

**2023 ANNUAL REPRESENTATIONS AND CERTIFICATIONS  
SUBMITTED TO NAVISTAR DEFENSE, LLC**

The company / individual below represents and certifies to Navistar Defense, LLC, and its subsidiaries and affiliates (hereinafter, “Navistar 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 Navistar Defense’s Federal contracts or grants. The company / individual named below will immediately notify Navistar Defense by contacting [NDSupplier@navistardefense.com](mailto:NDSupplier@navistardefense.com) should any of the information change or be found to be incorrect:

**COMPANY INFORMATION**

Company Name:	
Physical Address (Just the Number):	
Street, City, State, 9 Digit Zip Code, Country:	
Congressional District:	
Telephone:	
Facsimile:	
Point of Contact:	
* Taxpayer ID:	
** Cage Code:	
Unique Entity Identifier (UEI) from SAM.gov:	
*** Applicable NAICS Codes:	
Signature Date:	
Authorizing Signature:	
Typed Name and Title of Signatory:	

\* 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 – applies only if prime government work has been performed by the company / individual shown above.

\*\*\* 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 <http://www.sba.gov/contractingopportunities/officials/size/index.html>. Then select “Table of 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. 645 (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 NAVISTAR 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 2023**

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 <http://farsite.hill.af.mil/vffara.htm>.

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

Unique Entity Identifier (UEI) from SAM.gov:	
--	--

- 2. FAR 52.203-11 - Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (Sep 2007)**

(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 a civil penalty of not less than \$10,000, for each such failure.

### 3. 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] declares that they:

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.

[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.

### 4. 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 Navistar 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. Navistar 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 (provided that 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 of the 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 on the basis of adequate price competition without submission of cost or pricing data.

## Section B: Disclosure Statement - Cost Accounting Practices and Certification

- (a) Any subcontract in excess of 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 be 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: \_\_\_\_\_

Name of ACO or Federal official where filed: \_\_\_\_\_

Address of ACO or Federal official where filed: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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: \_\_\_\_\_

Name of ACO or Federal official where filed \_\_\_\_\_  
Address of ACO or Federal official where filed: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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 Navistar 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 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 Navistar 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 CFR 9904.402. 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 FAR 52.230-4)

### Section D: Additional Cost Accounting Standards Applicable to Existing Contracts

**Offeror:** Indicate below whether 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

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

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

*Executive* means officers, managing partners, or any other employees in management positions.

*First-tier subcontract* means a subcontract awarded directly by the Contractor for the purpose of acquiring supplies or services (including construction) for performance of a prime contract. It does not include the Contractor's supplier agreements with vendors, such as long-term arrangements for materials or supplies that benefit multiple contracts and/or the costs of which are normally applied to a Contractor's general and administrative expenses or indirect costs.

*Month of award* means the month in which a contract is signed by the Contracting Officer or the month in which a first-tier subcontract is signed by the Contractor.

*Total compensation* means the cash and noncash dollar value earned by the executive during the Contractor's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

(1) *Salary and bonus.*

(2) *Awards of stock, stock options, and stock appreciation rights.* Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Financial Accounting Standards Board's Accounting Standards Codification (FASB ASC) 718, Compensation-Stock Compensation.

(3) Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

(4) Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.

(5) Above-market earnings on deferred compensation which is not tax-qualified.

(6) 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.

(b) Section 2(d)(2) of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282), as amended by section 6202 of the Government Funding Transparency Act of 2008 (Pub. L. 110-252), requires the Contractor to report information on subcontract awards. The law requires all reported information be made public, therefore, the Contractor is responsible for notifying its subcontractors that the required information will be made public.

(c) Nothing in this clause requires the disclosure of classified information.

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.fsr.gov](http://www.fsr.gov)) for orders valued at \$30,000.00 or more. Including the following information, as required.

