify the COR or their designee (encrypted e-mail and fax) within 24 hours if services covered under this contract may be affected.

## **2.6 PREVENTIVE MAINTENANCE:**

Contractor shall provide service and preventive maintenance on all equipment as recommended by the manufacturer. Preventive maintenance shall only be performed by a certified service technician that has received the approved training.

## **2.7 MANUALS:**

The Contractor shall provide the Operation and Service manual to the patient and/or caregiver upon delivering any equipment. The manual shall contain information on operation, maintenance and troubleshooting for

clinicians, users, caregivers and service technicians. Contractor shall provide to each facility COR, one (1) copy of the Provider Information and Resource Manual which will include, at a minimum, the following information:

- A copy of all patient educational materials.

- Copies of all documents that will be utilized in performance of the contract.

- Office locations, including address, phone, and fax numbers.

- National Provider Identifier numbers for each location.

- Certificates of National Accreditation

- FDA approval

- Board of Pharmacy License for each state cover under this contract.

- Copy of local and state operating licenses.

- Copy of Employees licenses (required for all RRT/CRT) and training records, for each employee performing under this contract.

- A manual for each type of equipment provided under this contract.

## **2.8 STORAGE CHARGES:**

The Contractor shall provide cylinders to store at each facility without charging the Government. These cylinders shall be used for unusual circumstances (i.e. emergency services or short notice discharges). The Contractor's free loan period of cylinders shall not exceed the term of the contract.

## **2.9 HIGH RISK SMOKERS:**

The facility shall notify the Contractor of all identified High Risk Smokers. The Contractor shall notify the COR or designee of High-Risk Smokers that they identify in the home via encrypted email or fax within one (1) day of the home visit. Contractor notification to each COR or

designee shall consist of contractor's written report/form and shall contain at a minimum Veteran's name and last four (4) numbers of their social security number shall be clearly documented, and what precautions were provided to the patient. High-risk patients are patients who exhibit unsafe clinical or behavioral traits involving oxygen and smoking, such as; attempting to hide their smoking materials or activities from staff, having a history of non-compliance with smoking rules; or smoking in a patient sleeping room or other areas designated as non-smoking areas.

#### **2.10 PATIENT TRAVEL:**

The Contractor shall be responsible for coordinating all services for Veterans who travel within the geographical area covered by this contract. Travel is defined as those occurrences in which the beneficiary stays away from their residence overnight. Patients shall be instructed by the Contractor and VA staff to notify the Contractor and the VA resident facility at least two (2) weeks before intent to travel and four (4) weeks if they are permanently relocating. Patient shall be responsible for coordinating transportation of oxygen/equipment with their respective airlines. The Contractor shall provide Veterans traveling within the geographical area covered by the contract all oxygen services hereunder at the contract rate utilizing contractor furnished equipment only. The Contractor shall provide equipment setup by licensed CRT/RRT at designated travel destinations for Veterans receiving care at a covered geographic area within VISN 15. The Contractor shall invoice the resident Facility monthly for the services rendered under this contract.

When the Veteran is temporarily traveling/relocating, outside of the contracted area, the contractor shall coordinate oxygen requirements if that contractor has a subsidiary office located at the temporary destination. If not, the resident VA facility shall coordinate with the VAMC nearest the veteran's destination to make these arrangements.

When the Veteran is permanently relocating to any area not covered under this contract, the Contractor shall:

Instruct the patient that they are responsible for notifying the current resident facility 30 days prior to the permanent relocation.

Provide the Veteran with up to a 30-day supply (may be extended by the resident facility upon approval by the COR or their designee) of Oxygen/Ventilator equipment and supplies.

Upon arrival at the destination VAMC, any equipment that came with the patient and that is owned by the contractor shall be returned. Any cost incurred in the shipping/handling is the responsibility of the Contractor.

Travel outside the continental United States is not covered under this contract. Veteran shall be responsible for all travel arrangements and for obtaining oxygen services when traveling outside the United States.

#### **2.11 PLAN OF SERVICE:**

The Plan of Service shall be developed by appropriate VA clinical staff at each facility and the Contractor's Respiratory Care Practitioner (RCP) (RCP must be an RRT or CRT) in accordance

with the Plan of Care and the prescription provided by the VA. Prescription changes must be authorized in writing by the VA.

#### HOME OXYGEN & VENTILATOR CONTRACT ROLES AND RESPONSIBILITIES

<b>Scope/Type of Service</b>	<b>VAMC</b>	<b>Contracted Provider</b>
1. Role and responsibilities of the organization and the contracted provider in:		
a. Patient Admission Process	Clinical coordinator or designee reviews, verifies medical need, obtains physician order which is submitted to Prosthetics. VA authorized personnel contacts the contracted oxygen provider.	Contractor will furnish oxygen supplies, equipment, and services to VA beneficiaries for the VA Medical Centers during the period of the contract.

b. Patient Assessment Process, initial and ongoing	Service provided solely by VA staff, Pulmonary/respiratory.	Contractor, as part of the initial delivery protocol, completes the initial equipment assessment and provides education on equipment use and care, safety, VA Patient rights and responsibilities, etc. At the request of the VA Contractor CRT or RRT will consult with VA staff at the medical center for ventilator patients. Ongoing assessment related to equipment use, condition, education, and contractor will report maintenance every 3 months.
c. Plan of Care, development, review and revision	Service provided solely VA staff, pulmonary/respiratory for Home Oxygen Patients.	Contractor, at the request of the VA Staff, will participate in the development for Home Ventilator patients.
d. Plan of Service, equipment, maintenance, refills	Service provided solely by contractor.	The Contractor is responsible for developing, reviewing, and revising the patient's plan of service. The Plan of service will be maintained at the Contractor's local office providing service to the VA beneficiary and will be developed, reviewed, and revised per contract.
e. Scheduling care or services	Home Oxygen Coordinator HOC and/or COR will schedule home visits with the patient in keeping with the most current regulations on Home Oxygen Therapy.	The Contractor is responsible for scheduling services with VA beneficiaries.
f. Discharge Planning Discontinuing therapy	HOC or designee, either by direct notification from physician, death of the beneficiary, or reassessment no longer qualifies patient for therapy, will contact the contracted provider to discontinue therapy.	The Contractor will notify patient/family and arrange time for pick-up of equipment.

g) Travel outside usual service area	The VA will arrange for services for VA beneficiaries during travel status and use a non-contract source. Veteran is responsible for contacting the airlines to arrange for oxygen while on the airplane, if traveling by other public transportation, the patient is responsible for contacting and determining the policies of the transportation provider and conveying this information to the P&SAS. The supplying of oxygen by the VA will be determined dependent upon the transportation provider's policy. It is possible that some forms of public transportation may not be available for patients traveling with oxygen. If travel is by personal vehicle, the patient is responsible for working with the VA to determine the best approach to providing oxygen while traveling.	Will assist the VA in meeting the needs of the patients as requested, once it is determined the best method to be used for travel.
h) Patient Privacy and IT Security	VA will abide by local policy related to patient privacy and record security	The Contractor shall maintain a VA beneficiary account folder in compliance with the Privacy Act and Health Insurance Portability and Accountability Act (HIPAA).  All beneficiary files are subject to review by designated VAMC officials and accreditation surveyors on behalf of the VAMC during accreditation surveys or consultations. At a minimum the VA beneficiary folder will adhere to current The National Accreditation standards for patient record keeping regarding DME and home oxygen.

2. Documentation requirements and time frames	Service provided solely by the contractor	The Contractor will maintain a complete record of services provided to VA beneficiaries to meet current The National Accreditation Standards and as stipulated in the contract. The contractor will maintain this documentation in the VA beneficiary's folder.
3. Monitoring, evaluating, and auditing of contracted care and/or services.	The HOC and/or the COR or designee will make unscheduled on-site contractor and home patient visits on at least a quarterly basis, to monitor the contracted provider's performance under this contract.	The Contractor agrees to make available all records and documentation necessary to perform these reviews.
4. Responsibility of contracted provider to comply with applicable organization policies and personnel qualifications	Policies: the HOC and/or COR will review the Contractor's policies/procedures for compliance with VA policies/procedures and National Accreditation standards.	The Contractor agrees to make available all records and documents necessary per the Contract.  The Contractor shall be responsible for policy and personnel compliance with current National Accreditation standards.
5. Procedures for determining charges and reimbursement	COR or designee reviews monthly bills from the contracted provider for appropriate charges.	The Contractor will submit billing reports monthly as stipulated in this contract.

**2.12 COMMUNITY NUMBERS:**

The Contractor shall provide the local Power Company, Telephone Company, and Fire Department a letter for special consideration within 24 hours of the initial setup and delivery of Home Oxygen Services. This letter shall request that this patient be placed on the priority list to restore or respond in the event of an emergency or failure of any source. The Contractor shall provide this letter to the COR or designee for approval within 30 days of this contract award date. The Contractor shall also provide a magnet no smaller than 3 ½"X 4" with emergency numbers which include police department, fire department, ambulance, doctor and VAMC number to all patients.

**2.13 DELIVERY AND DISCONTINUATION OF EQUIPMENT AND SUPPLIES:**

The Contractor shall be responsible for scheduling appointments with patients within the time requirements listed in section 2.2 to initiate set ups and deliveries. Deliveries shall not be left unattended at the patient's home; physical acceptance of deliveries must take place between the Contractor and either the patient or caregiver. If the patient fails to meet two (2) consecutive appointments, the Contractor shall notify (via phone followed by encrypted email or fax) the COR or their designee within 24 hours of the second missed appointment. The COR or their designee shall contact the patient and a corrective action plan shall be implemented. COR or their designee shall notify (via phone followed by encrypted email or fax) the Contractor of any changes. If the Contractor has not documented valid attempts to contact the patient for set ups and or deliveries, the Government reserves the right to call in a third party and bill the Contractor. The Contractor shall not be paid for those services during the billing period if services are not rendered.

**2.14 DELIVERY SCHEDULE:**

Contractor shall develop a delivery schedule for service, equipment, and supplies with each patient following receipt of the facility order.

**2.15 SERVICE OF EQUIPMENT:**

The Contractor shall furnish, install and service all equipment and supplies ordered under this contract. All disposable supplies shall be new and unused. A label with the Contractor's name and emergency toll free telephone number, where they can be reached 24 hours/7 days a week, shall be affixed to all equipment.

The repair/maintenance of all equipment by the Contractor shall be performed by a competent professional familiar with nature of the equipment involved and fully qualified under the laws of the State in which the services are being rendered. Provision of all equipment shall be consistent with local Fire and Safety Codes in the respective area of the State, and shall conform to National Fire Protection Association (NFPA) 99/101 (Standard for Health Care Facilities/Life Safety Code) NFPA (Oxygen Cylinder Requirements found at <http://www.nfpa.org/assets/files/PDF/ROP/51-F2001-rop.pdf>). The Contractor shall provide a safety/emergency checklist to be completed, then signed by the veteran or his/her caregiver and retained in the patient account folder. The Contractor shall service all equipment at the manufacturer recommended intervals. The Contractor shall conduct a check of the concentrator using a certified oxygen analyzer that is calibrated according to the manufacturer standards.

The Contractor shall change compressor inlet pre-filters and compressor inlet bacteria filters according to the manufacturer recommendations. The Contractor shall test the alarm battery at each maintenance check, change as indicated but at least annually. The Contractor shall track and document maintenance of equipment in accordance with manufacturer specifications and provide these records for review upon request. Contractor shall furnish parts and labor for routine maintenance. The Contractor shall have recall procedures for equipment and supplies.

The Contractor shall not change or alter a patient's oxygen prescription or equipment requirements without a new prescription from the patient's VA provider.

#### **2.16 CONTRACTOR VISITS:**

The Contractor shall visit beneficiaries' residences in performance of this contract by appointment only between the hours of 8:00 AM and 8:00 PM, seven days per week, exceptions shall be made in the cases of emergencies. The Contractor shall be responsible for scheduling appointments for routine deliveries and follow-up, to the patient's home, at least 48 hours prior in advance. On each scheduled setup/delivery the Contractor shall retrain the patient on the use and care of the equipment and supplies. When conducting home visits, the Contractor's representatives shall present a professional appearance and adhere to the following as a minimum:

An ID badge shall be affixed to clothing above the waist with the Company name, employee name, and photograph to the front and clearly visible.

Shoes shall be clean and in good condition (open toe shoes are not acceptable).

Shirts and/or blouses shall be uniform and contain the companies name and/or logo.

Slacks or khakis shall be worn. Blue jeans are not allowed.

Mid-calf dress slacks or trousers shall not be denim, revealing, provocative, spandex or similar tight-fitting fabrics

Socks, stockings, or hosiery shall be worn at all times.

Skirts shall be at or below knee length.

Adhering to the CDC's COVID requirements throughout the pandemic

#### **2.17 EXCESS DELIVERY:**

The VA shall not authorize payment on the delivery of excess supplies or equipment. Patient using portable oxygen are limited on the number of tanks authorized per month, patients will be delivered tanks only to the extent they can be safely stored in accordance with national accreditation standards but not to exceed a 30-day supply. Excess deliveries are those provided without prior authorization by the VA.

#### **2.18 ASSESSMENT REQUIREMENTS:**

The Contractor shall perform an assessment of the patient's home and environment, to include fire safety, at least every 90 days (or if required due to Plan of Service changes) in accordance

with National accreditation standards and maintain documentation of assessments in the individual patient file or folder.

The Contractor shall notify the COR or their designee during the home visit if the Contractor's staff determines that the presence of oxygen in the home presents such a danger that the oxygen should be removed, or in the case of an initial set-up, not placed in the home. Unsafe conditions may include, but are not limited to, fire safety hazards, oxygen safety hazards, patient abuse, or any instance that places the patient, Contractor's staff or others, in immediate danger. The Contractor shall contact the COR or designee by phone during the home visit and furnish (via encrypted email or fax) written documentation of the safety hazard to the COR or their designee within five (5) business days of the incident.

The Contractor shall document and report (via encrypted email or fax) to the COR or their designee, within five (5) business days of the service, any patient who is non-compliant with safety guidelines set forth in the education and orientation material and or whose behavior poses a risk of self-harm or harm to others (i.e. smoking while on oxygen) despite warnings and ongoing educational interventions.

The Contractor shall check the adequacy of the electrical outlets in the patient's home and report unsafe conditions to the COR or their designee via phone call during the home visit. VA is not responsible or liable for any unsafe electrical conditions caused by the Contractor. Any alterations to the veteran's residence shall be the responsibility of the veteran. If the COR or their designee decide that the ordered equipment cannot be safely installed, an alternative oxygen delivery system shall be provided after approval until new prescription can be obtained.

The Contractor shall verify the presence of working smoke alarms and instruct the patient to test all smoke alarms on a monthly basis and include this verification in the documentation of assessment. The

Contractor shall document (via encrypted email or fax) any home where smoke alarms are not present and fully functional, the Contractor shall provide this notification to the COR or designee within five (5) business days of the service.

## **2.19 DISCONTINUATION OF SERVICE:**

The Government shall notify (via encrypted email or fax) the Contractor in the event of an order to discontinue oxygen service to any patient covered under this contract. Payment shall be prorated based upon the notification date of discontinuance of service. The Contractor shall notify the COR or designee within next business day upon discovering a patient is no longer available for services (i.e. deceased, moved out of the service or contract coverage area, and any other situation that the patient would no longer be available for services). Payments shall be prorated based on dates of service provided.

The Contractor shall remove equipment from the patient's residence at the earliest possible time but no later than two (2) business days after notification unless approved by COR or designee. The date and time of equipment pickup shall be coordinated with the patient (if relocated) and/or next of kin and/or significant other. The Contractor shall honor patient's or family's requests to pick-up equipment before or after funerals or family gatherings relative to patient's funeral.

## **2.20 PATIENT EDUCATION REQUIREMENTS:**

The Contractor shall provide education to each veteran at the time of set-up and assess the need for reinforcement during visits. This information is to be presented verbally, in demonstration and material covered shall be in written form to be left with the patient/care giver. The written material shall be in English as well as the foreign language of the patient, in the event the patient does not speak English. All patient education material and documents used in performance of this contract shall be presented in written form with the proposal. The Contractor, as directed by COR shall implement any new or revised educational materials.

## **2.21 WARNINGS:**

The Contractor shall provide educational and/or warning information for patients, their families, or caregivers on the hazards of smoking while oxygen is in use. The warning materials shall be provided upon initial delivery and every 90 days thereafter. The checklist used by vendors for follow-up services shall, at minimum, include:

No Smoking signs provided and posted

Smoke alarm present, veteran instructed to test all smoke alarms monthly, and smoke alarm sounds when tested and provide how to obtain one.

Veteran has been instructed to remove the cannula, shut off the oxygen supply, and wait for the oxygen to dissipate prior to smoking

Veteran, family or cohabitants given educational material regarding the hazards of smoking and using an open flame near oxygen.

Contractor shall check for fire extinguishers and/or provide guidance on how to obtain one.

