



ND DEFENSE ANNUAL REPRESENTATIONS AND CERTIFICATIONS

The company/individual below represents and certifies to ND Defense LLC, and its subsidiaries and affiliates (hereinafter, “ND Defense”) that the following information is current, accurate, and complete and will apply to all purchase orders/subcontracts issued to the named company/individual under ND Defense’s Federal contracts or grants. The company/individual named below will notify ND Defense immediately by contacting NDSupplier@nddefense.com should any information change or be found incorrect.

COMPANY INFORMATION

Company Name:	
Physical Address:	
Congressional District: https://www.house.gov/representatives/find-your-representative	
Telephone:	
Fax Number:	
Primary Point of Contact:	
* Taxpayer ID:	
** Cage Code:	
***Unique Entity Identifier (UEI) from SAM.gov:	
**** Applicable NAICS Codes:	
SIGNATURE PAGE on Page 12	

* This is the number required by the Internal Revenue Service (IRS) to be used in reporting income tax and other returns. The Taxpayer ID Number (TIN) may be either a Social Security Number or an Employer Identification Number.

** This is the number assigned by the government to the company address listed. It applies only if the company/individual shown above has performed prime government work.

*** The subcontractor must have a current registration with the U.S. Government’s System for Award Management (SAM – previously known as ORCA).

**** List all that may apply. **Mandatory field** – a minimum of one NAIC should be referenced. Additional sheets may be attached, if necessary. If unsure of your primary NAIC designation, an updated list can be found at - <https://www.sba.gov/document/support-table-size-standards>.

CAUTION: Federal law (13 CFR 121.108) prescribes penalties and remedies for misrepresentations of business status as small business or small disadvantaged business for the purpose of obtaining a subcontract such as Suspension or Debarment (48 CFR subpart 9.4); Civil Penalties (13 CDR part 142); Criminal Penalties (15 U.S.C. 45 (a)); Limitation on Liability (15 U.S.C. 645(a)).

THE OFFEROR CERTIFIES THAT THE INFORMATION CONTAINED WITHIN THIS DOCUMENT IS



TRUE AND ACCURATE TO THE BEST OF ITS KNOWLEDGE AND AGREES THAT SUCH REPRESENTATIONS AND CERTIFICATIONS SHALL FORM A PART OF ALL CONTRACTS AWARDED.

BY THE EXECUTION OF THIS DOCUMENT, THE OFFEROR AGREES TO PROVIDE IMMEDIATE WRITTEN NOTICE TO ND DEFENSE IF, AT ANY TIME DURING THE EFFECTIVE PERIOD OF THIS DOCUMENT, THE UNDERSIGNED OFFEROR LEARNS THAT THIS DOCUMENT WAS ERRONEOUS WHEN SUBMITTED OR HAS BECOME ERRONEOUS BY REASON OF CHANGED CIRCUMSTANCES.

THE EFFECTIVE PERIOD OF THIS DOCUMENT IS: CALENDAR YEAR enter current year

Representation and Certifications come from Federal Acquisition Regulations (FAR) and Defense Federal Acquisition Regulation Supplement (DFARS). The entire clause and definitions may be accessed on the internet <https://www.acquisition.gov/content/regulations>

☐ **Offeror has an active SAM registration**

Complete pages 1-12 and attach, or provide separately, your current SAM FAR&DFARS Report.

Renewed annual representations and certifications will be required at the SAM expiration date, or if SAM is updated before the current expiration date.

☐ **Offeror is not registered in SAM or has an inactive registration**

Complete all pages.

Renewed annual representations and certifications will be required annually, from the date of signature.

1. FAR 52.203-12 - LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 2020)

In accordance with FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, as part of your proposal response, please provide the following declaration for yourself and all lower-tier subcontractors which shall be forwarded to the Contracting Officer.

Subcontractor Name (including its chief executives and directors and any proposed consultants or subcontractors) certifies and declares that it does not have any past, present, or planned interests that constitute existing or potential payments to influence certain federal transactions.

<https://www.acquisition.gov/far/52.203-11>

☐ Need to disclose and submit OMB Standard Form LLL, Disclosure of Lobbying Activities disclosure pursuant to paragraph (d) of the provision at FAR 52.203-11; or

☐ Have nothing to disclose and do not need to submit OMB Standard Form LLL, Disclosure of Lobbying Activities disclosure pursuant to paragraph (d) of the provision at FAR 52.203-11.

