INNOVATIVE COMMERCIAL PRODUCTS IN SUPPORT OF CORONAVIRUS (COVID-19) RESPONSE COMMERCIAL SOLUTIONS OPENING PILOT PROGRAM (CSOP) GENERAL SOLICITATION

CSOP-HQ-CV-20-00001

DEPARTMENT OF HOMELAND SECURITY (DHS)

APRIL 14, 2020

INNOVATIVE COMMERCIAL PRODUCTS
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GENERAL SOLICITATION

1.0 GENERAL INFORMATION

1.1 BACKGROUND

The Department of Homeland Security (DHS) efforts in preparedness and readiness have facilitated a speedy, whole-of-government response in confronting COVID-19, keeping Americans safe, and helping detect and slow the spread of the virus.

As part of Department-wide, layered response, U.S. Customs and Border Protection (CBP), the Countering Weapons of Mass Destruction Office (CWMD), U.S. Coast Guard (USCG), Transportation Security Administration (TSA), Federal Emergency Management Agency (FEMA), U.S. Immigration and Customs Enforcement (ICE), the Cybersecurity and Infrastructure Security Agency (CISA) and others are actively working to protect the nation.

On Friday, March 13, 2020, the President declared a national emergency concerning the novel coronavirus disease (COVID-19) under section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207 (the "Stafford Act). Pursuant to this declaration, the FEMA, in coordination with the Department of Health and Human Services (HHS), will assist state, local, tribal, territorial governments and other eligible entities with the health and safety actions they take on behalf of the American public.

2.0 PROCUREMENT OBJECTIVES AND GOALS

2.1 OBJECTIVE

Considering the magnitude and potential threat that COVID-19 and similar microbial threats pose to our nation's health, safety and security, the Government seeks to rapidly accelerate the testing and fielding of new capabilities, employing innovative commercial products to the detection of exposure, prevention, containment and treatment of COVID-19 and similar microbial threats. Such innovative commercial products would be in support of the mission of the DHS, including the assistance that the FEMA is providing, in coordination with the HHS, to state, local, tribal, territorial governments and other eligible entities under the Stafford Act.

Proposed innovative commercial products may be, but are not limited to, products that: 1) supplement shortages and/or emerging needs for personal protective equipment, 2) enhance or expedite screening capabilities, 3) enhance or expedite facility cleaning capabilities, 4) extend testing capabilities, 5) utilize technology to support the COVID-19 response, or 6) convert existing production and logistics operations to support the COVID-19 response.

An important aspect of this objective is to support the efficient acquisition and testing of innovative commercial products from legitimate suppliers, as well as the efficient production and fielding of the successfully tested innovative commercial products.

2.2 GOALS

This general solicitation is seeking innovative commercial products that are in support of the COVID-19 response or similar microbial threats, aligned to the following overarching goals:

1) Promote innovative commercial products to the challenges that the Government is facing in effectively responding to the COVID-19 microbial virus related to the mission of the DHS and the assistance being requested from the Government by state, local, tribal, territorial governments and other eligible entities under the Stafford Act.
2) Streamline processes to enable efficient acquisition, testing and fielding of appropriate innovative commercial products from legitimate suppliers, driven through open communication between Government and vendors and through the Government's commitment to access, as appropriate, to a proxy product owner for each awarded contract.
3) Support the ability of the Government to efficiently coordinate across relevant standard and accreditation bodies (such as American National Standards Institute, Association for Advancement of Medical Instrumentation, Occupational Safety and Health Administration, National Institute of Standards and Technology Certification and Accreditation, etc.) to test selected innovative commercial products in support of efficient deployment of such products in support of the COVID-19 response.
4) Preference for the vendor to retain core intellectual property given the focus on identification of innovative commercial products to support the Government's COVID-19 response.

