1. SOLICITATION NUMBER

2. TYPE OF SOLICITATION

3. DATE ISSUED

PAGE OF PAGES

4. CONTRACT NUMBER

5. REQUISITION/PURCHASE REQUEST NUMBER

6. PROJECT NUMBER

7. ISSUED BY

CODE

8. ADDRESS OFFER TO

a. NAME

b. TELEPHONE NUMBER (Include area code) (NO COLLECT CALLS)

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

12a. THE CONTRACTOR MUST FURNISH ANY REQUIRED PERFORMANCE AND PAYMENT BONDS?

(If "YES," indicate within how many calendar days after award in Item 12B.)

12b. CALENDAR DAYS

13. ADDITIONAL SOLICITATION REQUIREMENTS:

STANDARD FORM 1442 (REV. 8/2014)

STANDARD FORM 1442

Prescribed by GSA-FAR (48 CFR) 52.236-1(d)

SOLICITATION, OFFER,

AND AWARD

(Construction, Alteration, or Repair)

SOLICITATION

SOLICITATION

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

9. FOR INFORMATION

 CALL:

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

SEALED BID (IFB)

NEGOTIATED (RFP)

11. The Contractor shall begin performance within \_\_\_\_\_\_\_\_\_\_\_\_ calendar days and complete it within

 \_\_\_\_\_\_\_\_\_\_\_\_

calendar days after receiving

award,

notice to proceed. This performance period is

mandatory

negotiable. (See \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_).

YES

NO

a.

Sealed offers in original and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_copies to perform the work required are due at the place specified in Item 8 by \_\_\_\_\_\_\_\_\_\_\_\_\_

(hour) local time \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (date). If this is a sealed bid solicitation, offers must be publicly opened at that time. Sealed

envelopes containing offers shall be marked to show the offeror's name and address, the solicitation number, the date and time offers are due.

b.

An offer guarantee

is,

is not required.

c.

All offers are subject to the (1) work requirements, and (2) other provisions and clauses incorporated in the solicitation in full text or by reference.

 .

d.

Offers providing less than \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ calendar days for Government acceptance after the date offers are due will not be

considered and will be rejected.

1

89

36C26324R0136

X

12-05-2024

TBD

438-25-2-3909-0001

438-22-900

36C263

Department of Veterans Affairs

NETWORK 23 CONTRACTING OFFICE

316 Robert Street N. STE. 506

St. Paul MN 55101

Department of Veterans Affairs

NETWORK 23 CONTRACTING OFFICE

316 Robert Street N. STE. 506

St. Paul MN 55101

Derek Fore

651-293-3032

Project: 438-22-900, Replace Boiler Plant

Project Location: Sioux Falls VA Health Care System, 2501 W 22nd St, Sioux Falls, SD 57105

The magnitude of construction of this VA project is between $20,000,000 and $50,000,000.

NAICS Code: 236220, Commercial and Institutional Building Construction

Small Business Size Standard: $45.0 Million

This solicitation will be evaluated on a tradeoff basis. As stated in this solicitation, this procurement is

a Firm-Fixed-Price Construction Solicitation IAW FAR 15.101-1.

This solicitation is set-aside for VetCert certified, Service-Disabled Veteran Owned Small Businesses (SDVOSB). Vendor

verification for SDVOSB can be found at https://veterans.certify.sba.gov/

THIS ACQUISITION IS SET-ASIDE 100% SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS (SDVOSB) ONLY, UNDER THE AUTHORITY OF

38 U.S.C. PART 8127(d). ANY PERSON OR BUSINESS ENTITY SUSPECTEDOF MISREPRESENTATION FOR THE PURPOSE OF THE SECURING A

GOVENMENT CONTRACT MAY BE CRIMINALLY INVESTIGATED AND PROSECUTED FOR FRAUD AGAINST THE UNITED STATES GOVERNMENT.

The contractor shall provide all supervision, tools, labor, materials, equipment, transportation and testing necessary

to complete the construction of the project described herein. Work includes general construction, electrical,

mechanical, plumbing, and other trades as required to provide a complete and finished product in accordance with all

contract terms and conditions, the Statement of Work (SOW), drawings, specifications, and all applicable

VA and local codes.

10

915

X

X

52.211-10

X

10

 0

12:00 PM

CST

01-27-2025

X

120

14. NAME AND ADDRESS OF OFFEROR

15. TELEPHONE NUMBER

16. REMITTANCE ADDRESS

CODE

FACILITY CODE

17. The offeror agrees to perform the work required at the prices specified below in strict accordance with the terms of the solicitation, if this offer is

accepted by the Government in writing within \_\_\_\_\_\_\_\_\_\_ calendar days after the date offers are due.

AMOUNTS

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

19. ACKNOWLEDGMENT OF AMENDMENTS

AMENDMENT

NUMBER

DATE.

20a. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER

20b. SIGNATURE

20c. OFFER DATE

21. ITEMS ACCEPTED:

22. AMOUNT

23. ACCOUNTING AND APPROPRIATION DATA

24. SUBMIT INVOICES TO ADDRESS SHOWN IN

ITEM

25. OTHER THAN FULL AND OPEN COMPETITION PURSUANT TO

10 U.S.C. 2304(c)(

 )

41 U.S.C. 3304(a) (

 )

26. ADMINISTERED BY

27. PAYMENT WILL BE MADE BY

PHONE:

FAX:

28. NEGOTIATED AGREEMENT

29. AWARD

Your

Contractor agrees

offer on this solicitation is hereby accepted as to the items listed. This

to furnish and deliver all items or perform all work requirements identified

award consummates the contract, which consists of (a) the Government

on this form and any continuation sheets for the consideration stated in

solicitation and your offer, and (b) this contract award. No further cont-

this contract. The rights and obligations of the parties to this contract

ractual document is necessary.

shall be governed by (a) this contract award, (b) the solicitation, and (c)

the clauses, representations, certifications, and specifications incorporated

by reference in or attached to this contract.

30a. NAME AND TITLE OF CONTRACTOR OR PERSON AUTHORIZED

31a. NAME OF CONTRACTING OFFICER

TO SIGN

30b. SIGNATURE

30c. DATE

31b. UNITED STATES OF AMERICA

31c. AWARD DATE

BY

**OFFER**

**AWARD**

**STANDARD FORM 1442 (REV. 8/2014) BACK**

(Include ZIP Code)

(Include area code)

(Include only if different than Item 14.)

(Insert any number equal to or greater than

the minimum requirement stated in Item 13d. Failure to insert any number means the offeror accepts the minimum in Item 13d.)

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

(Type or print)

(4 copies unless otherwise specified)

(Type or print)

(Type or print)

(Contractor is required to sign this

document and return \_\_\_\_\_\_\_ copies to issuing office.)

(Contractor is not required to sign this document.)

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

**(To be completed by Government)**

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

438-3650162-3909-854200-3220-23NR2WA07

Obligation Number: TBD

Department of Veterans Affairs

NETWORK 23 CONTRACTING OFFICE

316 Robert Street N. STE. 506

St. Paul MN 55101

Y

Department of Veterans Affairs

Financial Services Center

PO Box 149971

Austin TX 78714-9971

X

 1

Gregg Sutcliffe

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## A.3 PRICE/COST SCHEDULE

### ITEM INFORMATION

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| ITEM NUMBER | DESCRIPTION OF SUPPLIES/SERVICES | QUANTITY | UNIT | UNIT PRICE | AMOUNT |
| 0001 |  | 1.00 | JB | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  | PN: 438-22-900, Replace Boiler Plant: Provide all labor, materials, and equipment as specified in the Statement of Work, Plans, and specifications to provide a new boiler plant at the Sioux Falls VAMC.PRINCIPAL NAICS CODE: 236220 - Commercial and Institutional Building ConstructionPRODUCT/SERVICE CODE: Y1NB - Construction of Heating and Cooling Plants |  |
|  |  |  |  | **GRAND TOTAL** | **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |

# INSTRUCTIONS, CONDITIONS AND OTHER STATEMENTS TO BIDDERS/OFFERORS

**1. AVAILABILITY OF SOLICITATION DOCUMENTS**

All solicitation related documents will be published on the Contract Opportunities website at <https://sam.gov>. Proposal materials consisting of drawings, specifications, and contract forms are included and/or attached as part of this Request For Proposal (RFP). The VA will not provide printed copies of drawings or specifications. It is the responsibility of the offeror to obtain the proposal materials in a time and manner sufficient to respond to this solicitation by the specified due date.

**2. PROPOSAL EXPENSES AND PRE-CONTRACT COSTS**

This Request for Proposal (RFP) does not commit the Government to pay, as a direct charge, any costs incurred in the preparation and submission of a proposal.

**3. SDVOSB SET-ASIDE**

This procurement is 100% set-aside for Service-Disabled Veteran-Owned Small Business (SDVOSB) concerns. Offers received from other than Service-Disabled Veteran-Owned Small Business concerns will NOT be considered. All SDVOSBs must be listed as verified in the VET CERT at [Veteran Small Business Certification (sba.gov)](https://veterans.certify.sba.gov/) at TIME OF SUBMISSION OF OFFERS, as well as at TIME OF AWARD. Failure to be BOTH visible and verified at the time of offer and time of award will result in the offeror’s proposal being deemed unacceptable and ineligible for award.

**4. SELECTION PROCEDURES**

This is a Request for Proposal in accordance with FAR Part 15. The Government will award a contract resulting from this solicitation to the offeror whose offer conforming to the solicitation is determined by the Source Selection Authority to provide the best overall value to the Government utilizing the Trade-Off (FAR 15.101-1) method of evaluation. It is the intent of the Government to award without discussions; however, the Government reserves the right to engage in discussions. If the Contracting Officer decides that discussions are in the Government’s best interest, they will be conducted in accordance with FAR 15.306.

**5. PRE-PROPOSAL SITE VISIT**

A pre-proposal site visit will be conducted on 17 December 2024 at 10:00 AM CT.

**6. TECHNICAL QUESTIONS**

Questions of a technical nature must be provided in writing and shall be submitted by the prospective offerors to Derek Fore, Contract Specialist. Questions shall be submitted only via email to: Gregg.sutlcliffe@va.gov and Derek.fore@va.gov. The subject line must read: *36C26324R0136 438-22-900, Replace Boiler Plant – Technical Questions.* Oral questions of a technical nature are not acceptable. **THE CUT-OFF DATE AND TIME FOR RECEIPT OF QUESTIONS IS 24 December 2024 at 10:00 AM (CT).**

**7. AMENDMENTS**

Amendments to this solicitation will be posted to Contract Opportunities at <https://sam.gov>. Paper copies of the amendments will NOT be individually mailed. No other notification of amendments will be provided. Potential Offerors are advised that they are responsible for obtaining and acknowledging any amendments to the solicitation. Failure to acknowledge an amendment may result in your proposal being considered unacceptable.

**8. ACCURACY IN PROPOSALS**

Proposals must set forth full, accurate, and complete information as required by this RFP, (including attachments). The penalty for making false statements is prescribed in 18 U.S.C. 1001.

**9. DETERMINATION OF RESPONSIBILITY**

A Determination of Responsibility will be conducted for the apparent “awardee” prior to award of the project. The required information from the proposal, along with other information obtained from Government systems, such as, but not limited to the OSHA and EPA online inspection history databases, as well as any other information the Contracting Officer has determined to be valid, will be used to make the Determination of Responsibility. NOTE: Any information received by the Government that would cause for a negative Determination of Responsibility may make the Offeror ineligible for award.

**10. VETS 4212**

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

**11. SYSTEM FOR AWARD MANAGEMENT (SAM)**

Federal Acquisition Regulations require that federal contractors register in the System for Award Management (SAM) database at http://www.sam.gov and enter all mandatory information into the system. Offerors are required to be registered at the time of proposal submission and at time of award. Offerors are encouraged to ensure that they are registered in SAM prior to submitting their proposal.