## **2.22 PATIENT RIGHTS & RESPONSIBILITIES:**

Veterans shall be provided a copy of VA Patient Rights & Responsibilities and any applicable information concerning advance directives during initial setup. The Contractor shall provide documentation that the patient/caregiver has been instructed on how to contact the National Accreditation Office. Documentation will be included in the monthly billing.

## **2.23 FALL PREVENTION:**

The Contractor shall provide patient education or re-education on how to prevent falls in the home related to oxygen equipment and supplies (i.e. oxygen tubing is a fall hazard) on initial set up and every 90 days thereafter. The Contractor shall provide documentation (via encrypted email or fax) if it becomes known to the Contractor that the patient has recently fallen.

## **2.24 PERIODIC PERFORMANCE REVIEW REPORT:**

The Contractor shall provide a written, quarterly report addressing all National Accreditation Standards for improving organizational performance. The Contractor shall submit their Periodic Performance Review for contracted services to the COR via encrypted email or fax within 90 days of the end of base or option year annually. The Contractor shall assess and score each

standard and element of performance that is applicable to the contracted services by entering a self-assessed score. Any noncompliant findings or gaps in service identified on the self-assessment shall require a plan of action to correct as part of the Periodic Performance Review submitted to the COR.

#### **2.25 INCIDENT REPORT:**

The Contractor shall report special incidents found or occurring during a home visit; to include finding patients in need of emergency medical assistance, safety hazards that do not fall into the category of presenting immediate life-threatening danger to the patient or Contractors staff, inability to contact a patient within a reasonable period of time, suspected abuse or neglect of a patient by family members or caregivers and any other incident meeting the Contractors written policy for incident reporting according to National Accreditation standards. All reports, containing confidential patient information, shall be provided to the COR via encrypted email using a standard encryption scheme, or fax within 24 hours. The Contractor will follow all state and local laws in reporting suspected incidents of abuse or neglect. Life threatening situations shall be reported to the proper authorities immediately. The Contractor shall maintain a file containing all incident reports at its place of business.

#### **2.26 CUSTOMER SATISFACTION REPORT:**

The Contractor shall collect satisfaction data from contracted patients on a quarterly basis in accordance with National Accreditation standards. A copy of survey results shall be submitted to COR in Quarterly reports via encrypted email or fax. The quarterly report is due to the COR within 30 days of the conclusion of the quarter. The reporting quarters are as follows: October 1<sup>st</sup> through December 31<sup>st</sup>, January 1<sup>st</sup> through March 31<sup>st</sup>, April 1<sup>st</sup> through June 30<sup>th</sup> and July 1<sup>st</sup> through September 30<sup>th</sup>.

#### **2.27 INFECTION CONTROL REPORT:**

The Contractor shall have a current plan for surveillance, prevention, and control of infection in accordance with National Accreditation standards.

Contractors shall provide a list of names to the COR or designee of all veteran patients exposed to communicable diseases by contracted staff during an identified incubation period. The type of exposure will also be identified.

The Contractor shall collect, trend, and report on data related to the Contractor's Infection Control Program to the COR or designee on a quarterly basis via encrypted email or fax. The quarterly report is due to the COR within 30 days of the conclusion of the quarter.

#### **2.28 PERFORMANCE IMPROVEMENT REPORT:**

The Contractor shall collect, trend, and report on important processes and outcomes data related to patient care and organizational functions to the COR or designee on a quarterly basis for each contract performance period via encrypted email or fax. The quarterly report is due to the COR within 30 days of the conclusion of the quarter.

#### **2.29 CONTRACT USAGE REPORT:**

Contractor shall provide a monthly electronic report detailing contract usage by each VISN 15 Facility. Contractor shall provide to each VISN 15 Facility's COR their respective facility's electronic report NLT the 15th of each month. The electronic report shall include the total units per CLIN and total dollars invoiced by CLIN. Contractor additionally shall submit a composite report of each facility's usage, by facility, to include the total number of unique patients, the total number of units used by contract CLIN, and the total dollars invoiced by CLIN number to the VISN COR monthly, NLT the 15th of each month.

### **2.30 FALL PREVENTION REPORT:**

The Contractor shall collect data on falls and outcomes through conversations with the patient and caregivers on a quarterly basis for each contract performance period. The report shall indicate when the incident occurred, were injuries involved, possible causes of fall (i.e. medication, tripping hazard, and/or other situations), as well as corrective action plans, and patient education conducted. This report should be provided to the COR or designee via encrypted email and fax. The quarterly report is due to the COR within 30 days of the conclusion of the quarter.

### **2.31 HOME VISITS & MONTHLY PHONE FOLLOW-UPS:**

Contractor shall provide a report on compliance with the 30-day phone follow-ups and 90-day home visits requirement for home oxygen patients and the 30-day home visits requirement for patients using Ventilators.

Report shall be inclusive to all Veterans serviced under the contract. Data shall include date of last home visit, due date of next home visit, incomplete home visits including documentation and action plan. Report shall be compiled on a monthly basis and be provided NLT the 15<sup>th</sup> of each month to the COR on an excel spreadsheet, for each facility via encrypted e-mail.

### **2.32 SENTINEL EVENTS:**

The Contractor is required to inform the COR or designee within one (1) business day of a sentinel event (as defined by the National Accreditation standards) that occurs during the performance of this contract that involves VAMC beneficiaries.

### **2.33 REFUSAL OF SUPPLIES AND SERVICES:**

All beneficiaries have the right of refusal of supplies and services. In the event a beneficiary refuses supplies or service or orders the equipment be removed, the Contractor shall comply with the beneficiary's wishes, however the Contractor shall report the specifics of the refusal (via encrypted e-mail or fax) to the COR or designee within 24 hours.

### **2.34 EMERGENCY PATIENT SAFETY REPORTS:**

The Contractor shall provide the following emergent patient safety reports throughout the contract period (initial notification shall be within one business day of when the Contractor is aware of the event or issues) with a follow-up official report within 5 business days unless specified below.

The Contractor shall inform the COR or their designee of a sentinel event (as defined by Joint Commission) via encrypted email or fax that occurs during the performance of this contract that involves the patients serviced under this contract.

All beneficiaries shall have the right of refusal of service. In the event a patient refuses service or orders the equipment to be removed from the home, the Contractor shall notify the COR or designee by phone. The Contractor shall also report the specifics of the refusal to the COR or designee within 5 business days via encrypted e-mail. If the refusal occurs during a home visit, the Contractor's staff shall notify the COR or their designee of the refusal during the home visit.

The Contractor shall report suspected incidents of patient abuse or neglect. Suspected incidents shall be reported to the COR or their designee, as well as to the adult protective agency. The Contractor shall follow all state and local laws in reporting suspected incidents of abuse or neglect.

The Contractor shall report non-compliant behavior with fire safety guidelines set forth in the patient education and re-assessment material and/or behaviors which pose a risk of self-harm or harm to others. Such behavior shall be reported to the COR or designee during the home visit if the Contractor's staff determines the patient's non-compliant behavior, within the home environment, is not improving after education on the fire hazard of smoking when on oxygen treatment is provided. Noncompliant behavior and any follow-up actions (i.e. educations) shall be documented and forwarded to the COR or designee within 5 business days via encrypted e-mail.

### **3. EQUIPMENT REQUIREMENTS:**

#### **3.1 SUPPLIES:**

In accordance with the prescription received from the VAMC, the Contractor shall provide the patient with the following disposable supplies:

Oxygen cannula (including colored cannula/tubing) which is indicated for change at a minimum of every two (2) weeks with a supply in reserve at all times until the contractor's next scheduled visit.

Connectors, swivel connectors, washers, wrenches, oxygen nipple adaptors (Christmas trees) provided as needed.

All masks types, to include for low flow patients that cannot tolerate a cannula (when prescribed) for change every two (2) weeks with a 30-day supply in reserve at all times until the contractor's next scheduled visit.

25-50 ft. of oxygen connecting tubing shall be replaced on a 90-day supply with an equivalent section of tubing in reserve at all times until contractor next scheduled visit.

Trachea collar and accessories (i.e. tubing, large volume nebulizer, and any other supplies/equipment that is needed to carry out physician orders) allowing for change every three (3) days with a supply in reserve at all times until contractors next scheduled visit.

Humidifiers (both disposable and reusable) and water traps when deemed necessary. The number of humidifiers shall be sufficient to ensure that they are not depleted between re-supply visits. The number of traps shall be based on the patient's flow rate.

Safety holder(s), storage rack(s), and/or an e-cylinder cart shall be provided for all Veterans with a prescription for tanks (cylinders) and for use with the back-up system.

Bi-Directional thermal fuses; two (2) per each oxygen system. Include with the bi-directional thermal fuse will be installation and patient education of the bi-directional thermal fuses on all oxygen systems. All tubing/supplies needed to ensure the bi-directional thermal fuses are located as close as possible to the patient and oxygen source on all oxygen systems.

### **3.2 OXYGEN CONCENTRATORS:**

The oxygen concentrators shall be Underwriter Laboratory (UL) approved and shall at a minimum meet the following specifications:

The oxygen concentrator shall be electrically powered (120 volts)

The oxygen concentrator shall contain a battery-operated audible alarm to indicate a power failure

The oxygen concentrator shall not perform below the manufacturer's specification

The oxygen concentrator shall contain an hour meter and oxygen concentration indicator (OCI)

The oxygen concentrator shall be grounded internally or plug into a three-prong wall outlet appropriate for the patient's home (outlet adaptors are not acceptable).

Portable oxygen concentrators shall be Federal Aviation Administration (FAA) approved.

### **3.3 1-5 LPM (LITERS PER MINUTE) CONCENTRATOR:**

Concentrators shall meet the manufacturer's specifications based on patient needs:

Shall provide a minimum of 95% ( $\pm 2$ ) oxygen concentration at a regulated flow of 2 liters per minute; a minimum of 92% ( $\pm 2$ ) concentration at a regulated follow of 3 liters per minute; a minimum of 90% ( $\pm 2$ ) concentration at a regulated flow of 4 liters per minute; a minimum of 90% ( $\pm 2$ ) concentrations at a regulated flow of 5 liters per minute. 5% of the concentrators must be capable of providing oxygen at a liter flow up to 6 liters per minute with a minimum of 90% ( $\pm 2$ ) concentration.

Operate on a conventional 110/120 and be UL Listed.

Have thermal protector for compressor.

Must be double insulated and have two prong plugs. Outlet adapters are not acceptable.

Have pressure compensated flow meter.

Visual and audible alarms for the following failures required: Power Failure, O<sub>2</sub> Concentration, and Irregular Pressure.

Be mounted on wheels for easy movement by patient/caregiver.

Shall meet Food and Drug Administration (FDA) Quality Systems Regulations (QSR) standards.

Sound level of 60 decibel (db) or less.

Concentrators shall have oxygen sensing devices.

**3.4 TEN (10) LPM CONCENTRATOR:** Electrical device that employs sieves and physical separation to deliver 90% or higher concentration of oxygen at flow rates up to 10LPM.

Concentrators shall meet the following specifications.

Visual and audible Alarms for the following failures are required: Power Failure, O<sub>2</sub> Concentration and Irregular Pressure

Be double insulated and have two prong plug. Outlet adapters are not acceptable.

Be mounted on wheels for easy movement by patient/caregiver.

Shall meet Food and Drug Administration (FDA) Quality Systems Regulations (QSR) standards

Sound level of 60 decibel (db) or less.

Concentrators shall have oxygen sensing devices

### **3.5 PNEUMATIC POWERED OXYGEN CONSERVING DEVICES:**

The Oxygen Conserving Device shall be battery-powered or pneumatic powered device that limits oxygen flow to inspiration only and thereby increase the duration of the supply (latest technology that meets the prescription requirements). Pneumatic units shall appropriately meet the following specifications based on patient needs:

Pulse dose from 1 to 6 or higher

Have easy to read content gauge

Conservation ratio of 5:1 or higher

Have continuous flow setting

Notes: Conserving ratios are based on a breath rate of 20 breaths per minute (BPM).

Weight less than 30 oz.

### **3.6 BATTERY-POWERED OXYGEN CONSERVING DEVICES:**

The Oxygen Conserving Device shall be battery-powered or pneumatic powered device that limits oxygen flow to inspiration only and thereby increase the duration of the supply (latest

technology that meets the prescription requirements). Battery units shall approximately meet the following specifications based on patient needs:

Pulse dose from 1 to 6 or higher

Have easy to read content gauge

Conservation ratio of 5:1 or higher

Bolus delivered per breath of at least 10cc per setting

Have continuous flow setting

Weight less than 30 oz.

### **3.7 LIQUID OXYGEN SYSTEM:**

The Liquid oxygen system consists of large reservoir and portable unit that is filled from the reservoir.

Standard reservoir holds 110 pounds of liquid oxygen and portable unit holds 3-5 pounds of liquid oxygen. The standard reservoir weighs 65 pounds full and the portable unit weighs 6-8 pounds full (to include high flow systems).

Reservoir shall have condensation collection tray.

Shall have quick release valve for easy refilling.

Flow meter range of 1 to 6 LPM.

Portable must come with shoulder strap.

Shall have electrical or mechanical content indicators.

### **3.8 LIQUID SYSTEM WITH CONSERVING DEVICE:**

Liquid system with conserving device consists of large reservoir and portable unit that is filled from the reservoir. Standard reservoir holds 110 pounds of liquid oxygen and portable unit holds 0.9 pounds of liquid oxygen. The standard reservoir weighs 165 pounds full and the portable unit weighs 4 pounds full.

Reservoir shall have condensation collection tray.

Shall have quick release valve for easy refilling.

Shall have flow settings of 1-6.

Portable shall come with shoulder strap and belt loop holder.

Shall have electrical or mechanical content indicators.

### **3.9 PORTABLE CONCENTRATOR:**

Portable Concentrator shall provide a minimum 90% (+/-3%) oxygen concentration at all flow settings. and shall meet the following specifications.

The unit must weigh 20 pounds or less.

Shall have visual and audible alarms to include loss of power/hot power cartridge, low power cartridge/warm power cartridge, low oxygen output, O2 flow outside normal limits, no inspiration detected in pulse mode, unit malfunction.

AC/DC capability.

FAA approved for flight

12 hours battery life,

Continuous and pulse doses (40 ml or greater) flow option.

### **3.10 HUMIDIFIER WITH INTEGRATED FLOW GENERATOR:**

A system that features a humidifier with integrated flow source that comfortably delivers high flows of air/oxygen mixtures to spontaneously breathing patients through a nasal cannula or tracheostomy adapter.

System must have at a minimum:

Heated breathing tube

Variety of interfaces

Designed for simple set-up, use and cleaning

Adjustable temperature and flow settings

31, 34 and 37 °C

Integrated flow generator delivers a wide flow range (2 – 60 L/Min)

No high pressure (50 psi) air or oxygen required

Capability to bleed in supplemental oxygen

### **3.11 BACKUP SYSTEM:**

Veterans with a prescription for an oxygen concentrator shall be provided with a backup system consisting of a compressed gas source and regulator with stand, humidifiers, and cannulas/masks for use during the event of a power failure or mechanical problem with electrical home oxygen equipment. The Contractor shall provide documentation (via encrypted email and fax) if the patient declines the oxygen back-up system, to include the reason for declining backup system and the Veterans signature. Notification (via encrypted email and fax) shall be provided to COR or designee within five (5) business days of the veteran declining any prescribed equipment or contractor's inability to deliver the prescribed equipment.

**3.12 UNDERWRITERS LABORATORIES (UL) APPROVED EQUIPMENT:**

All electrically powered equipment used in performance of this contract shall be UL approved and in compliance.

**3.13 CONTRACTOR-FURNISHED EQUIPMENT:**

Contractor-furnished equipment shall be maintained per manufacturer's specifications. Contractor-owned equipment shall be repaired or replaced at no cost to the Government. The VAMC shall not be held liable for normal wear and tear of equipment. The VA shall not pay for rental on equipment used by an unauthorized individual during the performance of this contract or for equipment that is lost. Accordingly, this is considered to be the cost of doing business and is the requirement of the Contractor to pay for this type of equipment.

**CYLINDERS:**

The Contractor shall furnish aluminum cylinders that are in accordance with the Interstate Commerce Commission Regulations, and transport cylinders in accordance with Code of Federal Regulations (CFR) Part 49, U.S. Department of Transportation. Any H or M size oxygen cylinder furnished by the Contractor shall have H or M size oxygen cylinder safety stand at no additional charge to the Government. This stand shall remain contractor owned. All demurrage for cylinders will be included in the monthly fee for the authorized system.