3.0 PROCUREMENT AUTHORITY

The National Defense Authorization Act for Fiscal Year 2017, Title VIII, § 880 (Pub. L. 114-328), Pilot Programs for Authority to Acquire Innovative Commercial Items Using General Solicitation Competitive Procedures, authorizes the Department of Homeland Security (DHS) to carry out a "commercial solutions opening pilot program" (CSOP) to competitively procure innovative commercial products. "Innovative", within the meaning of this statute, is any new technology, process, or method, including research and development; or any new application of an existing technology, process, or method.

Pursuant to the authority of Pub. L. 114-328, DHS has been vested with procedural discretion to make multiple, stand-alone contract awards resulting from a merit-based peer review of viable innovative commercial products from legitimate suppliers.

4.0 FUNDING AND POTENTIAL FOLLOW-ON CONTRACTS

Each contract awarded through the Commercial Solutions Opening Pilot Program authority cannot exceed $10 million.

The actual number and value of awards under this CSOP agreement will be at the discretion of DHS, based on the merit of the proposals received, relevance to the mission, schedule, and the availability of funds.

The Government may decide to award follow-on contracts to support production of products developed under initial awards received through this general solicitation competition, at the discretion of the Government, without further competition. These Government decisions will be informed by performance under the initial awarded contracts and availability of funding. Resultant follow-on contracts may be issued using any existing DHS procurement authority, including other transaction authority and authority under the Federal Acquisition Regulation.

5.0 PROPRIETARY MARKINGS

Offerors must mark any pages of submitted proposals that contain business plans, technical information, pricing or other business sensitive information as proprietary information, which the Government agrees to safeguard.

To ensure that sensitive data is appropriately marked by the Offeror, include the following sentences on the cover page: "This proposal includes data that shall not be disclosed outside the Government, except to non-Government personnel for evaluation purposes, and shall not be duplicated, used or disclosed – in whole or in part – for any purpose other than to evaluate this submission. If, however, an agreement is awarded to this Company as a result of – or in connection with – the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent agreed upon by both parties in the resulting agreement. The data subject to this restriction are contained in sheets [insert numbers or other identification of sheets]."

Each restricted data sheet must be marked as follows: "Use or disclosure of all data contained on this sheet is subject to the restriction on the title page of this proposal."

6.0 PROPOSAL PREPARATION COSTS

The cost of preparing proposals in response to this general solicitation is not considered a direct charge to any resulting CSOP contract award or any follow-on contract. Proposal preparation costs are not recoverable.

7.0 PHASED PROCUREMENT PROCESS

Following receipt and peer review of proposals (Phase 1), the Government will invite selected offerors to work with the Government Contracting Officer to negotiate award scope, terms and conditions, and pricing, to determine if the parties can mutually agree to the terms and conditions for an award (Phase 2). Such negotiated terms and conditions might include intellectual property

rights, testing requirements, or related terms and conditions specific to a proposed innovative commercial product.

8.0 PHASE 1 PROCESS

8.1 PHASE 1 SUBMISSION INSTRUCTIONS

The Government is interested in receiving proposals to address the immediate COVID-19 response and recommends that Offeror's submit proposals accordingly. Therefore, proposals will be evaluated on an on-going basis while this general solicitation is open. Unless extended, no further proposals will be accepted for evaluation, and the general solicitation will close on August 31, 2020.

Proposals shall be submitted electronically to the following e-mail box: COVID19CSOP@HQ.DHS.GOV.

8.2 PHASE 1 PROPOSAL SUBMISSION – TECHNICAL QUESTIONNAIRE

Offerors with innovative commercial products should submit a completed Technical Questionnaire (Attachment 1) as its Phase 1 proposal submission. While Offerors are invited to submit multiple proposals, a separate Technical Questionnaire (Attachment 1) shall be completed for each proposed innovative commercial product.

8.3 COMMUNICATION

The Government may request a tele-conference or video-conference to better understand the proposed innovative commercial product. The Government reserves the right to request or additional written information, if applicable, to complete the peer review process.

8.4 PEER REVIEW PANEL

A peer review will be used to evaluate the responses Phase 1 proposals (Technical Questionnaire – Attachment 1 as well as any communications requested by the peer review panel during the Phase 1 evaluation process).

