

# **U.S. FOOD AND DRUG ADMINISTRATION (FDA)**

## **REQUEST FOR QUOTE**

### **TRACERPLUS MOBILE APPLICATION BUILDER LICENSE OR THE EQUIVALENT**

#### **FDA-RFQ-1245019**

This is a combined/synopsis solicitation issued under FAR Part 12 and 13.5 procedures. This is a Total Small Business Set-Aside procurement. The NAICS code is 423430. The size standard is \$250 in number of employees.

The Government is in no way obligated to make an award, nor to pay any costs incurred by the Contractor in preparing and submitting its quote.

#### **1. BACKGROUND**

The Center for Biologics Evaluation and Research (CBER) System Operations and Modernization (CSOM) Team was notified that the CBER Document Control Center (DCC) barcode scanners are no longer syncing with their service hub. The last successful sync was in the April 2020 timeframe.

These scanners are used to track movement of paper submissions between offsite storage, the Document Room, and CBER regulatory review staff. Due to COVID-19 physical scanning limitations over the past months, there has been a very limited volume of data being saved on one of the scanners. However, a volume increase is anticipated when physical operations begin to normalize.

A request that the CBER's CSOM Team conduct an analysis to determine if any of the Point-to-Point (P2P) scanners available on the Food and Drug Administration (FDA) Master Approved Technology (MAT) List can replace the current scanners and Document the current P2P process and identify alternate technical solutions that may provide additional functionality with a lower maintenance burden for the DATS P2P system. As a result of this analysis TracerPlus Mobile Application Builder was identified as the best solution for this issue.

#### **2. SCOPE**

FDA intends to procure TracerPlus Mobile Application Builder License or the equivalent.

### 3. REQUIREMENTS

The Contractor shall provide the following that meets the delineated salient functional characteristics for this requirement :

A. The TracerPlus Mobile Barcode and RFID Software Subscription or the equivalent salient characteristics shall consist of the following:

1. The ability to develop Wi-Fi enabled, enterprise class BarCode, RFID and NFC enabled Applications for PC or Android and iOS Devices that is capable of connecting to the FDA network within the White Oak campus.
2. The ability to create a user interface for performing scanning of location and item barcodes associated with pick-up, drop-off, and shelf inventory transactions.
3. The ability to support device authentication and user authentication so that scanning activities meet CBER and FDA security standards and can be traced to a specific user/device.
4. Include options for data synchronization, user notifications and error validation services.
5. Provide a software support structure that includes access directly to the manufacturer's software engineers to assist in troubleshooting any software related issues that may arise.

B. The TracerPlus Session Set Up Service – Custom Design Service or the equivalent salient characteristics shall consist of the following:

1. The ability to support device and user authentication so that scanning activities meet CBER and FDA security standards and can be traced to a specific user/device.
2. The ability to provide users with the ability to develop Wi-Fi enabled, enterprise class BarCode, RFID and NFC enabled Applications for PC or Android and iOS Devices that is capable of connecting to the FDA network within the White Oak campus.
3. The ability to create a user interface for performing scanning of location and item barcodes associated with pick-up, drop-off, and shelf inventory transactions.
4. The ability to provide Application Programming Interfaces (APIs) and Software Development Kits (SDKs), to allow integration with core business systems to maintain consistent metadata throughout the record lifecycle (e.g., review management records, records management applications, and/or collaboration environment/SharePoint).
5. The ability to support bulk scan of multiple documents and folders and provide the ability to associate them with a shared drop – off location.

6. The ability to log errors and notify users of an error event.
7. The ability to capture audit logs of all activities and events including what is being scanned, who performed the scanning, where the barcode was scanned, and the date and time of the barcode was scanned.
8. The ability to synchronize the scanning data with the system of record data schema to allow for tracking of documents and folders.
9. The ability to notify users associated with the status of the data synchronization from the P2P scanning device.
10. The ability to Identify/flag records where data save failed and provide a user with the data required to enter the record manually.
11. Provides a software support structure that includes access directly to the manufacturer's software engineers to assist in troubleshooting any software related issues that may arise.

C. The TracerPlus Connect Data Integration Service with PTS Configure Your Data Syncs or the equivalent salient characteristics shall consist of the following:

1. The ability to support device and user authentication so that scanning activities meet CBER and FDA security standards and can be traced to a specific user/device.
2. The ability to provide users with the ability to develop Wi-Fi enabled, enterprise class BarCode, RFID and NFC enabled Applications for PC or Android and iOS Devices that is capable of connecting to the FDA network within the White Oak campus.
3. The ability to seamlessly integrate with other software development packages to create a user interface for performing scanning of location and item barcodes associated with pick-up, drop-off, and shelf inventory transactions.
4. The ability to provide Application Programming Interfaces (APIs) and Software Development Kits (SDKs), to allow integration with core business systems to maintain consistent metadata throughout the record lifecycle (e.g., review management records, records management applications, and/or collaboration environment/SharePoint).
5. The ability to support bulk scan of multiple documents and folders and provide the ability to associate them with a shared drop – off location.
6. The ability to log errors and notify users of an error event.
7. The ability to capture audit logs of all activities and events including what is being scanned, who performed the scanning, where the barcode was scanned, and the date and time of the barcode was scanned.
8. The ability to synchronize the scanning data with the system of record data schema to allow for tracking of documents and folders.
9. The ability to provide a notification to users associated with the status of the data synchronization from the P2P scanning device.

10. The ability to identify/flag records where data save failed and provide a user with the data required to enter the record manually.
11. The ability to provide a software support structure that includes access directly to the manufacturer's software engineers to assist in troubleshooting any software related issues that may arise.

D. The TracerPlus Custom Cab File Build or the equivalent salient characteristics shall consist of the following:

1. The ability to support device and user authentication so that scanning activities meet CBER and FDA security standards and can be traced to a specific user/device.
2. The ability to provide users with the ability to develop Wi-Fi enabled, enterprise class BarCode, RFID and NFC enabled Applications for PC or Android and iOS Devices that is capable of connecting to the FDA network within the White Oak campus.
3. The ability to seamlessly integrate with other software development packages to create a user interface for performing scanning of location and item barcodes associated with pick-up, drop-off, and shelf inventory transactions.
4. The ability to provide Application Programming Interfaces (APIs) and Software Development Kits (SDKs), to allow integration with core business systems to maintain consistent metadata throughout the record lifecycle (e.g., review management records, records management applications, and/or collaboration environment/SharePoint).
5. The ability to support bulk scan of multiple documents and folders and provide the ability to associate them with a shared drop – off location.
6. The ability to capture audit logs of all activities and events including what is being scanned, who performed the scanning, where the barcode was scanned, and the date and time of the barcode was scanned.
7. The ability to provide the ability to synchronize the scanning data with the system of record data schema to allow for tracking of documents and folders.
8. The ability to provide a notification to users associated with the status of the data synchronization from the P2P scanning device.
9. The ability to log errors and notify users of an error event.
10. The ability to identify/flag records where data save failed and provide a user with the data required to enter the record manually.
11. The ability to provide a software support structure that includes access directly to the manufacturers software engineers to assist in troubleshooting any software related issues that may arise.