**3.14 VENTILATORS:**

The Contractor shall furnish ventilators as prescribed by a licensed and privileged VA physician/provider and will meet the following specifications:

<b>Controls</b>	
Circuit types	Active with PAP, passive
Ventilation types	Volume control, pressure control, bilevel
Volume modes	AC, SIMV (w/PS), CV
Pressure modes	CPAP, S, S/T, T, PC-SIMV (w/PS)
IPAP	4 – 50 cm H <sub>2</sub> O
EPAP	0 – 25 cm H <sub>2</sub> O for active circuits
	4 – 25 cm H <sub>2</sub> O for passive circuits

CPAP	4 – 20 cm H <sub>2</sub> O for passive circuits
	0 – 25 cm H <sub>2</sub> O for active circuits
PEEP	4 – 25 cm H <sub>2</sub> O for passive circuits
Pressure support differential	0 – 30 cm H <sub>2</sub> O
<b>Measured patient parameters</b>	
Tidal volume	50 – 2000 ml
Breath rate	0 – 60 for AC mode
	1 – 60 for all other modes
Inspiratory time	0.3 – 5.0 secs
Rise time	1 – 6
Ramp start pressure	0 – 25 cm H <sub>2</sub> O for active circuits
	4 – 25 cm H <sub>2</sub> O for passive circuits
	4 – 19 cm H <sub>2</sub> O in CPAP mode
Ramp length	Off, 5 – 45 minutes
Flex	Off, 1 – 3
Flow trigger sensitivity	1 – 9 l/min
Flow cycle	10% – 90%
Apnea rate	4 – 60 BPM
Tidal volume	0 – 2000 ml
Minute ventilation	0 – 99 l/min
Leak rate	0 – 200 l/min
Respiratory rate	0 – 80 BPM
Peak inspiratory flow	0 – 200 l/min
Peak inspiratory pressure	0 – 99 cm H <sub>2</sub> O
Mean airway pressure	0 – 99 cm H <sub>2</sub> O
Percentage patient triggered breaths	0 – 100%

I:E ratio	9.9:1 to 1:9.9
<b>Alarms</b>	
Circuit disconnect	Off, 10 – 60 secs
Apnea	Off, 10 – 60 secs
High tidal volume	Off, 50 – 2000 ml
Low tidal volume	Off, 50 – 2000 ml
High minute ventilation	Off, .1 – 99 l/min
Low minute ventilation	Off, .1 – 99 l/min
High respiratory rate	Off, 4 – 80 BPM
Low respiratory rate	Off, 4 – 80 BPM

Monthly rental will include a back-up ventilator. Before a final decision shall be made regarding the installation of a ventilator system in a patient's home, the Contractor's CRT/RRT shall make a visit to assess equipment functionality and the feasibility of supporting mechanical ventilation in the home. The home assessment shall include a home safety inspection as outlined under 2.3 of this contract. Monthly ventilator assessments shall include the following:

Ventilator settings/mode

Ventilator alarms

Actual high and low alarm parameters

Actual tidal volume and rate

Compliance

Patient pressure

Breath rate – ventilator

Breath rate – Patient

Tidal volume

Breathing effort

Inspiratory time

Oxygen concentration (fractional inspired oxygen (FiO<sub>2</sub>) or LPM), if necessary

Positive End Expiratory Pressure (PEEP), if applicable

Pressure Support, if applicable

The Contractor shall provide documentation (via encrypted email or fax) to the ordering facility's COR showing that they trained the patient or caregiver on how to check the battery.

The Contractor shall provide the patient and/or caregiver with enough supplies to ensure that the ventilator tubing/circuits are changed every seventh (7<sup>th</sup>) day or as per manufacturer's guidelines with two (2) in reserves at all times.

The Contractor shall provide the patient and family/care giver with training at the Medical Center prior to discharge upon the COR or designee's request.

### **3.15 VENTILATOR AND AIRWAY SUPPLIES:**

**The Contractor shall provide, as part of the monthly rental, supplies to manage the ventilator and airway which will include:**

All ventilator filters

All adapters for circuits

All filters for circuits

Heated Humidifiers.

Auto-fill Humidifier chambers, with refillable water bag, which will be changed every 7<sup>th</sup> day.

Water traps

Distilled saline water or sterile water

Heat Moisture Exchange (HME)

Manual resuscitation bag

### **3.16 AEROSOL COMPRESSOR SYSTEM:**

Compressor shall provide 10-50 psi continuous air output per minute.

Must operate on a conventional 110/120-volt capacity and must be UL listed.

Includes all maintenance and service, as required by the manufacturer.

Offeror shall indicate the manufactures and models being offered.

Includes all related items and services required for the normal operation, including but not limited to: service calls, tracheotomy collar, corrugated tubing, extension tubing, nebulizer/humidifier, mask, etc.

### **3.17 HEATED INTEGRATED COMPRESSOR SYSTEM:**

Compressor shall provide a minimum of 13 lpm @ 50 psi

Operating temperature shall be 50°F. to 104°F. (10°C. to 40°C.).

Must operate on a conventional 110/120-volt capacity and must be UL listed.

Includes all maintenance and service, as required by the manufacturer.

Offeror shall indicate the manufactures and models being offered.

Includes all related items and services required for the normal operation, including but not limited to service calls, tracheotomy collar, corrugated tubing, extension tubing, nebulizer/humidifier, mask, etc.

### **3.18 STOCK STORAGE:**

The Contractor shall, upon request by the facility, stock portable set ups at the VA to send home with patients. The Contractor shall, upon request by the facility, stock replacement cylinders, regulators, and oxygen conserving devices for patients who deplete their portable units during appointments. The Contractor shall coordinate with the Prosthetics and Sensory Aids Service and Respiratory Therapy Services at each facility, for accountability and payment. As authorized, the Contractor shall deliver a portable set-up or refill for patient discharge at any local facility.

## **4. REQUIREMENTS AND STANDARDS:**

**4.1 SITE VISITS:** Periodic, unscheduled on-site contractor, home oxygen patient, and ventilator patient visits shall be made by COR or designee to monitor the Contractor's performance under this contract. The Contractor shall make available (via encrypted email or fax) all records and documentation necessary during the monitoring visits to the COR or designee. Other visits shall be made by National Accreditation surveyors and the Home Oxygen Coordinator for each facility.

### **4.2 QUALIFICATIONS OF CONTRACTOR:**

Each branch office or distribution point shall meet or exceed National Accreditation standards. Any and all documentation related to the patient record during the duration of this contract is the property of the VA and shall be returned to the facility's COR by the Contractor upon the termination or non- renewal of this contract.

The Contractor's CRT/RRT/Certified Technicians staff shall have at least two (2) years of experience in successfully administering basic home oxygen and ventilator services to adult and geriatric patients. The Contractor shall be responsible for coordinating, supervising, and evaluating the services provided.

Contractor shall adhere to the provision of Public Law 104-191, Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the National Standards to Protect the Privacy and Security of Protected Health Information (PHI).

The Contractor shall internally maintain a patient account folder holding all documentation related to the supplies and services provided in compliance with the Privacy Act and Health Insurance Portability and Accountability Act (HIPAA). All patient files are subject to review by designated VAMC officials and accreditation surveyors on behalf of the VAMC during

accreditation surveys or consultation. At a minimum the patient folder shall adhere to current National Accreditation standards for patient record keeping.

The Contractor shall develop, maintain, and make available for review, personnel folders for all employees performing under this contract.

The Contractor shall provide initial and annual documentation of employee orientation, ongoing employee education, and ongoing assessment of employee competency for all employees involved with the delivery/recovery of equipment covered under this contract according to Joint Commission Standards. The Contractor shall provide copies of personnel files to the facility COR or designee within 14 working days of the date the contract is awarded. Files for all newly hired staff shall be forwarded to the Contracting Officer and the COR or designee within 14 working days of the date of hire.

The Contractor shall provide COR or their designee with a list of all employees currently competent to perform delivery/recovery and patient education services at the time the contract is awarded. COR or their designee shall inspect employee files at the time of the inspection of Contractor premises and vehicles. Employee files (or copies) shall be maintained at the local contract site.

The Contractor shall educate, evaluate, and document employee education in strict accordance with current Joint Commission accreditation standards.

Only employees that have been properly trained and who have demonstrated competency shall perform equipment deliveries, recoveries, and patient education on the equipment.

Contract shall ensure that all staff performing under this contract receive VA privacy training before commencing work and annually thereafter.

#### **4.3 CONFORMITY TO REGULATIONS:**

The Contractor's employees shall conform to all regulations, Federal, State and local, governing the performance of contracted services in each state in which performance occurs. VAMC facilities have been designated NO SMOKING areas in their entirety. Individuals found in violation of this no smoking policy shall be subject to a federal citation for disregarding posted safety rules and regulations in accordance with the local VAMC policy. Furthermore, Contractor shall be directed to stop work. Contractor shall notify all of his/her employees and/or sub-contractors of this strict enforcement policy.

#### **4.4 TRANSITION PERIOD:**

At the end of the contract period a transition period shall be required during which the incumbent Contractor shall continue to provide home oxygen supplies and services at the existing contract prices while the incoming Contractor is transitioning over.

**Phase In:** The incoming Contractor shall replace all appropriate VA authorized (incumbent Contractor-owned) equipment presently located in residences of beneficiaries with the incoming Contractor's equipment as soon as possible after award, but not to exceed ninety (90) days from date of contract award. Incoming Contractor shall coordinate with the incumbent contractor during the transition period relating to the removal of the incumbent Contractor's

equipment from the patient residences. The change shall include delivery, setup, and instruction as further specified herein, and shall be accomplished without disruption in supplies and services to the veteran or the VA. Transition date of each beneficiary shall be noted, to include the transfer of responsibility regarding Government Furnished Equipment (if applicable). The billing period shall begin on the noted transition date. Payments shall be assessed based on the providers established rate and prorated from setup date. Prorated monthly rates are based on a 30-day month.

**Phase Out:** In accordance with FAR 52.237-3 Continuity of Services, the Contractor realizes that the services being provided under this contract are vital and must be continued uninterrupted. The outgoing Contractor shall not remove any equipment from the beneficiary's residence until replacement equipment has been installed. The outgoing Contractor shall coordinate transition of equipment / services with the incoming Contractor as soon as possible, but not to exceed ninety (90) days from date of contract expiration. If additional transition time is required beyond contract expiration, the contractor shall be paid on a pro-rated basis at the prices established for the last period of performance. Prorated monthly rates are based on a 30-day month.

#### **4.5 SAFETY REQUIREMENTS:**

In the performance of this contract, the Contractor shall take such safety precautions as the Contracting Officer, or the COR determines to be reasonably necessary to protect the lives and health of all persons affected by this contract. The Contracting Officer or COR shall notify the Contractor of any noncompliance with the foregoing provisions and the action to be taken. The Contractor shall, after receipt of such notice, immediately correct the conditions to which attention has been directed. Such notice, when served on the Contractor or his/her representative at the site of the work, shall be followed in writing within one business day. If the Contractor fails or refuses to comply with these safety requirements, the Contracting Officer may (as stated in FAR 52.212- 4(m)) issue an order terminating all or any part of the work.

#### **4.6 VEHICLES:**

The vehicles used in the performance of this contract shall be licensed and meet the minimum requirements as mandated by each state/county/city in which performance occurs. All vehicles shall be clearly identified with the contractor's name.

#### **4.7 EVIDENCE OF COVERAGE:**

Before commencing work under the contract, the Contractor shall furnish the Contracting Officer with a certification from his/her insurance companies indicating the coverages for this contract have been obtained and that it may not be changed or canceled without written notice within thirty (30) days to the Contracting Officer.

#### **4.8 INFECTION CONTROL REQUIREMENTS:**

Contractor shall provide a current plan for surveillance, prevention, and control of infection at time of proposal submission. The plan shall meet or exceed current Joint Commission standards.

Contractor shall provide a list of names to the COR or designee of all patients exposed to communicable diseases by contracted staff during an identified incubation period within 24 hours of identifying this exposure. The type of exposure shall also be identified in the notification.

The COR or their designee shall consult with VA infection control staff regarding the need to contact exposed patients and/or complete any needed medical follow-up.

Standard precautions shall be used to prevent exposure to blood borne diseases when handling all contaminated equipment/items. Gloves shall be worn when handling items soiled with blood and/or body fluids. Hands shall be washed before and after visiting each patient and when gloves are removed. Contaminated equipment shall be separated from clean equipment. The Contractor's warehouse shall have clear demarcation between contaminated and clean storage areas. Delivery vehicles, if dirty and clean equipment is transported in the same vehicle, shall have a clearly demarcated area for clean and dirty items. Contractor's procedure for handling the pickup of dirty equipment shall meet or exceed Joint Commission Standards.

#### **4.9 STANDARDS AND GUIDELINES REFERENCE:**

American Association for Respiratory Care ([www.aarc.org](http://www.aarc.org))

American Society for Testing Materials (ASTM) minimum standards specification for electrically powered home care portable ventilators ([www.astm.org](http://www.astm.org))

Association for the Advancement of Medical Instrumentation (AAMI) ([www.aami.org](http://www.aami.org))

Joint Commission Standard for Home Care, current year standard. ([www.JointCommission.org](http://www.JointCommission.org))

Appropriate state board for licensed professionals

The American Respiratory Care Foundations for Respiratory Equipment Used in the Home

VHA Handbook 1173.13 Home Respiratory Care Program  
[http://www1.va.gov/vhapublications/ViewPublication.asp?pub\\_ID=349](http://www1.va.gov/vhapublications/ViewPublication.asp?pub_ID=349)

#### **4.10 CONTRACTING OFFICER'S REPRESENTATIVE:**

The Contracting Officer reserves the right to designate a representative to act for him/her in furnishing technical guidance and advice or generally evaluate the work to be performed under this contract. The VISN 15 Prosthetic Representative, or delegate, and delegate(s) from each facility shall be designated as the Contracting Officer's Representatives (COR). Such designation shall be in writing and shall define the scope and limitations of the designee's authority. A copy of the designation shall be furnished to the Contractor after notice of award.

The Contracting Officer may designate individuals as ordering officers with the authority to execute orders against an awarded indefinite delivery vehicle. Ordering officer authority limitations shall be established through individual appointment letters.

#### **5.1 PAYMENTS AND INVOICING**

Task orders will be issued, either monthly, quarterly, or by fiscal year for each medical center receiving services.

VA will review the invoice against its record. VA will notify the contractor of invoice discrepancies. Upon the resolution of the discrepancies, VA will approve the invoice and make payment to the contractor.

It shall be considered fraudulent for the contractor to bill other third-party insurance sources for supplies and services rendered to veteran enrollees under this contract. The contractor shall not submit bills to any other State, Federal, or third-party agency for reimbursement during the period the beneficiary is covered under this contract.

Invoices will be paid within 30 days upon final acceptance by the government. Each invoice must include Contract number. One monthly invoice shall be submitted to the authorizing facility, in arrears by the 10<sup>th</sup> working day of the subsequent month, for the total cost of supplies and services for the previous month. All billings will be made according to calendar month. The invoice shall include the total number of patients, total amount due and the contract number. The invoice shall be accompanied by an easily read, alphabetical listing of each veteran, with each supply or service itemized and shall contain the following information.

Veteran's last name, first name and last 4 digits of the social security number

Description of supplies and/or services

Dates of delivery.

CLIN number as shown on the schedule.

Healthcare Common Procedure Code (HCPCS) as shown on the schedule.

Cylinder sizes (where applicable)

Quantities

Line item cost

Total cost.

Copies of all documentation related to the provision of supplies and services under this contract will also be provided, to include but not limited to instruction, training, safety inspection, rights and responsibilities, etc. Each document will include the patients' names and last 4 digits of the social security number. When patients are added during the month the period of service/rental for that particular patient will begin the day the patient is actually set up. Rental entitlement will be terminated 48 hours after the contractor is notified to pick up the equipment.

A separate listing of all patients set up during the month, to include the patient's name, last 4 of the SSN and date of set up, will be included with the invoice.

A separate listing of all patients picked up during the month, to include the patient's name, last 4 of the SSN, reason for pick up and date of pick up.

A separate list of all patients with expired prescriptions will be included with the invoice.

The contractor shall prorate the first month from the date of set-up and the last month shall also be prorated to the date of discontinuation of service, not to exceed 48 hours after notification. In cases where the oxygen is picked up or switched-out within 30 days of the set-up, the contractor will be paid for at least one month of rental and/or service no matter how briefly the equipment was required.

**B.3 PRICE/COST SCHEDULE – See Attached Spreadsheet.**

## SECTION C - CONTRACT CLAUSES

### C.1 52.212-4 CONTRACT TERMS AND CONDITIONS—COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES (NOV 2021)

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

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

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

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

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

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

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

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

(g) Invoice.

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

(i) Name and address of the Contractor;

(ii) Invoice date and number;

(iii) Contract number, line item number and, if applicable, the order number;

(iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;

(v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;

(vi) Terms of any discount for prompt payment offered;

(vii) Name and address of official to whom payment is to be sent;

(viii) Name, title, and phone number of person to notify in event of defective invoice; and

(ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(x) Electronic funds transfer (EFT) banking information.

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

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

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

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

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

(i) Payment.—

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

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

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

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

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

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

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

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

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

(D) Contractor point of contact.

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

(6) *Interest.*

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

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

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

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

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

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

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

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

(A) The date fixed under this contract.

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

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

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

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

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

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

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

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

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

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

(l) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to

comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

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

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

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

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

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

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

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

(1) The schedule of supplies/services.

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

(3) The clause at 52.212-5.

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

(5) Solicitation provisions if this is a solicitation.