2. COST ACCOUNTING STANDARDS NOTICES AND CERTIFICATION

Cost Accounting Standards shall apply to any negotiated subcontract not exempt in accordance with 48 CFR 9903.201-1(b). Offeror must examine each of the following Sections and provide the requested information and return the duly signed certification to ND Defense. The information provided in this certification determines the Cost Accounting Standards applicable to the subcontract, if any, resulting from the request for quotation or proposal (RFQ/RFP) in Section F. below. ND Defense may require, and Offeror hereby agrees to provide justification to support its responses below, including its eligibility for any claimed exemptions.

Section A: Certificate of Full Contract Exemption from CAS Coverage

Offeror: If your proposal exceeds the applicable Cost Accounting Standards (CAS) threshold, but you claim a full exemption from all CAS rules and regulations, certify that an exemption applies by checking the appropriate box(es) below. **If an exemption is checked below go directly to Section F** to complete the certification. If no exemption is checked proceed to Section B:

- ☐ Contracts and subcontracts with small businesses.
- ☐ Contracts and subcontracts with foreign governments or their agents or instrumentalities.
- ☐ Contracts and subcontracts in which the price is set by law or regulation.
- ☐ Firm fixed-priced, fixed-priced with economic price adjustment (if price adjustment is not based on actual costs incurred), time and-materials, and labor-hour contracts and subcontracts for the acquisition of commercial items.
- ☐ Contracts or subcontracts of less than \$7.5 million, provided that, at the time of award, the business unit contractor or subcontractor is not currently performing any CAS-covered contracts or subcontracts valued at \$7.5 million or greater.
- ☐ Subcontracts under the NATO PHM Ship program to be performed outside the United States by a foreign concern.
- ☐ Firm-fixed-price contracts or subcontracts awarded based on adequate price competition without submission of cost or pricing data.

Section B: Disclosure Statement - Cost Accounting Practices and Certification

(a) Any subcontract more than the applicable CAS threshold resulting from this solicitation will be subject to the requirements of the Cost Accounting Standards Board (48 CFR Chapter 99), except for those subcontracts which are exempt as specified in 48 CFR 9903.201-1.

(b) Any proposal you submit, if accepted, that results in a subcontract subject to the requirements of 48 CFR Chapter 99, will require you, as a condition of contracting, to submit a Disclosure Statement as required by 48 CFR 9903.202. When required, the Disclosure Statement must be submitted as a part of your proposal under this solicitation unless you have already submitted a Disclosure Statement disclosing the practices used in connection with the pricing of this proposal. If a Disclosure Statement has already been submitted, you may satisfy the requirement for submission by providing the information requested in (c) of this Part (1), below. CAUTION: In the absence of specific regulations or agreement, a practice disclosed in a Disclosure Statement shall not, by virtue of such disclosure, be deemed to a proper, approved, or agreed-to practice for pricing proposals or accumulating and reporting contract performance cost data.

(c) Check the appropriate box, below:

(1) Certificate of Concurrent Submission of Disclosure Statement.

- ☐ Offeror hereby certifies that, as a part of the proposal, copies of the Disclosure Statement have been submitted as follows: (i) original and one copy to the cognizant Administrative Contracting Officer (ACO) or Federal agency official authorized to act in that capacity, as applicable, and (ii) one copy to the cognizant Federal auditor. (Disclosure must be on Form No. CASB DS-1 or CASB DS-2, as applicable. Forms may be obtained from the ACO or Federal official and/or from the loose-leaf version of the FAR.)



Date of Disclosure Statement:

Click or tap here to enter text.

Name of ACO or Federal official where filed:

Click or tap here to enter text.

Address of ACO or Federal official where filed:

Click or tap here to enter text.

Offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the Disclosure Statement.

(2) Certificate of Previously Submitted Disclosure Statement.

☐ Offeror hereby certifies that the Disclosure Statement was filed as follows:

Date of Disclosure Statement:

Click or tap here to enter text.

Name of ACO or Federal official where filed:

Click or tap here to enter text.

Address of ACO or Federal official where filed:

Click or tap here to enter text.

Offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the Disclosure Statement.

(3) Certificate of Monetary Exemption.

☐ Offeror hereby certifies that, together with all divisions, subsidiaries, and affiliates under common control, did not receive net awards of negotiated prime contracts and subcontracts subject to CAS totaling \$50 million or more in the cost accounting period immediately preceding the period in which this proposal was submitted. Offeror further certifies that if such status changes before an award resulting from this proposal, Offeror will advise ND Defense immediately.

(4) Certificate of Interim Exemption.