#### **4. DELIVERABLES**

The Contractor shall provide the below items in accordance with Section 3. Requirements and the delivery instructions in Section 5.

Ref. No.	Description	Product Code	Delivery Method	Qty	Period of Performance	Unit Price	Extended Price
3.A	TracerPlus Mobile Barcode and RFID Software Subscription	PTS-2200-SUB-YR	online	4	12 months		
3.B	TracerPlus Session Set Up Service – Custom Design Service	PTS-0100-SET	online	3	12 months		
3.C	TracerPlus Connect Data Integration Service – Have PTS Configure Your Data Syncs	PTS-CONN-INT	online	3	12 months		
3.D	TracerPlus Custom Cab File Build	PTS-CAB	online	1	12 months		

#### **5. INSPECTION AND ACCEPTANCE**

The Contracting Officer’s Representative (COR) will inspect and accept the services delivered. Inspection and acceptance will occur at the place of delivery. The Government will accept deliverables only if they conform to all terms and conditions of the contract, and satisfy the performance standards detailed within this SOW.

The contractor shall ensure proper control and coordination of all deliverables to ensure they are on time. Unless otherwise stated, the Government will review deliverables and notify the contractor of acceptance or non-acceptance within 10 business days of submission. Representatives of the contractor shall meet with the COR and other members of the Government as necessary and needed to review status of deliverables.

#### **6. PERIOD OF PERFORMANCE**

The period of performance shall be for one (1) year.

#### **7. PLACE OF PERFORMANCE**

- All providing of licensing and support shall be complete at the Vendors location. No onsite support or visits are required.

**Portable Technology Solutions, LLC**

221 David Court  
Calverton, NY 11933

Telephone: (877) 640-4152

- Any and all travel required for deliverables shall be at the expense of the contractor/vendor.

## **8. POINTS OF CONTACT**

### **CONTRACT MANAGEMENT:**

**Contract Specialist (CS):**

Tiffany Hatcher  
4041 Powder Mill Rd.  
Beltsville, MD 20705  
(240) 402-8856  
[Tiffany.Hatcher@fda.hhs.gov](mailto:Tiffany.Hatcher@fda.hhs.gov)

## **9. CONTRACTING OFFICER'S AUTHORITY**

The Contracting Officer (CO) is the sole person authorized to make or approve any changes in any of the requirements of this order and notwithstanding any provisions contained elsewhere in the order, the said authority remains solely with the CO. In the event the Contractor makes any changes at the direction of any person other than the CO, the change shall be considered to have been made without authority and no adjustment will be made in the order terms and conditions, including price. The CO shall be the only individual authorized to accept nonconforming work, waive any requirement of the order and modify any term or condition of the order. The CO is the only individual who can legally obligate Government funds.

The Contracting Officer's Representative (COR) or Project Officer is not authorized to make any commitments or otherwise obligate the Government or authorize any changes which affect the order price, terms or conditions. The COR/Project Officer is responsible for the technical aspects of the project and serves as technical liaison with the Contractor and is responsible for the final inspection and acceptance, and such other responsibilities as may be specified in the order.

## **10. CONTRACT TYPE**

The contract type of this order is firm-fixed price (FFP)

## **11. AUTHORIZED RESELLER/SERVICING AGENT**

The Contractor shall be the software Original Equipment Manufacturer (OEM) or an authorized reseller/servicing agent of the software OEM.

The Contractor shall notify the Contract Specialist / Contracting Officer immediately if this requirement is registered by a reseller with the OEM.

## **12. ORDER OF PRECEDENCE**

The Contractor shall follow the terms and conditions of this contract. Should the Contractor include any additional terms and conditions resulting in conflicts between this document and the Contractor's document, the Order of Precedence shall be as specified in *FAR Clause 52.212-4*. The Contractor shall not auto-renew any subscriptions, licenses, maintenances and services not authorized under this contract. Any auto-renewals are at the risk of the Contractor, and the Government will not reimburse the Contractor.

In the event of any inconsistencies between any licensing agreement incorporated into this order as an attachment and the FAR and HHSAR Clauses incorporated into this order, the FAR or HHSAR Clauses shall take precedence.

## **13. CLAUSES**

The below Health and Human Services Acquisition Regulation (HHSAR) Clauses apply. HHSAR Clauses can be viewed in full text at:

<http://www.hhs.gov/policies/hhsar/subpart352.html#subpart352.1--InstructionsforUsingProvisionsandClauses>

**352.222-70 – Contractor Cooperation in Equal Employment Opportunity Investigations (Dec 2015)**

**352.239-74 – Electronic Information and Technology Accessibility (December 2015)**

(a) Pursuant to Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d), as amended by the Workforce Investment Act of 1998, all electronic and information technology (EIT) supplies and services developed, acquired, or maintained under this contract or order must comply with the "Architectural and Transportation Barriers Compliance Board Electronic and Information Technology (EIT) Accessibility Standards" set forth by the Architectural and Transportation Barriers Compliance Board (also referred to as the "Access Board") in 36 CFR part 1194. Information about Section 508 is available at <http://www.hhs.gov/web/508>. The complete text of Section 508 Final Provisions can be accessed at <http://www.access-board.gov/guidelines-and-standards/communications-and-it/about-the-section-508-standards>.

(b) The Section 508 accessibility standards applicable to this contract or order are identified in the Statement of Work or Specification or Performance Work Statement. The contractor must provide any necessary updates to the submitted HHS Product Assessment Template(s) at the end of each contract or order exceeding the simplified acquisition threshold (see FAR 2.101) when the contract or order duration is one year or less. If it is determined by the Government that EIT 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:

- Must meet WCAG 2.0 A and AA
- E101.2 Equivalent Facilitation (Appendix A, Application and Scoping Requirements)
- E203 Access to Functionality (Appendix A, Application and Scoping Requirements)
- E204 Functional Performance Criteria (Appendix A, Application and Scoping Requirements)
- E205 Electronic Content (Appendix A, Application and Scoping Requirements)
- E208 Support Documentation and Services (Appendix A, Application and Scoping Requirements)
- Chapter 6 Support Documentation and Services (Appendix C, Functional Performance Criteria and Technical Requirements)
- 302 Functional Performance Criteria (Appendix C, Functional Performance Criteria and Technical Requirements)
- Electronic content must be accessible to HHS acceptance criteria. Checklist for various formats are available at <https://www.hhs.gov/web/section-508/making-files-accessible/index.html>, or from the Section 508 Coordinator listed at <https://www.hhs.gov/web/section-508/additional-resources/section-508-contacts/index.html>. Materials that are final items for delivery should be accompanied by the appropriate checklist, except upon approval of the Contracting Officer or Representative.
- E207 Software (Appendix A, Application and Scoping Requirements)
- Chapter 5 Software (Appendix C, Functional Performance Criteria and Technical Requirements)