8.5 PHASE 1 EVALUATION CRITERIA

The following evaluation criteria will be used by the peer review panel to assess the merit of the Phase 1 proposal submission. The evaluation criteria are listed below in order of importance from top to bottom.

- **Criterion I: Mission Suitability/Need and Technical Merit –** The potential of the proposed innovative commercial product, if matched to an identified or anticipated mission need, to meet the project objectives and goals as outlined in the general

solicitation, to include an assessment of the required testing and the likelihood of efficiently and/or effectively fielding the proposed innovative commercial product.

- **Criterion II: Business Viability** – The Offeror will be vetted to ensure it is a legitimate supplier and is able to support the testing and production of the requested quantity of the proposed innovative commercial product, should it be selected for award.

8.6 NOTIFICATION TO OFFERORS

The Government will notify the Offeror whether or not its proposed innovative commercial product is being considered for award.

At that time, the Government will invite selected Offerors to submit additional technical information and pricing and will participate in negotiations with the Contracting Officer in order to determine if the parties can mutually agree to award terms (Phase 2). Negotiations may include, but are not limited to, terms and conditions related to intellectual property rights, testing requirements, and/or other matters specific to a proposed innovative commercial product.

Any Offeror not selected for award may request, within five (5) calendar days of notification of non-selection, feedback regarding the peer review panel evaluation of its proposed innovative commercial product.

9.0 PHASE 2 – AWARD NEGOTIATION

The government intends to negotiate with Offerors to make resultant awards. These negotiations are planned for Phase 2 of this procurement.

9.1 PHASE 2 – TECHNICAL INFORMATION

The Offeror shall provide the Government with technical information related to the use, testing, production and fielding of the proposed innovative commercial product and shall develop a plan with the Government for any testing and certification requirements relevant to the proposed innovative commercial product. Information related to supply chain management, security, safeguarding of data and other PII, liability and other information relevant to a Government contract award may also be requested by the Government during Phase 2. All information provided to the Government during Phase 2 may be incorporated into the resultant contract award.

9.1 PHASE 2 - PRICE INFORMATION

The Offeror shall submit the total price for the proposed innovative commercial product, to include quantity and unit pricing as applicable, and shall provide any other data or supporting information that the parties agree is necessary for the determination of a fair and reasonable

price.

A milestone schedule shall be negotiated which clearly indicates the required delivery schedule for all Contract Line Item Numbers (CLINs) for the contract award. The milestone schedule will serve as the fixed-price contract payment schedule for any subsequent award.

As appropriate and necessary, the Government anticipates awarding the Test Article CLIN at the time of award. In such cases, all other CLINS will be awarded as optional CLINS. Note that CLIN structures for awarded technology products may differ but will nonetheless be dependent of requisite certification requirements being achievable prior to full deployment. A model CLIN structure is below. Note that this will vary by innovative commercial product.

CLIN	Description	Quantity	Unit Price	Total Price
0001	Test Article	TBD	$	
0002	Low Rate of Initial Production	TBD	$	
0003	Full Production	TBD	$	

10.0 PROTESTS TO THE AGENCY

10.1 Protests under CSOP awards shall be adjudicated as prescribed under DHS Agency-Level protest procedures.

Protest submissions shall be sent via e-mail to the Contracting Officer, Phorsha Peel, via e-mail at OPO.ClaimsProtests@HQ.DHS.GOV.

10.2 Offerors may seek assistance from the agency Advocate for Competition. The Department Advocate for Competition and Procuring Activity Advocates for Competition are shown on the Doing Business with DHS page, and is accessible at:

https://www.dhs.gov/competition-advocates-and-task-order-and-delivery-order-ombudsman.

11.0 INVOICES AND PAYMENTS

11.1 ASSIGNMENT

The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727). The contractor shall notify DHS before assigning its rights to receive payment under the anticipated contract.