- (6) Other paragraphs of this clause.
- (7) The Standard Form 1449.
- (8) Other documents, exhibits, and attachments
- (9) The specification.
- (t) [Reserved]
- (u) *Unauthorized Obligations.*

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

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

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

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

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

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

(End of Clause)

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

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

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

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

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

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

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

(End of Clause)

<u>FAR Number</u>	<u>Title</u>	<u>Date</u>
52.203-17	CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS	JUN 2020
52.204-4	PRINTED OR COPIED DOUBLE-SIDED ON POSTCONSUMER FIBER CONTENT PAPER	MAY 2011
52.204-13	SYSTEM FOR AWARD MANAGEMENT MAINTENANCE	OCT 2018
52.204-18	COMMERCIAL AND GOVERNMENT ENTITY CODE MAINTENANCE	AUG 2020
52.232-40	PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS	NOV 2021

## C.3 52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES (MAY 2022)

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

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

(2) 52.204–23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (NOV 2021) (Section 1634 of Pub. L. 115–91).

(3) 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (NOV 2021) (Section 889(a)(1)(A) of Pub. L. 115–232).

(4) 52.209-10, Prohibition on Contracting with Inverted Domestic Corporations (NOV 2015).

(5) 52.233-3, Protest After Award (Aug 1996) (31 U.S.C. 3553).

(6) 52.233-4, Applicable Law for Breach of Contract Claim (Oct 2004) (Public Laws 108-77 and 108-78 (19 U.S.C. 3805 note)).

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

(1) 52.203–6, Restrictions on Subcontractor Sales to the Government (JUN 2020), with Alternate I (NOV 2021) (41 U.S.C. 4704 and 10 U.S.C. 2402).

(2) 52.203–13, Contractor Code of Business Ethics and Conduct (NOV 2021) (41 U.S.C. 3509).

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

(4) 52.204–10, Reporting Executive Compensation and First-Tier Subcontract Awards (JUN 2020) (Pub. L. 109–282) (31 U.S.C. 6101 note).

(5) [Reserved]

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

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

(8) 52.209–6, Protecting the Government’s Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. (NOV 2021) (31 U.S.C. 6101 note).

(9) 52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters (Oct 2018) (41 U.S.C. 2313).

(10) [Reserved]

(11) 52.219–3, Notice of HUBZone Set-Aside or Sole-Source Award (SEP 2021) (15 U.S.C. 657a).

(12) 52.219–4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (SEP 2021) (if the offeror elects to waive the preference, it shall so indicate in its offer) (15 U.S.C. 657a).

(13) [Reserved]

(14)(i) 52.219-6, Notice of Total Small Business Set-Aside (NOV 2020) (15 U.S.C. 644).

(ii) Alternate I (MAR 2020) of 52.219-6.

(15)(i) 52.219-7, Notice of Partial Small Business Set-Aside (NOV 2020) (15 U.S.C. 644).

(ii) Alternate I (MAR 2020) of 52.219-7.

(16) 52.219-8, Utilization of Small Business Concerns (Oct 2018) (15 U.S.C. 637(d)(2) and (3)).

(17)(i) 52.219–9, Small Business Subcontracting Plan (NOV 2021) (15 U.S.C. 637(d)(4)).

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

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

(iv) Alternate III (JUN 2020) of 52.219–9.

(v) Alternate IV (SEP 2021) of 52.219–9.

(18)(i) 52.219-13, Notice of Set-Aside of Orders (MAR 2020) (15 U.S.C. 644(r)).

(ii) Alternate I (MAR 2020) of 52.219-13.

(19) 52.219–14, Limitations on Subcontracting (SEP 2021) (15 U.S.C. 657s).

(20) 52.219-16, Liquidated Damages—Subcontracting Plan (SEP 2021) (15 U.S.C. 637(d)(4)(F)(i)).

(21) 52.219–27, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (SEP 2021) (15 U.S.C. 657f).

(22) (i) 52.219–28, Post-Award Small Business Program Rerepresentation (SEP 2021) (15 U.S.C. 632(a)(2)).

(ii) Alternate I (MAR 2020) of 52.219–28.

(23) 52.219–29, Notice of Set-Aside for, or Sole-Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns (SEP 2021) (15 U.S.C. 637(m)).

(24) 52.219–30, Notice of Set-Aside for, or Sole-Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (SEP 2021) (15 U.S.C. 637(m)).

(25) 52.219-32, Orders Issued Directly Under Small Business Reserves (MAR 2020) (15 U.S.C. 644(r)).

(26) (26) 52.219–33, Nonmanufacturer Rule (SEP 2021) (15 U.S.C. 657s).

(27) 52.222-3, Convict Labor (June 2003) (E.O. 11755).

(28) 52.222–19, Child Labor—Cooperation with Authorities and Remedies (JAN 2022) (E.O. 13126).

(29) 52.222-21, Prohibition of Segregated Facilities (APR 2015).

(30)(i) 52.222–26, Equal Opportunity (SEP 2016) (E.O. 11246).

(ii) Alternate I (FEB 1999) of 52.222-26.

(31)(i) 52.222–35, Equal Opportunity for Veterans (JUN 2020) (38 U.S.C. 4212).

(ii) Alternate I (JULY 2014) of 52.222-35.

(32)(i) 52.222–36, Equal Opportunity for Workers with Disabilities (JUN 2020) (29 U.S.C. 793).

(ii) Alternate I (JULY 2014) of 52.222-36.

(33) 52.222–37, Employment Reports on Veterans (JUN 2020) (38 U.S.C. 4212).

(34) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496).

(35)(i) 52.222-50, Combating Trafficking in Persons (NOV 2021) (22 U.S.C. chapter 78 and E.O. 13627).

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

(36) 52.222-54, Employment Eligibility Verification (MAY 2022). (E. O. 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial products or commercial services as prescribed in FAR 22.1803.)

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

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

(38) 52.223-11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (JUN 2016) (E.O. 13693).

(39) 52.223-12, Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (JUN 2016) (E.O. 13693).

(40)(i) 52.223-13, Acquisition of EPEAT®-Registered Imaging Equipment (JUN 2014) (E.O.s 13423 and 13514).

(ii) Alternate I (OCT 2015) of 52.223-13.

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

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

(42) 52.223-15, Energy Efficiency in Energy-Consuming Products (MAY 2020) (42 U.S.C. 8259b).

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

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

(44) 52.223–18, Encouraging Contractor Policies to Ban Text Messaging While Driving (JUN 2020) (E.O. 13513).

(45) 52.223-20, Aerosols (JUN 2016) (E.O. 13693).

(46) 52.223-21, Foams (JUN 2016) (E.O. 13693).

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

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

(48) 52.225-1, Buy American—Supplies (NOV 2021) (41 U.S.C. chapter 83).

(49)(i) 52.225-3, Buy American—Free Trade Agreements—Israeli Trade Act (NOV 2021) (41 U.S.C. chapter 83, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, 19 U.S.C. 3805 note, 19 U.S.C. 4001 note, Pub. L. 103-182, 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, 110-138, 112-41, 112-42, and 112-43).

(ii) Alternate I (JAN 2021) of 52.225-3.

(iii) Alternate II (JAN 2021) of 52.225-3.

(iv) Alternate III (JAN 2021) of 52.225-3.

(50) 52.225–5, Trade Agreements (OCT 2019) (19 U.S.C. 2501, et seq., 19 U.S.C. 3301 note).

(51) 52.225-13, Restrictions on Certain Foreign Purchases (FEB 2021) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

(52) 52.225–26, Contractors Performing Private Security Functions Outside the United States (OCT 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).

(53) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (Nov 2007) (42 U.S.C. 5150).

(54) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov 2007) (42 U.S.C. 5150).

(55) 52.229–12, Tax on Certain Foreign Procurements (FEB 2021).

(56) 52.232-29, Terms for Financing of Purchases of Commercial Products and Commercial Services (NOV 2021) (41 U.S.C. 4505, 10 U.S.C. 2307(f)).

(57) 52.232-30, Installment Payments for Commercial Products and Commercial Services (NOV 2021) (41 U.S.C. 4505, 10 U.S.C. 2307(f)).

(58) 52.232-33, Payment by Electronic Funds Transfer—System for Award Management (Oct 2018) (31 U.S.C. 3332).

(59) 52.232-34, Payment by Electronic Funds Transfer—Other than System for Award Management (Jul 2013) (31 U.S.C. 3332).

(60) 52.232-36, Payment by Third Party (MAY 2014) (31 U.S.C. 3332).

(61) 52.239-1, Privacy or Security Safeguards (AUG 1996) (5 U.S.C. 552a).

(62) 52.242-5, Payments to Small Business Subcontractors (JAN 2017)(15 U.S.C. 637(d)(13)).

(63)(i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (NOV 2021) (46 U.S.C. 55305 and 10 U.S.C. 2631).

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

(iii) Alternate II (NOV 2021) of 52.247-64.

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

(1) 52.222-41, Service Contract Labor Standards (AUG 2018) (41 U.S.C. chapter 67).

(2) 52.222-42, Statement of Equivalent Rates for Federal Hires (MAY 2014) (29 U.S.C. 206 and 41 U.S.C. chapter 67).

(3) 52.222-43, Fair Labor Standards Act and Service Contract Labor Standards—Price Adjustment (Multiple Year and Option Contracts) (AUG 2018) (29 U.S.C. 206 and 41 U.S.C. chapter 67).

(4) 52.222-44, Fair Labor Standards Act and Service Contract Labor Standards—Price Adjustment (MAY 2014) (29 U.S.C 206 and 41 U.S.C. chapter 67).

(5) 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements (MAY 2014) (41 U.S.C. chapter 67).

(6) 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services—Requirements (MAY 2014) (41 U.S.C. chapter 67).

(7) 52.222-55, Minimum Wages for Contractor Workers Under Executive Order 14026 (JAN 2022).

(8) 52.222-62, Paid Sick Leave Under Executive Order 13706 (JAN 2022) (E.O. 13706).

(9) 52.226–6, Promoting Excess Food Donation to Nonprofit Organizations (JUN 2020) (42 U.S.C. 1792).

(d) Comptroller General Examination of Record. The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in

excess of the simplified acquisition threshold, as defined in FAR 2.101, on the date of award of this contract, and does not contain the clause at 52.215-2, Audit and Records—Negotiation.

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

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

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

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

(i) 52.203–13, Contractor Code of Business Ethics and Conduct (NOV 2021) (41 U.S.C. 3509).

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

(iii) 52.204–23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (NOV 2021) (Section 1634 of Pub. L. 115–91).

(iv) 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (NOV 2021) (Section 889(a)(1)(A) of Pub. L. 115–232).

(v) 52.219–8, Utilization of Small Business Concerns (Oct 2018) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds the applicable threshold specified in FAR 19.702(a) on the date of subcontract award, the subcontractor must include 52.219–8 in lower tier subcontracts that offer subcontracting opportunities.

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

(vii) 52.222–26, Equal Opportunity (SEP 2016) (E.O. 11246).

(viii) 52.222–35, Equal Opportunity for Veterans (JUN 2020) (38 U.S.C. 4212).

(ix) 52.222–36, Equal Opportunity for Workers with Disabilities (JUN 2020) (29 U.S.C. 793).

(x) 52.222–37, Employment Reports on Veterans (JUN 2020) (38 U.S.C. 4212).

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

(xii) 52.222-41, Service Contract Labor Standards (AUG 2018) (41 U.S.C. chapter 67).

(xiii)(A) 52.222-50, Combating Trafficking in Persons (NOV 2021) (22 U.S.C. chapter 78 and E.O. 13627).

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

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

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

(xvi) 52.222-54, Employment Eligibility Verification (MAY 2022) (E. O. 12989).

(xvii) 52.222-55, Minimum Wages for Contractor Workers Under Executive Order 14026 (JAN 2022).

(xviii) 52.222-62 Paid Sick Leave Under Executive Order 13706 (JAN 2022) (E.O. 13706).

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

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

(xx) 52.225–26, Contractors Performing Private Security Functions Outside the United States (OCT 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).

(xxi) 52.226–6, Promoting Excess Food Donation to Nonprofit Organizations (JUN 2020) (42 U.S.C. 1792). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6.

(xxii) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (NOV 2021) (46 U.S.C. 55305 and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

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

(End of Clause)

#### **C.4 52.216-18 ORDERING (AUG 2020)**

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule. Such orders may be issued from effective date of the contract through end of contract period of performance.

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

(c) A delivery order or task order is considered "issued" when—

(1) If sent by mail (includes transmittal by U.S. mail or private delivery service), the Government deposits the order in the mail;

(2) If sent by fax, the Government transmits the order to the Contractor's fax number; or

(3) If sent electronically, the Government either—

(i) Posts a copy of the delivery order or task order to a Government document access system, and notice is sent to the Contractor; or

(ii) Distributes the delivery order or task order via email to the Contractor's email address.

(d) Orders may be issued by methods other than those enumerated in this clause only if authorized in the contract.

(End of Clause)

#### **C.5 52.216-19 ORDER LIMITATIONS (OCT 1995)**

(a) *Minimum order.* When the Government requires supplies or services covered by this contract in an amount of less than \$2,500.00, the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.

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

(1) Any order for a single item in excess of \$10,000.00;

(2) Any order for a combination of items in excess of \$91,000,000.00; or

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

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

(d) Notwithstanding paragraphs (b) and (c) of this section, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is

returned to the ordering office within 2 (two) days after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

(End of Clause)

### **C.6 52.216-22 INDEFINITE QUANTITY (OCT 1995)**

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

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

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

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

(End of Clause)

### **C.7 52.217-2 CANCELLATION UNDER MULTI-YEAR CONTRACTS (OCT 1997)**

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

(1) Notifies the Contractor that funds are not available for contract performance for any subsequent program year; or

(2) Fails to notify the Contractor that funds are available for performance of the succeeding program year requirement.

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

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

(d) The cancellation charge will cover only—

(1) Costs—

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

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

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

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

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

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

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

(f) The Contractor's claim may include—

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

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

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

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

(g) The claim shall not include—

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

(2) Any cost already paid to the Contractor;

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

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

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

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

(End of Clause)

## **C.8 52.222-43 FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT LABOR STANDARDS—PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS) (AUG 2018)**

(a) This clause applies to both contracts subject to area prevailing wage determinations and contracts subject to collective bargaining agreements.

(b) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(c) The wage determination, issued under the Service Contract Labor Standards statute, (41 U.S.C. chapter 67), by the Administrator, Wage and Hour Division, U.S. Department of Labor, current on the anniversary date of a multiple year contract or the beginning of each renewal option period, shall apply to this contract. If no such determination has been made applicable to this contract, then the Federal minimum wage as established by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C. 206) current on the anniversary date of a multiple year contract or the beginning of each renewal option period, shall apply to this contract.

(d) The contract price, contract unit price labor rates, or fixed hourly labor rates will be adjusted to reflect the Contractor's actual increase or decrease in applicable wages and fringe benefits to the extent that the increase is made to comply with or the decrease is voluntarily made by the Contractor as a result of:

(1) The Department of Labor wage determination applicable on the anniversary date of the multiple year contract, or at the beginning of the renewal option period. For example, the prior year wage determination required a minimum wage rate of \$4.00 per hour. The Contractor chose to pay \$4.10. The new wage determination increases the minimum rate to \$4.50 per hour. Even if the Contractor voluntarily increases the rate to \$4.75 per hour, the allowable price adjustment is \$.40 per hour;

(2) An increased or decreased wage determination otherwise applied to the contract by operation of law; or

(3) An amendment to the Fair Labor Standards Act of 1938 that is enacted after award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(e) Any adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (d) of this clause, and the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance, but shall not otherwise include any amount for general and administrative costs, overhead, or profit.

(f) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after receiving a new wage determination unless this notification period is extended in writing by the Contracting Officer. The Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and the change in fixed hourly rates (if this is a time-and-materials or labor-hour contract), and any relevant supporting data, including payroll records, that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price, contract unit price labor rates, or fixed hourly rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(g) The Contracting Officer or an authorized representative shall have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor until the expiration of 3 years after final payment under the contract.

(End of Clause)

## **C.9 52.222-55 MINIMUM WAGES FOR CONTRACTOR WORKERS UNDER EXECUTIVE ORDER 14026 (JAN 2022)**

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

“United States” means the 50 states, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and the outer Continental Shelf as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331, *et seq.*).

“Worker”—

(1)(i) Means any person engaged in performing work on, or in connection with, a contract covered by Executive Order 14026, and—

(A) Whose wages under such contract are governed by the Fair Labor Standards Act (29 U.S.C. chapter 8), the Service Contract Labor Standards statute (41 U.S.C. chapter 67), or the Wage Rate Requirements (Construction) statute (40 U.S.C. chapter 31, subchapter IV);

(B) Other than individuals employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR part 541; and

(C) Regardless of the contractual relationship alleged to exist between the individual and the employer.

(ii) Includes workers performing on, or in connection with, the contract whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c).

(iii) Also includes any person working on, or in connection with, the contract and individually registered in a bona fide apprenticeship or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship.

(2)(i) A worker performs *on* a contract if the worker directly performs the specific services called for by the contract; and

(ii) A worker performs *in connection with* a contract if the worker's work activities are necessary to the performance of a contract but are not the specific services called for by the contract.