(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 HHS Section 508 Product Assessment Template and any other additional information necessary to assist the Government in determining that the EIT supplies or services conform to Section 508 accessibility standards. Instructions for documenting accessibility via the HHS Section 508 Product Assessment Template may be found under Section 508 policy on the HHS website: (<http://www.hhs.gov/web/508>). If it is determined by the Government that EIT 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 contract, a Blanket Purchase Agreement or a Basic Ordering Agreement, the task/delivery order requests that include EIT 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 HHS Section 508 Product Assessment Template and any other additional information necessary to assist the Government in determining that the EIT supplies or services conform to Section 508 accessibility standards. Instructions for documenting accessibility via the HHS Section 508 Product Assessment Template may be found at



<http://www.hhs.gov/web/508>. If it is determined by the Government that EIT 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)

The below Federal Acquisition Regulation (FAR) Clauses apply. FAR Clauses can be viewed in full text at: <http://www.acquisition.gov/far/current/html/FARTOCP52.html#wp372482>

**52.227-19 – Commercial Computer Software License (Dec 2007)**

**52.232-39 – Unenforceability of Unauthorized Obligations (Jun 2013)**

**52.232-40 – Providing Accelerated Payments to Small Business Subcontractors (Dec 2013)**

**52.252-2 – Clauses Incorporated by Reference (Feb 1998)**

**FAR 52.212-4: Contract Terms and Conditions – Commercial Items (October 2018)**

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

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

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

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

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

(d) *Disputes.* This contract is subject to [41 U.S.C. chapter 71](#), Contract Disputes. Failure of the parties to this contract to reach agreement on any request for equitable

adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR [52.233-1](#), Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

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

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

(g) Invoice.

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

(i) Name and address of the Contractor;

(ii) Invoice date and number;

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Payment.-

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

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

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

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

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

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

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

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

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

(D) Contractor point of contact.

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

(6) *Interest.*

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

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

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

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

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

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

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

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

(A) The date fixed under this contract.

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

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

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

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

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

(vii) The interest charge made under this clause may be reduced under the procedures prescribed in [32.608-2](#) of the Federal Acquisition Regulation in effect on the date of this contract.

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

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

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

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

(l) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

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

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

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

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

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

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

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

- (1) The schedule of supplies/services.
- (2) The Assignments, Disputes, Payments, Invoice, Other Compliances, Compliance with Laws Unique to Government Contracts, and Unauthorized Obligations paragraphs of this clause;
- (3) The clause at [52.212-5](#).
- (4) Addenda to this solicitation or contract, including any license agreements for computer software.

(5) Solicitation provisions if this is a solicitation.

(6) Other paragraphs of this clause.

(7) The [Standard Form 1449](#).

(8) Other documents, exhibits, and attachments.

(9) The specification.

(t)[Reserved]

(u) Unauthorized Obligations.

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

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

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

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

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

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

(End of clause)

**FAR 52.212-5: Contract Terms and Conditions Required to Implement Statutes or Executive Order – Commercial Items (January 2020)**

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

- (1) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).
- (2) 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Jul 2018) (Section 1634 of Pub. L. 115-91).
- (3) 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (Aug 2019) (Section 889(a)(1)(A) of Pub. L. 115-232).
- (4) 52.209-10, Prohibition on Contracting with Inverted Domestic Corporations (Nov 2015).
- (5) 52.233-3, Protest After Award (Aug 1996) (31 U.S.C. 3553).
- (6) 52.233-4, Applicable Law for Breach of Contract Claim (Oct 2004) (Public Laws 108-77 and 108-78 (19 U.S.C. 3805 note)).

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

- \_\_\_ (1) 52.203-6, Restrictions on Subcontractor Sales to the Government (Sept 2006), with Alternate I (Oct 1995) (41 U.S.C. 4704 and 10 U.S.C. 2402).
- \_\_\_ (2) 52.203-13, Contractor Code of Business Ethics and Conduct (Oct 2015) (41 U.S.C. 3509)).
- \_\_\_ (3) 52.203-15, Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (June 2010) (Section 1553 of Pub. L. 111-5). (Applies to contracts funded by the American Recovery and Reinvestment Act of 2009.)
- \_\_X\_ (4) 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards (Oct 2018) (Pub. L. 109-282) (31 U.S.C. 6101 note).
- \_\_\_ (5) [Reserved].
- \_\_\_ (6) 52.204-14, Service Contract Reporting Requirements (Oct 2016) (Pub. L. 111-117, section 743 of Div. C).
- \_\_\_ (7) 52.204-15, Service Contract Reporting Requirements for Indefinite-Delivery Contracts (Oct 2016) (Pub. L. 111-117, section 743 of Div. C).
- \_\_\_ (8) 52.209-6, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. (Oct 2015) (31 U.S.C. 6101 note).
- \_\_\_ (9) 52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters (Oct 2018) (41 U.S.C. 2313).
- \_\_\_ (10) [Reserved].
- \_\_\_ (11) (i) 52.219-3, Notice of HUBZone Set-Aside or Sole-Source Award (Nov 2011) (15 U.S.C.657a).