**(1) Congressional District:**

- (i) Offeror's Congressional District: [INSERT]
- (ii) Performance Location Congressional District (if different from above): [INSERT]

**(2) First-Tier Subcontract Information:**

- (i) 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:**

- (i) 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 [www.sec.gov/answers/excomp.htm](http://www.sec.gov/answers/excomp.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**



**\*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).

## 6. 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. 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.

(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 nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order 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 NAVISTAR DEFENSE; NAVISTAR DEFENSE may terminate the contract resulting from this solicitation for default.

## 7. FAR 52.219-1 SMALL BUSINESS PROGRAM REPRESENTATION (Sept 2021)

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

*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 concern eligible under the WOSB Program.

*Service-disabled veteran-owned small business concern --*

(1) Means a small business concern --

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

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

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

*Small business concern --*

(1) Means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (b) of this provision.

(2) *Affiliates*, as used in this definition, means business concerns, one of whom directly or indirectly controls or has the power to control the others, or a third party or parties control or have

the power to control the others. In determining whether affiliation exists, consideration is given to all appropriate factors including common ownership, common management, and contractual relationships. SBA determines affiliation based on the factors set forth at 13 CFR 121.103.

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

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

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

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

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

"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 concern" means a small business concern --

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

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

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

(b) (1) The North American Industry Classification System (NAICS) code for this acquisition is \_\_\_\_\_ *[insert NAICS code]*.

(2) The small business size standard is \_\_\_\_\_ *[insert size standard]*.

(3) The small business size standard for a concern that submits an offer, other than on a construction or service acquisition, but proposes to furnish an end item that it did not itself manufacture, process, or produce (*i.e.*, nonmanufacturer), is 500 employees if the acquisition --

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

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

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

(c) *Representations.*

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

(2) *[Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.]* The offeror represents that it  is,  is not, a small disadvantaged business concern as defined in 13 CFR 124.1002.

(3) *[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 women-owned small business concern.

(4) Women-owned small business (WOSB) concern eligible under the WOSB Program. *[Complete only if the offeror represented itself as a women-owned small business concern in paragraph (c)(3) of this provision.]* The offeror represents as part of its offer 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)(4)(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.

(5) Economically disadvantaged women-owned small business (EDWOSB) concern. *[Complete only if the offeror represented itself as a women-owned small business concern eligible under the WOSB Program in (c)(4) of this provision.]* The offeror represents as part of its offer that --

(i) it  is,  is not an EDWOSB 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)(5)(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.

(6) [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.

(7) [Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (c)(6) of this provision.] The offeror represents as part of its offer that it  is,  is not a service-disabled veteran-owned small business concern.

(8) [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)(8)(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.

(9) [Complete if offeror represented itself as disadvantaged in paragraph (c)(2) of this provision.] 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.

(d) *Notice.* Under 15 U.S.C.645(d), any person who misrepresents a firm's status as a business concern that is small, HUBZone small, small disadvantaged, service-disabled veteran-owned small, economically disadvantaged women-owned small, or women-owned small eligible under the WOSB Program in order to obtain a contract to be awarded under the preference programs established pursuant to section 8, 9, 15, 31, and 36 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall --

(1) Be punished by imposition of fine, imprisonment, or both;

(2) Be subject to administrative remedies, including suspension and debarment; and

(3) Be ineligible for participation in programs conducted under the authority of the Act.

*Alternate II* (Sep 2021). As prescribed in 19.309(a)(3), substitute the following paragraphs (b) and (c)(1) for paragraphs (b) and (c)(1) of the basic provision:

(b)(1) The North American Industry Classification System (NAICS) codes and corresponding size standards for this acquisition are as follows; the categories or portions these NAICS codes are assigned to are specified elsewhere in the solicitation:

NAICS Code	Size standard

**8. FAR 52.222-22 - PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (FEB 1999)**

The Offeror represents that

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

(B) It  has,  has not filed all required compliance reports; and

(C) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

**9. FAR 52.222-25 - AFFIRMATIVE ACTION COMPLIANCE (APR 1984)**

The Offeror certifies that --

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

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

## 10. ANTI-CORRUPTION COMPLIANCE

Offeror represents and warrants to NAVISTAR 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 in order 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 Navistar 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 Navistar 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 NAVISTAR DEFENSE the immediate right to terminate any resulting subcontract upon notice to Offeror without further payment or obligation of NAVISTAR DEFENSE to Offeror following or as a result of such termination.