(b) *Executive Order minimum wage rate.*

(1) The Contractor shall pay to workers, while performing in the United States, and performing on, or in connection with, this contract, a minimum hourly wage rate of \$15.00 per hour beginning January 30, 2022.

(2) The Contractor shall adjust the minimum wage paid, if necessary, beginning January 1, 2023, and annually thereafter, to meet the applicable annual E.O. minimum wage. The Administrator of the Department of Labor's Wage and Hour Division (the Administrator) will publish annual determinations in the Federal Register no later than 90 days before the effective date of the new E.O. minimum wage rate. The Administrator will also publish the applicable E.O. minimum wage on <https://www.sam.gov> (or any successor Web site), and a general notice on all wage determinations issued under the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, that will provide information on the E.O. minimum wage and how to obtain annual updates. The applicable published E.O. minimum wage is incorporated by reference into this contract.

(3)(i) The Contractor may request a price adjustment only after the effective date of the new annual E.O. minimum wage determination. Prices will be adjusted only for increased labor costs (including subcontractor labor costs) as a result of an increase in the annual E.O. minimum wage, and for associated labor costs (including those for subcontractors). Associated labor costs shall include increases or decreases that result from changes in social security and unemployment taxes and workers' compensation insurance, but will not otherwise include any amount for general and administrative costs, overhead, or profit.

(ii) Subcontractors may be entitled to adjustments due to the new minimum wage, pursuant to paragraph (b)(2). Contractors shall consider any subcontractor requests for such price adjustment.

(iii) The Contracting Officer will not adjust the contract price under this clause for any costs other than those identified in paragraph (b)(3)(i) of this clause, and will not provide duplicate price adjustments with any price adjustment under clauses implementing the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute.

(4) The Contractor warrants that the prices in this contract do not include allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(5) A pay period under this clause may not be longer than semi-monthly, but may be shorter to comply with any applicable law or other requirement under this contract establishing a shorter pay period. Workers shall be paid no later than one pay period following the end of the regular pay period in which such wages were earned or accrued.

(6) The Contractor shall pay, unconditionally to each worker, all wages due free and clear without subsequent rebate or kickback. The Contractor may make deductions that reduce a worker's wages below the E.O. minimum wage rate only if done in accordance with 29 CFR 23.230, Deductions.

(7) The Contractor shall not discharge any part of its minimum wage obligation under this clause by furnishing fringe benefits or, with respect to workers whose wages are governed by the Service Contract Labor Standards statute, the cash equivalent thereof.

(8) Nothing in this clause shall excuse the Contractor from compliance with any applicable Federal or State prevailing wage law or any applicable law or municipal ordinance or any applicable contract establishing a minimum wage higher than the E.O. 14026 minimum wage. However, wage increases under such other laws or municipal ordinances are not subject to price adjustment under this subpart.

(9) The Contractor shall pay the E.O. minimum wage rate whenever it is higher than any applicable collective bargaining agreement(s) wage rate.

(10) The Contractor shall follow the policies and procedures in 29 CFR 23.240(b) and 23.280 for treatment of workers engaged in an occupation in which they customarily and regularly receive more than \$30 a month in tips.

(c)(1) This clause applies to workers as defined in paragraph (a). As provided in that definition—

(i) Workers are covered regardless of the contractual relationship alleged to exist between the contractor or subcontractor and the worker;

(ii) Workers with disabilities whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c) are covered; and

(iii) Workers who are registered in a bona fide apprenticeship program or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship, are covered.

(2) This clause does not apply to—

(i) Fair Labor Standards Act (FLSA)-covered individuals performing in connection with contracts covered by the E.O., i.e. those individuals who perform duties necessary to the performance of the contract, but who are not directly engaged in performing the specific work

called for by the contract, and who spend less than 20 percent of their hours worked in a particular workweek performing in connection with such contracts;

(ii) Individuals exempted from the minimum wage requirements of the FLSA under 29 U.S.C. 213(a) and 214(a) and (b), unless otherwise covered by the Service Contract Labor Standards statute, or the Wage Rate Requirements (Construction) statute. These individuals include but are not limited to—

(A) Learners, apprentices, or messengers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(a);

(B) Students whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(b); and

(C) Those employed in a bona fide executive, administrative, or professional capacity (29 U.S.C. 213(a)(1) and 29 CFR part 541).

(d) *Notice.* The Contractor shall notify all workers performing work on, or in connection with, this contract of the applicable E.O. minimum wage rate under this clause. With respect to workers covered by the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, the Contractor may meet this requirement by posting, in a prominent and accessible place at the worksite, the applicable wage determination under those statutes. With respect to workers whose wages are governed by the FLSA, the Contractor shall post notice, utilizing the poster provided by the Administrator, which can be obtained at <http://www.dol.gov/agencies/whd/government-contracts>, in a prominent and accessible place at the worksite. Contractors that customarily post notices to workers electronically may post the notice electronically provided the electronic posting is displayed prominently on any Web site that is maintained by the contractor, whether external or internal, and customarily used for notices to workers about terms and conditions of employment.

(e) *Payroll Records.*

(1) The Contractor shall make and maintain records, for three years after completion of the work, containing the following information for each worker:

(i) Name, address, and social security number;

(ii) The worker's occupation(s) or classification(s);

(iii) The rate or rates of wages paid;

(iv) The number of daily and weekly hours worked by each worker;

(v) Any deductions made; and

(vi) Total wages paid.

(2) The Contractor shall make records pursuant to paragraph (e)(1) of this clause available for inspection and transcription by authorized representatives of the Administrator. The Contractor shall also make such records available upon request of the Contracting Officer.

(3) The Contractor shall make a copy of the contract available, as applicable, for inspection or transcription by authorized representatives of the Administrator.

(4) Failure to comply with this paragraph (e) shall be a violation of 29 CFR 23.260 and this contract. Upon direction of the Administrator or upon the Contracting Officer's own action, payment shall be withheld until such time as the noncompliance is corrected.

(5) Nothing in this clause limits or otherwise modifies the Contractor's payroll and recordkeeping obligations, if any, under the Service Contract Labor Standards statute, the Wage Rate Requirements (Construction) statute, the Fair Labor Standards Act, or any other applicable law.

(f) *Access.* The Contractor shall permit authorized representatives of the Administrator to conduct investigations, including interviewing workers at the worksite during normal working hours.

(g) *Withholding.* The Contracting Officer, upon his or her own action or upon written request of the Administrator, will withhold funds or cause funds to be withheld, from the Contractor under this or any other Federal contract with the same Contractor, sufficient to pay workers the full amount of wages required by this clause.

(h) *Disputes.* Department of Labor has set forth in 29 CFR 23.510, Disputes concerning contractor compliance, the procedures for resolving disputes concerning a contractor's compliance with Department of Labor regulations at 29 CFR part 23. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. These disputes include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the Department of Labor, or the workers or their representatives.

(i) *Antiretaliation.* The Contractor shall not discharge or in any other manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceeding under or related to compliance with the E.O. or this clause, or has testified or is about to testify in any such proceeding.

(j) *Subcontractor compliance.* The Contractor is responsible for subcontractor compliance with the requirements of this clause and may be held liable for unpaid wages due subcontractor workers.

(k) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (k) in all subcontracts, regardless of dollar value, that are subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and are to be performed in whole or in part in the United States.

(End of Clause)

## **C.10 52.232-19 AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR (APR 1984)**

Funds are not presently available for performance under this contract beyond 31 December 2023. The Government's obligation for performance of this contract beyond that date is contingent upon the availability of appropriated funds from which payment for contract purposes

can be made. No legal liability on the part of the Government for any payment may arise for performance under this contract beyond 31 December 2023, until funds are made available to the Contracting Officer for performance and until the Contractor receives notice of availability, to be confirmed in writing by the Contracting Officer.

(End of Clause)

### **C.11 52.237-3 CONTINUITY OF SERVICES (JAN 1991)**

(a) The Contractor recognizes that the services under this contract are vital to the Government and must be continued without interruption and that, upon contract expiration, a successor, either the Government or another contractor, may continue them. The Contractor agrees to (1) furnish phase-in training and (2) exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

(b) The Contractor shall, upon the Contracting Officer's written notice, (1) furnish phase-in, phase-out services for up to 90 days after this contract expires and (2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the Contracting Officer's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.

(c) The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

(d) The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract.

(End of Clause)

### **C.12 VAAR 852.212-70 PROVISIONS AND CLAUSES APPLICABLE TO VA ACQUISITION OF COMMERCIAL ITEMS (APR 2020)**

(a) The Contractor agrees to comply with any provision or clause that is incorporated herein by reference to implement agency policy applicable to acquisition of commercial items or components. The following provisions and clauses that have been checked by the Contracting Officer are incorporated by reference.

852.203–70, Commercial Advertising.

852.209–70, Organizational Conflicts of Interest.

- 852.211–70, Equipment Operation and Maintenance Manuals.
- 852.214–71, Restrictions on Alternate Item(s).
- 852.214–72, Alternate Item(s). [Note: this is a fillable clause.]
- 852.214–73, Alternate Packaging and Packing.
- 852.214–74, Marking of Bid Samples.
- 852.215–70, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors.
- 852.215–71, Evaluation Factor Commitments.
- 852.216–71, Economic Price Adjustment of Contract Price(s) Based on a Price Index.
- 852.216–72, Proportional Economic Price Adjustment of Contract Price(s) Based on a Price Index.
- 852.216–73, Economic Price Adjustment—State Nursing Home Care for Veterans.
- 852.216–74, Economic Price Adjustment—Medicaid Labor Rates.
- 852.216–75, Economic Price Adjustment—Fuel Surcharge.
- 852.219–9, VA Small Business Subcontracting Plan Minimum Requirements.
- 852.219–10, VA Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside.
- 852.219–11, VA Notice of Total Veteran-Owned Small Business Set-Aside.
- 852.222–70, Contract Work Hours and Safety Standards—Nursing Home Care for Veterans.
- 852.228–70, Bond Premium Adjustment.
- 852.228–71, Indemnification and Insurance.
- 852.228–72, Assisting Service-Disabled Veteran-Owned and Veteran-Owned Small Businesses in Obtaining Bonds.
- 852.232–72, Electronic Submission of Payment Requests.
- 852.233–70, Protest Content/Alternative Dispute Resolution.
- 852.233–71, Alternate Protest Procedure.
- 852.237–70, Indemnification and Medical Liability Insurance.
- 852.246–71, Rejected Goods.
- 852.246–72, Frozen Processed Foods.
- 852.246–73, Noncompliance with Packaging, Packing, and/or Marking Requirements.

- 852.270–1, Representatives of Contracting Officers.
- 852.271–72, Time Spent by Counselee in Counseling Process.
- 852.271–73, Use and Publication of Counseling Results.
- 852.271–74, Inspection.
- 852.271–75, Extension of Contract Period.
- 852.273–70, Late Offers.
- 852.273–71, Alternative Negotiation Techniques.
- 852.273–72, Alternative Evaluation.
- 852.273–73, Evaluation—Health-Care Resources.
- 852.273–74, Award without Exchanges.

(b) All requests for quotations, solicitations, and contracts for commercial item services to be provided to beneficiaries must include the following clause:

- 852.237–74, Nondiscrimination in Service Delivery.

(End of Clause)

### **C.13 VAAR 852.219-10 VA NOTICE OF TOTAL SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS SET-ASIDE (JUL 2019) (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 802.101, 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 so listed in the Vendor Information Pages (VIP) database (<https://www.vip.vetbiz.va.gov>); 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, including the nonmanufacturer rule and limitations on subcontracting requirements in 13 CFR 121.406 and 125.6, 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. The nonmanufacturer rule and the limitations on subcontracting apply to all SDVOSB and VOSB set-asides and sole source contracts.

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

(b) *General.*

(1) Offers are solicited only from eligible service-disabled veteran-owned small business concerns. Only VIP-listed service-disabled veteran-owned small business concerns (SDVOSBs) may submit offers in response to this solicitation. Offers received from concerns that are not VIP-listed service-disabled veteran-owned small business concerns shall not be considered.

(2) Any award resulting from this solicitation shall be made to a VIP-listed service-disabled veteran-owned small business concern that meets the size standard for the applicable NAICS code.

(c) *Representation.* 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. Pursuant to 38 U.S.C. 8127(e), only VIP-listed SDVOSBs are considered eligible. Therefore, any reference in 13 CFR part 121 and 125 to a servicedisabled veteran-owned small business concern (SDVO SBC), is to be construed to apply to a VA verified and VIP-listed SDVOSB and only such concern(s) qualify as similarly situated. The offeror must also be eligible at the time of award.

(d) *Agreement.* Agreement. When awarded a contract (see FAR 2.101, Definitions), including orders under multiple-award contracts, or a subcontract, 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 125, including the nonmanufacturer rule and limitations on subcontracting requirements in 13 CFR part 121.406 and 125.6, provided that for purposes of the limitations on subcontracting, only VIP-listed SDVOSBs 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 independent contractor shall be considered a subcontractor. 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 nonmanufacturer, 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) is 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 contractors. In the case of a contract for special trade contractors, it will not pay more than 75% of the amount paid by the government to it to firms that are not VIP-listed SDVOSBs.

(5) Subcontracting. Any work that a VIP-listed SDVOSB subcontractor further subcontracts will count towards the percent of subcontract amount that cannot be exceeded. For supply or construction contracts, cost of materials is excluded and not considered to be subcontracted. For mixed contracts and additional limitations, refer to 13 CFR 125.6.

(e) Joint ventures. A joint venture may be considered an SDVOSB if the joint venture is listed in VIP and complies with the requirements in 13 CFR 125.18(b), provided that any reference therein to service-disabled veteran-owned small business concern or SDVO SBC, is to be construed to mean 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.

(f) Precedence. For any inconsistencies between the requirements of the SBA program for service-disabled veteran-owned small business concerns and the VA Veterans First Contracting Program, as defined in VAAR subpart 819.70 and this clause, the VA Veterans First Contracting Program requirements have precedence.

(End of Clause)

#### **C.14 VAAR 852.219-74 LIMITATIONS ON SUBCONTRACTING— MONITORING AND COMPLIANCE (JUL 2018)**

(a) This solicitation includes SDVOSB 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)

### **C.15 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)

## C.16 VAAR 852.219-78 VA NOTICE OF LIMITATIONS ON SUBCONTRACTING—CERTIFICATE OF COMPLIANCE FOR SUPPLIES AND PRODUCTS (SEP 2021) (DEVIATION)

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

(1) If awarded a contract (see F(a)FAR 2.101 definition), it will comply with the limitations on subcontracting requirement as provided in the solicitation and the resultant contract, as follows: *[Offeror check the appropriate box]*

(i)  In the case of a contract for supplies or products (other than from a non-manufacturer 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 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. Cost of materials are excluded and not considered to be subcontracted.

(ii)  In the case of a contract for supplies from a nonmanufacturer, 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) is granted. The offeror understands that, as provided in 13 CFR 121.406(b)(7), such a waiver has no effect on requirements external to the Small Business Act, such as the Buy American Act or the Trade Agreements Act.

(2) Manufacturer or nonmanufacturer representation and certification. *[Offeror fill-in—check each applicable box below. The offeror must select the applicable provision below, identifying itself as either a manufacturer or nonmanufacturer]:*

(i)  Manufacturer or producer. The offeror certifies that it is the manufacturer or producer of the end item being procured, and the end item is manufactured or produced in the United States, in accordance with paragraph (a)(1)(i).

(ii)  Nonmanufacturer. The offeror certifies that it qualifies as a nonmanufacturer in accordance with the requirements of 13 CFR 121.406(b) and paragraph (a)(1)(ii). The offeror further certifies it meets each element below as required to qualify as a nonmanufacturer. *[Offeror fill-in—check each box below.]*

The offeror certifies that it does not exceed 500 employees (or 150 employees for the Information Technology Value Added Reseller exception to NAICS code 541519, which is found at 13 CFR 121.201, footnote 18).

The offeror certifies that it is primarily engaged in the retail or wholesale trade and normally sells the type of item being supplied.

The offeror certifies that it will take ownership or possession of the item(s) with its personnel, equipment, or facilities in a manner consistent with industry practice.

(iii)  The offeror certifies that it will supply the end item of a small business manufacturer, processor, or producer made in the United States, unless a waiver as provided in 13 CFR 121.406(b)(5) has been issued by SBA. *[Contracting Officer fill-in or removal (see 13 CFR 121.1205). This requirement must be included for a single end item. However, if SBA has*

*issued an applicable waiver of the nonmanufacturer rule for the end item, this requirement must be removed in the final solicitation or contract.]*

or [Contracting Officer tailor clause to remove one or other block under subparagraph (iii).]

[ ] If this is a multiple item acquisition, the offeror certifies that at least 50% of the estimated contract value is composed of items that are manufactured by small business concerns.

*[Contracting Officer fill-in or removal. See 13 CFR 121.406(d) for multiple end items. If SBA has issued an applicable nonmanufacturer rule waiver, this requirement must be removed in the final solicitation or contract.]*

(3) 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.