- \_\_\_ (ii) Alternate I (Nov 2011) of 52.219-3.
- \_\_\_ (12) (i) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Oct 2014) (if the offeror elects to waive the preference, it shall so indicate in its offer) (15 U.S.C. 657a).
  - \_\_\_ (ii) Alternate I (Jan 2011) of 52.219-4.
- \_\_\_ (13) [Reserved]
- X (14) (i) 52.219-6, Notice of Total Small Business Set-Aside (Nov 2011) (15 U.S.C.644).
  - \_\_\_ (ii) Alternate I (Nov 2011).
  - \_\_\_ (iii) Alternate II (Nov 2011).
- \_\_\_ (15) (i) 52.219-7, Notice of Partial Small Business Set-Aside (June 2003) (15 U.S.C. 644).
  - \_\_\_ (ii) Alternate I (Oct 1995) of 52.219-7.
  - \_\_\_ (iii) Alternate II (Mar 2004) of 52.219-7.
- \_\_\_ (16) 52.219-8, Utilization of Small Business Concerns (Oct 2018) (15 U.S.C. 637(d)(2) and (3)).
- \_\_\_ (17) (i) 52.219-9, Small Business Subcontracting Plan (Aug 2018) (15 U.S.C. 637(d)(4))
  - \_\_\_ (ii) Alternate I (Nov 2016) of 52.219-9.
  - \_\_\_ (iii) Alternate II (Nov 2016) of 52.219-9.
  - \_\_\_ (iv) Alternate III (Nov 2016) of 52.219-9.
  - \_\_\_ (v) Alternate IV (Aug 2018) of 52.219-9
- \_\_\_ (18) 52.219-13, Notice of Set-Aside of Orders (Nov 2011) (15 U.S.C. 644(r)).
- \_\_\_ (19) 52.219-14, Limitations on Subcontracting (Jan 2017) (15 U.S.C.637(a)(14)).
- \_\_\_ (20) 52.219-16, Liquidated Damages-Subcontracting Plan (Jan 1999) (15 U.S.C. 637(d)(4)(F)(i)).
- \_\_\_ (21) 52.219-27, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (Oct 2019) (15 U.S.C. 657f).
- X (22) 52.219-28, Post Award Small Business Program Representation (Jul 2013) (15 U.S.C. 632(a)(2)).
- \_\_\_ (23) 52.219-29, Notice of Set-Aside for, or Sole Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns (Dec 2015) (15 U.S.C. 637(m)).
- \_\_\_ (24) 52.219-30, Notice of Set-Aside for, or Sole Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (Dec 2015) (15 U.S.C. 637(m)).
- X (25) 52.222-3, Convict Labor (June 2003) (E.O.11755).
- X (26) 52.222-19, Child Labor-Cooperation with Authorities and Remedies (Jan 2020) (E.O.13126).
- X (27) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).
- X (28) (i) 52.222-26, Equal Opportunity (Sept 2016) (E.O.11246).
  - \_\_\_ (ii) Alternate I (Feb 1999) of 52.222-26.
- \_\_\_ (29) (i) 52.222-35, Equal Opportunity for Veterans (Oct 2015) (38 U.S.C. 4212).
  - \_\_\_ (ii) Alternate I (July 2014) of 52.222-35.
- \_\_\_ (30) (i) 52.222-36, Equal Opportunity for Workers with Disabilities (Jul 2014) (29 U.S.C.793).
  - \_\_\_ (ii) Alternate I (July 2014) of 52.222-36.
- \_\_\_ (31) 52.222-37, Employment Reports on Veterans (Feb 2016) (38 U.S.C. 4212).

- \_\_\_ (32) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496).
- \_X\_ (33) (i) 52.222-50, Combating Trafficking in Persons (Jan 2019) (22 U.S.C. chapter 78 and E.O. 13627).
  - \_\_\_ (ii) Alternate I (Mar 2015) of 52.222-50 (22 U.S.C. chapter 78 and E.O. 13627).
- \_\_\_ (34) 52.222-54, Employment Eligibility Verification (Oct 2015). (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in 22.1803.)
- \_\_\_ (35) (i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA– Designated Items (May 2008) (42 U.S.C. 6962(c)(3)(A)(ii)). (Not applicable to the acquisition of commercially available off-the-shelf items.)
  - \_\_\_ (ii) Alternate I (May 2008) of 52.223-9 (42 U.S.C. 6962(i)(2)(C)). (Not applicable to the acquisition of commercially available off-the-shelf items.)
- \_\_\_ (36) 52.223-11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (Jun 2016) (E.O. 13693).
- \_\_\_ (37) 52.223-12, Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (Jun 2016) (E.O. 13693).
- \_\_\_ (38) (i) 52.223-13, Acquisition of EPEAT®-Registered Imaging Equipment (Jun 2014) (E.O.s 13423 and 13514).
  - \_\_\_ (ii) Alternate I (Oct 2015) of 52.223-13.
- \_\_\_ (39) (i) 52.223-14, Acquisition of EPEAT®-Registered Televisions (Jun 2014) (E.O.s 13423 and 13514).
  - \_\_\_ (ii) Alternate I (Jun 2014) of 52.223-14.
- \_\_\_ (40) 52.223-15, Energy Efficiency in Energy-Consuming Products (Dec 2007) (42 U.S.C. 8259b).
- \_\_\_ (41) (i) 52.223-16, Acquisition of EPEAT®-Registered Personal Computer Products (Oct 2015) (E.O.s 13423 and 13514).
  - \_\_\_ (ii) Alternate I (Jun 2014) of 52.223-16.
- \_X\_ (42) 52.223-18, Encouraging Contractor Policies to Ban Text Messaging While Driving (Aug 2011) (E.O. 13513).
- \_\_\_ (43) 52.223-20, Aerosols (Jun 2016) (E.O. 13693).
- \_\_\_ (44) 52.223-21, Foams (Jun 2016) (E.O. 13693).
- \_\_\_ (45) (i) 52.224-3 Privacy Training (Jan 2017) (5 U.S.C. 552 a).
  - \_\_\_ (ii) Alternate I (Jan 2017) of 52.224-3.
- \_\_\_ (46) 52.225-1, Buy American-Supplies (May 2014) (41 U.S.C. chapter 83).
- \_\_\_ (47) (i) 52.225-3, Buy American-Free Trade Agreements-Israeli Trade Act (May 2014) (41 U.S.C. chapter 83, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, 19 U.S.C. 3805 note, 19 U.S.C. 4001 note, Pub. L. 103-182, 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, 110-138, 112-41, 112-42, and 112-43).
  - \_\_\_ (ii) Alternate I (May 2014) of 52.225-3.
  - \_\_\_ (iii) Alternate II (May 2014) of 52.225-3.
  - \_\_\_ (iv) Alternate III (May 2014) of 52.225-3.
- \_\_\_ (48) 52.225-5, Trade Agreements (Oct 2019) (19 U.S.C. 2501, et seq., 19 U.S.C. 3301 note).
- \_X\_ (49) 52.225-13, Restrictions on Certain Foreign Purchases (June 2008) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control

of the Department of the Treasury).

- \_\_\_ (50) 52.225-26, Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).
- \_\_\_ (51) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (Nov 2007) (42 U.S.C. 5150).
- \_\_\_ (52) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov 2007) (42 U.S.C. 5150).
- \_\_\_ (53) 52.232-29, Terms for Financing of Purchases of Commercial Items (Feb 2002) (41 U.S.C.4505, 10 U.S.C.2307(f)).
- \_\_\_ (54) 52.232-30, Installment Payments for Commercial Items (Jan 2017) (41 U.S.C.4505, 10 U.S.C.2307(f)).
- X (55) 52.232-33, Payment by Electronic Funds Transfer-System for Award Management (Oct 2018) (31 U.S.C. 3332).
- \_\_\_ (56) 52.232-34, Payment by Electronic Funds Transfer-Other than System for Award Management (Jul 2013) (31 U.S.C.3332).
- \_\_\_ (57) 52.232-36, Payment by Third Party (May 2014) (31 U.S.C.3332).
- \_\_\_ (58) 52.239-1, Privacy or Security Safeguards (Aug 1996) (5 U.S.C. 552a).
- \_\_\_ (59) 52.242-5, Payments to Small Business Subcontractors (Jan 2017) (15 U.S.C. 637(d)(13)).
- \_\_\_ (60) (i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx. 1241(b) and 10 U.S.C. 2631).
  - \_\_\_ (ii) Alternate I (Apr 2003) of 52.247-64.
  - \_\_\_ (iii) Alternate II (Feb 2006) of 52.247-64.