☐ Offeror hereby certifies that: (i) Offeror first exceeded the monetary exemption for disclosure, as defined in (c)(3) above, in the cost accounting period immediately preceding the period in which this offer was submitted; and (ii) in accordance with 48 CFR 9903.202-1, Offeror is not yet required to submit a Disclosure Statement. Offeror further certifies that if an award resulting from this proposal has not been made within 90 days after the end of that period, Offeror will immediately submit a revised certificate to the Contracting Officer, in the form specified under (c)(1) or (c)(2) above, as appropriate, to verify submission of a completed Disclosure Statement.

CAUTION: Offerors currently required to disclose because they were awarded a CAS-covered prime contract or subcontract of \$50 million or more in the current cost accounting period may not claim this exemption (exemption (c)(4)). Further, this exemption applies only in connection with proposals submitted before the expiration of the 90-day period following the cost accounting period in which the monetary exemption was exceeded.

Section C: Certificate of Eligibility for Modified Cost Accounting Standards Coverage

Offeror: If your proposal exceeds the applicable Cost Accounting Standards (CAS) threshold, but you claim a partial exemption from certain CAS rules and regulations or if you claim that alternative CAS coverage applies, certify that an exemption applies by checking the appropriate box(es) below:

(1) Eligibility for Modified Cost Accounting Standards Coverage

Offeror: If you are eligible to use the modified provisions of 48 CFR 9903.201-2(b) and elect to do so, indicate by checking the box below.

☐ Offeror hereby claims an exemption from the Cost Accounting Standards clause under the provisions of 48 CFR 9903.201-2(b) and certifies that Offeror is eligible to use the Disclosure and Consistency of Cost Accounting Practices clause because, during the cost accounting period immediately preceding the period in which this proposal was submitted, Offeror received less than \$50 million in awards of CAS-covered prime contracts and subcontracts. Offeror further certifies that if such status changes before an award resulting from this proposal, Offeror will advise ND Defense immediately.

CAUTION: Offeror may not claim the above eligibility for modified contract coverage if this proposal is expected to result in the award of a CAS-covered subcontract of \$50 million or more; or if, during its current cost accounting period, Offeror has been awarded a single CAS- covered prime contract or subcontract of \$50 million or more.

(2) Eligibility for Modified Cost Accounting Standards Coverage by an Educational Institution

☐ Offeror hereby certifies it is an educational institution that will not use a Federally Funded Research and Development Center (FFRDC) operated by it to perform the work for this contract. Offer further certifies it is an educational institution eligible for coverage under CFR 9903.201-2 (c). (CAS coverage is pursuant to FAR 52.230-5 rather than FAR 52.230-2.)

(3) Eligibility for Modified Cost Accounting Standards Coverage by a Foreign Concern

☐ Offeror hereby certifies its eligibility for exemption from CAS Coverage as a foreign concern. Any resultant subcontract shall comply with CAS Standards found in 48 CFR 9904.401 and 48 CFR9904.402. Offeror shall disclose (if it meets certain requirements) actual cost accounting practices and follow consistently disclosed and established cost accounting practices. (CAS coverage is pursuant to FAR52.230-4)

Section D: Additional Cost Accounting Standards Applicable to Existing Contracts

Offeror: Indicate below whether the award of the contemplated subcontract would, in accordance with subparagraph (a) (3) of the Cost Accounting Standards clause, require a change in established cost accounting practices affecting existing contracts and subcontracts:

- ☐ YES
☐ NO

Section E: Proposal Disclosure - Cost Accounting Practices Changes

Offeror: Complete this Part only if a CAS exemption is **not** claimed and the subcontract will be subject to CAS as specified in 48 CFR 9903-201 (see FAR 52.230-7):

Will the contract award result in a required or unilateral change in cost accounting practice, including unilateral changes requested to be desirable changes?

- ☐ YES
☐ NO

* If you checked "YES", you must:

- (1) Prepare the price proposal in response to the solicitation using the changed practice for the period of performance for which the practice will be used; and
- (2) Submit a description of the changed cost accounting practice to the Buyer and the Cognizant Federal agency official as pricing support for the proposal.

Section F: Authorized Signature of Offeror

Offeror: By signing below, you acknowledge and agree that your certifications and responses, above, are true and correct.

- ☐ The Offeror acknowledges and agrees that the certifications and responses, above, are true and correct.

RFQ/RFP NO: enter RFQ/RFP NO.