(4) 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 or to determine whether the offeror qualifies as a manufacturer or nonmanufacturer in compliance with the limitations on subcontracting requirement. 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. 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]* qualifies as a manufacturer or nonmanufacturer as stated herein and that if awarded the contract, *[insert name of offeror]* will comply with the limitations on subcontracting requirement specified in the resultant contract, unless a waiver as described in 13 CFR 121.406(b)(5) is granted. 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)

### **C.17 VAAR 852.242-71 ADMINISTRATIVE CONTRACTING OFFICER (OCT 2020)**

The Contracting Officer reserves the right to designate an Administrative Contracting Officer (ACO) for the purpose of performing certain tasks/duties in the administration of the contract. Such designation will be in writing through an ACO Letter of Delegation and will identify the responsibilities and limitations of the ACO. A copy of the ACO Letter of Delegation will be furnished to the Contractor.

(End of Clause)

### **C.18 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)

## **C.19 MANDATORY WRITTEN DISCLOSURES**

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

## **C.20 VA INFORMATION AND INFORMATION SYSTEM SECURITY/PRIVACY LANGUAGE FOR INCLUSION INTO CONTRACTS, AS APPROPRIATE**

### **GENERAL**

Contractors, contractor personnel, subcontractors, and subcontractor personnel shall be subject to the same Federal laws, regulations, standards, and VA Directives and Handbooks as VA and VA personnel regarding information and information system security.

### **ACCESS TO VA INFORMATION AND VA INFORMATION SYSTEMS**

a. A contractor/subcontractor shall request logical (technical) or physical access to VA information and VA information systems for their employees, subcontractors, and affiliates only to the extent necessary to perform the services specified in the contract, agreement, or task order.

b. All contractors, subcontractors, and third-party servicers and associates working with VA information are subject to the same investigative requirements as those of VA appointees or employees who have access to the same types of information. The level and process of background security investigations for contractors must be in accordance with VA Directive and Handbook 0710, *Personnel Suitability and Security Program*. The Office for Operations, Security, and Preparedness is responsible for these policies and procedures.

c. Contract personnel who require access to national security programs must have a valid security clearance. National Industrial Security Program (NISP) was established by Executive Order 12829 to ensure that cleared U.S. defense industry contract personnel safeguard the classified information in their possession while performing work on contracts, programs, bids, or research and development efforts. The Department of Veterans Affairs does not have a Memorandum of Agreement with Defense Security Service (DSS). Verification of a Security Clearance must be processed through the Special Security Officer located in the Planning and National Security Service within the Office of Operations, Security, and Preparedness.

d. Custom software development and outsourced operations must be located in the U.S. to the maximum extent practical. If such services are proposed to be performed abroad and are not disallowed by other VA policy or mandates, the contractor/subcontractor must state where all non-U.S. services are provided and detail a security plan, deemed to be acceptable by VA, specifically to address mitigation of the resulting problems of communication, control, data protection, and so forth. Location within the U.S. may be an evaluation factor.

e. The contractor or subcontractor must notify the Contracting Officer immediately when an employee working on a VA system or with access to VA information is reassigned or leaves the contractor or subcontractor's employ. The Contracting Officer must also be notified immediately by the contractor or subcontractor prior to an unfriendly termination.

#### VA INFORMATION CUSTODIAL LANGUAGE

f. Information made available to the contractor or subcontractor by VA for the performance or administration of this contract or information developed by the contractor/subcontractor in performance or administration of the contract shall be used only for those purposes and shall not be used in any other way without the prior written agreement of the VA. This clause expressly limits the contractor/subcontractor's rights to use data as described in Rights in Data - General, FAR 52.227-14(d) (1).

g. VA information should not be co-mingled, if possible, with any other data on the contractors/subcontractor's information systems or media storage systems in order to ensure VA requirements related to data protection and media sanitization can be met. If co-mingling must be allowed to meet the requirements of the business need, the contractor must ensure that VA's information is returned to the VA or destroyed in accordance with VA's sanitization requirements. VA reserves the right to conduct onsite inspections of contractor and subcontractor IT resources to ensure data security controls, separation of data and job duties, and destruction/media sanitization procedures are in compliance with VA directive requirements.

h. Prior to termination or completion of this contract, contractor/subcontractor must not destroy information received from VA, or gathered/created by the contractor in the course of performing this contract without prior written approval by the VA. Any data destruction done on behalf of VA by a contractor/subcontractor must be done in accordance with National Archives and Records Administration (NARA) requirements as outlined in VA Directive 6300, *Records and Information Management* and its Handbook 6300.1 *Records Management Procedures*, applicable VA Records Control Schedules, and VA Handbook 6500.1, *Electronic Media Sanitization*. Self-certification by the contractor that the data destruction requirements above have been met must be sent to the VA Contracting Officer within 30 days of termination of the contract.

i. The contractor/subcontractor must receive, gather, store, back up, maintain, use, disclose and dispose of VA information only in compliance with the terms of the contract and applicable Federal and VA information confidentiality and security

laws, regulations and policies. If Federal or VA information confidentiality and security laws, regulations and policies become applicable to the VA information or information systems after execution of the contract, or if NIST issues or updates applicable FIPS or Special Publications (SP) after execution of this contract, the parties agree to negotiate in good faith to implement the information confidentiality and security laws, regulations and policies in this contract.

j. The contractor/subcontractor shall not make copies of VA information except as authorized and necessary to perform the terms of the agreement or to preserve electronic information stored on contractor/subcontractor electronic storage media for restoration in case any electronic equipment or data used by the contractor/subcontractor needs to be restored to an operating state. If copies are made for restoration purposes, after the restoration is complete, the copies must be appropriately destroyed.

k. If VA determines that the contractor has violated any of the information confidentiality, privacy, and security provisions of the contract, it shall be sufficient grounds for VA to withhold payment to the contractor or third party or terminate the contract for default or terminate for cause under Federal Acquisition Regulation (FAR) part 12.

l. If a VHA contract is terminated for cause, the associated BAA must also be terminated and appropriate actions taken in accordance with VHA Handbook 1600.01, *Business Associate Agreements*. Absent an agreement to use or disclose protected health information, there is no business associate relationship.

m. The contractor/subcontractor must store, transport, or transmit VA sensitive information in an encrypted form, using VA-approved encryption tools that are, at a minimum, FIPS 140-2 validated.

n. The contractor/subcontractor's firewall and Web services security controls, if applicable, shall meet or exceed VA's minimum requirements. VA Configuration Guidelines are available upon request.

o. Except for uses and disclosures of VA information authorized by this contract for performance of the contract, the contractor/subcontractor may use and disclose VA information only in two other situations: (i) in response to a qualifying order of a court of competent jurisdiction, or (ii) with VA's prior written approval. The contractor/subcontractor must refer all requests for, demands for production of, or inquiries about, VA information and information systems to the VA contracting officer for response.

p. Notwithstanding the provision above, the contractor/subcontractor shall not release VA records protected by Title 38 U.S.C. 5705, confidentiality of medical quality assurance records and/or Title 38 U.S.C. 7332, confidentiality of certain health records pertaining to drug addiction, sickle cell anemia, alcoholism or alcohol abuse, or infection with human immunodeficiency virus. If the contractor/subcontractor is in receipt of a court order or other requests for the

above-mentioned information, that contractor/subcontractor shall immediately refer such court orders or other requests to the VA contracting officer for response.

q. For service that involves the storage, generating, transmitting, or exchanging of VA sensitive information but does not require C&A or an MOU-ISA for system interconnection, the contractor/subcontractor must complete a Contractor Security Control Assessment (CSCA) on a yearly basis and provide it to the COTR.

#### INFORMATION SYSTEM DESIGN AND DEVELOPMENT

r. Information systems that are designed or developed for or on behalf of VA at non-VA facilities shall comply with all VA directives developed in accordance with FISMA, HIPAA, NIST, and related VA security and privacy control requirements for Federal information systems. This includes standards for the protection of electronic PHI, outlined in 45 C.F.R. Part 164, Subpart C, information and system security categorization level designations in accordance with FIPS 199 and FIPS 200 with implementation of all baseline security controls commensurate with the FIPS 199 system security categorization (reference Appendix D of VA Handbook 6500, *VA Information Security Program*). During the development cycle a Privacy Impact Assessment (PIA) must be completed, provided to the COTR, and approved by the VA Privacy Service in accordance with Directive 6507, *VA Privacy Impact Assessment*.

s. The contractor/subcontractor shall certify to the COTR that applications are fully functional and operate correctly as intended on systems using the VA Federal Desktop Core Configuration (FDCC), and the common security configuration guidelines provided by NIST or the VA. This includes Internet Explorer 7 configured to operate on Windows XP and Vista (in Protected Mode on Vista) and future versions, as required.

t. The standard installation, operation, maintenance, updating, and patching of software shall not alter the configuration settings from the VA approved and FDCC configuration. Information technology staff must also use the Windows Installer Service for installation to the default "program files" directory and silently install and uninstall.

u. Applications designed for normal end users shall run in the standard user context without elevated system administration privileges.

v. The security controls must be designed, developed, approved by VA, and implemented in accordance with the provisions of VA security system development life cycle as outlined in NIST Special Publication 800-37, *Guide for Applying the Risk Management Framework to Federal Information Systems*, VA Handbook 6500, *Information Security Program* and VA Handbook 6500.5, *Incorporating Security and Privacy in System Development Lifecycle*.

w. The contractor/subcontractor is required to design, develop, or operate a System of Records Notice (SOR) on individuals to accomplish an agency function subject to the Privacy Act of 1974, (as amended), Public Law 93-579, December 31, 1974 (5 U.S.C. 552a) and applicable agency regulations. Violation of the Privacy Act may involve the imposition of criminal and civil penalties.

x. The contractor/subcontractor agrees to:

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

(a) The Systems of Records (SOR); and

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

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

(3) Include this Privacy Act clause, including this subparagraph (3), in all subcontracts awarded under this contract which requires the design, development, or operation of such a SOR.

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

(1) "Operation of a System of Records" means performance of any of the activities associated with maintaining the SOR, including the collection, use, maintenance, and dissemination of records.

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

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

i. The vendor shall ensure the security of all procured or developed systems and technologies, including their subcomponents (hereinafter referred to as "Systems"), throughout the life of this contract and any extension, warranty, or maintenance periods. This includes, but is not limited to workarounds, patches, hotfixes, upgrades, and any physical components (hereafter referred to as Security Fixes) which may be necessary to fix all security vulnerabilities published or known to the vendor anywhere in the Systems, including Operating Systems and firmware. The vendor shall ensure that Security Fixes shall not negatively impact the Systems.

j. The vendor shall notify VA within 24 hours of the discovery or disclosure of successful exploits of the vulnerability which can compromise the security of the Systems (including the confidentiality or integrity of its data and operations, or the availability of the system). Such issues shall be remediated as quickly as is practical, but in no event longer than 5 days.

k. When the Security Fixes involve installing third party patches (such as Microsoft OS patches or Adobe Acrobat), the vendor will provide written notice to the VA that the patch has been validated as not affecting the Systems within 10 working days. When the vendor is responsible for operations or maintenance of the Systems, they shall apply the Security Fixes within 5 days.

l. All other vulnerabilities shall be remediated as specified in this paragraph in a timely manner based on risk, but within 60 days of discovery or disclosure. Exceptions to this paragraph (e.g. for the convenience of VA) shall only be granted with approval of the contracting officer and the VA Assistant Secretary for Office of Information and Technology.

#### INFORMATION SYSTEM HOSTING, OPERATION, MAINTENANCE, OR USE

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

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

of Action and Milestones (POA&M) must be submitted and approved prior to the collection of PII.

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

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

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

ee. VA prohibits the installation and use of personally owned or contractor/subcontractor- owned equipment or software on VA's network. If non-VA owned equipment must be used to fulfill the requirements of a contract, it must be stated in the service agreement, SOW or contract. All of the security controls required for government furnished equipment (GFE) must be utilized in approved other equipment (OE) and must be funded by the owner of the equipment. All remote systems must be equipped with, and use, a VA-approved antivirus (AV)

software and a personal (host-based or enclave based) firewall that is configured with a VA- approved configuration. Software must be kept current, including all critical updates and patches. Owners of approved OE are responsible for providing and maintaining the anti-viral software and the firewall on the non-VA owned OE.

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

gg. Bio-Medical devices and other equipment or systems containing media (hard drives, optical disks, etc.) with VA sensitive information must not be returned to the vendor at the end of lease, for trade-in, or other purposes. The options are:

- (1) Vendor must accept the system without the drive;
- (2) VA's initial medical device purchase includes a spare drive which must be installed in place of the original drive at time of turn-in; or
- (3) VA must reimburse the company for media at a reasonable open market replacement cost at time of purchase.
- (4) Due to the highly specialized and sometimes proprietary hardware and software associated with medical equipment/systems, if it is not possible for the VA to retain the hard drive, then;
  - (a) The equipment vendor must have an existing BAA if the device being traded in has sensitive information stored on it and hard drive(s) from the system are being returned physically intact; and
  - (b) Any fixed hard drive on the device must be non-destructively sanitized to the greatest extent possible without negatively impacting system operation. Selective clearing down to patient data folder level is recommended using VA approved and validated overwriting technologies/methods/tools. Applicable media sanitization specifications need to be pre- approved and described in the purchase order or contract.
  - (c) A statement needs to be signed by the Director (System Owner) that states that the drive could not be removed and that (a) and (b) controls above are in place and completed. The ISO needs to maintain the documentation.

hh. The term “security incident” means an event that has, or could have, resulted in unauthorized access to, loss or damage to VA assets, or sensitive information, or an action that breaches VA security procedures. The contractor/subcontractor shall immediately notify the COTR and simultaneously, the designated ISO and Privacy Officer for the contract of any known or suspected security/privacy incidents, or any unauthorized disclosure of sensitive information, including that contained in system(s) to which the contractor/subcontractor has access.

ii. To the extent known by the contractor/subcontractor, the contractor/subcontractor’s notice to VA shall identify the information involved, the circumstances surrounding the incident (including to whom, how, when, and where the VA information or assets were placed at risk or compromised), and any other information that the contractor/subcontractor considers relevant.

jj. With respect to unsecured protected health information, the business associate is deemed to have discovered a data breach when the business associate knew or should have known of a breach of such information. Upon discovery, the business associate must notify the covered entity of the breach. Notifications need to be made in accordance with the executed business associate agreement.

kk. In instances of theft or break-in or other criminal activity, the contractor/subcontractor must concurrently report the incident to the appropriate law enforcement entity (or entities) of jurisdiction, including the VA OIG and Security and Law Enforcement. The contractor, its employees, and its subcontractors and their employees shall cooperate with VA and any law enforcement authority responsible for the investigation and prosecution of any possible criminal law violation(s) associated with any incident. The contractor/subcontractor shall cooperate with VA in any civil litigation to recover VA information, obtain monetary or other compensation from a third party for damages arising from any incident or obtain injunctive relief against any third party arising from, or related to, the incident.

#### LIQUIDATED DAMAGES FOR DATA BREACH

ll. Consistent with the requirements of 38 U.S.C. §5725, a contract may require access to sensitive personal information. If so, the contractor is liable to VA for liquidated damages in the event of a data breach or privacy incident involving any SPI the contractor/subcontractor processes or maintains under this contract.

mm. The contractor/subcontractor shall provide notice to VA of a “security incident” as set forth in the Security Incident Investigation section above. Upon such notification, VA must secure from a non-Department entity or the VA Office of Inspector General an independent risk analysis of the data breach to determine the level of risk associated with the data breach for the potential misuse of any sensitive personal information involved in the data breach. The term 'data breach' means the loss, theft, or other unauthorized access, or any access other than that incidental to

the scope of employment, to data containing sensitive personal information, in electronic or printed form, that results in the potential compromise of the confidentiality or integrity of the data. Contractor shall fully cooperate with the entity performing the risk analysis. Failure to cooperate may be deemed a material breach and grounds for contract termination.

nn. Each risk analysis shall address all relevant information concerning the data breach, including the following:

- (1) Nature of the event (loss, theft, unauthorized access);
- (2) Description of the event, including:
  - (a) Date of occurrence;
  - (b) data elements involved, including any PII, such as full name, social security number, date of birth, home address, account number, disability code;
- (3) Number of individuals affected or potentially affected.
- (4) Names of individuals or groups affected or potentially affected;
- (5) Ease of logical data access to the lost, stolen or improperly accessed data in light of the degree of protection for the data, e.g., unencrypted, plain text;
- (6) Amount of time the data has been out of VA control;
- (7) The likelihood that the sensitive personal information will or has been compromised (made accessible to and usable by unauthorized persons);
- (8) Known misuses of data containing sensitive personal information, if any;
- (9) Assessment of the potential harm to the affected individuals;
- (10) Data breach analysis as outlined in 6500.2 Handbook, *Management of Security and Privacy Incidents*, as appropriate; and
- (11) Whether credit protection services may assist record subjects in avoiding or mitigating the results of identity theft based on the sensitive personal information that may have been compromised.

oo. Based on the determinations of the independent risk analysis, the contractor shall be responsible for paying to the VA liquidated damages in the amount of \$37.50 per affected individual to cover the cost of providing credit protection services to affected individuals consisting of the following:

- (1) Notification;

- (2) One year of credit monitoring services consisting of automatic daily monitoring of at least 3 relevant credit bureau reports;
- (3) Data breach analysis;
- (4) Fraud resolution services, including writing dispute letters, initiating fraud alerts and credit freezes, to assist affected individuals to bring matters to resolution;
- (5) One year of identity theft insurance with \$20,000.00 coverage at \$0 deductible; and
- (6) Necessary legal expenses the subjects may incur to repair falsified or damaged credit records, histories, or financial affairs.