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

- \_\_\_ (1) 52.222-17, No-displacement of Qualified Workers (May 2014)(E.O. 13495).
- \_\_\_ (2) 52.222-41, Service Contract Labor Standards (Aug 2018) (41 U.S.C. chapter 67).
- \_\_\_ (3) 52.222-42, Statement of Equivalent Rates for Federal Hires (May 2014) (29 U.S.C. 206 and 41 U.S.C. chapter 67).
- \_\_\_ (4) 52.222-43, Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (Multiple Year and Option Contracts) (Aug 2018) (29 U.S.C. 206 and 41 U.S.C. chapter 67).
- \_\_\_ (5) 52.222-44, Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (May 2014) (29 U.S.C. 206 and 41 U.S.C. chapter 67).
- \_\_\_ (6) 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (May 2014) (41 U.S.C. chapter 67).
- \_\_\_ (7) 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements (May 2014) (41 U.S.C. chapter 67).
- \_\_\_ (8) 52.222-55, Minimum Wages Under Executive Order 13658 (Dec 2015).
- \_\_\_ (9) 52.222-62, Paid Sick Leave Under Executive Order 13706 (Jan 2017) (E.O.

13706).

— (10) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (May 2014) (42 U.S.C. 1792).

(d) Comptroller General Examination of Record. The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, Audit and Records-Negotiation.

- (1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.
- (2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.
- (3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

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

- (i) 52.203-13, Contractor Code of Business Ethics and Conduct (Oct 2015) (41 U.S.C. 3509).
- (ii) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).
- (iii) 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Jul 2018) (Section 1634 of Pub. L. 115-91).
- (iv) 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (Aug 2019) (Section 889(a)(1)(A) of Pub. L. 115-232).
- (v) 52.219-8, Utilization of Small Business Concerns (Oct 2018)

- (15 U.S.C.637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$700,000 (\$1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.
- (vi) 52.222-17, Non-displacement of Qualified Workers (May 2014) (E.O. 13495). Flow down required in accordance with paragraph (l) of FAR clause 52.222-17.
  - (vii) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).
  - (viii) 52.222-26, Equal Opportunity (Sept 2015) (E.O.11246).
  - (ix) 52.222-35, Equal Opportunity for Veterans (Oct 2015) (38 U.S.C.4212).
  - (x) 52.222-36, Equal Opportunity for Workers with Disabilities (Jul 2014) (29 U.S.C.793).
  - (xi) 52.222-37, Employment Reports on Veterans (Feb 2016) (38 U.S.C.4212)
  - (xii) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause 52.222-40.
  - (xiii) 52.222-41, Service Contract Labor Standards (Aug 2018) (41 U.S.C. chapter 67).
  - (xiv) (A) 52.222-50, Combating Trafficking in Persons (Jan 2019) (22 U.S.C. chapter 78 and E.O 13627).
  - (B) Alternate I (Mar 2015) of 52.222-50(22 U.S.C. chapter 78 and E.O 13627).
  - (xv) 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (May 2014) (41 U.S.C. chapter 67).
  - (xvi) 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements (May 2014) (41 U.S.C. chapter 67).
  - (xvii) 52.222-54, Employment Eligibility Verification (Oct 2015) (E.O. 12989).
  - (xviii) 52.222-55, Minimum Wages Under Executive Order 13658 (Dec 2015).
  - (xix) 52.222-62, Paid Sick Leave Under Executive Order 13706 (Jan 2017) (E.O. 13706).
  - (xx) (A) 52.224-3, Privacy Training (Jan 2017) (5 U.S.C. 552a).
  - (B) Alternate I (Jan 2017) of 52.224-3.
  - (xxi) 52.225-26, Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).
  - (xxii) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (May 2014) (42 U.S.C. 1792). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6.
  - (xxiii) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx.1241(b) and 10 U.S.C.2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.
- (2) While not required, the Contractor may include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

## 14. PROVISIONS

### **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 address

<https://www.acquisition.gov/far/current/html/FARTOCP52.html#wp372482>

### **52.203-18 – Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements—Representation (Jan 2017)**

### **52.204-24 – Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment (Dec 2019)**

### **52.204-26 – Covered Telecommunications Equipment or Services-Representation (Dec 2019)**

### **52.211-6 – Brand Name or Equal (Aug 1999)**

(End of provision)

The below Health and Human Services Acquisition Regulation (HHSAR) provision apply. HHSAR Clauses can be viewed in full text at:

<http://www.hhs.gov/policies/hhsar/subpart352.html#subpart352.1-->

InstructionsforUsingProvisionsandClauses

### **352.239-73: Electronic and Information Technology Accessibility Notice (Dec2015)**

(End of provision)

### **FAR 52.212-3: Offeror Representations and Certifications-Commercial Items (Dec 2019)**

The Offeror shall complete only paragraph (b) of this provision if the Offeror has completed the annual representations and certification electronically in the System for Award Management (SAM) accessed through <https://www.sam.gov>. If the Offeror has not completed the annual representations and certifications electronically, the Offeror shall complete only paragraphs (c) through (v) of this provision.

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

“Covered telecommunications equipment or services” has the meaning provided in the clause [52.204-25](#), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

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

“Forced or indentured child labor” means all work or service—

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

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

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

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

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

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

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

(9) PSC 9620, Minerals, Natural and Synthetic; and

(10) PSC 9630, Additive Metal Materials.

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

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

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

- (1) Are conducted under contract directly and exclusively with the regional government of southern Sudan;
- (2) Are conducted pursuant to specific authorization from the Office of Foreign Assets Control in the Department of the Treasury, or are expressly exempted under Federal law from the requirement to be conducted under such authorization;
- (3) Consist of providing goods or services to marginalized populations of Sudan;
- (4) Consist of providing goods or services to an internationally recognized peacekeeping force or humanitarian organization;
- (5) Consist of providing goods or services that are used only to promote health or education;  
or
- (6) Have been voluntarily suspended. “Sensitive technology”—

“Sensitive technology”—

- (1) Means hardware, software, telecommunications equipment, or any other technology that is to be used specifically—
  - (i) To restrict the free flow of unbiased information in Iran; or
  - (ii) To disrupt, monitor, or otherwise restrict speech of the people of Iran; and



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

“Service-disabled veteran-owned small business concern”—

(1) Means a small business concern—

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

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

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

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

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

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

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

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

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

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

(1) Directly by a parent corporation; or

(2) Through another subsidiary of a parent corporation

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

“Veteran-owned small business concern” means a small business concern—

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

(2) The management and daily business operations of which are controlled by one or more veterans.