3. FAR 52.204-10 REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS (JUN 2020)

View definitions as used in this provision: <https://www.acquisition.gov/far/52.204-10>

In accordance with FAR 52.204-10, Executive Compensation and First-Tier Subcontract Award data will be provided to the Federal Funding Accountability and Transparency Act Sub-Award Reporting System (www.ftrs.gov) for orders valued at \$30,000.00 or more. Including the following information, as required.

(1) Congressional District:

- (i) Offeror's Congressional District: enter Congressional District.
- (ii) Performance Location Congressional District (if different from above): enter Performance Location.

(2) First-Tier Subcontract Information:

In the Offeror's preceding tax year, the Offeror:

- (A) ☐ Did, ☐ Did not, have gross income from all sources under \$300,000.

(3) First-Tier Subcontractor Compensation:

In the Offeror's preceding fiscal year, the Offeror:

- (A) ☐ Did, ☐ Did not, receive 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and sub-grants), cooperative agreements, and other forms of Federal financial assistance;

AND

- ☐ Did, ☐ Did not, receive \$25,000,000.00 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and sub-grants), cooperative agreements, and other forms of Federal financial assistance.

(B) The public ☐ does, ☐ does not, have access to information about the compensation of the executives through periodic files under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or section 6104 of the Internal Revenue Code of 1986 (to determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>

- (ii) Offeror's top five most highly compensated executives and *total compensation (Complete the following only if the answer to (A) above is **Did** and (B) **Does Not**):

Offeror's Top Five Executives

*Total Compensation

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*Total Compensation: The cash and noncash dollar value earned by the executive during the Offeror's preceding fiscal year and includes the following: salary and bonus, award of stock, stock options, and stock appreciation rights, earnings for services under non-equity incentive plan, changes in pension value, and above-market earnings on deferred compensation which is not tax-qualified, as well as other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites



or property) for the executive exceeds \$10,000.00. For more information see FAR 52.204-10 or 17 CFR 229-402(c)(2).

4. ANTI-CORRUPTION COMPLIANCE

Offeror represents and warrants to ND DEFENSE, and its parent, subsidiaries, and affiliates, that:

(A) Offeror is familiar with the terms and provisions of and agrees to comply with the U.S. Foreign Corrupt Practices Act (the "FCPA"), 15 U.S.C. §§ 78 dd-1, et seq., the United Kingdom's Bribery Act ("UK Bribery Act") and any applicable international and local country anti-bribery and anti-corruption laws and regulations (the FCPA, the UK Bribery Act, and such applicable international and local country laws and rules are individually and collectively referred to as "Anti-Corruption Laws") and the purposes of such Anti-Corruption Laws; and,

(B) Offeror will conduct its business operations in accordance with all applicable Anti-Corruption Laws and has not and will not offer, authorize, pay, attempt to pay, or give anything of value, either directly or indirectly, to an official of a non-U.S. government or a public international organization, or any other person of similar authority for the purpose of

(i) influencing any act or decision by that person in his/her official capacity,

(ii) inducing that person to do or omit any act in violation of his/her official capacity,

(iii) inducing that person to influence an act or decision of the governmental or international organization to obtain or retain business for, or direct business to, any person, or

(iv) to secure any improper advantage; and,

(C) Neither Offeror nor any of its employees, representatives, and/or agents is an official, officer, employee, or representative of any public international organization, government or political party or a candidate for political office and no government entity or ultimate purchaser has or will have a beneficial interest in Offeror's business; and,

(D) Offeror acknowledges that ND Defense's corporate policy prohibits payments made to induce a government official to perform a routine duty or service, commonly referred to as "facilitating payments" and Offeror agrees that no such payments will be made or offered by Offeror to carry out any obligations under any resulting Order. Offeror agrees that it will put into place for ND Defense and all related companies, policies, procedures and guidelines with respect to all applicable Anti-Corruption Laws and will provide compliance and anti-corruption training to its employees and representatives as well as employees and representatives of all related companies on an as-needed basis; and,

(E) Offeror acknowledges that all payments to Offeror under any resulting order shall be made by check or wire transfer to accounts with a recognized banking institution that are owned and controlled by Offeror, and that none shall be made by cash or other negotiable instrument. Offeror shall keep accurate books and records and shall preserve all books, records, data and evidence of procedures and policies relating to Offeror's compliance with the foregoing and shall make all books and records relating to transactions pursuant to any resulting order available for examination and audit at reasonable times as necessary to ensure compliance with any Anti-Corruption Laws. Offeror further agrees that any failure by Offeror to comply with the terms of this paragraph shall give ND DEFENSE the immediate right to terminate any resulting subcontract upon notice to Offeror without further payment or obligation of ND DEFENSE to Offeror following or as a result of such termination.