#### SECURITY CONTROLS COMPLIANCE TESTING

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

#### TRAINING

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

- (1) Sign and acknowledge (either manually or electronically) understanding of and responsibilities for compliance with the *Contractor Rules of Behavior*, Appendix E relating to access to VA information and information systems;
- (2) Successfully complete the *VA Cyber Security Awareness and Rules of Behavior* training and annually complete required security training;
- (3) Successfully complete the appropriate VA privacy training and annually complete required privacy training; and
- (4) Successfully complete any additional cyber security or privacy training, as required for VA personnel with equivalent information system access *[to be defined by the VA program official and provided to the contracting officer for inclusion in the solicitation document – e.g., any role-based information security training]*

*required in accordance with NIST Special Publication 800-16, Information Technology Security Training Requirements.]*

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

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

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

### Quality Assurance Surveillance Plan

### WAGE DETERMINATIONS INCORPORATED BY REFERENCE

### PWS Supplement – Counties (see attached)

#### Quality Assurance Surveillance Plan

Report	Description	Due Date	PWS Reference
Post Set Up Call & Documentation	A post set-up call will be performed by the RRT / CRT.	Within 72 hours of initial set-up	2.2(A)
Periodic Equipment Evaluation	The Contractor shall have a CRT/RRT phone the Patient to reassess equipment compliance, educational needs, etc. for Home Oxygen Patients at least once every <u>90 days</u> and visit once every <u>30 days</u> for Patients on ventilators.	Within 5 business days of visit	2.4(A)
Periodic Performance Review Report	The Contractor shall provide a written report addressing all Joint Commission Standards for improving organizational performance	within 90 days of the end of base or option year annually	2.24
Incident Report	The Contractor shall report special incidents found or occurring during a home visit; to include finding	within 24 hours. Life threatening situations (i.e. 911, police, etc.)	2.25

Customer Satisfaction Report	The Contractor shall collect satisfaction data from contracted Patients and their families on a quarterly basis in accordance with Joint Commission standards	within the 5 <sup>th</sup> working day at the conclusion of the quarter.	2.26
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	Patients in need of emergency medical assistance, safety hazards that do not fall into the category of presenting immediate life-threatening danger to the Patient or Contractors staff, inability to contact a Patient within a reasonable period of time, and any other incident meeting the Contractors written policy for incident reporting according to Joint Commission accreditation standards.	shall be reported to the proper authorities immediately.	
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Infection Control Report	The Contractor shall collect, trend, and report on data related to the Contractor's Infection Control Program	within the 5 <sup>th</sup> working day at the conclusion of the quarter.	2.27
Performance Improvement Report	The Contractor shall collect, trend, and report on important processes and outcomes data related to Patient care and organizational functions	within the 5 <sup>th</sup> working day at the conclusion of the quarter	2.28
Contract Usage Report	Contractor shall provide a monthly electronic report detailing contract usage by each VISN 15 Facility.	NLT the 15th of each month	2.29
Fall Prevention Report	The Contractor shall collect data on falls and outcomes through conversations with the patient and caregivers on a quarterly basis for each contract performance period.	within the 5 <sup>th</sup> working day at the conclusion of the quarter.	2.30
Home Visit Report	Contractor shall provide a report on compliance with the 90-day home visit requirement for Home Oxygen Patients and 30 day home visit requirement for Patients using Ventilators.	NLT the 15 <sup>th</sup> of each month	2.31
Sentinel Events Emergency Patient Safety Reports	The Contractor shall provide the following emergent Patient safety reports throughout the contract period: Sentinel Event, Refusal of Service, Patient Abuse or Neglect, Non-compliant Behavior.	initial notification shall be within one business day of when the Contractor is aware of the event or issues with a follow-up official report within 5 business days.	2.32

End of Document

### WAGE DETERMINATIONS INCORPORATED BY REFERENCE

This solicitation incorporates the U.S. Department of Labor (USDOL) wage determinations identified in the table below by reference, with the same force and effect as if they were incorporated into the solicitation in full text.

<b>USDOL Service Contract Act Wage Determinations</b>				
<b><u>Wage Determination</u></b>				<b>Location (State)</b>
<b><u>Area (County)</u></b>	<b><u>Number</u></b>	<b><u>Revision</u></b>		
		<b><u>No.</u></b>	<b><u>Date of</u></b>	
Boone	2015-5079	18	07/11/2022	MO
Jackson	2015-5105	18	07/11/2022	MO
Leavenworth	2015-5105	18	07/11/2022	KS
Williamson	2015-5769	18	07/11/2022	IL
Butler	2015-5101	19	07/11/2022	MO
St. Louis City	2015-5075	22	07/11/2022	MO
St. Louis County	2015-5075	22	07/11/2022	MO
Shawnee	2015-5339	19	08/04/2022	KS
Sedgwick	2015-5341	22	08/04/2022	KS
Vernon	2015-5103	18	07/11/2022	MO
Johnson	2015-5089	20	07/12/2022	MO
Clinton, Clay	2015-5105	18	07/11/2022	MO

**Notes:** USDOL Service Contract Act Wage Determination Information (Continued)

1 – FAR clause 52.222-41, Service Contract Labor Standards (MAY 2014) is incorporated into this contract by reference under FAR clause 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders – Commercial Items (JAN 2017).

2 – In accordance with FAR 52.222-41, each service employee employed in the performance of this contract by the Contractor, or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits determined by the Secretary of Labor, or authorized representative, as specified in any wage determination attached to this contract.

3 – This solicitation incorporates the wage determinations identified in this table by reference, with the same force and effect as if they were incorporated into the solicitation in full text. Some wage determinations include

counties that are not included in the Area(s) of Responsibility/ Jurisdiction that apply to the solicitation's locations specified in the Delivery Schedule.
4 – The full text of any wage determination identified in this table may be accessed at the following website: <a href="https://sam.gov/">https://sam.gov/</a> . Follow the path identified in Paragraph 5, below.
5 – On the first screen, click “Wage Determinations,” tab, then click “Service Contracts” tab, then select state & county where the services are to be performed, answer “Yes, in the same locality” to the first prompt, “No” to the second, and “No, and the SCA WD in the current contract ends in an odd number” for the third, then click on the “Service Contract Act WD #: hyperlink” under “Showing 1 - 1 of 1 results” at the top of the page. The latest edition of the wage determination will appear and can be printed/downloaded.
6– The Department of Labor has held that Contractors must pay their employees the Service Contract Act wages while they are driving both to and from destinations for the VA.
7 – Upon written request, the Contracting Officer (CO) shall provide a full text copy of any wage determination(s) identified in this table.
8 - Pursuant to FAR Clause 52.222-43, Fair Labor Standards Act and Service Contract Labor Standards - Price Adjustment (Multiple Year and Option Contracts) paragraph (f) Contractor shall notify the Contracting Officer of any increase claimed within 30 days after receiving a new wage determination unless this notification period is extended in writing by the CO.
<i>Revised: 06/28/2022</i>

## SECTION E - SOLICITATION PROVISIONS

### E.1 52.212-1 INSTRUCTIONS TO OFFERORS—COMMERCIAL ITEMS (JUN 2020)

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

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

(1) The solicitation number;

(2) The time specified in the solicitation for receipt of offers;

(3) The name, address, and telephone number of the offeror;

(4) A technical description of the items being offered in sufficient detail to evaluate compliance with the requirements in the solicitation. This may include product literature, or other documents, if necessary;

(5) Terms of any express warranty;

(6) Price and any discount terms;

(7) "Remit to" address, if different than mailing address;

(8) A completed copy of the representations and certifications at FAR 52.212-3 (see FAR 52.212-3(b) for those representations and certifications that the offeror shall complete electronically);

(9) Acknowledgment of Solicitation Amendments;

(10) Past performance information, when included as an evaluation factor, to include recent and relevant contracts for the same or similar items and other references (including contract numbers, points of contact with telephone numbers and other relevant information); and

(11) If the offer is not submitted on the SF 1449, include a statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation. Offers that fail to furnish required representations or information, or reject the terms and conditions of the solicitation may be excluded from consideration.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

GSA Federal Supply Service Specifications Section

Suite 8100 470 East L'Enfant Plaza, SW

Washington, DC 20407

Telephone (202) 619-8925

Facsimile (202) 619-8978.

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

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

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

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

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

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

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

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

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

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

(j) *Unique entity identifier.* (Applies to all offers that exceed the micro-purchase threshold, and offers at or below the micro-purchase threshold if the solicitation requires the Contractor to be registered in the System for Award Management (SAM).) The Offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "Unique Entity Identifier" followed by the unique entity identifier that identifies the Offeror's name and address. The Offeror also shall enter its Electronic Funds Transfer (EFT) indicator, if applicable. The EFT indicator is a four-character suffix to the unique entity identifier. The suffix is assigned at the discretion of the Offeror to establish additional SAM records for identifying alternative EFT accounts (see FAR subpart 32.11) for the same entity. If the Offeror does not have a unique

entity identifier, it should contact the entity designated at [www.sam.gov](http://www.sam.gov) for unique entity identifier establishment directly to obtain one. The Offeror should indicate that it is an offeror for a Government contract when contacting the entity designated at [www.sam.gov](http://www.sam.gov) for establishing the unique entity identifier.

(k) [Reserved]

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

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

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

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

(4) A summary of the rationale for award;

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

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

(End of Provision)

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

A. Offers submitted for this procurement will be evaluated using FAR Part 15 procedures. The Government will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government.

B. The following factors will be evaluated as part of the trade-off analysis:

(1) Factor 1 – Experience. This factor will be used to assess the Offeror's experience providing contracted in-home oxygen services and contracted in-home ventilator services to patients in their place of residence.

(2) Factor 2 – Price. This factor shall be used to assess the reasonableness of the Offeror's proposed price.

C. For the purposes of this evaluation, factors are listed in descending order of importance. Factor 1 is more important than price for the purposes of determining the best value to the Government, therefore, the Government may award to other than the lowest priced offeror if it is in the Government's best interest to do so.

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

(End of Provision)

### E.3 52.212-2 Addendum – Proposal Instructions

Introductory Statement \*\* ALL PROPOSAL PREPARATION COSTS WILL BE AT THE SOLE RESPONSIBILITY OF THE OFFEROR. THE GOVERNMENT WILL NOT REIMBURSE ANY FIRM FOR THEIR PROPOSAL PREPARATION COSTS.\*\*

This section provides general guidance for preparing proposals as well as specific instructions on format and content of the proposal. The Offeror's proposal must include all data and information requested herein and must be submitted in accordance with these instructions. Nonconformance with the instructions provided herein may result in an unfavorable proposal evaluation. Proposals shall be clear, concise and shall include sufficient detail for effective evaluation and for substantiating the validity of the stated claims. The proposal should not simply rephrase or restate the Governments' requirements but shall address how the vendor intends to meet these requirements. Offerors shall assume that the Government has no prior knowledge of their abilities and experience and will base its evaluation on the information presented in the vendor's proposal. Elaborate brochures or documentation, binding, detailed artwork or other embellishments are unnecessary and are not desired. Offerors are required to meet all solicitation requirements, including terms and conditions, representations and certifications and technical requirements.

**Anticipated Award.** The Government intends to make a single contract award in response to this solicitation.

**Guaranteed Minimum:** The Government will order at least \$2,500.00 in supplies/services during the base year of the contract. (Note: The guaranteed minimum order amount applies to the base year only. Award of the additional option period is not guaranteed nor is there a guaranteed minimum order amount in any given option period that is exercised.)

**Maximum Total Contract Amount:** The potential aggregate contract total over the term of the entire contract (base year and option periods) is \$95,000,000.00.

#### **Instructions to Offerors.**

Per VA Acquisition Regulation 852.219-10(b)(1) incorporated by reference in this solicitation and the resulting contract, Offers are solicited only from eligible Service-Disabled Veteran Owned Small Business (SDVOSB) concerns. Only SDVOSBs listed as "verified" at VA's Vendor Information pages (VIP), available at [www.vip.vetbiz.va.gov](http://www.vip.vetbiz.va.gov), may submit offers in response to this solicitation. Offers received from concerns that are not VIP-listed SDVOSB

concerns shall not be considered. Please note that Offeror's proposing as a Joint Venture or Mentor-Protégé arrangement will not be considered to meet eligibility as a SDVOSB for this procurement unless that Joint Venture is listed as "verified" at VA's VIP.

Per FAR 52.204-7, included in this solicitation by reference, an Offeror is required to be registered in SAM when submitting its offer, and shall continue to be registered until time of award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.

Period of Acceptance of Offers. The Offeror agrees to hold prices in its offer firm for a period of one-hundred-eighty (180) calendar days from the date specified in the receipt of offers. The offeror shall date and sign the SF1449 in blocks 30 a, b and c agreeing to all terms and conditions of this solicitation and the resulting contract.

Past Performance. The past performance of the apparent successful offeror will be reviewed by the contracting officer prior to award as part of the contracting officer's responsibility determination per FAR Part 9.

### **Instructions for Proposal Submission.**

#### **The proposal shall consist of two (2) separate volumes:**

Volume One (1): Experience

Volume Two (2): Price

#### **Volume One (1): Experience.**

This factor will be used to assess the Offeror's experience providing contracted in-home oxygen services and contracted in-home ventilator services to patients in their place of residence. Offerors shall provide a narrative describing their specific experience providing contracted in-home oxygen services and contracted in-home ventilator services to patients in their place of residence. For each reference contract the Offeror submits as evidence of its experience providing in-home oxygen services or in-home ventilator services, or both, the Offeror's narrative must clearly state the following information:

- (1) the legal name of entity with whom the Offeror held the contract;
- (2) the contract number;
- (3) whether the contract was for in-home oxygen services, in-home ventilator services, or both;
- (4) a description providing details of the specific tasks the Offeror performed under that contract;
- (5) in what geographic location the Offeror performed these services;
- (6) the dates during which the Offeror performed the contract;

(7) the number of patients to whom the Offeror provided in-home oxygen services or in-home ventilator services, or both, under that contract – break out and specify numbers separately for in-home oxygen services and in-home ventilator services;

(8) whether the provided reference contract is for services provided by the Offeror or provided by a proposed subcontractor of the Offeror's;

(9) whether the Offeror or its proposed subcontractor was the prime contractor or a subcontractor for that provided reference contract;

(10) the name, phone number, and email address of a person at the entity with whom the Offeror (or Offeror's proposed subcontractor) held the contract who can verify the information the Offeror provides in the narrative description for this factor.

**NOTE:** The information requested above is required for the Government to evaluate proposals for the Experience evaluation factor. General statements claiming experience providing contracted in-home oxygen services and contracted in-home ventilator services that do not include specific references to prior contract work or that do not include the information required above, are not acceptable.

**FAILURE TO SUBMIT THE INFORMATION REQUIRED ABOVE TO SUPPORT THE OFFEROR'S CLAIMED EXPERIENCE MAY BE VIEWED BY THE GOVERNMENT AS EVIDENCE THAT THE OFFEROR LACKS EXPERIENCE IN PROVIDING CONTRACTED IN-HOME OXYGEN SERVICES OR CONTRACTED IN-HOME VENTILATOR SERVICES OR BOTH, WHEN EVALUATING PROPOSALS FOR THE EXPERIENCE EVALUATION FACTOR.**

**Volume Two (2)-Price:**

Offerors shall complete the attached spreadsheet RFP Home Oxygen Schedule 10-13-2022. This factor shall be used to assess the reasonableness of the Offeror's proposed price.

**Minimum Submission Requirements in order to be considered for award, the offeror is required to submit, at a minimum, the following:**

1. Signed SF-1449.
2. Signed Amendment(s) SF-30, if any.
3. Volume One (1): Experience
4. Volume Two (2): Price. Which includes:

The attached spreadsheet RFP Home Oxygen Schedule 10-13-2022.

**Other material submissions**

The offeror is required to submit a copy of the RFP response via email. RFP response shall be named 36C255-22-R-0100: VISN 15 Home Oxygen [Vendor Name]. Pricing information shall be provided to include the corresponding spreadsheet. The pricing document shall be named VISN 15 Home Oxygen [Vendor Name] Price.

## Proposal Markings

Proposals should not include marketing or promotional material

NOTE: Proposals will be accepted only by email to the contracting officer, Mike Crader, at [michael.crader@va.gov](mailto:michael.crader@va.gov). It is the offeror's responsibility to ensure the e-mailed proposal is received by the contracting officer by the date and time specified in the solicitation.