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

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

(1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(b) (1) *Annual Representations and Certifications.* Any changes provided by the Offeror in paragraph (b)(2) of this provision do not automatically change the representations and certifications in SAM

(2) The offeror has completed the annual representations and certifications electronically in SAM accessed through <http://www.sam.gov>. After reviewing SAM information, the Offeror verifies by submission of this offer that the representations and certifications currently posted electronically at FAR 52.212-3, Offeror Representations and Certifications-Commercial Items, have been entered or updated in the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), at the time this offer is submitted and are incorporated in this offer by reference (see FAR 4.1201), except for paragraphs

\_\_\_\_\_.

*[Offeror to identify the applicable paragraphs at (c) through (v) of this provision that the offeror has completed for the purposes of this solicitation only, if any.]*

*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.*

*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 electronically on SAM.]*

(c) Offerors must complete the following representations when the resulting contract will be performed in the United States or its outlying areas. Check all that apply.

(1) *Small business concern.* The offeror represents as part of its offer that it  is,  is not a small business concern.

(2) *Veteran-owned small business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents as part of its offer that it  is,  is not a veteran-owned small business concern.

(3) *Service-disabled veteran-owned small business concern.* [Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (c)(2) of this provision.] The offeror represents as part of its offer that it  is,  is not a service-disabled veteran-owned small business concern.

(4) *Small disadvantaged business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents, that it  is,  is not a small disadvantaged business concern as defined in 13 CFR124.1002.

(5) *Women-owned small business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it  is,  is not a women-owned small business concern.

(6) WOSB concern eligible under the WOSB Program. [Complete only if the offeror represented itself as a women-owned small business concern in paragraph (c)(5) of this provision.] The offeror represents that-

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

(ii) It  is,  is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (c)(6)(i) of this provision is accurate for each WOSB concern eligible under the WOSB Program participating in the joint venture. [The offeror shall enter the name or names of the WOSB concern eligible under the WOSB Program and other small businesses that are participating in the joint venture: \_\_\_\_\_.] Each WOSB concern eligible under the WOSB Program participating in the joint venture shall submit a separate signed copy of the WOSB representation.

(7) Economically disadvantaged women-owned small business (EDWOSB) concern. [Complete only if the offeror represented itself as a WOSB concern eligible under the WOSB Program in (c)(6) of this provision.] The offeror represents that-

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

(ii) It  is,  is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (c)(7)(i) of this provision is accurate for each EDWOSB concern participating in the joint venture. [*The offeror shall enter the name or names of the EDWOSB concern and other small businesses that are participating in the joint venture: \_\_\_\_\_.*] Each EDWOSB concern participating in the joint venture shall submit a separate signed copy of the EDWOSB representation.

**Note:** Complete paragraphs (c)(8) and (c)(9) only if this solicitation is expected to exceed the simplified acquisition threshold.

(8) *Women-owned business concern (other than small business concern).* [*Complete only if the offeror is a women-owned business concern and did not represent itself as a small business concern in paragraph (c)(1) of this provision.*] The offeror represents that it  is a women-owned business concern.

(9) *Tie bid priority for labor surplus area concerns.* If this is an invitation for bid, small business offerors may identify the labor surplus areas in which costs to be incurred on account of manufacturing or production (by offeror or first-tier subcontractors) amount to more than 50 percent of the contract price: \_\_\_\_\_

(10) *HUBZone small business concern.* [*Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.*] The offeror represents, as part of its offer, that—

(i) It  is,  is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material 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 (c)(10)(i) of this provision is accurate for each HUBZone small business concern participating in the HUBZone joint venture. [*The offeror 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.

(d) Representations required to implement provisions of Executive Order 11246-

(1) Previous contracts and compliance. The offeror represents that-

(i) It  has,  has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation; and

(ii) It  has,  has not filed all required compliance reports.

(2) *Affirmative Action Compliance.* The offeror represents that-

(i) It  has developed and has on file,  has not developed and does not have on file, at each establishment, affirmative action programs required by rules and regulations of the Secretary of Labor (41 CFR parts 60-1 and 60-2), or

(ii) It  has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

(e) *Certification Regarding Payments to Influence Federal Transactions* (31 <http://uscode.house.gov/> U.S.C. 1352). (Applies only if the contract is expected to exceed \$150,000.) By submission of its offer, the offeror certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress on his or her behalf in connection with the award of any resultant contract. If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this contract, the offeror shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. The offeror need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

(f) *Buy American Certificate.* (Applies only if the clause at Federal Acquisition Regulation (FAR) [52.225-1](#), Buy American-Supplies, is included in this solicitation.)

(1) The offeror certifies that each end product, except those listed in paragraph (f)(2) of this provision, is a domestic end product and that for other than COTS items, the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products, *i.e.*, an end product that is not a COTS item and does not meet the component test in paragraph (2) of the definition of “domestic end product.” The terms “commercially available off-the-shelf (COTS) item” “component,” “domestic end product,” “end product,” “foreign end product,” and “United States” are defined in the clause of this solicitation entitled “Buy American-Supplies.”

(2) Foreign End Products:

Line Item No.	Country of Origin

_____	_____
_____	_____
_____	_____

[List as necessary]

(3) The Government will evaluate offers in accordance with the policies and procedures of FAR [part 25](#).

(g) (1) *Buy American-Free Trade Agreements-Israeli Trade Act Certificate*. (Applies only if the clause at FAR [52.225-3](#), Buy American-Free Trade Agreements-Israeli Trade Act, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (g)(1)(ii) or (g)(1)(iii) of this provision, is a domestic end product and that for other than COTS items, the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The terms “Bahrainian, Moroccan, Omani, Panamanian, or Peruvian end product,” “commercially available off-the-shelf (COTS) item,” “component,” “domestic end product,” “end product,” “foreign end product,” “Free Trade Agreement country,” “Free Trade Agreement country end product,” “Israeli end product,” and “United States” are defined in the clause of this solicitation entitled “Buy American-Free Trade Agreements–Israeli Trade Act.”

(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products (other than Bahrainian, Moroccan, Omani, Panamanian, or Peruvian end products) or Israeli end products as defined in the clause of this solicitation entitled “Buy American-Free Trade Agreements-Israeli Trade Act”:

Free Trade Agreement Country End Products (Other than Bahrainian, Moroccan, Omani, Panamanian, or Peruvian End Products) or Israeli End Products:

Line Item No.	Country of Origin
_____	_____

_____	_____
_____	_____

[List as necessary]

(iii) The offeror shall list those supplies that are foreign end products (other than those listed in paragraph (g)(1)(ii) of this provision) as defined in the clause of this solicitation entitled “Buy American-Free Trade Agreements-Israeli Trade Act.” The offeror shall list as other foreign end products those end products manufactured in the United States that do not qualify as domestic end products, *i.e.*, an end product that is not a COTS item and does not meet the component test in paragraph (2) of the definition of “domestic end product.”