The Offeror acknowledges and certifies compliance with the foregoing.

## 11. 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 Navistar Defense's Combatting Trafficking in Persons Policy ([Combatting Trafficking in Persons Navistar Defense Policy 01-07-06](#))

The Offeror acknowledges and certifies compliance with the foregoing.

## 12. U.S EXPORT REGULATIONS

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

As a potential vendor or subcontractor to NAVISTAR DEFENSE, Offeror hereby acknowledges that information exchanged between Navistar 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, Navistar 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 22 CFR Parts 120.14 and 120.15, (See below):

- (2) its representative(s) dealing directly with NAVISTAR DEFENSE meet the definition of a “natural” U.S. Person as defined at 22 CFR Parts 120.14 and 120.15, (See below);
- (3) it will not disclose, or otherwise provide access to, NAVISTAR 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 NAVISTAR DEFENSE; Technical Data;

Offeror further represents and agrees:

- (1) to immediately notify NAVISTAR DEFENSE if Offeror is acquired by a foreign entity or becomes otherwise owned or controlled by a foreign entity;
- (2) to immediately notify NAVISTAR 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 NAVISTAR 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 NAVISTAR 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 Navistar 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 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 22CFR 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 NAVISTAR DEFENSE, Offeror hereby acknowledges that information exchanged between Navistar 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 into technical discussions, or otherwise transferring Technical Data to Offeror, Navistar 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 NAVISTAR DEFENSE meet the definition of (1) above;
- (3) it will not disclose, or otherwise provide access to, NAVISTAR DEFENSE to a Foreign Person (as defined at 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 NAVISTAR DEFENSE Technical Data;

Offeror further represents and agrees:

- (1) to immediately notify NAVISTAR DEFENSE if Offeror is acquired by a foreign entity or becomes otherwise owned or controlled by a foreign entity;
- (2) to immediately notify NAVISTAR 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 NAVISTAR 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.*

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

Name	E-Mail Address	Telephone Number

**Part III - Definitions:**

**Part 772 of the EAR - Technical data**

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

- (1) “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:**

1. '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.
2. 'Technical assistance' may take forms such as instruction, skills, training, working knowledge, consulting services. 'Technical assistance' may involve transfer of 'technical data'. 'Technical assistance' may involve transfer of 'technical data'.

- (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.

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

### 13. CODE OF CONDUCT

Supplier hereby certifies:

It has reviewed and understands Navistar Defense's Code of Conduct Policy: [Navistar Defense Code of Conduct](#)

The Offeror acknowledges and certifies compliance with the foregoing.

### 14. DFARS 252.246-7007 - CONTRACTOR COUNTERFEIT ELECTRONIC PART DETECTION AND AVOIDANCE SYSTEM (AUG 2016)

(a) Definitions. As used in this clause --

“Authorized aftermarket manufacturer” means an organization that fabricates a part under a contract with, or with the express written authority of, the original component manufacturer based on the original component manufacturer’s designs, formulas, and/or specifications.

“Authorized supplier” means a supplier, distributor, or an aftermarket manufacturer with a contractual arrangement with, or the express written authority of, the original manufacturer or current design activity to buy, stock, repackage, sell, or distribute the part.

“Contract manufacturer” means a company that produces goods under contract for another company under the label or brand name of that company.

“Contractor-approved supplier” means a supplier that does not have a contractual agreement with the original component manufacturer for a transaction, but has been identified as trustworthy by a contractor or subcontractor.

“Counterfeit electronic part” means an unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified electronic part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used electronic parts represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.

“Electronic part” means an integrated circuit, a discrete electronic component (including, but not limited to, a transistor, capacitor, resistor, or diode), or a circuit assembly (section 818(f)(2) of Pub. L. 112-81).

“Obsolete electronic part” means an electronic part that is no longer available from the original manufacturer or an authorized aftermarket manufacturer.