**12. REVIEW REQUIRED REGISTRATION WITH CONTRACTOR**

Contractor Performance Assessment Reporting System (CPARS):

As prescribed in Federal Acquisition Regulation (FAR) Part 42.1502(e), the Department of Veterans Affairs (VA) evaluates contractor past performance on all construction contracts that exceed $750,000 and shares those evaluations with other Federal Government contract specialists and procurement officials. The FAR requires that the contractor be provided an opportunity to comment on past performance evaluations prior to each report closing. To fulfill this requirement VA uses an online database, CPARS. CPARS also includes access to the federal awardee performance and integrity information system (FAPIIS). FAPIIS is a web-enabled application accessed via CPARS for contractor responsibility determination information. Each contractor whose contract award is estimated to exceed $750,000 is required to register with CPARS database at the following web address: http://www.cpars.gov/. Help in registering can be obtained by contacting Customer Support Desk @ DSN: 684-1690 or COMM: 207- 438-1690. Registration should occur no later than thirty days after contract award and must be kept current should there be any change to the contractor’s registered representative. For contracts with a period of one year or less, the contracting officer will perform a single evaluation when the contract is complete. For contracts exceeding one year, the contracting officer will evaluate the contractor’s performance annually. Interim reports will be filed each year until the last year of the contract, when the final report will be completed. The report shall be assigned in CPARS to the contractor’s designated representative for comment. The contractor representative will have thirty days to submit any comments and re-assign the report to the VA contracting officer. Failure to have a current registration in the CPARS database, or to re-assign the report to the VA contracting officer within those thirty days, will result in the Government’s evaluation being placed on file in the database with a statement that the contractor failed to respond.

**13. BACKGROUND INVESTIGATIONS AND SPECIAL AGREEMENT CHECKS**

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

**14. SPECIAL NOTES REGARDING FAR 52.229-3: FEDERAL, STATE, AND LOCAL TAXES**

Offerors are hereby notified that all state and local sales or use taxes for construction materials must be included in their bid or proposal price. It is solely the responsibility of the offeror to include all other applicable taxes in their bid or proposal price as well. The Government has determined that for this acquisition it cannot take advantage of any sales or use tax exemptions that may be available to it under applicable state law. Under no circumstances will any Contractor be designated as an agent of the Government for purposes of any tax exemption, nor will the Government authorize any Contractor’s use of any tax exemption directly applicable to the Government under this procurement.

**15. REFERENCES TO VA ENGINEER, RESIDENT ENGINEER OR PROJECT MANAGER**

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

**16. STATEMENT OF WORK (SOW)**

See attachment – Final SOW 8.28.24

### PROPOSAL PREPARATION INSTRUCTION

* 1. The submission of the signed SF 1442 and Block 17, specified below will constitute the Offeror’s acceptance of the terms and conditions of the RFP, including attachments and any issued amendments.
	2. To assure timely and equitable evaluation of proposals, offerors must follow the instructions contained herein.

### PROPOSAL SUBMISSION

* 1. All proposals shall be submitted by the **Prime Contractor** no later than (NLT) closing date and time specified in SF1442, Block 13.A. (subject to amendment) via email at Gregg.sutlcliffe@va.gov and Derek.fore@va.gov **NO OTHER FORMS OF SUBMISSION WILL BE ACCEPTED.**
	2. Due to email server constraints, your proposal shall be submitted **as portable data files (pdf)** and documents submitted must be smaller than **ten (10) Mega Bytes (MB) in size**. Send document in separate files as deem necessary. The offeror is responsible to verify that the Government has received the proposals.
	3. Undeliverable emails due to an offeror’s proposal size, using wrong email address, or otherwise, is not the responsibility of the Government.

### 3. SELECTION AND EVALUATION PROCEDURES

* 1. Proposals will be subject to an initial screening for compliance with proposal preparation instructions. Failure to comply will result in a proposal being excluded from competition without further evaluation of the proposal beyond the initial screening.

### 4. PROPOSAL REQUIREMENTS AND FORMATTING

1. Proposals shall be typewritten, with fonts no smaller than 10 points, with page layout no smaller than ½” top, bottom and ½” side margins, single space, paginated, portrait mode or letter size paper; except charts may be displayed in landscape mode.
2. Solicitation forms requiring to be completed shall be typewritten with fonts no smaller than 9 points.
3. **No** **hyperlinks or electronic media** will be allowed or considered.
4. Any conceptual drawings, renderings, product data sheets, one-line diagrams, etc. included in your proposal, shall be submitted as **portable data files (pdf).**
5. **Format your technical proposal factor by factor, as listed in the solicitation. Stick to the page limits.**
6. Proposals which merely restate the requirement or state that the requirement will be met, without providing supporting rationale, are not sufficient and will not be considered an appropriate response. It is the offeror’s responsibility to insure the completeness of the proposal.
7. **Proprietary Data:** See FAR 52.215-1

### 5. TECHNICAL PROPOSAL PREPARATION INSTRUCTIONS

1. **TECHNICAL PROPOSAL PREPARATION INSTRUCTIONS:** The following must be included in the offeror’s proposal:

**FIRST PACKAGE:**

1. Cover Page with: Construction Project, Solicitation Number, Project Title and Project Number, Company Information (Principal points of contact, email, address, phone numbers (including area code), Unique Entity Identifier (UIE) number, Cage code)
2. Table of Contents
3. Signed SF 1442 by the SDVOSB, with Blocks 14-20C completed including acknowledgement of any Amendments issued.
4. Verification of the annual form VETS-4212, Federal Contractor Veterans’ Employment Report. (*Refer to General Information Section, paragraph 17.*)
5. Copy of current Veteran Small Business Certification (VetCert).
6. Completed Mandatory (LOS) Certification clause – *Per VAAR 819.7004, VAAR 852.219-75 VA Notice of Limitations on Subcontracting – Certificate of Compliance for Services and Construction must be completed, signed, and returned with the offeror’s bid/quotation/proposal. The Government will not consider offers for award from offerors that do not provide the certification with their bid/quotation/proposal, and all such responses will be deemed ineligible for evaluation and award.*
7. Additional Prime Contractor Information: All Offerors shall submit current information on their current Bonding/Surety Level for construction contracts. The Offeror shall provide a letter from their surety demonstrating the offeror’s total bonding capacity and current available bonding capacity, dated no earlier than the solicitation release date.

All Offerors shall submit information pertaining to their past Safety and Environmental record. The information must contain a certification that the bidder/offeror has no more than three (3) serious, or one (1) repeat or one (1) willful OSHA or any EPA violation(s) in the past three years. If such certification cannot be made, a Bidder/Offeror shall explain why and submit as much information as possible regarding the circumstances of its past safety and environmental record, including the number of EPA violations and/or the number of serious, repeat, and/or willful OSHA violations, along with a detailed description of those violations.

All Bidders/Offerors shall submit information regarding their current Experience Modification Rate (EMR). This information shall be obtained from the Offeror’s insurance carrier and be furnished on the insurance carrier’s letterhead. If an Offeror’s EMR is above 1.0, Offeror must submit a written explanation of the EMR from its insurance carrier furnished on the insurance carrier’s letterhead, describing the reasons for the elevated EMR and the anticipated date the EMR may be reduced to 1.0 or below.

The Prime Contractor Bonding Level and Safety/EMR Ratings will be considered during the responsibility determination portion of the award process.

**SECOND PACKAGE (TECHNICAL PROPOSAL):**

1. Cover Page with: Construction Project, Solicitation Number, Project Title and Project Number, Company Information (Principle points of contact, email, address, phone numbers (including area code), Unique Entity Identifier (UIE) number, Cage code, etc.)
2. Table of Contents
3. Required Submittals for Factor 1 – Technical Approach (30 pages max.)
4. Required Submittals for Factor 2 – Experience (Min.3 projects, and Max 5 projects; 20 pages max.)
5. Required Submittals for Factor 3 – Key Personnel Experience (20 pages max.)
6. Required Submittals for Factor 4 – Past Performance (10 pages max.)
7. Required Submittal for Factor 5 – Submitted Boiler (40 pages max.)

### 7. PRICE PROPOSAL PREPARATION INSTRUCTIONS

1. **PRICE PROPOSAL PREPARATION INSTRUCTIONS:** The following must be included in the offeror’s technical proposal:

**PRICE PROPOSAL**

1. Cover Page with: Construction Project, Solicitation Number, Project Title and Project Number, Company Information (Principal points of contact, email, address, phone numbers (including area code), Unique Entity Identifier (UIE) number, Cage code, etc.)
2. Table of Contents
3. Bid Bond-SF24 “legible scan copy in pdf format”
4. Completed Price Schedule
5. Price Proposal Breakdown to support price proposed.
	1. Provide a detailed divisional price breakdown for the purpose of evaluating price. The breakdown shall separately **at a minimum** **but not limited to** (*this is not an all-inclusive breakdown list, DO NOT limit your breakdown to this list)* include the following cost elements: Labor (Direct & Indirect), Materials, Material Markups, Material Overhead, Equipment, Subcontractor Cost, Other Direct Costs, Overhead Expenses, Indirect Cost, General & Administrative (G&A) expenses, and Profit. While developing your price proposal please make sure to include all applicable taxes, and government stamps cost.
6. **NOTE:** Price breakdown shall be indicative of showing at least 15 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other eligible service-disabled veteran-owned small business concerns in accordance with VAAR 852.219-73.

## 8. EVALUATION FACTORS FOR AWARD

The evaluation factors consist of:

* Factor 1 - Technical Approach and Technical Qualification
* Factor 2 – Experience
* Factor 3 – Key Personnel
* Factor 4 – Past Performance
* Factor 5 – Submitted Boiler
* Factor 6 - Price

Relative Importance: Non-Price Factors are of equal importance and when combined, are significantly more important than price.

**FACTOR 1: TECHNICAL APPROACH**

***(30 Pages max.)***

Submittal Requirements:

1. Provide a narrative describing the Offeror’s method to manage the project to achieve design-build objectives as described in the solicitation. Include all aspects covered in the scope of work. The technical approach section shall include language that validates the offeror’s knowledge of this type of project and should not be written in general terms. The following shall be included in the narrative:
	* Construction Approach: Describe the techniques and methods for this construction project to include coordination with the design, projected timelines and phases, and coordination of work. Include an explanation of the total project management approach for the construction team, to include partnering/coordination with subcontractors, basic construction team and/or design team, and concurrent construction activities by others, if any are known.
	* Quality Control: Describe quality control processes during construction phases that will lead to an effective and successful project that completes on-time and meets performance needs and requirements.
	* Cost Control: Describe cost control measures during construction phases that will lead to an effective and successful project that completes within budget.
	* Explanation of all identified potential risks – especially any related to your preliminary Pre-Construction Risk Assessment (PCRA) and Infection Control Risk Assessment (ICRA). Discuss how risk mitigation activities will be managed for thorough and timely execution.
	* Provide proposed plan to minimize the impact of construction on day-to-day hospital activities.
	* Discuss the process your firm will take to handle disruptions, delays, and change orders. Offerors are specifically instructed to provide clear, unambiguous, and detailed information.
2. The Offeror shall provide a draft project schedule for construction that adheres to the period of performance of this project. Each Offeror’s construction schedule shall address the following:
	* Be in the form of a progress chart of suitable scale to indicate the work scheduled for completion by any given date during the work period.
		+ - Construction period milestones, phasing, and timeframes.
			- Sufficient information to indicate full understanding of the project scope.
		+ Identification of long lead materials/equipment.

Evaluation Approach:

1. The Government will evaluate the extent to which the submitted information meets all requirements above, and demonstrates their understanding of the project requirements:
2. The Government will evaluate the extent to which the draft project schedule includes all requirements above and demonstrates the offeror’s understanding of and ability to perform all required elements of the project in the timeframe specified with limited impact to the Medical Center. The draft project schedule must include the activities which are consistent with those described within the project drawings, specifications, and Scope of Work documents and must not exceed the Governments maximum allowable performance period. The period of performance for this project is 915 calendar days after the Notice to Proceed. For scheduling purposes, assume an estimated award date of May 27, 2025. The Offeror shall prepare and submit a reasonable construction schedule showing all necessary work elements to complete the project identified under this solicitation. The schedule must be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the performance period. The submitted schedule must be developed using project scheduling software such as MS Project, Primavera, or any other comparable form.

Offerors are specifically instructed to provide clear, unambiguous, and detailed information. Confusing, vague, or conflicting representations of Technical Approach to demonstrate technical competence, including proposals that simply restate the published requirements, will not be rated as highly as proposals that provide clear and detailed information.