11.2 PAYMENT AND INVOICE INSTRUCTIONS (APR 2014)

An invoice must include—

1. Contract Number
2. Invoice Number
3. A description of the innovative commercial product(s)
4. Quantity received
5. The period of performance covered by the invoice
6. Terms of Payment
7. Payment Office
8. Amount claimed
9. Bank Account of Payee:
10. Bank:
11. Address:
12. Routing Transit Number:
13. Depositor Account Title:
14. Depositor Number:

The Contractor shall submit the invoice electronically to the address below:

ATTN: TBD/ E-mail: TBD (Invoice Processing Inbox)

Simultaneously provide an electronic copy of the invoice to the following individuals at the addresses below:

a) ATTN: TBD (Contract Specialist)
E-mail: TBD

b) ATTN: TBD (Contracting Officer)
E-mail: TBD

c) ATTN**: TBD (COR)**
E-mail: TBD

The Contractor shall prepare and submit a sufficiently compliant invoice and receiving report for technical certification of inspection/acceptance of products and approval for payment.

The Contractor shall attach back up information to the invoices and receiving reports substantiating all costs for products delivered. The receiving agency's written or electronic acceptance by the COR and date of acceptance shall be included as part of the backup documentation.

11.3 PAYMENTS

11.3.1 GENERAL

The Government shall pay the Contractor 30 days after the service period, the prices stipulated in this contract for supplies delivered and accepted, less any deductions provided in this contract.

Unless otherwise specified in the contract, the Government may make payment on partial deliveries accepted by the Government if either:

- The amount due on the deliveries warrants it.
- The Contractor requests it and the amount due on the deliveries is at least $1,000 or 50 percent of the total contract price.

11.3.2 OVERPAYMENTS

If the Contractor becomes aware of a duplicate invoice payment or that the Government has otherwise overpaid on an invoice payment, the Contractor shall:

- Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the:
    - Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);
    - Affected contract number and delivery order number, if applicable;
    - Affected line item or subline item, if applicable; and Contractor point of contact.
- Provide a copy of the remittance and supporting documentation to the Contracting Officer.

12.0 TERMS AND CONDITIONS

The terms and conditions defined throughout this section are applicable only to a resulting contract award as described in the preceding sections of this general solicitation.

12.1 SYSTEM FOR AWARD MANAGEMENT (SAM) REGISTRATION

Successful Offerors not already registered in SAM will be required to register prior to award of any contract. Information regarding SAM registration is available at https://sam.gov. See the following Quick Start Guide for specific guidance on SAM registration: https://www.sam.gov/SAM/transcript/QUICK_START_GUIDE_FOR_SCREEN_READERS_IN_SAM.pdf. To remain registered in the SAM database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequently update its information to ensure it is current, accurate and complete.

The Contractor is responsible during performance and through final payment of any contract for the accuracy and completeness of the data within the SAM database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. The Contractor shall

not change the name or address for EFT payments or manual payments, as appropriate, in the SAM record to reflect an assignee for the purpose of assignment of claims. Assignees shall be separately registered in the SAM database.

12.2 INTELLECTUAL PROPERTY

Intellectual property rights shall be negotiated prior to a resulting contract award with those Offerors selected for award. The mutually agreed upon intellectual property terms and conditions shall be inserted into this section at the time of award.

12.3 RISK OF LOSS

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

- Delivery of the supplies to a carrier, if transportation is Free on Board (FOB) origin, or
- Delivery of the supplies to the Government at the destination specified in the contract, if transportation is FOB destination.

12.7 LIMITATION ON LIABILITY

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

12.8 OTHER COMPLIANCES

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

12.9 ORDER OF PRECEDENCE

In the event of a conflict between the terms of this contract and other governing documents, the conflict shall be resolved by giving precedence in descending order as follows:

1. The clauses of this contract.

2. Any attachments to this contract.

12.10 UNAUTHORIZED OBLIGATIONS

12.10.1 Except as stated in Section 12.10.2, when Any supply acquired under this contract

is subject to any commercial supplier agreement that includes any language, provision, or clause requiring the Government to pay any future fees, penalties, interest, legal costs or to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

- Any such language, provision, or clause is unenforceable against the Government.
- Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the commercial supplier agreement. If the commercial supplier agreement is invoked through an "I agree" click box or other comparable mechanism (e.g., "click-wrap" or "browse-wrap" agreements), execution does not bind the Government or any Government authorized end user to such clause.
- Any such language, provision, or clause is deemed to be stricken form the commercial supplier agreement.