"Original component manufacturer" means an organization that designs and/or engineers a part and is entitled to any intellectual property rights to that part.

“Original equipment manufacturer” means a company that manufactures products that it has designed from purchased components and sells those products under the company's brand name.

“Original manufacturer” means the original component manufacturer, the original equipment manufacturer, or the contract manufacturer.

“Suspect counterfeit electronic part” means an electronic part for which credible evidence (including, but not limited to, visual inspection or testing) provides reasonable doubt that the electronic part is authentic.

- (b) Acceptable counterfeit electronic part detection and avoidance system. The Contractor shall establish and maintain an acceptable counterfeit electronic part detection and avoidance system. Failure to maintain an acceptable counterfeit electronic part detection and avoidance system, as defined in this clause, may result in disapproval of the purchasing system by the Contracting Officer and/or withholding of payments and affect the allowability of costs of counterfeit electronic parts or suspect counterfeit electronic parts and the cost of rework or corrective action that may be required to remedy the use or inclusion of such parts (see DFARS 231.205-71).
- (c) System criteria. A counterfeit electronic part detection and avoidance system shall include risk-based policies and procedures that address, at a minimum, the following areas:
  - (1) The training of personnel.
  - (2) The inspection and testing of electronic parts, including criteria for acceptance and rejection. Tests and inspections shall be performed in accordance with accepted Government and industry recognized techniques. Selection of tests and inspections shall be based on minimizing risk to the Government. Determination of risk shall be based on the assessed probability of receiving a counterfeit electronic part; the probability that the inspection or test selected will detect a counterfeit electronic part; and the potential negative consequences of a counterfeit electronic part being installed (e.g., human safety, mission success) where such consequences are made known to the Contractor.
  - (3) Processes to abolish counterfeit parts proliferation.

(4) Risk-based processes that enable tracking of electronic parts from the original manufacturer to product acceptance by the Government, whether the electronic parts are supplied as discrete electronic parts or are contained in assemblies, in accordance with paragraph (c) of the clause at 252.246-7008, Sources of Electronic Parts (also see paragraph (c)(2) of this clause).

(5) Use of suppliers in accordance with the clause at 252.246-7008.

(6) Reporting and quarantining of counterfeit electronic parts and suspect counterfeit electronic parts. Reporting is required to the Contracting Officer and to the Government-Industry Data Exchange Program (GIDEP) when the Contractor becomes aware of, or has reason to suspect that, any electronic part or end item, component, part, or assembly containing electronic parts purchased by the DoD, or purchased by a Contractor for delivery to, or on behalf of, the DoD, contains counterfeit electronic parts or suspect counterfeit electronic parts. Counterfeit electronic parts and suspect counterfeit electronic parts shall not be returned to the seller or otherwise returned to the supply chain until such time that the parts are determined to be authentic.

(7) Methodologies to identify suspect counterfeit parts and to rapidly determine if a suspect counterfeit part is, in fact, counterfeit.

(8) Design, operation, and maintenance of systems to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts. The Contractor may elect to use current Government - or industry - recognized standards to meet this requirement.

(9) Flow down of counterfeit detection and avoidance requirements, including applicable system criteria provided herein, to subcontractors at all levels in the supply chain that are responsible for buying or selling electronic parts or assemblies containing electronic parts, or for performing authentication testing.

(10) Process for keeping continually informed of current counterfeiting information and trends, including detection and avoidance techniques contained in appropriate industry standards, and using such information and techniques for continuously upgrading internal processes.

(11) Process for screening GIDEP reports and other credible sources of counterfeiting information to avoid the purchase or use of counterfeit electronic parts.

(12) Control of obsolete electronic parts in order to maximize the availability and use of authentic, originally designed, and qualified electronic parts throughout the product's life cycle.

- (d) Government review and evaluation of the Contractor's policies and procedures will be accomplished as part of the evaluation of the Contractor's purchasing system in accordance with 252.244-7001, Contractor Purchasing System Administration--Basic, or Contractor Purchasing System Administration--Alternate I.
- (e) The Contractor shall include the substance of this clause, excluding the introductory text and including only paragraphs (a) through (e), in subcontracts, including subcontracts for commercial items, for electronic parts or assemblies containing electronic parts.