**FACTOR 2: EXPERIENCE**

***(*****20 pages max.*)***

Submittal Requirements:

**Relevant:**  For purposes of this evaluation, a relevant project is further defined as “construction completed in a clinic, hospital or other medical facility space” construction projects to be at least $5.0 Million of similar size and scope and 80% complete.

**Sizes:** Similar size is considered via quantity of components replaced/installed. Minimum requirement to be at least 50% of this design’s requirement.

**Scope:** Similar scope would include new construction of a new boiler plant or a major renovation of an existing boiler plant including but not limited to removal and replacement of the existing boilers, and coordination of utility shutdowns for the hospital campus.

The offeror shall provide a minimum of three (3) and a maximum of five (5) projects completed within the last seven (7) years of similar size and scope to this project. Projects must demonstrate an offeror’s experience as a prime contractor managing multiple subcontractors.

Offerors shall explain how the information provided is relevant to the proposed acquisition and the projects selected should clearly demonstrate the construction capabilities of the Offeror. Each project shall include at least one (1) of the four (4) below targeted experiences. At least a total of two (2) experiences must be accounted for in all the project submissions combined. Example Project 1 has Experience 1, Project 2 has Experience 3, Project 3 has Experience 1.

**Targeted Experience**

1. Installation of large fire tube boilers at least 500 HP.
2. Installation of stainless-steel plumbing piping.
3. Installation of the high-pressure steam piping.
4. Experience with large scale utility shutdowns within a hospital.

The Offeror’s submission should include at a minimum:

* Project Title, Project Contract Number (and Task Order Number if one was associated with the contract), Project Location (Physical Address); Contract Type (Example: Firm-Fixed-Price, Time and Materials, Cost Reimbursement, etc.).
* Project point of contact and contact information.
* A brief description of the scope of work, including the relevant factors explained above.
* Project prime contractor and major subcontractors.
* Project statistics including start and completion dates (original vs actual) and project cost (original vs actual). If original vs actual completion dates and project cost differ, please provide an explanation as to why they differ.
* Problems encountered on identified contracts, if applicable, and the offeror’s corrective actions. The Government will evaluate the submitted information on the extent to which the offeror has demonstrated experience in performing construction projects that are similar in size and scope to the current requirement.

Evaluation Approach:

The Government will evaluate the submitted information on the extent to which the offeror has demonstrated experience in performing construction projects that are similar in size and scope to the current requirement.

**FACTOR 3: KEY PERSONNEL EXPERIENCE**

Submittal Requirements:

The Offeror shall provide a resume for each of the following key construction personnel: Project Manager, Site Supervisor, Safety Manager, and Quality Manager as well as any known major subcontractors. For each resume, include company name; name of individual; relevant listing of experience; qualifications such as specialized training, education, experience, etc. For any subcontractors identified, provide a resume for that company, identify any key personnel that will be assigned to the contract resulting from this solicitation, and the relevant experience of both the company and any key personnel that were identified.

Evaluation Approach:

The proposals will be evaluated based on the resumes provided by the Offeror. The VA will evaluate the extent to which the listed personnel and subcontractors demonstrate capabilities and qualifications to provide the required planning, implementation, and completion of the project. Additional consideration will be given to offerors with key personnel that have specialized training, educations, certifications, and experience in an operational healthcare facility.

**FACTOR 4: PAST PERFORMANCE**

***(Min.* 3 projects, Max. 5 projects, and 10-page limit*)***

Submittal Requirements:

The offeror shall provide a past performance evaluation for each of the projects listed under experience. If the evaluation is available in CPARS, it shall be submitted with the proposal. If the evaluation is not available in CPARS, then the Offeror shall submit a Past Performance Questionnaire (PPQ) (reference Attachments) for each project referenced for Past Performance. The Offeror shall notify their client that the PPQ shall be submitted via email to the Government’s point of contact, derek.fore@va.gov. If the Offeror is unable to obtain a completed PPQ from a client for a project before proposal closing date, the Offeror shall complete and submit with the proposal the first page of the PPQ, which will provide contract and client information for the respective project. The Government may make reasonable attempts to contact the client noted for that project(s) to obtain the PPQ information. Although the Government may make attempts, it is not responsible for ensuring that complete PPQ information is provided, and that the Government will evaluate past performance even if complete information isn’t provided. Offerors should follow-up with clients/references to help ensure timely submittal of questionnaires. The page limit does not apply for the CPARS and PPQs.

Evaluation Approach:

Past performance will be evaluated on the quality of the Offeror’s past performance with respect to the projects provided. The currency and relevance of the information, source of the information, context of the data, and general trends in contractor’s performance shall be considered. When evaluating, quality aspects that may be considered are timeliness of contract completion, adherence to contract schedules and timely submission of data deliverables, the contractor’s ability to comply with the terms and conditions of the contract, the overall quality of the work performed on the contract, the Offeror’s managerial performance, and if the reference would enter a contract with the contractor again. Contractors without relevant past performance or for whom past performance information is not available, will be given a neutral rating. Past performance evaluations may also be conducted using information obtained from CPARS. Other sources may include, but are not limited to, inquiries of owner representatives, Federal Awardee Performance, and Integrity Information System (FAPIIS), Electronic Subcontract Reporting System (eSRS), and any other known sources not provided by the Offeror.

**FACTOR 5: SUBMITTED BOILER**

***(*40 pages max.*)***

Submittal Requirements:

The Offeror shall provide a preliminary boiler shop drawing with their proposal that includes but not limited to performance, dimensions, and service clearances.

Evaluation Approach:

The proposed boiler shop drawing will be evaluated on the extent to which it meets all contract requirements, including but not limited to performance capabilities and service clearances. The minimum requirements are those located in specification 23 52 39 and plan sheets MP600 and MQ100.

**FACTOR 6: PRICE**

**(5 Pages max.)**

Submittal Requirements:

* The offeror shall submit the properly filled out Price Schedule, included in the solicitation.
* Provide a detailed divisional price breakdown for the purpose of evaluating price. The breakdown shall separately **at a minimum** **but not limited to** (*this is not an all-inclusive breakdown list, DO NOT limit your breakdown to this list)* include the following cost elements: Labor (Direct & Indirect), Materials, Material Markups, Material Overhead, Equipment, Subcontractor Cost, Other Direct Costs, Overhead Expenses, Indirect Cost, General & Administrative (G&A) expenses, and Profit. While developing your price proposal please make sure to include all applicable taxes, and government stamps cost.

Evaluation Approach:

The offeror’s proposed price will be evaluated for completeness and price reasonableness. Price reasonableness will be established using any necessary price/cost analysis techniques in FAR 15.404-1, including but not limited to price competition information and the Independent Government Cost Estimate (IGCE), along with any other pricing tools deemed necessary.

An award cannot be made if the successful offer’s proposal price exceeds available funding or cost limitations, if applicable.

### 9. BASIS FOR AWARD

1. Basis of Award**:** It is the Government’s intent to award one (1) firm-fixed price contract resulting from this solicitation to the responsible offeror whose offer, conforming to the solicitation, is fair and reasonable, and has been determined to be the most advantageous to the Government, non-price, price, and other factors considered. The proposals must conform to the solicitation requirements and judged to represent the Best Value to the Government. The source selection process will utilize FAR Subpart 15.101-1 Tradeoff process to evaluate proposals and award the contract.
2. Non-Price factors are of equal importance and when combined, are significantly more important than cost or price.
3. Intent for No Discussions: Offerors are hereby advised that the Government intends to evaluate proposals and award a contract without conducting discussions with offerors. However, the Government reserves the right to contact Offerors and/or hold discussions if the Contracting Officer determines them to be necessary. Offerors are cautioned that discussions may not be conducted, and Offerors should not assume that they will have an opportunity to revise their proposals after submission.

# INSTRUCTIONS, CONDITIONS AND OTHER STATEMENTS TO BIDDERS/OFFERORS

## 2.1 52.201-1 ACQUISITION 360: VOLUNTARY SURVEY (SEP 2023)

 (a) All actual and potential offerors are encouraged to provide feedback on the preaward and debriefing processes, as applicable. Feedback may be provided to agencies up to 45 days after award. The feedback is anonymous, unless the participant self-identifies in the survey. Actual and potential offerors can participate in the survey by selecting the following link: *https:// www.acquisition.gov/360*.

 (b) The Contracting Officer will not review the information provided until after contract award and will not consider it in the award decision. The survey is voluntary and does not convey any protections, rights, or grounds for protest. It creates a way for actual and potential offerors to provide the Government constructive feedback about the preaward and debriefing processes, as applicable, used for a specific acquisition.

 (End of Clause)

## 2.2 52.216-1 TYPE OF CONTRACT (APR 1984)

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

(End of Provision)

## 2.3 52.222-5 CONSTRUCTION WAGE RATE REQUIREMENTS—SECONDARY SITE OF THE WORK (MAY 2014)

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

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

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

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

(End of Provision)

## 2.4 52.222-23 NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY FOR CONSTRUCTION (FEB 1999)

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

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

|  |  |
| --- | --- |
| **Goals for minority participation for each trade** | **Goals for female participation for each trade** |
| 1.2 % | 6.9 % |

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

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

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

 (1) Name, address, and telephone number of the subcontractor;

 (2) Employer's identification number of the subcontractor;

 (3) Estimated dollar amount of the subcontract;

 (4) Estimated starting and completion dates of the subcontract; and

 (5) Geographical area in which the subcontract is to be performed.

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

Sioux Falls, Minnehaha County, South Dakota

(End of Provision)

## 2.5 52.225-12 NOTICE OF BUY AMERICAN REQUIREMENT—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (MAY 2014)

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

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

 (c) Evaluation of offers.

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

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

 (d) Alternate offers.

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

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

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

 (i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

 (ii) May be accepted if revised during negotiations.

(End of Provision)

## 2.6 52.228-1 BID GUARANTEE (SEP 1996)

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

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

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

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

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

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

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

(End of Provision)

## 2.7 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:

 Gregg Sutcliffe

 Derek Fore

 Hand-Carried Address:

 Department of Veterans Affairs

 NETWORK 23 CONTRACTING OFFICE

 111 South 18th Plaza, Suite C53/C62

 Omaha NE 68102

 Mailing Address:

 Department of Veterans Affairs

 NETWORK 23 CONTRACTING OFFICE

 111 South 18th Plaza, Suite C53/C62

 Omaha NE 68102

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

(End of Provision)

## 2.8 52.236-27 SITE VISIT (CONSTRUCTION) (FEB 1995) ALTERNATE I (FEB 1995)

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

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

 17 December 2024 at 10:00 AM CT

 (c) Participants will meet at—

 Build 17, Room 204, Engineer Conference Room

(End of Provision)

## 2.9 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/index.asp

(End of Provision)

|  |  |  |
| --- | --- | --- |
| **FAR Number** | **Title** | **Date** |
| 52.204-16 | COMMERCIAL AND GOVERNMENT ENTITY CODE REPORTING | AUG 2020 |
| 52.204-22 | ALTERNATIVE LINE ITEM PROPOSAL | JAN 2017 |
| 52.211-6 | BRAND NAME OR EQUAL | AUG 1999 |
| 52.215-1 | INSTRUCTIONS TO OFFERORS—COMPETITIVE ACQUISITION | NOV 2021 |
| 52.215-20 | REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA AND DATA OTHER THAN CERTIFIED COST OR PRICING DATA ALTERNATE IV (OCT 2010) | NOV 2021 |
| 52.228-17 | INDIVIDUAL SURETY—PLEDGE OF ASSETS (BID GUARANTEE) | FEB 2021 |
| 52.236-28 | PREPARATION OF PROPOSALS—CONSTRUCTION | OCT 1997 |

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

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

 (1) Include the name, address, fax number, email and telephone number of the protester;

 (2) Identify the solicitation and/or contract number;

 (3) Include an original signed by the protester or the protester’s representative and at least one copy;

 (4) Set forth a detailed statement of the legal and factual grounds of the protest, including a description of resulting prejudice to the protester, and provide copies of relevant documents;

 (5) Specifically request a ruling of the individual upon whom the protest is served;

 (6) State the form of relief requested; and

 (7) Provide all information establishing the timeliness of the protest.