12.10.2 Section 12.10.1, does not apply to indemnification or any other payment by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

12.11 COMMERCIAL SUPPLIER AGREEMENTS – UNENFORCEABLE CLAUSES

When any supply acquired under this contract is subject to a commercial supplier agreement, the following language shall be deemed incorporated into the commercial supplier agreement. As used herein, "this agreement" means the commercial supplier agreement:

- Notwithstanding any other provision of this agreement, when the end user is an agency or instrumentality of the U.S. Government, the following shall apply:
    - Applicability. This agreement is a part of a contract between the commercial supplier and the U.S. Government for the acquisition of the supply that necessitates a license or other similar legal instrument.
    - End User. This agreement shall bind the ordering activity as end user but shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.
    - Laws and Disputes. This agreement is governed by Federal law.
        - Any language purporting to subject the U.S. Government to laws of a U.S. state, U.S. territory, district, or municipality, or a foreign nation, except where Federal law expressly provides for the application of such laws, is hereby deleted.
        - Any language requiring dispute resolution in a specific forum or venue that is different from that prescribed by applicable Federal law is hereby deleted.
        - Any language prescribing a different time period for bringing an action than that prescribed by applicable Federal law in relation to a dispute is

hereby deleted.

- Continued Performance. The supplier or licensor shall not unilaterally revoke, terminate or suspend any rights granted to the Government except as allowed by this contract. If the supplier or licensor believes the ordering activity to be in breach of the agreement, it shall pursue its rights under applicable Federal statute while continuing performance as set forth below in this section.
- Arbitration; Equitable or Injunctive Relief. In the event of a claim or dispute arising under or relating to this agreement, a binding arbitration shall not be used unless specifically authorized by agency guidance, and equitable or injunctive relief, including the award of attorney fees, costs or interest, may be awarded against the U.S. Government only when explicitly provided by statute.
- Updating Terms.
    - After award, the contractor may unilaterally revise commercial supplier agreement terms if they are not material. A material change is defined as:
        - Terms that change Government rights or obligations;
        - Terms that increase Government prices;
        - Terms that decrease overall level of service; or
        - Terms to limit any other Government right addressed elsewhere in this contract.
    - For revisions that will materially change the terms of the contract, the revised commercial supplier agreement must be incorporated into the contract using a bilateral modification.
    - Any agreement terms or conditions unilaterally revised subsequent to award that are inconsistent with any material term or provision of this contract shall not be enforceable against the Government, and the Government shall not be deemed to have consented to them.
- No Automatic Renewals. If any license or service tied to periodic payment is provided under this agreement (e.g., annual software maintenance or annual lease term), such license or service shall not renew automatically upon expiration of its current term without prior express consent by an authorized Government representative approval.
- Indemnification. Any clause of this agreement requiring the commercial supplier or licensor to defend or indemnify the end user is hereby amended to provide that the U.S. Department of Justice has the sole right to represent the United States in any such action, in accordance with 28 U.S.C. 516.
- Audits. Any clause of this agreement permitting the commercial supplier or licensor to audit the end user's compliance with this agreement is hereby amended as follows:
    - Discrepancies found in an audit may result in a charge by the commercial supplier or licensor to the ordering activity. Any resulting invoice must comply with the proper invoicing requirements specified in the underlying Government contract or order.
    - This charge, if disputed by the ordering activity, will be resolved through the Disputes section of this contract.