The Offeror acknowledges and certifies compliance with the foregoing.

## **15. DFARS 252-204-7012 - SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING (Dec 2019)**



(a) Definitions. As used in this clause --

“Adequate security” means protective measures that are commensurate with the consequences and probability of loss, misuse, or unauthorized access to, or modification of information.

“Compromise” means disclosure of information to unauthorized persons, or a violation of the security policy of a system, in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object, or the copying of information to unauthorized media may have occurred.

“Contractor attributional/proprietary information” means information that identifies the contractor(s), whether directly or indirectly, by the grouping of information that can be traced back to the contractor(s) (e.g., program description, facility locations), personally identifiable information, as well as trade secrets, commercial or financial information, or other commercially sensitive information that is not customarily shared outside of the company.

“Controlled technical information” means technical information with military or space application that is subject to controls on the access, use, reproduction, modification, performance, display, release, disclosure, or dissemination. Controlled technical information would meet the criteria, if disseminated, for distribution statements B through F using the criteria set forth in DoD Instruction 5230.24, Distribution Statements on Technical Documents. The term does not include information that is lawfully publicly available without restrictions.

“Covered contractor information system” means an unclassified information system that is owned, or operated by or for, a contractor and that processes, stores, or transmits covered defense information.

“Covered defense information” means unclassified controlled technical information or other information, as described in the Controlled Unclassified Information (CUI) Registry at <http://www.archives.gov/cui/registry/category-list.html>, that requires safeguarding or dissemination controls pursuant to and consistent with law, regulations, and Governmentwide policies, and is --

(1) Marked or otherwise identified in the contract, task order, or delivery order and provided to the contractor by or on behalf of DoD in support of the performance of the contract; or

(2) Collected, developed, received, transmitted, used, or stored by or on behalf of the contractor in support of the performance of the contract.

“Cyber incident” means actions taken through the use of computer networks that result in a compromise or an actual or potentially adverse effect on an information system and/or the information residing therein.

“Forensic analysis” means the practice of gathering, retaining, and analyzing computer-related data for investigative purposes in a manner that maintains the integrity of the data.

“Information system” means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.

“Malicious software” means computer software or firmware intended to perform an unauthorized process that will have adverse impact on the confidentiality, integrity, or availability of an information system. This definition includes a virus, worm, Trojan horse, or other code-based entity that infects a host, as well as spyware and some forms of adware.

“Media” means physical devices or writing surfaces including, but is not limited to, magnetic tapes, optical disks, magnetic disks, large-scale integration memory chips, and printouts onto which covered defense information is recorded, stored, or printed within a covered contractor information system.

“Operationally critical support” means supplies or services designated by the Government as critical for airlift, sealift, intermodal transportation services, or logistical support that is essential to the mobilization, deployment, or sustainment of the Armed Forces in a contingency operation.

“Rapidly report” means within 72 hours of discovery of any cyber incident.

“Technical information” means technical data or computer software, as those terms are defined in the clause at DFARS 252.227-7013 , Rights in Technical Data --

Noncommercial Items, regardless of whether or not the clause is incorporated in this solicitation or contract. Examples of technical information include research and engineering data, engineering drawings, and associated lists, specifications, standards, process sheets, manuals, technical reports, technical orders, catalog-item identifications, data sets, studies and analyses and related information, and computer software executable code and source code.

(b) *Adequate security.* The Contractor shall provide adequate security on all covered contractor information systems. To provide adequate security, the Contractor shall implement, at a minimum, the following information security protections:

(1) For covered contractor information systems that are part of an Information Technology (IT) service or system operated on behalf of the Government, the following security requirements apply:

(i) Cloud computing services shall be subject to the security requirements specified in the clause 252.239-7010 , Cloud Computing Services, of this contract.

(ii) Any other such IT service or system (i.e., other than cloud computing) shall be subject to the security requirements specified elsewhere in this contract.