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

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

(End of Provision)

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

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

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

(End of Provision)

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

 Deputy Assistant Secretary for Acquisition and Logistics,

 Risk Management Team, Department of Veterans Affairs

 810 Vermont Avenue, N.W.

 Washington, DC 20420

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

 Director, Office of Construction and Facilities Management

 811 Vermont Avenue, N.W.

 Washington, DC 20420

## 2.12 VAAR 852.239-75 INFORMATION AND COMMUNICATION TECHNOLOGY ACCESSIBILITY NOTICE (FEB 2023)

 (a) Any offeror responding to this solicitation must comply with established VA Information and Communication Technology (ICT) (formerly Electronic and Information (EIT)) accessibility standards. Information about Section 508 is available at [*http://www.section508.va.gov/*](http://www.section508.va.gov/).

 (b) The Section 508 accessibility standards applicable to this solicitation are stated in the clause at 852.239–75, Information and Communication Technology Accessibility. In order to facilitate the Government’s determination whether proposed ICT supplies meet applicable Section 508 accessibility standards, offerors must submit appropriate VA Section 508 Checklists, in accordance with the checklist completion instructions. The purpose of the checklists is to assist VA acquisition and program officials in determining whether proposed ICT supplies, or information, documentation and services conform to applicable Section 508 accessibility standards. The checklists allow offerors or developers to self-evaluate their supplies and document—in detail—whether they conform to a specific Section 508 accessibility standard, and any underway remediation efforts addressing conformance issues.

 (c) Respondents to this solicitation must identify any exception to Section 508 requirements. If an offeror claims its supplies or services meet applicable Section 508 accessibility standards, and it is later determined by the Government, i.e., after award of a contract or order, that supplies or services delivered do not conform to the described accessibility standards, remediation of the supplies or services to the level of conformance specified in the contract will be the responsibility of the Contractor at its expense.

(End of Provision)

# REPRESENTATIONS AND CERTIFICATIONS

## 3.1 52.204-8 ANNUAL REPRESENTATIONS AND CERTIFICATIONS (MAY 2024)

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

 (2) The small business size standard is $45 Million.

 (3) The small business size standard for a concern that submits an offer, other than on a construction or service acquisition, but proposes to furnish an end item that it did not itself manufacture, process, or produce is 500 employees, or 150 employees for information technology value-added resellers under NAICS code 541519, if the acquisition—

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

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

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

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

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

 [ ] (i) Paragraph (d) applies.

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

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

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

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

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

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

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

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

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

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

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

 (B) Exceed the simplified acquisition threshold; and

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

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

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

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

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

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

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

 (xii) 52.219-1, Small Business Program Representations (Basic, Alternates I, and II). This provision applies to solicitations when the contract 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).

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

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

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

 (xiii) 52.219-2, Equal Low Bids. This provision applies to solicitations when contracting by sealed bidding and the contract 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).

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

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

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

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

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

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

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

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

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

 (B) If the acquisition value is $50,000 or more but is less than $100,000, the provision with its Alternate II applies.

 (C) If the acquisition value is $100,000 or more but is less than $102,280, the provision with its Alternate III applies.

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

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

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

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

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

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

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

 [X] (i) 52.204-17, Ownership or Control of Offeror.

 [X] (ii) 52.204-20, Predecessor of Offeror.

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

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

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

 [] (vi) 52.227-6, Royalty Information.

 [] (A) Basic.

 [] (B) Alternate I.

 [] (vii) 52.227-15, Representation of Limited Rights Data and Restricted Computer Software.

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

|  |  |  |  |
| --- | --- | --- | --- |
| FAR Clause # | Title | Date | Change |
|  |  |  |  |

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

(End of Provision)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

 (i) For covered equipment—

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

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

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

 (ii) For covered services—

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

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

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

 (i) For covered equipment—

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

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

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

 (ii) For covered services—

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

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

(End of Provision)

## 3.3 52.204-29 FEDERAL ACQUISITION SUPPLY CHAIN SECURITY ACT ORDERS—REPRESENTATION AND DISCLOSURES (DEC 2023)

 (a) *Definitions*. As used in this provision, *Covered article, FASCSA order, Intelligence community, National security system, Reasonable inquiry, Sensitive compartmented information, Sensitive compartmented information system*, and *Source* have the meaning provided in the clause 52.204–30, Federal Acquisition Supply Chain Security Act Orders— Prohibition.

 (b) *Prohibition*. Contractors are prohibited from providing or using as part of the performance of the contract any covered article, or any products or services produced or provided by a source, if the prohibition is set out in an applicable Federal Acquisition Supply Chain Security Act (FASCSA) order, as described in paragraph (b)(1) of FAR 52.204–30, Federal Acquisition Supply Chain Security Act Orders—Prohibition.

 (c) *Procedures*. (1) The Offeror shall search for the phrase ‘‘FASCSA order’’ in the System for Award Management (SAM)([*https://www.sam.gov*](https://www.sam.gov)) for any covered article, or any products or services produced or provided by a source, if there is an applicable FASCSA order described in paragraph (b)(1) of FAR 52.204–30, Federal Acquisition Supply Chain Security Act Orders—Prohibition.

 (2) The Offeror shall review the solicitation for any FASCSA orders that are not in SAM, but are effective and do apply to the solicitation and resultant contract (see FAR 4.2303(c)(2)).

 (3) FASCSA orders issued after the date of solicitation do not apply unless added by an amendment to the solicitation.

 (d) *Representation*. By submission of this offer, the offeror represents that it has conducted a reasonable inquiry, and that the offeror does not propose to provide or use in response to this solicitation any covered article, or any products or services produced or provided by a source, if the covered article or the source is prohibited by an applicable FASCSA order in effect on the date the solicitation was issued, except as waived by the solicitation, or as disclosed in paragraph (e).

 (e) *Disclosures*. The purpose for this disclosure is so the Government may decide whether to issue a waiver. For any covered article, or any products or services produced or provided by a source, if the covered article or the source is subject to an applicable FASCSA order, and the Offeror is unable to represent compliance, then the Offeror shall provide the following information as part of the offer:

 (1) Name of the product or service provided to the Government;

 (2) Name of the covered article or source subject to a FASCSA order;

 (3) If applicable, name of the vendor, including the Commercial and Government Entity code and unique entity identifier (if known), that supplied the covered article or the product or service to the Offeror;

 (4) Brand;

 (5) Model number (original equipment manufacturer number, manufacturer part number, or wholesaler number);

 (6) Item description;

 (7) Reason why the applicable covered article or the product or service is being provided or used;

 (f) *Executive agency review of disclosures*. The contracting officer will review disclosures provided in paragraph (e) to determine if any waiver may be sought. A contracting officer may choose not to pursue a waiver for covered articles or sources otherwise subject to a FASCSA order and may instead make an award to an offeror that does not require a waiver.

(End of Provision)

## 3.4 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 (FAPIIS) is current, accurate, and complete as of the date of submission of this offer with regard to the following information:

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

 (i) In a criminal proceeding, a conviction.

 (ii) In a civil proceeding, a finding of fault and liability that results in the payment of a monetary fine, penalty, reimbursement, restitution, or damages of $5,000 or more.

 (iii) In an administrative proceeding, a finding of fault and liability that results in—

 (A) The payment of a monetary fine or penalty of $5,000 or more; or

 (B) The payment of a reimbursement, restitution, or damages in excess of $100,000.

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

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

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

(End of Provision)

## 3.5 52.209-13 VIOLATION OF ARMS CONTROL TREATIES OR AGREEMENTS—CERTIFICATION (NOV 2021)

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

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

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

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

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

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

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

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

 (2) If there may have been such activity, review all findings in the report associated with those foreign countries to determine whether or not each such foreign country was determined to be in violation of its obligations undertaken in an arms control, nonproliferation, or disarmament agreement to which the United States is a party, or to be not adhering to its arms control, nonproliferation, or disarmament commitments in which the United States is a participating state. For clarity, in the annual report an explicit certification of noncompliance is equivalent to a determination of violation. However, the following statements in the annual report are not equivalent to a determination of violation:

 (i) An inability to certify compliance.

 (ii) An inability to conclude compliance.

 (iii) A statement about compliance concerns.

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

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

 (d) Do not submit an offer unless—

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

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

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

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

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

(End of Provision)

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| --- | --- | --- |
| **FAR Number** | **Title** | **Date** |
| 52.204-7 | SYSTEM FOR AWARD MANAGEMENT | NOV 2024 |
| 52.229-11 | TAX ON CERTAIN FOREIGN PROCUREMENTS—NOTICE AND REPRESENTATION | JUN 2020 |

# GENERAL CONDITIONS

## 4.1 52.204-30 FEDERAL ACQUISITION SUPPLY CHAIN SECURITY ACT ORDERS—PROHIBITION (DEC 2023)

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

 *Covered article*, as defined in 41 U.S.C. 4713(k), means—

 (1) Information technology, as defined in 40 U.S.C. 11101, including cloud computing services of all types;

 (2) Telecommunications equipment or telecommunications service, as those terms are defined in section 3 of the Communications Act of 1934 (47 U.S.C. 153);

 (3) The processing of information on a Federal or non-Federal information system, subject to the requirements of the Controlled Unclassified Information program (see 32 CFR part 2002); or

 (4) Hardware, systems, devices, software, or services that include embedded or incidental information technology.

 *FASCSA order* means any of the following orders issued under the Federal Acquisition Supply Chain Security Act (FASCSA) requiring the removal of covered articles from executive agency information systems or the exclusion of one or more named sources or named covered articles from executive agency procurement actions, as described in 41 CFR 201–1.303(d) and (e):

 (1) The Secretary of Homeland Security may issue FASCSA orders applicable to civilian agencies, to the extent not covered by paragraph (2) or (3) of this definition. This type of FASCSA order may be referred to as a Department of Homeland Security (DHS) FASCSA order.

 (2) The Secretary of Defense may issue FASCSA orders applicable to the Department of Defense (DoD) and national security systems other than sensitive compartmented information systems. This type of FASCSA order may be referred to as a DoD FASCSA order.

 (3) The Director of National Intelligence (DNI) may issue FASCSA orders applicable to the intelligence community and sensitive compartmented information systems, to the extent not covered by paragraph (2) of this definition. This type of FASCSA order may be referred to as a DNI FASCSA order.

 *Intelligence community*, as defined by 50 U.S.C. 3003(4), means the following—

 (1) The Office of the Director of National Intelligence;

 (2) The Central Intelligence Agency;

 (3) The National Security Agency;

 (4) The Defense Intelligence Agency;

 (5) The National Geospatial-Intelligence Agency;

 (6) The National Reconnaissance Office;

 (7) Other offices within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs;

 (8) The intelligence elements of the Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, the Federal Bureau of Investigation, the Drug Enforcement Administration, and the Department of Energy;

 (9) The Bureau of Intelligence and Research of the Department of State;

 (10) The Office of Intelligence and Analysis of the Department of the Treasury;

 (11) The Office of Intelligence and Analysis of the Department of Homeland Security; or

 (12) Such other elements of any department or agency as may be designated by the President, or designated jointly by the Director of National Intelligence and the head of the department or agency concerned, as an element of the intelligence community.

 *National security system*, as defined in 44 U.S.C. 3552, means any information system (including any telecommunications system) used or operated by an agency or by a contractor of an agency, or other organization on behalf of an agency—

 (1) The function, operation, or use of which involves intelligence activities; involves cryptologic activities related to national security; involves command and control of military forces; involves equipment that is an integral part of a weapon or weapons system; or is critical to the direct fulfillment of military or intelligence missions, but does not include a system that is to be used for routine administrative and business applications (including payroll, finance, logistics, and personnel management applications); or

 (2) Is protected at all times by procedures established for information that have been specifically authorized under criteria established by an Executive order or an Act of Congress to be kept classified in the interest of national defense or foreign policy.

 *Reasonable inquiry* means an inquiry designed to uncover any information in the entity’s possession about the identity of any covered articles, or any products or services produced or provided by a source. This applies when the covered article or the source is subject to an applicable FASCSA order. A reasonable inquiry excludes the need to include an internal or third-party audit.

 *Sensitive compartmented information* means classified information concerning or derived from intelligence sources, methods, or analytical processes, which is required to be handled within formal access control systems established by the Director of National Intelligence.

 *Sensitive compartmented information system* means a national security system authorized to process or store sensitive compartmented information.