        - Any audit requested by the Contractor will be performed at the Contractor's expense, without reimbursement by the Government.
    - Taxes or Surcharges. Any taxes or surcharges which the commercial supplier or licensor seeks to pass along to the Government as end user will be governed by the terms of the underlying Government contract or order and, in any event, must be submitted to the Contracting Officer for a determination of applicability prior to invoicing unless specifically agreed to otherwise in the Government contract.
    - If this agreement includes a confidentiality clause, such clause is hereby amended to state that neither the agreement nor the contract price list, as applicable, shall be deemed "confidential information." Issues regarding release of "unit pricing" will be resolved consistent with the Freedom of Information Act. Notwithstanding anything in this agreement to the contrary, the Government may retain any confidential information as required by law, regulation or its internal document retention procedures for legal, regulatory or compliance purposes; provided, however, that all such retained confidential information will continue to be subject to the confidentiality obligations of this agreement.
- If any language, provision, or clause of this agreement conflicts or is inconsistent with Section 12.11, the language and provisions of Section 12.11 shall prevail to the extent of such inconsistency.

12.12 INCORPORATION BY REFERENCE

Any Contractor representations and certifications completed electronically via the System for Award Management (SAM) are incorporated by reference into the contract.

12.13 SUSPENSION AND TERMINATION PROCEDURES

12.14.1 The Government reserves the right to terminate the CSOP for cause or for the convenience of the Government.

12.14.1.1 The CO may suspend performance of this contract at any time by providing written notice to the contractor. Upon receipt of such a notice, the contractor shall cease performance until the CO either (1) withdraws the suspension of work in writing or (2) notifies the contractor in writing of his or her intention to terminate this contract whether for convenience of the Government or for cause. If the suspension results in the incurrence of costs that the contractor was unable to avoid, the contractor may request an equitable adjustment in writing for consideration by the CO.

12.14.1.2 If the CO fails to provide further instructions within sixty (60) days from the notice to suspend work, this contract will be considered terminated for the convenience of the Government, and the contractor will cooperate with the Government with closing out the contract.

12.14.1.3 The CO may terminate this contract in whole or in part for the convenience of the Government at any time by written notice. The contractor shall comply with the written notice, including ceasing further performance and taking all reasonable measures to minimize any further incurrence of costs.

12.14.1.4 If the contractor fails to comply with the terms and conditions of this contract, the CO will provide written notice of breach or deficiency to the contractor and will provide the contractor an opportunity to explain or correct the breach or deficiency within thirty (30) days from receipt of notice. As a result of any response by the contractor, the CO may (1) proceed with the termination for cause; (2) convert the termination to one for the convenience of the Government; or (3) direct the contractor to continue performance.

12.14.2 This contract may be terminated by the CO at the request of the contractor under the following conditions:

12.14.2.1 The contractor shall notify the CO at least 30 days prior to the termination requested effective date.

12.14.2.2 The notification shall state the reasons for the requested termination, the requested effective date, and, if a partial termination, the portion to be terminated. If the CO determines, in the case of a partial termination, that the reduced or modified portion of the award will not accomplish the purpose for which the award was made, the CO may terminate the award in its entirety.

12.14.3 The Government and the contractor will negotiate in good faith an equitable reimbursement for work performed for which the contractor has not received payment.

13.0 DEFINITIONS

1. Administrative Modification: Changes that do not affect the substantive rights of the parties, such as changes in the paying office, appropriations errors and typographical errors.

2. Head of the Contracting Activity (HCA) means the official delegated by the Chief Procurement Officer and the Senior Procurement Executive who is responsible for managing a Component's procurement.

3. Government refers to the United States Government, including the DHS.

4. Parties, as used herein, shall refer to [CONTRACTOR NAME] and the United States of America, hereinafter called the Government, represented by DHS.

5. Contracting Officer (CO): Individual who can bind the Government to a contract within the scope of the authority delegated to the CO by the HCA.

14.0 ADDITIONAL TERMS AND CONDITIONS

14.1 FOREIGN NATIONALS

A. For purposes of this clause, foreign nationals are all persons not citizens of, not nationals of, nor immigrant aliens to, the United States of America. Nothing in this clause is intended to waive any requirements imposed by any other U.S. Government agency with respect to employment of foreign nationals or export control.
B. The contractor acknowledges that the technical data generated under this contract may be subject to export control, including disclosure to foreign nationals, whether such data is provided orally or in written form.
C. The contractor agrees to obtain written approval from the CO before assigning any foreign national to perform work under this contract or before granting foreign nationals access to data related to this contract, whether such data is provided by the Government or generated under this contract.