(2) For covered contractor information systems that are not part of an IT service or system operated on behalf of the Government and therefore are not subject to the security requirement specified at paragraph (b)(1) of this clause, the following security requirements apply:

(i) Except as provided in paragraph (b)(2)(ii) of this clause, the covered contractor information system shall be subject to the security requirements in National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171, “Protecting

Controlled Unclassified Information in Nonfederal Information Systems and Organizations” (available via the internet at <http://dx.doi.org/10.6028/NIST.SP.800-171>) in effect at the time the solicitation is issued or as authorized by the Contracting Officer.

(ii)(A) The Contractor shall implement NIST SP 800-171, as soon as practical, but not later than December 31, 2017. For all contracts awarded prior to October 1, 2017, the Contractor shall notify the DoD Chief Information Officer (CIO), via email at [osd.dibcsia@mail.mil](mailto:osd.dibcsia@mail.mil), within 30 days of contract award, of any security requirements specified by NIST SP 800-171 not implemented at the time of contract award.

(B) The Contractor shall submit requests to vary from NIST SP 800-171 in writing to the Contracting Officer, for consideration by the DoD CIO. The Contractor need not implement any security requirement adjudicated by an authorized representative of the DoD CIO to be nonapplicable or to have an alternative, but equally effective, security measure that may be implemented in its place.

(C) If the DoD CIO has previously adjudicated the contractor’s requests indicating that a requirement is not applicable or that an alternative security measure is equally effective, a copy of that approval shall be provided to the Contracting Officer when requesting its recognition under this contract.

(D) If the Contractor intends to use an external cloud service provider to store, process, or transmit any covered defense information in performance of this contract, the Contractor shall require and ensure that the cloud service provider meets security requirements equivalent to those established by the Government for the Federal Risk and Authorization Management Program (FedRAMP) Moderate baseline (<https://www.fedramp.gov/resources/documents/>) and that the cloud service provider complies with requirements in paragraphs (c) through (g) of this clause for cyber incident reporting, malicious software, media preservation and protection, access to additional information and equipment necessary for forensic analysis, and cyber incident damage assessment.

(3) Apply other information systems security measures when the Contractor reasonably determines that information systems security measures, in addition to those identified in paragraphs (b)(1) and (2) of this clause, may be required to provide adequate security in a dynamic environment or to accommodate special circumstances (e.g., medical devices) and any individual, isolated, or temporary deficiencies based on an assessed risk or vulnerability. These measures may be addressed in a system security plan.

*(c) Cyber incident reporting requirement.*

(1) When the Contractor discovers a cyber incident that affects a covered contractor information system or the covered defense information residing therein, or that affects the contractor’s ability to perform the requirements of the contract that are designated as operationally critical support and identified in the contract, the Contractor shall --

(i) Conduct a review for evidence of compromise of covered defense information, including, but not limited to, identifying compromised computers, servers, specific data, and user accounts. This review shall also include analyzing covered contractor

information system(s) that were part of the cyber incident, as well as other information systems on the Contractor's network(s), that may have been accessed as a result of the incident in order to identify compromised covered defense information, or that affect the Contractor's ability to provide operationally critical support; and

(ii) Rapidly report cyber incidents to DoD at <https://dibnet.dod.mil>.

(2) *Cyber incident report.* The cyber incident report shall be treated as information created by or for DoD and shall include, at a minimum, the required elements at <https://dibnet.dod.mil>.

(3) *Medium assurance certificate requirement.* In order to report cyber incidents in accordance with this clause, the Contractor or subcontractor shall have or acquire a DoD-approved medium assurance certificate to report cyber incidents. For information on obtaining a DoD-approved medium assurance certificate, see <https://public.cyber.mil/eca/>.

(d) *Malicious software.* When the Contractor or subcontractors discover and isolate malicious software in connection with a reported cyber incident, submit the malicious software to DoD Cyber Crime Center (DC3) in accordance with instructions provided by DC3 or the Contracting Officer. Do not send the malicious software to the Contracting Officer.