 *Source* means a non-Federal supplier, or potential supplier, of products or services, at any tier.

 (b) *Prohibition*. (1) Unless an applicable waiver has been issued by the issuing official, Contractors shall not provide or use as part of the performance of the contract any covered article, or any products or services produced or provided by a source, if the covered article or the source is prohibited by an applicable FASCSA orders as follows:

 (i) For solicitations and contracts awarded by a Department of Defense contracting office, DoD FASCSA orders apply.

 (ii) For all other solicitations and contracts DHS FASCSA orders apply.

 (2) The Contractor shall search for the phrase ‘‘FASCSA order’’ in the System for Award Management (SAM) at [*https://www.sam.gov*](https://www.sam.gov) to locate applicable FASCSA orders identified in paragraph (b)(1).

 (3) The Government may identify in the solicitation additional FASCSA orders that are not in SAM, which are effective and apply to the solicitation and resultant contract.

 (4) A FASCSA order issued after the date of solicitation applies to this contract only if added by an amendment to the solicitation or modification to the contract (see FAR 4.2304(c)). However, see paragraph (c) of this clause.

 (5)(i) If the contractor wishes to ask for a waiver of the requirements of a new FASCSA order being applied through modification, then the Contractor shall disclose the following:

 (A) Name of the product or service provided to the Government;

 (B) Name of the covered article or source subject to a FASCSA order;

 (C) If applicable, name of the vendor, including the Commercial and Government Entity code and unique entity identifier (if known), that supplied or supplies the covered article or the product or service to the Offeror;

 (D) Brand;

 (E) Model number (original equipment manufacturer number, manufacturer part number, or wholesaler number);

 (F) Item description;

 (G) Reason why the applicable covered article or the product or service is being provided or used;

 (ii) *Executive agency review of disclosures*. The contracting officer will review disclosures provided in paragraph (b)(5)(i) to determine if any waiver is warranted. A contracting officer may choose not to pursue a waiver for covered articles or sources otherwise covered by a FASCSA order and to instead pursue other appropriate action.

 (c) *Notice and reporting requirement*. (1) During contract performance, the Contractor shall review *SAM.gov* at least once every three months, or as advised by the Contracting Officer, to check for covered articles subject to FASCSA order(s), or for products or services produced by a source subject to FASCSA order(s) not currently identified under paragraph (b) of this clause.

 (2) If the Contractor identifies a new FASCSA order(s) that could impact their supply chain, then the Contractor shall conduct a reasonable inquiry to identify whether a covered article or product or service produced or provided by a source subject to the FASCSA order(s) was provided to the Government or used during contract performance.

 (3)(i) The Contractor shall submit a report to the contracting office as identified in paragraph (c)(3)(ii) of this clause, if the Contractor identifies, including through any notification by a subcontractor at any tier, that a covered article or product or service produced or provided by a source was provided to the Government or used during contract performance and is subject to a FASCSA order(s) identified in paragraph (b) of this clause, or a new FASCSA order identified in paragraph (c)(2) of this clause. For indefinite delivery contracts, the Contractor shall report to both the contracting office for the indefinite delivery contract and the contracting office for any affected order.

 (ii) If a report is required to be submitted to a contracting office under (c)(3)(i) of this clause, the Contractor shall submit the report as follows:

 (A) If a Department of Defense contracting office, the Contractor shall report to the website at [*https://dibnet.dod.mil*](https://dibnet.dod.mil).

 (B) For all other contracting offices, the Contractor shall report to the Contracting Officer.

 (4) The Contractor shall report the following information for each covered article or each product or service produced or provided by a source, where the covered article or source is subject to a FASCSA order, pursuant to paragraph (c)(3)(i) of this clause:

 (i) Within 3 business days from the date of such identification or notification:

 (A) Contract number;

 (B) Order number(s), if applicable;

 (C) Name of the product or service provided to the Government or used during performance of the contract;

 (D) Name of the covered article or source subject to a FASCSA order;

 (E) If applicable, name of the vendor, including the Commercial and Government Entity code and unique entity identifier (if known), that supplied the covered article or the product or service to the Contractor;

 (F) Brand;

 (G) Model number (original equipment manufacturer number, manufacturer part number, or wholesaler number);

 (H) Item description; and

 (I) Any readily available information about mitigation actions undertaken or recommended.

 (ii) Within 10 business days of submitting the information in paragraph (c)(4)(i) of this clause:

 (A) Any further available information about mitigation actions undertaken or recommended.

 (B) In addition, the Contractor shall describe the efforts it undertook to prevent submission or use of the covered article or the product or service produced or provided by a source subject to an applicable FASCSA order, and any additional efforts that will be incorporated to prevent future submission or use of the covered article or the product or service produced or provided by a source that is subject to an applicable FASCSA order.

 (d) *Removal*. For Federal Supply Schedules, Governmentwide acquisition contracts, multi-agency contracts or any other procurement instrument intended for use by multiple agencies, upon notification from the Contracting Officer, during the performance of the contract, the Contractor shall promptly make any necessary changes or modifications to remove any product or service produced or provided by a source that is subject to an applicable FASCSA order.

 (e) *Subcontracts*. (1) The Contractor shall insert the substance of this clause, including this paragraph (e) and excluding paragraph (c)(1) of this clause, in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial products and commercial services.

 (2) The Government may identify in the solicitation additional FASCSA orders that are not in SAM, which are effective and apply to the contract and any subcontracts and other contractual instruments under the contract. The Contractor or higher-tier subcontractor shall notify their subcontractors, and suppliers under other contractual instruments, that the FASCSA orders in the solicitation that are not in SAM apply to the contract and all subcontracts.

(End of Clause)

## 4.2 52.211-10 COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK (APR 1984) ALTERNATE I (APR 1984)

 The Contractor shall be required to (a) commence work under this contract within 10 calendar days after the date the Contractor receives the notice to proceed, (b) prosecute the work diligently, and (c) complete the entire work ready for use not later than 915 Calendar days after receipt of Notice to Proceed. The time stated for completion shall include final cleanup of the premises.

 The completion date is based on the assumption that the successful offeror will receive the notice to proceed by 12 days after award. The completion date will be extended by the number of calendar days after the above date that the Contractor receives the notice to proceed, except to the extent that the delay in issuance of the notice to proceed results from the failure of the Contractor to execute the contract and give the required performance and payment bonds within the time specified in the offer.

(End of Clause)

## 4.3 52.219-28 POST-AWARD SMALL BUSINESS PROGRAM REREPRESENTATION (FEB 2024)

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

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

 *Small business concern*—

 (1) Means a concern, including its affiliates, that is independently owned and operated, not dominant in its field of operation, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (d) of this clause.

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

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

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

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

 (3) For long-term contracts—

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

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

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

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

 (e) The small business size standard for a Contractor providing an end item that it does not manufacture, process, or produce itself, for a contract other than a construction or service contract, is 500 employees, or 150 employees for information technology value-added resellers under NAICS code 541519, if the acquisition—

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

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

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

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

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

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

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

 (2) [*Complete only if the Contractor represented itself as a small business concern in paragraph (h)(1) of this clause.*] The Contractor represents that it [ ] is, [ ] is not, a small disadvantaged business concern as defined in 13 CFR 124.1001.

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

 (4) Women-owned small business (WOSB) concern eligible under the WOSB Program. The Contractor represents that it [ ] is, [ ] is not a joint venture that complies with the requirements of 13 CFR 127.506(a) through (c). [*The Contractor shall enter the name and unique entity identifier of each party to the joint venture:* \_\_\_\_\_.]

 (5) Economically disadvantaged women-owned small business (EDWOSB) joint venture. The Contractor represents that it [ ] is, [ ] is not a joint venture that complies with the requirements of 13 CFR 127.506(a) through (c). [*The Contractor shall enter the name and unique entity identifier of each party to the joint venture*: \_\_\_\_\_.]

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

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

 (8) *Service-disabled veteran-owned small business (SDVOSB) joint venture eligible under the SDVOSB Program*. The Contractor represents that it [ ] is, [ ] is not an SDVOSB joint venture eligible under the SDVOSB Program that complies with the requirements of 13 CFR 128.402. [*The Contractor shall enter the name and unique entity identifier of each party to the joint venture*: \_\_.]

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

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

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

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

(End of Clause)

## 4.4 52.223-20 AEROSOLS (MAY 2024)

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

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

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

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

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

 (1) In-use emission rates, energy efficiency;

 (2) Safety, such as flammability or toxicity;

 (3) Ability to meet technical performance requirements; and

 (4) Commercial availability at a reasonable cost.

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

(End of Clause)

## 4.5 52.223-21 FOAMS (MAY 2024)

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

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

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

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

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

 (1) In-use emission rates, energy efficiency, and safety;

 (2) Ability to meet performance requirements; and

 (3) Commercial availability at a reasonable cost.

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

(End of Clause)

## 4.6 52.225-11 BUY AMERICAN—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (NOV 2023)

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

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

 (1) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

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

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

 (1) Means any item of supply (including construction material) that is—

 (i) A commercial product (as defined in paragraph (1) of the definition of ‘‘commercial product’’ at Federal Acquisition Regulation (FAR) 2.101;

 (ii) Sold in substantial quantities in the commercial marketplace; and

 (iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

 (2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

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

 *Construction material* means an article, material, or supply brought to the construction site by the Contractor or subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

 *Cost of components* means—

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

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

 *Critical component* means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

 *Critical item* means a domestic construction material or domestic end product that is deemed critical to U.S. supply chain resiliency. The list of critical items is at FAR 25.105.

 *Designated country* means any of the following countries:

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

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

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

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

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

 *Domestic construction material* means—

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

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

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

 (A) The cost of its components mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic. Components of unknown origin are treated as foreign; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

 (b) Construction materials.

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

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

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

 N/A

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

 (i) The cost of domestic construction material would be unreasonable.

 (A) *For domestic construction material that is not a critical item or does not contain critical components*. (1) The cost of a particular domestic construction material subject to the restrictions of the Buy American statute is unreasonable when the cost of such material exceeds the cost of foreign material by more than 20 percent;

 (2) For construction material that is not a COTS item and does not consist wholly or predominantly of iron or steel or a combination of both, if the cost of a particular domestic construction material is determined to be unreasonable or there is no domestic offer received, and the low offer is for foreign construction material that does not exceed 55 percent domestic content, the Contracting Officer will treat the lowest offer of foreign construction material that is manufactured in the United States and exceeds 55 percent domestic content as a domestic offer and determine whether the cost of that offer is unreasonable by applying the evaluation factor listed in paragraph (b)(4)(i)(A)(1) of this clause.

 (3) The procedures in paragraph (b)(4)(i)(A)(2) of this clause will no longer apply as of January 1, 2030.

 (B) *For domestic construction material that is a critical item or contains critical components*. (1) The cost of a particular domestic construction material that is a critical item or contains critical components, subject to the requirements of the Buy American statute, is unreasonable when the cost of such material exceeds the cost of foreign material by more than 20 percent plus the additional preference factor identified for the critical item or construction material containing critical components listed at FAR 25.105.

 (2) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both, if the cost of a particular domestic construction material is determined to be unreasonable or there is no domestic offer received, and the low offer is for foreign construction material that does not exceed 55 percent domestic content, the Contracting Officer will treat the lowest offer of foreign construction material that is manufactured in the United States and exceeds 55 percent domestic content as a domestic offer, and determine whether the cost of that offer is unreasonable by applying the evaluation factor listed in paragraph (b)(4)(i)(B)(1) of this clause.

 (3) The procedures in paragraph (b)(4)(i)(B)(2) of this clause will no longer apply as of January 1, 2030.

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

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

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

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

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

 (B) Unit of measure;

 (C) Quantity;

 (D) Price;

 (E) Time of delivery or availability;

 (F) Location of the construction project;

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

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

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

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

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

 (2) If the Government determines after contract award that an exception to the Buy American statute applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

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

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

Foreign and Domestic Construction Materials Price Comparison

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

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

[Include other applicable supporting information.]

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

(End of Clause)

## 4.7 52.227-4 PATENT INDEMNITY—CONSTRUCTION CONTRACTS (DEC 2007) ALTERNATE I (DEC 2007)

 (a) Except as otherwise provided, the Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs and expenses, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of performing this contract or out of the use or disposal by or for the account of the Government of supplies furnished or work performed under this contract.