☐ The Offeror acknowledges and certifies compliance with the foregoing.

5. HUMAN TRAFFICKING CERTIFICATIONS

Supplier hereby certifies:

1. Its policies and practices prohibit engaging in the trafficking of persons, the use of forced labor, or the procuring of commercial sex acts in the country or countries in which it conducts business; and

2. If applicable, it has implemented a compliance plan to prevent any prohibited activities identified at FAR 52.222-50(b)

and to monitor, detect, and terminate any agent, subcontract or subcontractor employee engaging in prohibited activities; and

3. After having conducted due diligence, either (a), to the best of its knowledge and belief, neither it nor any of its agents, subcontractors or their agents is or has engaged in any such activities; or, (b) if abuses relating to any of the prohibited activities identified in FAR 52.222-50(b) have been found, the Supplier or subcontractor has taken the appropriate remedial and referral actions; and

4. Has reviewed and understands ND Defense's Combating Trafficking in Persons Policy ([Combating Trafficking in Persons ND Defense Policy](#))

☐ The Offeror acknowledges and certifies compliance with the foregoing.

6. U.S EXPORT REGULATIONS

I. INTERNATIONAL TRAFFIC IN ARMS REGULATIONS (ITAR) COMPLIANCE CERTIFICATION

As a potential vendor or subcontractor to ND DEFENSE, Offeror hereby acknowledges that information exchanged between ND Defense LLC and Offeror may include the use of, or access to, Technical Data (as defined in 22 CFR 120.10) that is subject to export controls under 22 CFR 120-130 (International Traffic in Arms Regulations) and its successor and supplemental laws and regulations.

Part I – Certifications:

Before entering into technical discussions, or otherwise transferring Technical Data to Offeror, ND Defense, requires the following certifications. Therefore, by submittal of its proposal and/or execution of these Representations and Certifications, Offeror hereby certifies:

- (1) it meets the definition of a “corporate” U.S. Person as defined in 22 CFR Parts 120.14 and 120.15, (See below):
- (2) its representative(s) dealing directly with ND DEFENSE meets the definition of a “natural” U.S. Person as defined in 22 CFR Parts 120.14 and 120.15, (See below);
- (3) it will not disclose, or otherwise provide access to, ND DEFENSE to a Foreign Person (as defined at 22 CFR Part 120.16) including but not limited to employees, contractors, consultants, business partners, subcontractors, or vendors, without prior U.S. Government approval;
- (4) it will be responsible for ensuring that all U.S. Government export control requirements will be conveyed to all sub-tier suppliers or subcontractors that will be provided access to ND DEFENSE; Technical Data;

Offeror further represents and agrees:

- (1) to immediately notify ND DEFENSE if Offeror is acquired by a foreign entity or becomes otherwise owned or controlled by a foreign entity;
- (2) to immediately notify ND DEFENSE of any changes in status affecting Offeror's standing with the U.S. Government with regard to restrictions of its export privileges and/or any suspension or debarment actions.

Part II - Export Control Markings:

Any Technical Data supplied by ND DEFENSE that is subject to ITAR will bear the following marking:

These items are controlled by the U.S. Government and authorized for export only to the country of ultimate destination for use by the ultimate consignee or end-user(s) herein identified. They may not be resold, transferred, or otherwise disposed of, to any other country or to any person other than the authorized ultimate consignee or end-user(s), either in their original form or after being incorporated into other items, without first obtaining approval from the U.S. government or as otherwise authorized by U.S. law and regulations.



Any Technical Data supplied by ND DEFENSE to foreign Offerors that is subject to the ITAR export control will bear one of the following markings:

These items are controlled by the U.S. Government and authorized for export only to the country of ultimate destination for use by the ultimate consignee or end-user(s) herein identified. They may not be resold, transferred, or otherwise disposed of, to any other country or to any person other than the authorized ultimate consignee or end-user(s), either in their original form or after being incorporated into other items, without first obtaining approval from the U.S. government or as otherwise authorized by U.S. law and regulations.

This document contains Technical Data as defined at 22 CFR 120.10 and is exported under the authority of LICENSE/ AGREEMENT NUMBER to Offeror in COUNTRY. Recipient is responsible for compliance with U.S. export laws and regulations.