Other Foreign End Products:

Line Item No.	Country of Origin
_____	_____
_____	_____
_____	_____

[List as necessary]

(iv) The Government will evaluate offers in accordance with the policies and procedures of FAR [part 25](#).

(2) *Buy American-Free Trade Agreements-Israeli Trade Act Certificate, Alternate I*. If Alternate I to the clause at FAR [52.225-3](#) is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products as defined in the clause of this solicitation entitled “Buy American-Free Trade Agreements-Israeli Trade Act”:

Canadian End Products:

Line Item No.
_____
_____
_____

*[List as necessary]*

(3) *Buy American-Free Trade Agreements-Israeli Trade Act Certificate, Alternate II.* If Alternate II to the clause at FAR [52.225-3](#) is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products or Israeli end products as defined in the clause of this solicitation entitled “Buy American-Free Trade Agreements-Israeli Trade Act”:

Canadian or Israeli End Products:

Line Item No.	Country of Origin
_____	_____
_____	_____



_____	_____
-------	-------

*[List as necessary]*

(4) *Buy American-Free Trade Agreements-Israeli Trade Act Certificate, Alternate III.* If Alternate III to the clause at [52.225-3](#) is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products (other than Bahrainian, Korean, Moroccan, Omani, Panamanian, or Peruvian end products) or Israeli end products as defined in the clause of this solicitation entitled “Buy American-Free Trade Agreements-Israeli Trade Act”:

Free Trade Agreement Country End Products (Other than Bahrainian, Korean, Moroccan, Omani, Panamanian, or Peruvian End Products) or Israeli End Products:

Line Item No.	Country of Origin
_____	_____
_____	_____
_____	_____

*[List as necessary]*

(5) *Trade Agreements Certificate.* (Applies only if the clause at FAR [52.225-5](#), Trade Agreements, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (g)(5)(ii) of this provision, is a U.S.-made or designated country end product, as defined in the clause of this solicitation entitled “Trade Agreements.”

(ii) The offeror shall list as other end products those end products that are not U.S.-made or designated country end products.

Other End Products:

Line Item No.	Country of Origin
_____	_____
_____	_____
_____	_____

*[List as necessary]*

(iii) The Government will evaluate offers in accordance with the policies and procedures of FAR [part 25](#). For line items covered by the WTO GPA, the Government will evaluate offers of U.S.-made or designated country end products without regard to the restrictions of the Buy American statute. The Government will consider for award only offers of U.S.-made or designated country end products unless the Contracting Officer determines that there are no offers for such products or that the offers for such products are insufficient to fulfill the requirements of the solicitation.

(h) *Certification Regarding Responsibility Matters (Executive Order 12689)*. (Applies only if the contract value is expected to exceed the simplified acquisition threshold.) The offeror certifies, to the best of its knowledge and belief, that the offeror and/or any of its principals—

(1)  Are,  are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(2)  Have,  have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, state or local government contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;

(3)  Are,  are not presently indicted for, or otherwise criminally or civilly charged by a Government entity with, commission of any of these offenses enumerated in paragraph (h)(2) of this clause; and

(4)  Have,  have not, within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,500 for which the liability remains unsatisfied.

(i) Taxes are considered delinquent if both of the following criteria apply:

(A) *The tax liability is finally determined.* The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(B) *The taxpayer is delinquent in making payment.* A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(ii) *Examples.* (A) The taxpayer has received a statutory notice of deficiency, under I.R.C. §6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(B) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. §6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(C) The taxpayer has entered into an installment agreement pursuant to I.R.C. §6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.

(D) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. §362 (the Bankruptcy Code).

(i) *Certification Regarding Knowledge of Child Labor for Listed End Products (Executive Order 13126).* [The Contracting Officer must list in paragraph (i)(1) any end products being

*acquired under this solicitation that are included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, unless excluded at 22.1503(b).]*

(1) *Listed end products.*

Listed End Product	Listed Countries of Origin
_____	_____
_____	_____

(2) *Certification. [If the Contracting Officer has identified end products and countries of origin in paragraph (i)(1) of this provision, then the offeror must certify to either (i)(2)(i) or (i)(2)(ii) by checking the appropriate block.]*

(i) The offeror will not supply any end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product.

(ii) The offeror may supply an end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. The offeror certifies that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any such end product furnished under this contract. On the basis of those efforts, the offeror certifies that it is not aware of any such use of child labor.

(j) *Place of manufacture.* (Does not apply unless the solicitation is predominantly for the acquisition of manufactured end products.) For statistical purposes only, the offeror shall indicate whether the place of manufacture of the end products it expects to provide in response to this solicitation is predominantly-

(1)  In the United States (Check this box if the total anticipated price of offered end products manufactured in the United States exceeds the total anticipated price of offered end products manufactured outside the United States); or

(2)  Outside the United States.

(k) *Certificates regarding exemptions from the application of the Service Contract Labor Standards* (Certification by the offeror as to its compliance with respect to the contract also constitutes its certification as to compliance by its subcontractor if it subcontracts out the

exempt services.) [*The contracting officer is to check a box to indicate if paragraph (k)(1) or (k)(2) applies.*]

(1) Maintenance, calibration, or repair of certain equipment as described in FAR 22.1003-4(c)(1). The offeror  does  does not certify that—

(i) The items of equipment to be serviced under this contract are used regularly for other than Governmental purposes and are sold or traded by the offeror (or subcontractor in the case of an exempt subcontract) in substantial quantities to the general public in the course of normal business operations;

(ii) The services will be furnished at prices which are, or are based on, established catalog or market prices (see FAR 22.1003-4(c)(2)(ii)) for the maintenance, calibration, or repair of such equipment; and

(iii) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract will be the same as that used for these employees and equivalent employees servicing the same equipment of commercial customers.

(2) Certain services as described in FAR 22.1003-4(d)(1). The offeror  does  does not certify that—

(i) The services under the contract are offered and sold regularly to non-Governmental customers, and are provided by the offeror (or subcontractor in the case of an exempt subcontract) to the general public in substantial quantities in the course of normal business operations;

(ii) The contract services will be furnished at prices that are, or are based on, established catalog or market prices (see FAR 22.1003-4(d)(2)(iii));

(iii) Each service employee who will perform the services under the contract will spend only a small portion of his or her time (a monthly average of less than 20 percent of the available hours on an annualized basis, or less than 20 percent of available hours during the contract period if the contract period is less than a month) servicing the Government contract; and

(iv) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract is the same as that used for these employees and equivalent employees servicing commercial customers.