 (b) This patent indemnification shall not apply to the following items:

N/A

(End of Clause)

## 4.8 SUPPLEMENTAL INSURANCE REQUIREMENTS

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

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

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

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

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

(End of Clause)

## 4.9 52.236-4 PHYSICAL DATA (APR 1984)

 Data and information furnished or referred to below is for the Contractor's information. The Government shall not be responsible for any interpretation of or conclusion drawn from the data or information by the Contractor.

 (a) The indications of physical conditions on the drawings and in the specifications are the result of site investigations by:

 Paradigm Engineers

 See Plans, Specifications, and Geotechnical Report

 (b) Weather Conditions:

 (c) Transportation Facilities

 (d) Other Physical Data

(End of Clause)

## 4.10 52.245-2 GOVERNMENT PROPERTY INSTALLATION OPERATION SERVICES (APR 2012)

 (a) This Government Property listed in paragraph (e) of this clause is furnished to the Contractor in an "as-is, where is" condition. The Government makes no warranty regarding the suitability for use of the Government property specified in this contract. The Contractor shall be afforded the opportunity to inspect the Government property as specified in the solicitation.

 (b) The Government bears no responsibility for repair or replacement of any lost Government property. If any or all of the Government property is lost or becomes no longer usable, the Contractor shall be responsible for replacement of the property at Contractor expense. The Contractor shall have title to all replacement property and shall continue to be responsible for contract performance.

 (c) Unless the Contracting Officer determines otherwise, the Government abandons all rights and title to unserviceable and scrap property resulting from contract performance. Upon notification to the Contracting Officer, the Contractor shall remove such property from the Government premises and dispose of it at Contractor expense.

 (d) Except as provided in this clause, Government property furnished under this contract shall be governed by the Government Property clause of this contract.

 (e) Government property provided under this clause:

 Soap dispensers

 Paper towel dispensers

 Toilet paper dispensers

(End of Clause)

## 4.11 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/index.asp

(End of Clause)

|  |  |  |
| --- | --- | --- |
| **FAR Number** | **Title** | **Date** |
| 52.202-1 | DEFINITIONS | JUN 2020 |
| 52.203-3 | GRATUITIES | APR 1984 |
| 52.203-5 | COVENANT AGAINST CONTINGENT FEES | MAY 2014 |
| 52.203-6 | RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT | JUN 2020 |
| 52.203-7 | ANTI-KICKBACK PROCEDURES | JUN 2020 |
| 52.203-8 | CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY | MAY 2014 |
| 52.203-10 | PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY | MAY 2014 |
| 52.203-12 | LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS | JUN 2020 |
| 52.203-13 | CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT | NOV 2021 |
| 52.203-14 | DISPLAY OF HOTLINE POSTER(S) | NOV 2021 |
| 52.203-17 | CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS | NOV 2023 |
| 52.203-19 | PROHIBITION ON REQUIRING CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS OR STATEMENTS | JAN 2017 |
| 52.204-9 | PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL | JAN 2011 |
| 52.204-10 | REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS | JUN 2020 |
| 52.204-13 | SYSTEM FOR AWARD MANAGEMENT MAINTENANCE | OCT 2018 |
| 52.204-14 | SERVICE CONTRACT REPORTING REQUIREMENTS | OCT 2016 |
| 52.204-18 | COMMERCIAL AND GOVERNMENT ENTITY CODE MAINTENANCE | AUG 2020 |
| 52.204-19 | INCORPORATION BY REFERENCE OF REPRESENTATIONS AND CERTIFICATIONS | DEC 2014 |
| 52.204-23 | PROHIBITION ON CONTRACTING FOR HARDWARE, SOFTWARE, AND SERVICES DEVELOPED OR PROVIDED BY KASPERSKY LAB COVERED ENTITIES | DEC 2023 |
| 52.204-25 | PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT | NOV 2021 |
| 52.204-27 | PROHIBITION ON A BYTEDANCE COVERED APPLICATION | JUN 2023 |
| 52.209-6 | PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT | NOV 2021 |
| 52.209-9 | UPDATES OF PUBLICLY AVAILABLE INFORMATION REGARDING RESPONSIBILITY MATTERS | OCT 2018 |
| 52.209-10 | PROHIBITION ON CONTRACTING WITH INVERTED DOMESTIC CORPORATIONS | NOV 2015 |
| 52.210-1 | MARKET RESEARCH | NOV 2021 |
| 52.215-2 | AUDIT AND RECORDS—NEGOTIATION | JUN 2020 |
| 52.215-17 | WAIVER OF FACILITIES CAPITAL COST OF MONEY | OCT 1997 |
| 52.215-21 | REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA AND DATA OTHER THAN CERTIFIED COST OR PRICING DATA—MODIFICATIONS ALTERNATE IV (OCT 2010) | NOV 2021 |
| 52.219-8 | UTILIZATION OF SMALL BUSINESS CONCERNS | FEB 2024 |
| 52.222-3 | CONVICT LABOR | JUN 2003 |
| 52.222-4 | CONTRACT WORK HOURS AND SAFETY STANDARDS—OVERTIME COMPENSATION | MAY 2018 |
| 52.222-6 | CONSTRUCTION WAGE RATE REQUIREMENTS | AUG 2018 |
| 52.222-7 | WITHHOLDING OF FUNDS | MAY 2014 |
| 52.222-8 | PAYROLLS AND BASIC RECORDS | JUL 2021 |
| 52.222-9 | APPRENTICES AND TRAINEES | JUL 2005 |
| 52.222-10 | COMPLIANCE WITH COPELAND ACT REQUIREMENTS | FEB 1988 |
| 52.222-11 | SUBCONTRACTS (LABOR STANDARDS) | MAY 2014 |
| 52.222-12 | CONTRACT TERMINATION—DEBARMENT | MAY 2014 |
| 52.222-13 | COMPLIANCE WITH CONSTRUCTION WAGE RATE REQUIREMENTS AND RELATED REGULATIONS | MAY 2014 |
| 52.222-14 | DISPUTES CONCERNING LABOR STANDARDS | FEB 1988 |
| 52.222-15 | CERTIFICATION OF ELIGIBILITY | MAY 2014 |
| 52.222-21 | PROHIBITION OF SEGREGATED FACILITIES | APR 2015 |
| 52.222-26 | EQUAL OPPORTUNITY | SEP 2016 |
| 52.222-27 | AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION | APR 2015 |
| 52.222-35 | EQUAL OPPORTUNITY FOR VETERANS | JUN 2020 |
| 52.222-36 | EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES | JUN 2020 |
| 52.222-37 | EMPLOYMENT REPORTS ON VETERANS | JUN 2020 |
| 52.222-40 | NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT | DEC 2010 |
| 52.222-50 | COMBATING TRAFFICKING IN PERSONS | NOV 2021 |
| 52.222-54 | EMPLOYMENT ELIGIBILITY VERIFICATION | MAY 2022 |
| 52.222-55 | MINIMUM WAGES FOR CONTRACTOR WORKERS UNDER EXECUTIVE ORDER 14026 | JAN 2022 |
| 52.222-62 | PAID SICK LEAVE UNDER EXECUTIVE ORDER 13706 | JAN 2022 |
| 52.223-2 | REPORTING OF BIOBASED PRODUCTS UNDER SERVICE AND CONSTRUCTION CONTRACTS | MAY 2024 |
| 52.223-3 | HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA | FEB 2021 |
| 52.223-5 | POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION | MAY 2024 |
| 52.223-10 | WASTE REDUCTION PROGRAM | MAY 2024 |
| 52.223-11 | OZONE-DEPLETING SUBSTANCES AND HIGH GLOBAL WARMING POTENTIAL HYDROFLUOROCARBONS | MAY 2024 |
| 52.223-23 | SUSTAINABLE PRODUCTS AND SERVICES | MAY 2024 |
| 52.225-13 | RESTRICTIONS ON CERTAIN FOREIGN PURCHASES | FEB 2021 |
| 52.226-7 | DRUG-FREE WORKPLACE | MAY 2024 |
| 52.226-8 | ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING | MAY 2024 |
| 52.227-1 | AUTHORIZATION AND CONSENT | JUN 2020 |
| 52.227-2 | NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT | JUN 2020 |
| 52.228-2 | ADDITIONAL BOND SECURITY | OCT 1997 |
| 52.228-5 | INSURANCE—WORK ON A GOVERNMENT INSTALLATION | JAN 1997 |
| 52.228-11 | INDIVIDUAL SURETY—PLEDGE OF ASSETS | FEB 2021 |
| 52.228-12 | PROSPECTIVE SUBCONTRACTOR REQUESTS FOR BONDS | DEC 2022 |
| 52.228-14 | IRREVOCABLE LETTER OF CREDIT | NOV 2014 |
| 52.228-15 | PERFORMANCE AND PAYMENT BONDS—CONSTRUCTION | JUN 2020 |
| 52.229-3 | FEDERAL, STATE, AND LOCAL TAXES | FEB 2013 |
| 52.229-12 | TAX ON CERTAIN FOREIGN PROCUREMENTS | FEB 2021 |
| 52.232-5 | PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS | MAY 2014 |
| 52.232-17 | INTEREST | MAY 2014 |
| 52.232-23 | ASSIGNMENT OF CLAIMS | MAY 2014 |
| 52.232-27 | PROMPT PAYMENT FOR CONSTRUCTION CONTRACTS | JAN 2017 |
| 52.232-33 |  PAYMENT BY ELECTRONIC FUNDS TRANSFER—SYSTEM FOR AWARD MANAGEMENT | OCT 2018 |
| 52.232-39 | UNENFORCEABILITY OF UNAUTHORIZED OBLIGATIONS | JUN 2013 |
| 52.232-40 | PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS | MAR 2023 |
| 52.233-1 | DISPUTES ALTERNATE I (DEC 1991) | MAY 2014 |
| 52.233-3 | PROTEST AFTER AWARD | AUG 1996 |
| 52.233-4 | APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM | OCT 2004 |
| 52.236-2 | DIFFERING SITE CONDITIONS | APR 1984 |
| 52.236-3 | SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK | APR 1984 |
| 52.236-5 | MATERIAL AND WORKMANSHIP | APR 1984 |
| 52.236-6 | SUPERINTENDENCE BY THE CONTRACTOR | APR 1984 |
| 52.236-7 | PERMITS AND RESPONSIBILITIES | NOV 1991 |
| 52.236-8 | OTHER CONTRACTS | APR 1984 |
| 52.236-9 | PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS | APR 1984 |
| 52.236-10 | OPERATIONS AND STORAGE AREAS | APR 1984 |
| 52.236-11 | USE AND POSSESSION PRIOR TO COMPLETION | APR 1984 |
| 52.236-12 | CLEANING UP | APR 1984 |
| 52.236-13 | ACCIDENT PREVENTION ALTERNATE I (APR 1984) | NOV 1991 |
| 52.236-14 | AVAILABILITY AND USE OF UTILITY SERVICES | APR 1984 |
| 52.236-15 | SCHEDULES FOR CONSTRUCTION CONTRACTS | APR 1984 |
| 52.236-16 | QUANTITY SURVEYS | APR 1984 |
| 52.236-17 | LAYOUT OF WORK | APR 1984 |
| 52.236-21 | SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION ALTERNATE I (APR 1984) | FEB 1997 |
| 52.236-26 | PRECONSTRUCTION CONFERENCE | FEB 1995 |
| 52.242-13 | BANKRUPTCY | JUL 1995 |
| 52.242-14 | SUSPENSION OF WORK | APR 1984 |
| 52.243-4 | CHANGES | JUN 2007 |
| 52.244-5 | COMPETITION IN SUBCONTRACTING | AUG 2024 |
| 52.244-6 | SUBCONTRACTS FOR COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES | FEB 2024 |
| 52.245-1 | GOVERNMENT PROPERTY | SEP 2021 |
| 52.245-9 | USE AND CHARGES | APR 2012 |
| 52.246-12 | INSPECTION OF CONSTRUCTION | AUG 1996 |
| 52.246-21 | WARRANTY OF CONSTRUCTION ALTERNATE I (APR 1984) | MAR 1994 |
| 52.249-2 | TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED PRICE) ALTERNATE I (SEPT 1996) | APR 2012 |
| 52.246-11 | HIGHER-LEVEL CONTRACT QUALITY REQUIREMENT | DEC 2014 |
| 52.246-26 | REPORTING NONCONFORMING ITEMS | AUG 2024 |
| 52.248-3 | VALUE ENGINEERING—CONSTRUCTION | OCT 2020 |
| 52.249-10 | DEFAULT (FIXED-PRICE CONSTRUCTION) | APR 1984 |
| 52.253-1 | COMPUTER GENERATED FORMS | JAN 1991 |

## 4.12 VAAR 852.201-70 CONTRACTING OFFICER'S REPRESENTATIVE (DEC 2022)

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

(End of Clause)

## 4.13 VAAR 852.203-70 COMMERCIAL ADVERTISING (MAY 2018)

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

(End of Clause)

## 4.14 VAAR 852.211-72 TECHNICAL INDUSTRY STANDARDS (NOV 2018)

 (a) The Contractor shall conform to the standards established by: Department of Veterans Affairs Plans and Specifications as to 438-22-900, Replace Boiler Plant.