This document contains technical data, the use of which is restricted by the U.S. Arms Export Control Act. This data has been provided in accordance with, and is subject to, the limitations specified in §126.5 of the International Traffic in Arms Regulations (ITAR). By accepting this data, the consignee agrees to honor the requirements of the ITAR.

Part III - Registration as a Defense Manufacturer/Exporter:

Section 122.1(a) of the ITAR requires that any person who engages in the United States in the business of either manufacturing or exporting defense articles or furnishing defense services is required to register with the Office of Defense Trade Controls. Manufacturers who do not engage in exporting must nevertheless register.

Please indicate the following information with regard to your company:

- ☐ Offeror is registered with DDTC.
- ☐ Offeror is not registered with DDTC.
- ☐ Offeror is exempt from registration with DDTC for the following reason:
 - ☐ 122.1(b)(1) Officers and employees of the United States Government acting in an official capacity;
 - ☐ 122.1(b)(2) Persons whose pertinent business activity is confined to the production of unclassified technical data only;
 - ☐ 122.1(b)(3) Persons all of whose manufacturing and export activities are licensed under the Atomic Energy Act of 1954, as amended;
 - ☐ 122.1(b)(4) Persons who engage only in the fabrication of articles for experimental or scientific purpose, including research and development.

Additionally, the following individuals are U.S. Persons who are authorized to access ND Defense drawings via eSpec, Data eXchange, or other electronic means (email, etc.):

Name	E-Mail Address	Telephone Number

Part IV - Definitions:

22 CFR 120.10 - Technical data

(a) Technical data means, for purposes of this subchapter:

- (1) Information, other than software as defined in 22CFR 120.10(a)(4), which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance, or modification of defense articles. This includes information in the form of blueprints, drawings, photographs, plans, instructions, and documentation.
- (2) Classified information relating to defense articles and defense services;
- (3) Information covered by an invention secrecy order;

(4) Software as defined in 22CFR 121.8(f) of this subchapter directly related to defense articles;

(5) This definition does not include information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges, and universities or information in the public domain as defined in 22CFR 120.11. It also does not include basic marketing information on function or purpose or general system descriptions of defense articles.

22 CFR 120.14 - Person - Person means a natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization or group, including governmental entities. If a provision in this subchapter does not refer exclusively to a foreign person (22CFR 120.16) or a U.S. person (22CFR 120.15), then it refers to both.

22 CFR 120.15 - U.S. Person - U.S. person means a person (as defined in section 120.14 of this part) who is lawful permanent resident as defined by 8 U.S.C. 1101(a)(20) or who is a protected individual as defined by 8 U.S.C. 1324b(a)(3). It also means any corporation, business association, partnership, society, trust, or any other entity, organization or group that is incorporated to do business in the United States. It also includes any governmental (federal, state, or local) entity. It does not include any foreign person as defined in 22 CFR 120.16.

22 CFR 120.16 - Foreign Person - Foreign persons means any natural person who is not a lawful permanent resident as defined by 8 U.S.C. 1101(a)(20) or who is not a protected individual as defined by 8 U.S.C. 1324b(a)(3). It also means any foreign corporation, business association, partnership, trust, society, or any other entity or group that is not incorporated or organized to do business in the United States, as well as international organizations, foreign governments, and any agency or subdivision of foreign governments (e.g., diplomatic missions).

II. EXPORT ADMINISTRATION REGULATION (15 CFR §§730-774) COMPLIANCE CERTIFICATION

As a potential vendor or subcontractor to ND DEFENSE, Offeror hereby acknowledges that information exchanged between ND Defense and Offeror may include the use of, or access to, Technology, as defined in Part 772 of the Export Administration Regulation (EAR) that is subject to export controls under (15 CFR §§730-774) the EAR and its successor and supplemental laws and regulations.

Part I – Certifications:

Before entering technical discussions, or otherwise transferring Technical Data to Offeror, ND Defense requires the following certifications. Therefore, by submittal of its proposal and/or execution of these Representations and Certifications, Offeror hereby certifies:

- (1) it meets the definition of a “corporate” U.S. Person as defined at Part 772 of the EAR;
- (2) its representative(s) dealing directly with ND DEFENSE meet the definition of (1) above;
- (3) it will not disclose, or otherwise provide access to, ND DEFENSE to a Foreign Person (as defined in Part 772 of the EAR. including but not limited to employees, contractors, consultants, business partners, subcontractors, or vendors, without prior U.S. Government approval;
- (4) it will be responsible for ensuring that all U.S. Government export control requirements will be conveyed to all sub-tier suppliers or subcontractors that will be provided access to ND DEFENSE Technical Data;

Offeror further represents and agrees:

- (1) to immediately notify ND DEFENSE if Offeror is acquired by a foreign entity or becomes otherwise owned or controlled by a foreign entity;
- (2) to immediately notify ND DEFENSE of any changes in status affecting Offeror’s standing with the U.S. Government regarding restrictions of its export privileges and/or any suspension or debarment actions.

