Representation and Certification
for
Modernized Bioplant Facility at Radford Army Ammunition Plant (RFAAP)

1. I have read 10 U.S.C. § 2808a, the Other Transaction Agreement (OTA) for the Modernized Bioplant Facility and the provisions provided in the Request for Solutions. By submitting this certification, I, _____, as an authorized representative of_____, am attesting to the accuracy of the representations and certifications contained herein. I understand that I may be subject to criminal prosecution under Section 1001, Title 18 of the United States Code or civil liability under the False Claims Act if I misrepresent_____in any of these representations or certifications to the Government.

2. In accordance with 10 U.S.C. § 2028a, Authority of the DoD to Carry Out Facility Construction or repair Projects, each project awarded under an OTA must meet at least one of the following conditions:

   a. There is at least one nontraditional defense contractor or nonprofit research institution participating to a significant extent in the project.

   b. All significant participants in the transaction other than the Federal Government are small businesses, including those participating in Small Business Innovation Research (SBIR) or Small Business Technology Transfer programs, or nontraditional defense contractors.

   c. At least one third of the total cost of the prototype project is to be paid out of funds provided by parties other than the Federal Government.

3. I hereby certify that_____:

   ☐ Is a non-traditional defense contractor

   ☐ Is a traditional defense contractor and there is at least one nontraditional defense contractor or nonprofit research institution participating to a significant extent in the prototype project. The following nontraditional defense contractor(s) or nonprofit research institution(s) is/are proposed to participate to a significant extent in the prototype project:
   _____
   _____

   ☐ All significant participants in the transaction other than the Federal Government are small businesses, including those participating in Small Business Innovation Research (SBIR) or Small Business Technology Transfer programs, or nontraditional defense contractors.

   ☐ Is a traditional defense contractor and at least one third of the total cost of the prototype project is to be paid out of funds provided by parties other than the Federal Government.

4. Based on the certification provided in paragraph 3, a one-third cost share will ( )/will not ( ) be provided under this OTA in order to fulfill the requirement of 10 U.S.C.§2028a.

Name: _____

Title: _____

Signature:_____ Date: _____

APPENDIX A

Definitions Regarding 10 U.S.C. §2028a

a. **Nontraditional Defense Contractor:** An entity that is not currently performing and has not performed, for at least the one-year period preceding the solicitation of sources by the DoD for the procurement or transaction, any contract or subcontract for the DoD that is subject to full coverage under the cost accounting standards prescribed pursuant to Section 1502 of Title 41 and the regulations implementing such section.

b. **Significant Participation:** Significant participation by a nontraditional defense contractor can be:

   i. Supplying new key technology or products
   ii. Accomplishing a significant amount of the prototype effort
   iii. Causing a material reduction in the cost or schedule or increase in performance

   Note: Nontraditional does not necessarily have to be a prime contractor – can be a subcontractor, lower tier vendor, intra-company business unit, or teamed with a traditional as long as participation is "significant". Offerors should ensure that the roles and responsibilities for nontraditional participants are clearly described in the Enhanced Whitepaper, if significant nontraditional participation is the supporting authority proposed for the OTA.

   The USG will follow the specific guidance from OSD concerning the use of nontraditional defense contractors. Nontraditional defense contractors will be required to provide DUNS number. Any offeror that does not fall within the parameters of the nontraditional defense contractor definition shall be considered a traditional defense contractor.

c. **Cost Sharing:** Cost sharing is defined as the resources expended by the award recipient in performance of the proposed SOW and subject to the direction of the Government Agreement's Officer Representative. If an initiative does not contain at least one nontraditional defense contractor participating to a significant extent, then it is required that the proposal contains at least one-third of the total initiative cost as a cost share.

   Please note that cost sharing is strongly encouraged if possible because it leads to stronger leveraging of Government-contractor collaboration. Proposals that contain cost share cannot include fee.

APPENDIX B

FAR 52.204-24 Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) For covered equipment—

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

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

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

(ii) For covered services—

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

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

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

(i) For covered equipment—

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

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

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

(ii) For covered services—

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

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

(End of provision)