 (b) The Contractor shall submit proof of conformance to the standard. This proof may be a label or seal affixed to the equipment or supplies, warranting that the item(s) have been tested in accordance with the standards and meet the contract requirement. Proof may also be furnished by the organization listed above certifying that the item(s) furnished have been tested in accordance with and conform to the specified standards.

 (c) Offerors may obtain the standards cited in this provision by submitting a request, including the solicitation number, title and number of the publication to: Department of Veterans Affairs derek.fore@va.gov

 (d) The offeror shall contact the Contracting Officer if response is not received within two weeks of the request.

(End of Clause)

## 4.15 VAAR 852.219-73 VA NOTICE OF TOTAL SET-ASIDE FOR CERTIFIED SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESSES (JAN 2023) (DEVIATION)

 (a) *Definition*. for the Department of Veterans Affairs, ‘‘*Service-disabled Veteran-owned small business concern or SDVOSB’’*:

 (1) Means a small business concern—

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

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

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

 (iv) The business has been certified for ownership and control pursuant to 38 U.S.C. 8127, 13 CFR 128, and is listed as certified in the SBA certification database at [*https://veterans.certify.sba.gov/*](https://veterans.certify.sba.gov/); and

 (v) The business agrees to comply with VAAR subpart 819.70 and Small Business Administration (SBA) regulations regarding small business size, government contracting, and the Veteran Small Business Certification Program at 13 CFR parts 121, 125, and 128.

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

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

 (4) The term ‘‘small business concern owned and controlled by Veterans with service-connected disabilities’’ has the meaning given the term ‘‘*small business concern owned and controlled by service-disabled veterans*’’ under section 3(q)(2) of the Small Business Act (15 U.S.C. 632(q)(2)).

 (5) The term *“SDVOSB participant”* or *certified SDVOSB* means a small business that has been certified in the SBA Veteran Small Business Certification Program and listed in the SBA certification database (see 13 CFR 128.102).

 (b) *General*. In order for a concern to submit an offer and be eligible for the award of an SDVOSB set-aside or sole source contract, the concern must qualify as a small business concern under the size standard corresponding to the NAICS code assigned to the contract and be listed as an SDVOSB participant in the SBA certification database as set forth in 13 CFR 128.

 (1) Offers received from entities that are not certified SDVOSBs and listed in the SBA certification database at the time of offer shall not be considered.

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

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

 (c) *Representation*. Pursuant to 38 U.S.C. 8127(e), only certified SDVOSBs listed in the SBA certification database are considered eligible to receive award of a resulting contract. By submitting an offer, the prospective contractor represents that it is an eligible and certified SDVOSB as defined in this clause, 13 CFR 121, 125, and 128, and VAAR subpart 819.70.

 (d) *Agreement*/*LOS certification.* When awarded a contract action, including orders under multipleaward contracts, an SDVOSB agrees that in the performance of the contract, the SDVOSB shall comply with requirements in VAAR subpart 819.70 and SBA regulations on small business size, and government contracting programs at 13 CFR part 121 and part 125, including the non-manufacturer rule and limitations on subcontracting (LOS) requirements in 13 CFR 121.406(b) and 13 CFR 125.6. For the purpose of limitations on subcontracting, only certified SDVOSBs listed in the SBA certification database (including independent contractors) shall be considered eligible and/or ‘‘similarly situated’’ (i.e., a firm that has the same small business program status as the prime contractor). An otherwise eligible firm further agrees to comply with the required LOS certification requirements in this solicitation (see 852.219–75 or 852.219–76 as applicable). These requirements are summarized as follows:

 (1) *Services*. In the case of a contract for services (except construction), the SDVOSB prime contractor will not pay more than 50% of the amount paid by the government to the prime for contract performance to firms that are not certified SDVOSBs listed in the SBA certification database (excluding direct costs to the extent they are not the principal purpose of the acquisition and the SDVOSB/ VOSB does not provide the service, such as airline travel, cloud computing services, or mass media purchases). When a contract includes both services and supplies, the 50 percent limitation shall apply only to the service portion of the contract.

 (2) *Supplies/products*.

 (i) In the case of a contract for supplies or products (other than from a non-manufacturer of such supplies), the SDVOSB prime contractor will not pay more than 50% of the amount paid by the government to the prime for contract performance, excluding the cost of materials, to firms that are not certified SDVOSBs listed in the SBA certification database. When a contract includes both supply and services, the 50 percent limitation shall apply only to the supply portion of the contract.

 (ii) In the case of a contract for supplies from a non-manufacturer, the SDVOSB prime contractor will supply the product of a domestic small business manufacturer or processor, unless a waiver as described in 13 CFR 121.406(b)(5) has been granted. Refer to 13 CFR 125.6(a)(2)(ii) for guidance pertaining to multiple item procurements.

 (3) *General construction*. In the case of a contract for general construction, the SDVOSB prime contractor will not pay more than 85% of the amount paid by the government to the prime for contract performance, excluding the cost of materials, to firms that are not certified SDVOSBs listed in the SBA certification database.

 (4) *Special trade construction contractors*. In the case of a contract for special trade contractors, no more than 75% of the amount paid by the government to the prime for contract performance, excluding the cost of materials, may be paid to firms that are not certified SDVOSBs listed in the SBA certification database.

 (5) *Subcontracting*. An SDVOSB subcontractor must meet the NAICS size standard assigned by the prime contractor and be certified and listed in the SBA certification database to count as similarly situated. Any work that a first tier SDVOSB subcontractor further subcontracts will count towards the percent of subcontract amount that cannot be exceeded. For supply or construction contracts, the cost of materials is excluded and not considered to be subcontracted. When a contract includes both services and supplies, the 50 percent limitation shall apply only to the portion of the contract with the preponderance of the expenditure upon which the assigned NAICS is based. For information and more specific requirements, refer to 13 CFR 125.6.

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

[X] By the end of the base term of the contract or order, and then by the end of each subsequent option period; or

[] By the end of the performance period for each order issued under the contract.

 (f) *Joint ventures*. A joint venture may be considered eligible as an SDVOSB if the joint venture complies with the requirements in 13 CFR 128.402 and the managing joint venture partner makes the representations under paragraph (c) of this clause. A joint venture agrees that, in the performance of the contract, the applicable percentage specified in paragraph (d) of this clause will be performed by the aggregate of the joint venture participants.

 (g) *Precedence*. The VA Veterans First Contracting Program, as defined in VAAR 802.101, subpart 819.70, and this clause, takes precedence over any inconsistencies between the requirements of the SBA Veteran Small Business Certification Program and the VA Veterans First Contracting Program.

 (h) *Misrepresentation*. Pursuant to 38 U.S.C. 8127(g), any business concern, including all its principals, that is determined by VA to have willfully and intentionally misrepresented a company’s SDVOSB status is subject to debarment from contracting with the Department for a period of not less than five years (see VAAR 809.406–2 Causes for Debarment).

(End of Clause)

## 4.16 VAAR 852.219-75 VA NOTICE OF LIMITATIONS ON SUBCONTRACTING—CERTIFICATE OF COMPLIANCE FOR SERVICES AND CONSTRUCTION (JAN 2023) (DEVIATION)

 (a) Pursuant to 38 U.S.C. 8127(l)(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 certified SDVOSBs listed in the SBA certification database as set forth in 852.219–73 or certified VOSBs listed in the SBA certification database as set forth in 852.219–74. Any work that a similarly situated certified SDVOSB/VOSB 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 certified SDVOSBs listed in the SBA certification database as set forth in 852.219–73 or certified VOSBs listed in the SBA certification database as set forth in 852.219–74. Any work that a similarly situated certified SDVOSB/VOSB 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 certified SDVOSBs listed in the SBA certification database as set forth in 852.219–73 or certified VOSBs listed in the SBA certification database as set forth in 852.219–74. Any work that a similarly situated certified SDVOSB/VOSB 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 18 U.S.C. 1001.

 (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. Contracting officers may, at their discretion, require the contractor to demonstrate its compliance with the limitations on subcontracting at any time during performance and upon completion of a contract if the information regarding such compliance is not already available to the contracting officer. Evidence of compliance includes, but is not limited to, invoices, copies of subcontracts, or a list of the value of tasks performed.

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

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

Certification

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

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

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

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

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

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

(End of Clause)

## 4.17 VAAR 852.223-71 SAFETY AND HEALTH (SEP 2019)

 (a) To help ensure the protection of the life and health of all persons, and to help prevent damage to property, the Contractor shall comply with all Federal, State, and local laws and regulations applicable to the work being performed under this contract. These laws are implemented or enforced by the Environmental Protection Agency (EPA), Occupational Safety and Health Administration (OSHA) and other regulatory/enforcement agencies at the Federal, State, and local levels.

 (1) Additionally, the Contractor shall comply with the following regulations when developing and implementing health and safety operating procedures and practices for both personnel and facilities involving the use or handling of hazardous materials and the conduct of research, development, or test projects:

 (i) 29 CFR 1910.1030, Bloodborne pathogens; 29 CFR 1910.1450, Occupational exposure to hazardous chemicals in laboratories. These regulations are available at <https://www.osha.gov/>.

 (ii) Nuclear Regulatory Commission Standards and Regulations, pursuant to the Energy Reorganization Act of 1974 (42 U.S.C. 5801 et seq.) Copies are available from the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

 (2) The following Government guidelines are recommended for developing and implementing health and safety operating procedures and practices for both personnel and facilities:

 (i) Biosafety in Microbiological and Biomedical Laboratories, Centers for Disease Control and Prevention (CDC), available at <http://www.cdc.gov/biosafety/publications/index.htm>.

 (ii) Prudent Practices in the Laboratory, National Research Council, National Academy Press, Washington, DC 20001, available at <http://www.nap.edu>.

 (b)(1) The Contractor shall maintain an accurate record of, and promptly report to the Contracting Officer, all accidents or incidents resulting in the exposure of persons to toxic substances, hazardous materials; the injury or death of any person; or damage to property incidental to work performed under the contract resulting from toxic or hazardous materials and resulting in any or all violations for which the Contractor has been cited by any Federal, State or local regulatory/enforcement agency.

 (2) The report shall include a copy of the notice of violation and the findings of any inquiry or inspection, and an analysis addressing the impact these violations may have on the work remaining to be performed. The report shall also state the required action(s), if any, to be taken to correct any violation(s) noted by the Federal, State, or local regulatory/enforcement agency and the time frame allowed by the agency to accomplish the necessary corrective action.

 (c) If the Contractor fails or refuses to comply with the Federal, State or local regulatory/enforcement agency's directive(s) regarding any violation(s) and prescribed corrective action(s), the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action (as approved by the Federal, State, or local regulatory/enforcement agencies) has been taken and documented to the Contracting Officer. No part of the time lost due to any such stop work order shall form the basis for a request for extension or costs or damages by the Contractor.

 (d) The Contractor shall insert this clause in each subcontract involving toxic substances or hazardous materials. The Contractor is responsible for the compliance of its subcontractors with the provisions of this clause.

(End of Clause)

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

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

(End of Clause)

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

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

(End of Clause)

## 4.20 **VAAR** 852.232-71 PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS (INCLUDING NAS– CPM) (NOV 2018)

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

 (a) Retainage.