(e) *Media preservation and protection.* When a Contractor discovers a cyber incident has occurred, the Contractor shall preserve and protect images of all known affected information systems identified in paragraph (c)(1)(i) of this clause and all relevant monitoring/packet capture data for at least 90 days from the submission of the cyber incident report to allow DoD to request the media or decline interest.

(f) *Access to additional information or equipment necessary for forensic analysis.* Upon request by DoD, the Contractor shall provide DoD with access to additional information or equipment that is necessary to conduct a forensic analysis.

(g) *Cyber incident damage assessment activities.* If DoD elects to conduct a damage assessment, the Contracting Officer will request that the Contractor provide all of the damage assessment information gathered in accordance with paragraph (e) of this clause.

(h) *DoD safeguarding and use of contractor attributional/proprietary information.* The Government shall protect against the unauthorized use or release of information obtained from the contractor (or derived from information obtained from the contractor) under this clause that includes contractor attributional/proprietary information, including such information submitted in accordance with paragraph (c). To the maximum extent practicable, the Contractor shall identify and mark attributional/proprietary information. In making an authorized release of such information, the Government will implement appropriate procedures to minimize the contractor attributional/proprietary information that is included in such authorized release, seeking to include only that information that is necessary for the authorized purpose(s) for which the information is being released.

(i) *Use and release of contractor attributional/proprietary information not created by or for DoD.* Information that is obtained from the contractor (or derived from information obtained from the contractor) under this clause that is not created by or for DoD is authorized to be released outside of DoD --

(1) To entities with missions that may be affected by such information;

(2) To entities that may be called upon to assist in the diagnosis, detection, or mitigation of cyber incidents;

(3) To Government entities that conduct counterintelligence or law enforcement investigations;

(4) For national security purposes, including cyber situational awareness and defense purposes (including with Defense Industrial Base (DIB) participants in the program at 32 CFR part 236); or

(5) To a support services contractor (“recipient”) that is directly supporting Government activities under a contract that includes the clause at 252.204-7009 , Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information.

(j) *Use and release of contractor attributional/proprietary information created by or for DoD.* Information that is obtained from the contractor (or derived from information obtained from the contractor) under this clause that is created by or for DoD (including the information submitted pursuant to paragraph (c) of this clause) is authorized to be used and released outside of DoD for purposes and activities authorized by paragraph (i) of this clause, and for any other lawful Government purpose or activity, subject to all applicable statutory, regulatory, and policy based restrictions on the Government’s use and release of such information.

(k) The Contractor shall conduct activities under this clause in accordance with applicable laws and regulations on the interception, monitoring, access, use, and disclosure of electronic communications and data.

(l) *Other safeguarding or reporting requirements.* The safeguarding and cyber incident reporting required by this clause in no way abrogates the Contractor’s responsibility for other safeguarding or cyber incident reporting pertaining to its unclassified information systems as required by other applicable clauses of this contract, or as a result of other applicable U.S. Government statutory or regulatory requirements.

(m) *Subcontracts.* The Contractor shall --

(1) Include this clause, including this paragraph (m), in subcontracts, or similar contractual instruments, for operationally critical support, or for which subcontract performance will involve covered defense information, including subcontracts for commercial items, without alteration, except to identify the parties. The Contractor shall determine if the information required for subcontractor performance retains its identity as covered defense information and will require protection under this clause, and, if necessary, consult with the Contracting Officer; and

(2) Require subcontractors to --

(i) Notify the prime Contractor (or next higher-tier subcontractor) when submitting a request to vary from a NIST SP 800-171 security requirement to the Contracting Officer, in accordance with paragraph (b)(2)(ii)(B) of this clause; and

(ii) Provide the incident report number, automatically assigned by DoD, to the prime Contractor (or next higher-tier subcontractor) as soon as practicable, when reporting a cyber incident to DoD as required in paragraph (c) of this clause.

The Offeror acknowledges and certifies compliance with the foregoing. (Applicable when Navistar Defense provides supplier “Controlled Unclassified Information”)

**END OF DOCUMENT**