(3) If paragraph (k)(1) or (k)(2) of this clause applies—

(i) If the offeror does not certify to the conditions in paragraph (k)(1) or (k)(2) and the Contracting Officer did not attach a Service Contract Labor Standards wage determination to the solicitation, the offeror shall notify the Contracting Officer as soon as possible; and

(ii) The Contracting Officer may not make an award to the offeror if the offeror fails to execute the certification in paragraph (k)(1) or (k)(2) of this clause or to contact the Contracting Officer as required in paragraph (k)(3)(i) of this clause.

(l) *Taxpayer Identification Number (TIN)* ( [26 U.S.C. 6109](#), [31 U.S.C. 7701](#)). (Not applicable if the offeror is required to provide this information to the SAM to be eligible for award.)

(1) All offerors must submit the information required in paragraphs (l)(3) through (l)(5) of this provision to comply with debt collection requirements of [31 U.S.C. 7701\(c\)](#) and [3325\(d\)](#), reporting requirements of [26 U.S.C. 6041](#), [6041A](#), and [6050M](#), and implementing regulations issued by the Internal Revenue Service (IRS).

(2) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the Government ([31 U.S.C. 7701\(c\)\(3\)](#)). If the resulting contract is subject to the payment reporting requirements described in FAR [4.904](#), the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

(3) *Taxpayer Identification Number (TIN)*.

TIN: \_\_\_\_\_.

TIN has been applied for.

TIN is not required because:

Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;

Offeror is an agency or instrumentality of a foreign government;

Offeror is an agency or instrumentality of the Federal Government.

(4) *Type of organization*.

Sole proprietorship;

Partnership;

Corporate entity (not tax-exempt);

Corporate entity (tax-exempt);

Government entity (Federal, State, or local);

Foreign government;

International organization per 26 CFR1.6049-4;

Other \_\_\_\_\_.

(5) *Common parent.*

Offeror is not owned or controlled by a common parent;

Name and TIN of common parent:

Name \_\_\_\_\_.

TIN \_\_\_\_\_.

(m) *Restricted business operations in Sudan.* By submission of its offer, the offeror certifies that the offeror does not conduct any restricted business operations in Sudan.

(n) *Prohibition on Contracting with Inverted Domestic Corporations.*

(1) Government agencies are not permitted to use appropriated (or otherwise made available) funds for contracts with either an inverted domestic corporation, or a subsidiary of an inverted domestic corporation, unless the exception at 9.108-2(b) applies or the requirement is waived in accordance with the procedures at 9.108-4.

(2) *Representation.* The Offeror represents that—

(i) It  is,  is not an inverted domestic corporation; and

(ii) It  is,  is not a subsidiary of an inverted domestic corporation.

(o) *Prohibition on contracting with entities engaging in certain activities or transactions relating to Iran.*

(1) The offeror shall e-mail questions concerning sensitive technology to the Department of State at [CISADA106@state.gov](mailto:CISADA106@state.gov).

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

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

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

(iii) Certifies that the offeror, and any person owned or controlled by the offeror, does not knowingly engage in any transaction that exceeds \$3,500 with Iran’s Revolutionary Guard Corps or any of its officials, agents, or affiliates, the property and interests in property of which are blocked pursuant to the International Emergency Economic Powers Act (et seq.) (see OFAC’s Specially Designated Nationals and Blocked Persons List at <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

(2) The Offeror represents that—

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

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

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

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

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

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

Predecessor legal name: .

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

(s)[Reserved].

(t) *Public Disclosure of Greenhouse Gas Emissions and Reduction Goals*. Applies in all solicitations that require offerors to register in SAM (12.301(d)(1)).

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

(2) Representation. [Offeror to check applicable block(s) in paragraph (t)(2)(i) and (ii)].

(i) The Offeror (itself or through its immediate owner or highest-level owner)  does,  does not publicly disclose greenhouse gas emissions, i.e., makes available on a publicly accessible website the results of a greenhouse gas inventory, performed in accordance with an accounting standard with publicly available and consistently applied criteria, such as the Greenhouse Gas Protocol Corporate Standard.

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

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

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

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

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

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

contract to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information (e.g., agency Office of the Inspector General).

(v) *Covered Telecommunications Equipment or Services-Representation*. Section 889(a)(1)(A) of Public Law 115-232.

- (1) The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal awards for “covered telecommunications equipment or services”.
- (2) The Offeror represents that it  does,  does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument.

(End of provision)

## 15. INSTRUCTIONS TO QUOTERS/EVALUATION CRITERIA

### A. Instructions to Quoters:

1. Quoters shall submit a complete pricing for all products listed in this RFQ. Partial quotes will not be considered. Incomplete pricing or pricing with omissions may not be considered for award.
2. Quotations must meet all the requirements of this solicitation in order to be considered technically acceptable.
3. All Quoters providing quotations must clearly state the overall cost to the Government.
4. Quoters shall submit all assumptions in their quotation.
5. Quoter shall be an Original Equipment Manufacturer, authorized reseller and/or servicing agent of the software manufacturer.
6. Quoters should ensure that their initial submission represents their best pricing and that all information is provided to determine technical acceptability. The Government will not research items to determine compatibility; all information regarding compatibility must be contained within the quotation.
7. Equal to Quotes must submit Technical volume with detailed point-by-point description of how the equal to product meets all the salient characteristics of this solicitation. Equal to Quotes shall be required to operate seamlessly with all requirements out lined in Section 3 of this solicitation. Simply returning the solicitation may deem your quote to be non responsive.

Regeration of the requirements out lined in Section 3 may be deemed technically unacceptable.

8. Quoters submitting equal to products, shall submit Section 508 Product Accessibility Templates (PAT) in full text with their quotations. For more information regarding PATs see:

<http://www.hhs.gov/web/section-508/contracting/technology-products/product-accessibility-template/>

9. The Government will evaluate the quotation that it meets the requirement of the solicitation to include description, quantity, period of performance and pricing for the deliverables.
10. Quoters shall certify their quotes to be valid for 30 days.
11. Questions: All questions shall be submitted electronically via email to Tiffany Hatcher at [tiffany.hatcher@fda.hhs.gov](mailto:tiffany.hatcher@fda.hhs.gov), August 23, 2021, 5:00 pm EST.
12. Due Date: All qoutes shall be submitted electronically via email to Tiffany Hatcher at [tiffany.hatcher@fda.hhs.gov](mailto:tiffany.hatcher@fda.hhs.gov) by August 25, 2021, 5:00 pm EST.

B. Evaluation:

1. All quotes will be evaluated on a Lowest Priced Technically Acceptable (LPTA) basis.
2. Technical features meeting/exceeding requirements as specified in Section 3 of this solicitation.
3. Section 508 Product Accessibility

## 16. BASIS FOR AWARD

All quotations will be evaluated on a Lowest Priced Technically Acceptable (LPTA) basis. The award will be made to the lowest price Quoter that demonstrates they can meet all the requirements of this solicitation. Failure to demonstrate meeting any of the requirements will result in a rating of technically unacceptable and will not be considered for award.

(End of Solicitation)