 (1) The Contracting Officer may retain funds—

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

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

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

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

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

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

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

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

 (b) The Contractor shall submit a schedule of costs in accordance with the requirements of section ‘‘Network Analysis System—Critical Path Method (NAS–CPM)’’ to the Contracting Officer for approval within 90 calendar days after date of receipt of notice to proceed. The approved cost schedule will be one of the bases for determining progress payments to the Contractor for work completed.

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

 (2) The total costs of all work activities/events shall equal the contract price.

 (3) Insurance and similar items shall be prorated and included in each work activity/event cost of the critical path method (CPM).

 (4) The CPM shall include a separate cost loaded activity for adjusting and testing of the systems listed in the table in paragraph (b)(5) of this clause. The percentages listed in paragraph (b)(5) will be used to determine the cost of adjust and test work activities/events and identify, for payment purposes, the value of the work to adjust, correct and test systems after the material has been installed.

 (5) Payment for adjust and test activities will be made only after the Contractor has demonstrated that each of the systems is substantially complete and operates as required by the contract.

|  |
| --- |
| VALUE OF ADJUSTING, CORRECTING, AND TESTING SYSTEM |
| System | Percent |
| Pneumatic tube system………………………………………………………………………………. | 10 |
| Incinerators (medical waste and trash)……………………………………………………….. | 5 |
| Sewage treatment plant equipment……………………………………………………………. | 5 |
| Water treatment plant equipment……………………………………………………………… | 5 |
| Washers (dish, cage, glass, etc.)………………………………………………………………….. | 5 |
| Sterilizing equipment……………………………………………………………………………….…. | 5 |
| Water distilling equipment…………………………………………………………………………. | 5 |
| Prefab temperature rooms (cold, constant temperature)………………………….. | 5 |
| Entire air-conditioning system (Specified under 600 Sections)…………………… | 5 |
| Entire boiler plant system (Specified under 700 Sections)………………………….. | 5 |
| General supply conveyors…………………………………………………………………………… | 10 |
| Food service conveyors………………………………………………………………………….…… | 10 |
| Pneumatic soiled linen and trash system…………………………………………………… | 10 |
| Elevators and dumbwaiters………………………………………………………………………… | 10 |
| Materials transport system…………………………………………………………………………. | 10 |
| Engine-generator system……………………………………………………………………………. | 5 |
| Primary switchgear……………………………………………………………………………………… | 5 |
| Secondary switchgear………………………………………………………………………………….. | 5 |
| Fire alarm system………………………………………………………………………………………… | 5 |
| Nurse call system………………………………………………………………………………………… | 5 |
| Intercom system………………………………………………………………………………………….. | 5 |
| Radio system……………………………………………………………………………………………….. | 5 |
| TV (entertainment) system………………………………………………………………………… | 5 |

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

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

 (1) The materials or equipment are in accordance with the contract requirements and/or approved samples and shop drawings;

 (2) The materials and/or equipment are approved by the resident engineer;

 (3) The materials and/or equipment are stored separately and are readily available for inspection and inventory by the resident engineer;

 (4) The materials and/or equipment are protected against weather, theft and other hazards and are not subjected to deterioration; and

 (5) The Contractor obtains the concurrence of its surety for off-site storage.

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

 (f) The Contracting Officer will notify the Contractor in writing within 10 calendar-days of exercising retainage against any payment in accordance with FAR clause 52.232–5(e). The notice shall disclose the amount of the retainage in value and percent retained from the payment, and provide explanation for the retainage.

(End of Clause)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(End of Clause)

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

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

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

 (b) The Contractor shall—

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

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

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

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

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

 (c) In general—

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

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

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

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

|  |  |  |
| --- | --- | --- |
| Title | File | Drawing No. |
| Cover Sheet and Index | 00 General\_Part 1 | GI001 |
|  |  |  |
|  |  |  |
|  |  |  |

(End of Clause)

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

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

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

(End of Clause)

## 4.24 VAAR 852.236-80 SUBCONTRACTS AND WORK COORDINATION (APR 2019) ALTERNATE I (APR 2019)

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

 (b) The Contractor shall be responsible to the Government for acts and omissions of his/her own employees, and subcontractors and their employees. The Contractor shall also be responsible for coordination of the work of the trades, subcontractors, and material suppliers. The Contractor shall, in advance of the work, prepare coordination drawings showing the location of openings through slabs, the pipe sleeves and hanger inserts, as well as the location and elevation of utility lines, including, but not limited to, conveyor systems, pneumatic tubes, ducts, and conduits and pipes two inches and larger in diameter. These drawings, including plans, elevations, and sections as appropriate, shall clearly show the manner in which the utilities fit into the available space and relate to each other and to existing building elements. Drawings shall be of appropriate scale to satisfy the previously stated purposes, but not smaller than 3⁄8-inch scale. Drawings may be composite (with distinctive colors for the various trades) or may be separate but fully coordinated drawings (such as sepias or photographic paper reproducibles) of the same scale. Separate drawings shall depict identical building areas or sections and shall be capable of being overlaid in any combination. The submitted drawings for a given area of the project shall show the work of all trades that will be involved in that particular area. Six complete composite drawings or six complete sets of separate reproducible drawings shall be received by the Government not less than 20 days prior to the scheduled start of the work in the area illustrated by the drawings, for the purpose of showing the Contractor’s planned methods of installation. The objectives of such drawings are to promote carefully planned work sequence and proper trade coordination, in order to assure the expeditious solutions of problems and the installation of lines and equipment as contemplated by the contract documents while avoiding or minimizing additional costs to the Contractor and to the Government. In the event the Contractor, in coordinating the various installations and in planning the method of installation, finds a conflict in location or elevation of any of the utilities with themselves, with structural items or with other construction items, he/she shall bring this conflict to the attention of the Contracting Officer immediately. In doing so, the Contractor shall explain the proposed method of solving the problem or shall request instructions as to how to proceed if adjustments beyond those of usual trades’ coordination are necessary. Utilities installation work will not proceed in any area prior to the submission and completion of the Government review of the coordinated drawings for that area, nor in any area in which conflicts are disclosed by the coordination drawings, until the conflicts have been corrected to the satisfaction of the Contracting Officer. It is the responsibility of the Contractor to submit the required drawings in a timely manner consistent with the requirements to complete the work covered by this contract within the prescribed contract time.

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

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

(End of Clause)

## 4.25 VAAR 852.236-90 RESTRICTION ON SUBMISSION AND USE OF EQUAL PRODUCTS (APR 2019)

 (a) This clause applies to the following items:

N/A

 (b) Notwithstanding the ‘‘Material and Workmanship’’ clause of this contract, FAR 52.236–5(a), nor any other clause or provision, only brand name products for the items listed above will be authorized for use on this contract.

(End of Clause)

## 4.26 VAAR 852.239-76 INFORMATION AND COMMUNICATION TECHNOLOGY ACCESSIBILITY (FEB 2023)

 (a) All information and communication technology (ICT) (formerly referred to as electronic and information technology (EIT)) supplies, information, documentation and services support developed, acquired, maintained or delivered under this contract or order must comply with the ‘‘Architectural and Transportation Barriers Compliance Board Electronic and Information Technology (EIT) Accessibility Standards’’ (see 36 CFR part 1194). Information about Section 508 is available at [*http://www.section508.va.gov/*](http://www.section508.va.gov/).

 (b) The Section 508 accessibility standards applicable to this contract or order are identified in the specification, statement of work, or performance work statement. If it is determined by the Government that ICT supplies and services provided by the Contractor do not conform to the described accessibility standards in the contract, remediation of the supplies or services to the level of conformance specified in the contract will be the responsibility of the Contractor at its own expense.

 (c) The Section 508 accessibility standards applicable to this contract are: N/A

 (d) In the event of a modification(s) to this contract or order, which adds new EIT supplies or services or revises the type of, or specifications for, supplies or services, the Contracting Officer may require that the Contractor submit a completed VA Section 508 Checklist and any other additional information necessary to assist the Government in determining that the ICT supplies or services conform to Section 508 accessibility standards. If it is determined by the Government that ICT supplies and services provided by the Contractor do not conform to the described accessibility standards in the contract, remediation of the supplies or services to the level of conformance specified in the contract will be the responsibility of the Contractor at its own expense.

 (e) If this is an Indefinite-Delivery type contract, a Blanket Purchase Agreement or a Basic Ordering Agreement, the task/delivery order requests that include ICT supplies or services will define the specifications and accessibility standards for the order. In those cases, the Contractor may be required to provide a completed VA Section 508 Checklist and any other additional information necessary to assist the Government in determining that the ICT supplies or services conform to Section 508 accessibility standards. If it is determined by the Government that ICT supplies and services provided by the Contractor do not conform to the described accessibility standards in the provided documentation, remediation of the supplies or services to the level of conformance specified in the contract will be the responsibility of the Contractor at its own expense.

(End of Clause)

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

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

Derek Fore

Department of Veterans Affairs

NETWORK 23 CONTRACTING OFFICE

316 Robert Street N. STE. 506

St. Paul, MN 55101

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

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

 (2) Issuance of default letters.

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

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

 (5) Issuance of Contracting Officer final determination letters.

 (6) Issuance of termination notices.

 (7) Authorization of final payment.

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

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

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

NCO 23 Construction Team 2

,

 (1) Conduct post-award orientation conferences.

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

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

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

(End of Clause)

## 4.28 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)

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

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

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

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

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

 (3) Proposals shall be submitted to the Contracting Officer or ACO and the resident engineer as expeditiously as possible, but not later than 14 calendar days, after receipt of a written change order by the Contracting Officer.

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

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

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

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

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

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

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

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

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

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

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

(End of Clause)

## 4.30 MANDATORY WRITTEN DISCLOSURES

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

## 4.31 IT CONTRACT SECURITY

 VA INFORMATION AND INFORMATION SYSTEM SECURITY/PRIVACY

 1. 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.

 2. 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.

 3. VA INFORMATION CUSTODIAL LANGUAGE

 a. 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).

 b. 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 on site 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.

 c. 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.

 d. 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.

 e. 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.

 f. 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.

 g. 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.

 h. 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.

 i. 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.

 j. 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.

 k. 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.

 l. 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 COR.

 4. INFORMATION SYSTEM DESIGN AND DEVELOPMENT

 a. 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 COR, and approved by the VA Privacy Service in accordance with Directive 6507, VA Privacy Impact Assessment.

 b. The contractor/subcontractor shall certify to the COR 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.

 c. 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.

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

 e. 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.

 f. 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.

 g. 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;

 (1) 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

 (2) 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.

 h. 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 7 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 7 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.

 5. INFORMATION SYSTEM HOSTING, OPERATION, MAINTENANCE, OR USE

 a. 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 vulnerablity 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 COR 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.

 b. 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.

 c. 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.

 d. 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.

 e. 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 COR. 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.

 f. 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.

 g. 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.

 h. 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.

 6. SECURITY INCIDENT INVESTIGATION

 a. 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 COR 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.

 b. 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.

 c. 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.

 d. 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.

 7. LIQUIDATED DAMAGES FOR DATA BREACH

 a. 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.

 b. 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.

 c. 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.

 d. 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 $500.00 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.

 8. 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.

 9. TRAINING

 a. 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.]

 b. The contractor shall provide to the contracting officer and/or the COR 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.

 c. 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.

(End of Clause)

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| --- | --- | --- |
| **FAR Number** | **Title** | **Date** |
| 852.204-70 | PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL | MAY 2020 |

## 4.32 List of Attachments

See attached document: Final SOW 8.28.24.

See attached document: Specifications.

See attached document: 00 General\_Part1.

See attached document: 00 General\_Part2.

See attached document: 00 General\_Part3.

See attached document: 01 Civil.

See attached document: 02 Structural.

See attached document: 03 Architectural\_Part1.

See attached document: 03 Architectural\_Part2.

See attached document: 04 Fire Protection.

See attached document: 05 Plumbing.

See attached document: 06 Mechanical.

See attached document: 07 Electrical\_Part1.

See attached document: 07 Electrical\_Part2.

See attached document: 07 Electrical\_Part3.

See attached document: 07 Electrical\_Part4.

See attached document: Geotechnical Report.

See attached document: Wage Determination SD20240028 9.6.24.

See attached document: PPQ Form.