Part II - Export Control Markings:

Any Technical Data supplied by ND DEFENSE that is subject to the EAR will bear one of the following markings:

EAR DCS:

These items are controlled by the U.S. Government and authorized for export only to the country of ultimate destination for use by the ultimate consignee or end-user(s) herein identified. They may not be resold, transferred, or otherwise disposed of, to any other country or to any person other than the authorized ultimate consignee or end-user(s), either in their original form or after being incorporated into other items, without first obtaining approval from the U.S. government or as otherwise authorized by U.S. law and regulations.

EAR99 DCS:

These commodities, technology, or software are controlled under the authority of the Export Administration Regulation (EAR) and classified as EAR99; diversion contrary to U.S law is prohibited.

Part III - Definitions:

Part 772 of the EAR - Technical data

Technical data means, for purposes of this subchapter:

“Technology”. (General Technology Note, throughout EAR) Specific information necessary for the “development”, “production”, or “use” of a product. The information takes the form of ‘technical data’ or ‘technical assistance’.

N.B.: Controlled “technology” is defined in the General Technology Note and in the Commerce Control List (supplement no. 1 to part 774 of the EAR).

Note 1: “Technology” also is specific information necessary for any of the following: Operation, installation (including on-site installation), maintenance (checking), repair, overhaul, refurbishing, or other terms specified in ECCNs on the CCL that control “technology.”

Note 2: “Technology” not elsewhere specified on the CCL is designated as EAR99, unless the “technology” is subject to the exclusive jurisdiction of another U.S. Government agency (see § 734.3(b)(1)) or is otherwise not subject to the EAR (see § 734.4(b)(2) and (b)(3) and §§ 734.7 through 734.11 of the EAR).

Technical Notes:

‘Technical data’ May take forms such as blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals, and instructions written or recorded on other media or devices such as disk, tape, read-only memories.

‘Technical assistance may involve the transfer of technical data and may take forms such as instruction, skills training, working knowledge, consulting services.

- (1) Classified information relating to defense articles and defense services;
- (2) Information covered by an invention secrecy order;
- (3) Software as defined in 22CFR 121.8(f) of this subchapter directly related to defense articles;
- (4) This definition does not include information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities or information in the public domain as defined in 22CFR 120.11. It also does not include basic marketing information on function or purpose or general system descriptions of defense articles.

All other definitions applicable to the EAR can be found in Part 772 of the EAR

7. CODE OF CONDUCT

Supplier hereby certifies:

It has reviewed and understands ND Defense’s Code of Conduct Policy: [ND Defense Code of Conduct](#).

☐ The Offeror acknowledges and certifies compliance with the foregoing.

8. DFARS 252.246-7007 - CONTRACTOR COUNTERFEIT ELECTRONIC PART DETECTION AND AVOIDANCE SYSTEM (JAN 2023)

View this clause at the following link: <https://www.acquisition.gov/dfars/252.246-7007-contractor-counterfeit-electronic-part-detection-and-avoidance-system>.

☐ The Offeror acknowledges and certifies compliance with the DFARS 252.246-7007 - CONTRACTOR COUNTERFEIT ELECTRONIC PART DETECTION AND AVOIDANCE SYSTEM (JAN 2023).

9. DFARS 252-204-7012 - SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING (May 2024)

View this clause at the following link: <https://www.acquisition.gov/dfars/252.204-7012-safeguarding-covered-defense-information-and-cyber-incident-reporting>.

☐ The Offeror acknowledges and certifies compliance with the DFARS 252-204-7012 - SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING (May 2024). (Applicable when ND Defense provides supplier "Controlled Unclassified Information")

ELECTRONIC SIGNATURE

By entering my name, I certify the following:

- I am **enter name of Signee**.
- I am authorized to sign this document on behalf of **enter name of Company**.
- I represent and certify the above information is current, accurate, and complete and will apply to all purchase orders/ subcontracts issued to the named company/individual by ND Defense LLC.
- ND Defense will immediately be notified should any of the information change or be found to be incorrect.