## Solicitation Questions

Questions concerning the solicitation will be accepted with a final cut-off date for question submission of 1:00pm Central Time, 21 October 2022. Questions will only be accepted by email to [michael.crader@va.gov](mailto:michael.crader@va.gov). Please reference RFP number 36C255-22-R-0100: VISN 15 Home Oxygen Questions in the subject line.

## Proposal Due Date

Proposal submission is due NLT 1:00pm Central Time, 14 November 2022.

## E.4 52.212-3 OFFEROR REPRESENTATIONS AND CERTIFICATIONS— COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES (MAY 2022) (JUL 2020) (DEVIATION)

The Offeror shall complete only paragraph (b) of this provision if the Offeror has completed the annual representations and certification electronically in the System for Award Management (SAM) accessed through <https://www.sam.gov>. If the Offeror has not completed the annual representations and certifications electronically, the Offeror shall complete only paragraphs (c) through (v) of this provision.

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

*Covered telecommunications equipment or services* has the meaning provided in the clause 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

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

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

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

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

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

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

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

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

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

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

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

*Reasonable inquiry* has the meaning provided in the clause 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

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

that the person (as that term is defined in Section 2 of the Sudan Accountability and Divestment Act of 2007) conducting the business can demonstrate—

(1) Are conducted under contract directly and exclusively with the regional government of southern Sudan;

(2) Are conducted pursuant to specific authorization from the Office of Foreign Assets Control in the Department of the Treasury, or are expressly exempted under Federal law from the requirement to be conducted under such authorization;

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

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

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

(6) Have been voluntarily suspended.

*Sensitive technology—*

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

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

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

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

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

(1) Means a small business concern—

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

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

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

*Small business concern—*

(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 size standards in this solicitation.

(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.

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

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

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

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

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

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

(1) Directly by a parent corporation; or

(2) Through another subsidiary of a parent corporation.

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

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

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

(2) The management and daily business operations of which are controlled by one or more veterans.

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

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

(1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

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

(b)(1) Annual Representations and Certifications. Any changes provided by the Offeror in paragraph (b)(2) of this provision do not automatically change the representations and certifications in SAM.

(2) The offeror has completed the annual representations and certifications electronically in SAM accessed through <http://www.sam.gov>. After reviewing SAM information, the Offeror verifies by submission of this offer that the representations and certifications currently posted electronically at FAR 52.212–3, Offeror Representations and Certifications—Commercial Products and Commercial Services, have been entered or updated in the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard(s) applicable to the NAICS code(s) referenced for this solicitation), at the time this offer is submitted and are incorporated in this offer by reference (see FAR 4.1201), except for paragraphs .

(c) Offerors must complete the following representations when the resulting contract is for supplies to be delivered or services to be performed in the United States or its outlying areas, or when the contracting officer has applied part 19 in accordance with 19.000(b)(1)(ii). Check all that apply.

(1) *Small business concern*. The offeror represents as part of its offer that it [ ] is, [ ] is not a small business concern.

(2) *Veteran-owned small business concern*. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents as part of its offer that it [ ] is, [ ] is not a veteran-owned small business concern.

(3) *Service-disabled veteran-owned small business concern*. [Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (c)(2) of this provision.] The offeror represents as part of its offer that it [ ] is, [ ] is not a service-disabled veteran-owned small business concern.

(4) *Small disadvantaged business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it [ ] is, [ ] is not a small disadvantaged business concern as defined in 13 CFR 124.1002.

(5) *Women-owned small business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it [ ] is, [ ] is not a women-owned small business concern.

(6) WOSB concern eligible under the WOSB Program. [Complete only if the offeror represented itself as a women-owned small business concern in paragraph (c)(5) of this provision.] The offeror represents that—

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

(ii) It [ ] is, [ ] is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (c)(6)(i) of this provision is accurate for each WOSB concern eligible under the WOSB Program participating in the joint venture. [The offeror shall enter the name or names of the WOSB concern eligible under the WOSB Program and other small businesses that are participating in the joint venture: \_\_\_\_\_.] Each WOSB concern eligible under the WOSB Program participating in the joint venture shall submit a separate signed copy of the WOSB representation.

(7) Economically disadvantaged women-owned small business (EDWOSB) concern. [Complete only if the offeror represented itself as a WOSB concern eligible under the WOSB Program in (c)(6) of this provision.] The offeror represents that—

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

(ii) It [ ] is, [ ] is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (c)(7)(i) of this provision is accurate for each EDWOSB concern participating in the joint venture. [The offeror shall enter the name or names of the EDWOSB concern and other small businesses that are participating in the joint venture: \_\_\_\_\_.] Each EDWOSB concern participating in the joint venture shall submit a separate signed copy of the EDWOSB representation.

**Note:** Complete paragraphs (c)(8) and (c)(9) only if this solicitation is expected to exceed the simplified acquisition threshold.

(8) *Women-owned business concern (other than small business concern).* [Complete only if the offeror is a women-owned business concern and did not represent itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it [ ] is a women-owned business concern.

(9) *Tie bid priority for labor surplus area concerns.* If this is an invitation for bid, small business offerors may identify the labor surplus areas in which costs to be incurred on account

of manufacturing or production (by offeror or first-tier subcontractors) amount to more than 50 percent of the contract price:

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(10) *HUBZone small business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents, as part of its offer, that—

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

(ii) It [ ] is, [ ] is not a joint venture that complies with the requirements of 13 CFR Part 126, and the representation in paragraph (c)(10)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. [The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture: \_\_\_\_\_.] Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

(d) Representations required to implement provisions of Executive Order 11246—

(1) *Previous contracts and compliance.* The offeror represents that—

(i) It [ ] has, [ ] has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation; and

(ii) It [ ] has, [ ] has not filed all required compliance reports.

(2) *Affirmative Action Compliance.* The offeror represents that—

(i) It [ ] has developed and has on file, [ ] has not developed and does not have on file, at each establishment, affirmative action programs required by rules and regulations of the Secretary of Labor (41 CFR parts 60-1 and 60-2), or

(ii) It [ ] has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

(e) *Certification Regarding Payments to Influence Federal Transactions* (31 U.S.C. 1352). (Applies only if the contract is expected to exceed \$150,000.) By submission of its offer, the offeror certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress on his or her behalf in connection with the award of any resultant contract. If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this contract, the offeror shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide

the name of the registrants. The offeror need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

(f) *Buy American Certificate.* (Applies only if the clause at Federal Acquisition Regulation (FAR) 52.225-1, Buy American—Supplies, is included in this solicitation.)

(1)(i) The Offeror certifies that each end product, except those listed in paragraph (f)(2) of this provision, is a domestic end product.

(ii) The Offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

(iii) The terms “domestic end product,” “end product,” “foreign end product,” and “United States” are defined in the clause of this solicitation entitled “Buy American—Supplies.”

(2) Foreign End Products:

Line item No.	Country of origin

[List as necessary]

(3) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25.

(g)(1) *Buy American—Free Trade Agreements—Israeli Trade Act Certificate.* (Applies only if the clause at FAR 52.225-3, Buy American—Free Trade Agreements—Israeli Trade Act (JUL 2020) (DEVIATION), is included in this solicitation.)

(i)(A) The Offeror certifies that each end product, except those listed in paragraph (g)(1)(ii) or (iii) of this provision, is a domestic end product.

(B) The terms “Bahrainian, Moroccan, Omani, Panamanian, or Peruvian end product,” “domestic end product,” “end product,” “foreign end product,” “Free Trade Agreement country,” “Free Trade Agreement country end product,” “Israeli end product,” and “United States” are defined in the clause of this solicitation entitled “Buy American—Free Trade Agreements—Israeli Trade Act.”

(ii) The Offeror certifies that the following supplies are Free Trade Agreement country end products (other than Bahrainian, Moroccan, Omani, Panamanian, or Peruvian end products) or Israeli end products as defined in the clause of this solicitation entitled “Buy American—Free Trade Agreements—Israeli Trade Act.”

Free Trade Agreement Country End Products (Other than Bahrainian, Moroccan, Omani, Panamanian, or Peruvian End Products) or Israeli End Products:

Line item No.	Country of origin

[List as necessary]

(iii) The Offeror shall list those supplies that are foreign end products (other than those listed in paragraph (g)(1)(ii) of this provision) as defined in the clause of this solicitation entitled “Buy American—Free Trade Agreements—Israeli Trade Act.” The Offeror shall list as other foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

Other Foreign End Products:

Line item No.	Country of origin

[List as necessary]

(iv) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25.

(2) *Buy American—Free Trade Agreements—Israeli Trade Act Certificate, Alternate II. (JUL 2020) (DEVIATION)* If *Alternate II* to the clause at FAR 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Israeli end products as defined in the clause of this solicitation entitled “Buy American—Free Trade Agreements—Israeli Trade Act”:

Israeli End Products:

Line item No.

[List as necessary]

(3) *Buy American—Free Trade Agreements—Israeli Trade Act Certificate, Alternate III (JUL 2020) (DEVIATION)*. If *Alternate III* to the clause at FAR 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products (other than Bahrainian, Korean, Moroccan, Omani, Panamanian, or Peruvian end products) or Israeli end products as defined in the clause of this solicitation entitled “Buy American—Free Trade Agreements—Israeli Trade Act”:

Free Trade Agreement Country End Products (Other than Bahrainian, Korean, Moroccan, Omani, Panamanian, or Peruvian End Products) or Israeli End Products:

Line item No.	Country of origin

[List as necessary]

(4) *Trade Agreements Certificate*. (Applies only if the clause at FAR 52.225-5, Trade Agreements (JUL 2020) (DEVIATION), is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (g)(5)(ii) of this provision, is a U.S.-made or designated country end product, as defined in the clause of this solicitation entitled "Trade Agreements".

(ii) The offeror shall list as other end products those end products that are not U.S.-made or designated country end products.

Other End Products:

Line item No.	Country of origin

[List as necessary]

(iii) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25. For line items covered by the WTO GPA, the Government will evaluate offers of U.S.-made or designated country end products without regard to the restrictions of the Buy American statute. The Government will consider for award only offers of U.S.-made or designated country end products unless the Contracting Officer determines that there are no offers for such products or that the offers for such products are insufficient to fulfill the requirements of the solicitation.

(h) *Certification Regarding Responsibility Matters* (Executive Order 12689). (Applies only if the contract value is expected to exceed the simplified acquisition threshold.) The offeror certifies, to the best of its knowledge and belief, that the offeror and/or any of its principals—

(1)  Are,  are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(2)  Have,  have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, state or local government contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;

(3)  Are,  are not presently indicted for, or otherwise criminally or civilly charged by a Government entity with, commission of any of these offenses enumerated in paragraph (h)(2) of this clause; and

(4)  Have,  have not, within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds the threshold at 9.104–5(a)(2) for which the liability remains unsatisfied.

(i) Taxes are considered delinquent if both of the following criteria apply:

(A) *The tax liability is finally determined.* The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(B) *The taxpayer is delinquent in making payment.* A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(ii) *Examples.*

(A) The taxpayer has received a statutory notice of deficiency, under I.R.C. Sec. 6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(B) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. Sec. 6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(C) The taxpayer has entered into an installment agreement pursuant to I.R.C. Sec. 6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.

(D) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. 362 (the Bankruptcy Code).

(i) *Certification Regarding Knowledge of Child Labor for Listed End Products (Executive Order 13126).*

(1) *Listed end products.*

Listed end product	Listed countries of origin

(2) *Certification.* [If the Contracting Officer has identified end products and countries of origin in paragraph (i)(1) of this provision, then the offeror must certify to either (i)(2)(i) or (i)(2)(ii) by checking the appropriate block.]

(i) The offeror will not supply any end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product.

(ii) The offeror may supply an end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. The offeror certifies that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any such end product furnished under this contract. On the basis of those efforts, the offeror certifies that it is not aware of any such use of child labor.

(j) *Place of manufacture.* (Does not apply unless the solicitation is predominantly for the acquisition of manufactured end products.) For statistical purposes only, the offeror shall indicate whether the place of manufacture of the end products it expects to provide in response to this solicitation is predominantly—

(1)  In the United States (Check this box if the total anticipated price of offered end products manufactured in the United States exceeds the total anticipated price of offered end products manufactured outside the United States); or

(2)  Outside the United States.

(k) *Certificates regarding exemptions from the application of the Service Contract Labor Standards.* (Certification by the offeror as to its compliance with respect to the contract also constitutes its certification as to compliance by its subcontractor if it subcontracts out the exempt services.) [The contracting officer is to check a box to indicate if paragraph (k)(1) or (k)(2) applies.]

(1) Maintenance, calibration, or repair of certain equipment as described in FAR 22.1003-4(c)(1). The offeror  does  does not certify that—

(i) The items of equipment to be serviced under this contract are used regularly for other than Governmental purposes and are sold or traded by the offeror (or subcontractor in the case of an exempt subcontract) in substantial quantities to the general public in the course of normal business operations;

(ii) The services will be furnished at prices which are, or are based on, established catalog or market prices (see FAR 22.1003-4(c)(2)(ii)) for the maintenance, calibration, or repair of such equipment; and

(iii) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract will be the same as that used for these employees and equivalent employees servicing the same equipment of commercial customers.

(2) Certain services as described in FAR 22.1003-4(d)(1). The offeror  does  does not certify that—

(i) The services under the contract are offered and sold regularly to non-Governmental customers, and are provided by the offeror (or subcontractor in the case of an exempt subcontract) to the general public in substantial quantities in the course of normal business operations;

(ii) The contract services will be furnished at prices that are, or are based on, established catalog or market prices (see FAR 22.1003-4(d)(2)(iii));

(iii) Each service employee who will perform the services under the contract will spend only a small portion of his or her time (a monthly average of less than 20 percent of the available hours on an annualized basis, or less than 20 percent of available hours during the contract period if the contract period is less than a month) servicing the Government contract; and

(iv) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract is the same as that used for these employees and equivalent employees servicing commercial customers.

(3) If paragraph (k)(1) or (k)(2) of this clause applies—

(i) If the offeror does not certify to the conditions in paragraph (k)(1) or (k)(2) and the Contracting Officer did not attach a Service Contract Labor Standards wage determination to the solicitation, the offeror shall notify the Contracting Officer as soon as possible; and

(ii) The Contracting Officer may not make an award to the offeror if the offeror fails to execute the certification in paragraph (k)(1) or (k)(2) of this clause or to contact the Contracting Officer as required in paragraph (k)(3)(i) of this clause.

(l) *Taxpayer Identification Number (TIN)* (26 U.S.C. 6109, 31 U.S.C. 7701). (Not applicable if the offeror is required to provide this information to SAM to be eligible for award.)

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

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

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

TIN: \_\_\_\_\_.

TIN has been applied for.

TIN is not required because:

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

Offeror is an agency or instrumentality of a foreign government;

Offeror is an agency or instrumentality of the Federal Government.

(4) *Type of organization.*

Sole proprietorship;

Partnership;

Corporate entity (not tax-exempt);

Corporate entity (tax-exempt);

Government entity (Federal, State, or local);

Foreign government;

International organization per 26 CFR 1.6049-4;

Other \_\_\_\_\_.

(5) *Common parent.*

Offeror is not owned or controlled by a common parent;

Name and TIN of common parent:

Name \_\_\_\_\_.

TIN \_\_\_\_\_.

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

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

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

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

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

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

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

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

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

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

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

(iii) Certifies that the offeror, and any person owned or controlled by the offeror, does not knowingly engage in any transaction that exceeds the threshold at FAR 25.703–2(a)(2) with Iran’s Revolutionary Guard Corps or any of its officials, agents, or affiliates, the property and interests in property of which are blocked pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (see OFAC’s Specially Designated Nationals and Blocked Persons List at <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The Offeror represents that—

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

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

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

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

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

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

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

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

(s) [Reserved]

(t) *Public Disclosure of Greenhouse Gas Emissions and Reduction Goals.* Applies in all solicitations that require offerors to register in SAM (12.301(d)(1)).

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

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

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

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

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

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

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

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

reporting waste, fraud, or abuse related to the performance of a Government contract to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information (e.g., agency Office of the Inspector General).

(v) *Covered Telecommunications Equipment or Services—Representation*. Section 889(a)(1)(A) and section 889(a)(1)(B) of [Public Law 115-232](#).

(1) 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”.

(2) The Offeror represents that—

(i) It [ ] does, [ ] 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.

(ii) After conducting a reasonable inquiry for purposes of this representation, that it [ ] does, [ ] does not use covered telecommunications equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services.

(End of Provision)

## **E.5 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)

## **E.6 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 FAPIIS 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)

## **E.7 52.216-1 TYPE OF CONTRACT (APR 1984)**

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

(End of Provision)

## **E.8 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:

Mike Crader  
michael.crader@va.gov

Hand-Carried Address:

Department of Veterans Affairs  
Network Contracting Office (NCO) 15  
3450 S 4th Street Trafficway  
Leavenworth KS 66048

Mailing Address:

Department of Veterans Affairs  
Network Contracting Office (NCO) 15  
3450 S 4th Street Trafficway  
Leavenworth KS 66048

(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)

### **E.9 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)