14.2 TERMS OF THE CONTRACT

Nothing in this contract is intended to conflict with current law, regulation or directives of DHS. If a term of this contract is inconsistent with such authority, then that term shall be invalid, but the remaining terms and conditions of this contract shall remain in full force and effect.

14.3 CONTRACT TYPE

It is intended that the initial contract from this general solicitation will be Firm Fixed Price.

14.4 OPTIONS

DHS may establish options for future purchasing requirements. Options shall be executed in accordance with terms established in the resulting CSOP contract.

14.5 PROTECTION OF INFORMATION

Contractor access to unclassified but Security Sensitive Information may be required under this SOW. Contractor employees shall safeguard this information against unauthorized disclosure or dissemination in accordance with DHS MD 11042.1, Safeguarding Sensitive But Unclassified (For Official Use Only) Information. The Contractor shall ensure that all Contractor personnel having access to business or procurement sensitive information sign a non-disclosure agreement, DHS Form 11000-6. Contractor shall protect personal identifiable information (PII) under the Privacy Act Contractor employees shall safeguard this information against unauthorized disclosure or dissemination in accordance with the law and Government policies and regulations.

14.6 ORGANIZATIONAL CONFLICT OF INTEREST

The Contractor may have access to proprietary, sensitive, or material from various public or private sources. For example: proprietary, intellectual property, critical infrastructure key resource (CIKR), sensitive but unclassified (SBU), law enforcement sensitive (LES), sensitive security information (SSI) used to build curricula and exercises.

14.7 PROTECTED CRITICAL INFRASTRUCTURE INFORMATION

Non-Disclosure of Protected Critical Infrastructure Information (CII)

The parties have agreed to implement a Rule promulgating new regulations at Title 6 Code of Federal Regulations Section 29.8(c) to govern procedures for handling critical infrastructure information. The regulations detailed in the Rule, which was effective upon publication pursuant to Section 808 of the Congressional Review Act, were promulgated pursuant to Title II, Section 214 of the Homeland Security Act of 2002, known as the "Critical Infrastructure Information Act of 2002" (CII Act).

The Contractor shall not request, obtain, maintain, or use Protected CII without a prior written certification from the Protected CII Program Manager or a Protected CII Officer that conforms to the requirements of Section 29.8(c) of the regulations in the Rule.

The Contractor shall comply with all requirements of the Protected CII (PCII) Program set out in the CII Act, in the implementing regulations published in the Rule, and in the PCII Procedures Manual, as they may be amended from time to time and shall safeguard Protected CII in accordance with the procedures contained therein.

The Contractor shall ensure that each of its employees, consultants, and sub-Contractors who work on the PCII Program have executed Non-Disclosure Agreements (NDAs) in a form prescribed by the PCII Program Manager. The Contractor shall ensure that each of its employees, consultants and sub-Contractors has executed a NDA and agrees that none of its employees, consultants or sub-Contractors will be given access to Protected CII without having previously executed a NDA.

14.8 CONTRACTING OFFICER'S AUTHORITY

The Contracting Officer (CO) is the only person authorized to approve changes in any of the requirements of this contract. In the event the Contractor effects any changes at the direction of any person other than the Contracting Officer, the changes will be considered to have been made without authority and no adjustment will be made in the contract price to cover any increase in costs incurred as a result thereof. The Contracting Officer shall be the only individual authorized to accept nonconforming work, waive any requirement of the contract, or to modify any term or Government funds. No cost chargeable to the proposed contract can be incurred before receipt of a fully executed contract or specific authorization from the Contracting Officer.

14.9 MODIFICATIONS TO THE CONTRACT

A. Modifications to the contract may be proposed by either party. Only a CO has the authority to modify this contract on behalf of the Government.
B. The CO may unilaterally issue administrative modifications to the contract, which may include the period of performance.

15.0 ATTACHMENTS

1 – Technical Questionnaire