Signed By: **enter Signature**

Date: **enter current date**

10. FAR 52.203-11 - CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (Sep 2024)

a. *Definitions.* As used in this provision-"Lobbying contact" has the meaning provided at 2 U.S.C. 1602(8). The terms "agency," "influencing or attempting to influence," "officer or employee of an agency," "person," "reasonable compensation," and "regularly employed" are defined in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" (52.203-12).

b. *Prohibition.* The prohibition and exceptions contained in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" (52.203-12) are hereby incorporated by reference in this provision.

c. *Certification.* The offeror, by signing its offer, hereby 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 its behalf in connection with the awarding of this contract.

d. *Disclosure.* 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.

e. *Penalty.* Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by 31 U.S.C. 1352. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure required to be filed or amended by this provision, shall be subject to civil penalties as provided in 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

11. FAR 52.209-5 - CERTIFICATION REGARDING RESPONSIBILITY MATTERS (Aug 2020)

(a) (1) The Offeror certifies, to the best of its knowledge and belief, that --

(i) The Offeror and/or any of its Principals –

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

(B) ☐ 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 public (Federal, State, or local) 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 (if offeror checks "have", the offeror shall also see 52.209-7, if included in this solicitation);

(C) ☐ Are, ☐ Are not, presently indicted for, or otherwise criminally or civilly charged by a governmental entity with commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision;

(D) ☐ Have, ☐ Have not, within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds the threshold at 9.104-5(a)(2) for which the liability remains unsatisfied.

(1) Federal taxes are considered delinquent if both of the following criteria apply:

(i) *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.

(ii) *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.

(2) Examples.

(i) 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.

(ii) 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. During 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.

(iii) 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.

(iv) 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).

(ii) The Offeror ☐ has, ☐ has not, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

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

This Certification Concerns a Matter Within the Jurisdiction of an Agency of the United States and the Making of a False, Fictitious, or Fraudulent Certification May Render the Maker Subject to Prosecution Under Section 1001, Title 18, United States Code.

(b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror non responsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government and to ND DEFENSE; ND DEFENSE may terminate the contract resulting from this solicitation for default.

12. FAR 52.219-1 SMALL BUSINESS PROGRAM REPRESENTATION (Feb 2024)

View definitions as used in this provision: <https://www.acquisition.gov/far/52.219-1>

It ☐ is, ☐ is not, a **SMALL** business concern.

It ☐ is, ☐ is not, a small business joint venture that complies with the requirements of 13 CFR 121.103(h) and 13 CFR 125.8(a) and (b).

[The offeror shall enter the name and unique entity identifier of each party to the joint venture: enter joint venture(s) UEI.]

[Complete only if the offeror represented itself as a small business concern.]

It ☐ is, ☐ is not, a **SMALL-DISADVANTAGED** business concern.

The offeror shall check the category in which its ownership falls:

☐ Black American.

☐ Hispanic American.

☐ Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).

☐ Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, Republic of Palau, Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).

☐ Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).

☐ Individual/concern, other than one of the preceding.

It ☐ is, ☐ is not, a **WOMEN-OWNED** small business concern.

The offeror represents that it ☐ is, ☐ is not, a joint venture that complies with the requirements of 13 CFR 127.506(a) through (c). [The offeror shall enter the name and unique entity identifier of each party to the joint venture: enter joint venture(s) UEI.]

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

It ☐ is, ☐ is not, a **VETERAN-OWNED** small business concern.

[Complete only if the offeror represented itself as a veteran-owned small business concern.]

The offeror represents that it ☐ is, ☐ is not, a **SERVICE-DISABLED VETERAN-OWNED** small business concern.

The offeror represents that it ☐ is, ☐ is not, a SDVOSB joint venture eligible under the SDVOSB Program that complies with the requirements of 13 CFR 128.402. [The offeror shall enter the name and unique entity identifier of each party to the joint venture: enter joint venture(s) UEI.]

It ☐ is, ☐ is not, a **HUBZONE** small business concern listed, on the date of this representation, as having been certified by SBA as a HUBZone small business concern in the Dynamic Small Business Search and SAM, and will attempt to maintain an employment rate of HUBZone residents of 35 percent of its employees during performance of a HUBZone contract (see 13 CFR 126.200(e)(1)); and it ☐ is, ☐ is not, a HUBZone joint venture that complies with the requirements of 13 CFR 126.616(a) through (c). [The offeror shall enter the name and unique entity identifier of each party to the joint venture: enter joint venture(s) UEI.]

END OF DOCUMENT