OFFEROR'S PROPOSAL LETTER

In response to the Solicitation, also known as request for proposal (RFP), referenced below, and in accordance with the accompanying solicitation provisions, any addenda thereto and the terms and conditions of the proposed subcontract, the Offeror identified below (hereinafter referred to as OFFEROR) proposes to furnish all plant, labor, technical and professional services, supervision, materials and equipment (other than materials and equipment specified as furnished by others) and perform all operations necessary and required to complete the Work specified in the proposed subcontract. OFFEROR's Proposal is enclosed with this letter.

OFFEROR agrees that its Proposal constitutes a firm offer to Triad National Security, LLC (Triad) which, if not withdrawn prior to the proposal due date, cannot be withdrawn after the proposal due date for the period of time specified in the solicitation provisions.

OFFEROR certifies that

- it has examined and is fully familiar with all of the solicitation provisions and any addenda thereto;
- it has examined and is fully familiar with all of the terms and conditions of the proposed subcontract;
- it has carefully checked all of the words and figures shown in its proposed price(s);
- it has carefully reviewed the accuracy of all statements in its Proposal and attachments thereto; and
- it has, by careful examination of the solicitation provisions and any addenda thereto, satisfied itself as to the nature and location of all work required by the proposed subcontract and all other matters which can in any way affect the work or the cost thereof.

OFFEROR agrees that Triad shall not be responsible for any errors or omissions on the part of OFFEROR in preparing its Proposal.

If awarded a subcontract, OFFEROR agrees to execute the subcontract and deliver it to Triad's Subcontract Administrator within five (5) business days after subcontract award, together with all required submittals.

OFFEROR'S representative listed below acknowledges that he/she has read the Agreement to Arbitrate shown below, and expressly agrees on behalf of the OFFEROR to the following:

1. *No arbitration may be initiated under this Agreement until an Offeror has complied with and completed the Triad Procurement Protest Process which is set forth in this Solicitation. Any arbitration initiated prior to Offeror's completion of the Protest process will be dismissed for failure to exhaust administrative remedies.*
2. *Any dispute over any matter arising out of this Solicitation or any award decision in connection with this Solicitation will be subject to mandatory and binding arbitration as stated in the Agreement to Arbitrate below.*
3. *By responding to this Solicitation, OFFEROR is waiving any right to seek remedies in court, including the right to a trial by judge or jury which Offeror may have, or claim to have, with respect to any controversy or claim arising out of or relating to this*

Solicitation, any evaluation or selection process in connection with this Solicitation, or any award decision arising from this Solicitation.

4. *OFFEROR accepts the terms and conditions set forth in the Agreement to Arbitrate below.*

AGREEMENT TO ARBITRATE (Nov 2018)

This Agreement to Arbitrate (Agreement) constitutes an express contract between Offeror and Triad, regardless of who is awarded the subcontract. As consideration for this agreement, Triad agrees to consider the offeror's proposal for an award in exchange for the offeror's agreement to arbitrate as stated herein. **No arbitration may be initiated under this Agreement until an Offeror has complied with and completed Triad's Procurement Protest Process, which is set forth in this Solicitation**. Any arbitration initiated prior to Offeror's completion of the Protest process will be dismissed for failure to exhaust administrative remedies. The scope of any arbitration initiated pursuant to this Agreement will be the issues raised in an Offeror's Protest and any new issues that were not and could not have been discovered prior to or during the Protest process.

The Solicitation is not a promise to contract, either express or implied. Any procurement conducted by Triad in connection with this Solicitation will be conducted solely at Triad's discretion. Triad reserves the right to make any award, or no award, in connection with this Solicitation, in its sole discretion and in the best interests of Triad and the Government.

By responding to this Solicitation, Offeror agrees that any controversy or claim arising out of or relating to this Solicitation, any evaluation or selection process in connection with this Solicitation, or any award decision based on this Solicitation shall be settled by an arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and the provisions of this Agreement. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

(a) Arbitrator

An arbitration initiated under this Agreement shall be decided by one arbitrator. The Offeror initiating arbitration shall be provided with a list of at least five (5) potential arbitrators identified by Triad from the National Roster of commercial arbitrators certified by the American Arbitration Association. The Offeror shall select the arbitrator of its choice from that list, subject to the availability of the arbitrator and absent any conflicts of interest between the selected arbitrator and the Offeror.

(b) Choice of Law

An arbitration initiated under this Agreement shall be decided under and governed by the laws of the State of New Mexico. The enforceability of this Arbitration Agreement will be determined under the laws of the State of New Mexico.

(c) Limitation of Remedies

(i) In no event shall an award in an arbitration initiated under this Agreement exceed the actual, reasonable cost of the preparation of Offeror's proposal, plus actual and reasonable attorneys' fees and costs incurred in the arbitration.

(ii) The arbitrator shall not under any circumstances award expectancy damages, consequential damages, "lost profits" damages, special damages, punitive damages, or any remedy or relief other than the remedy identified in subparagraph (i) above.

(iii) Any award in an arbitration initiated under this Agreement shall be limited to the relief identified in subparagraph (i), and shall not include any injunction, other equitable relief or direction to any party other than the direction to pay a monetary amount.

(d) Arbitration Deadline

Any demand for arbitration initiated under this Agreement shall be brought no later than thirty (30) business days from the Protest Official's final decision on an Offeror's Protest.

(e) Limitations on Discovery in Arbitration

(i) Within ten (10) business days from the appointment of an arbitrator, Triad shall file with the arbitrator and produce to the Offeror a file consisting of all documents and other tangible things relevant to the Offeror's claim and to the procurement action(s) which is/are the subject of the arbitration (the Arbitration File). The Arbitration File will include a complete copy of the Solicitation and proposed subcontract, documentation of the procurement and selection process, correspondence between the parties that is relevant to the arbitration, and all documents on which Triad relied in making the procurement decision(s) that are the subject of the arbitration. The Arbitration File may be supplemented by either party upon approval by the arbitrator.

(ii) Discovery in the arbitration will generally be governed by the New Mexico Rules of Civil Procedure for the District Courts, with the following limitations:

(A) Each party will be limited to taking no more than three (3) depositions, unless the arbitrator finds good cause to permit additional depositions.

(B) Written discovery shall be limited to no more than twenty-five (25) requests for production of documents, and shall not include interrogatories or requests for admission, unless the arbitrator finds good cause to allow discovery beyond the limitations of this paragraph.

(iii) The arbitrator may further limit discovery and/or issue any necessary protective orders as provided in the New Mexico Rules of Civil Procedure for the District Courts.

(f) Standard of Review

The following standard of review shall apply to the arbitration. The Arbitrator may only grant relief if he or she finds substantial evidence that Triad's conduct was inconsistent with the Solicitation and prejudiced the Offeror. To demonstrate prejudice, the Offeror must show that there was a substantial likelihood that it would have received the subcontract but for Triad's conduct.

(g) Costs of Arbitration

The cost of the arbitrator's fees, any American Arbitration Association administrative fees, and costs of the arbitration shall be borne by the losing party.

(h) Locale

The location of the arbitration shall be Los Alamos, New Mexico, or any other location mutually agreed upon by the parties.

THIS FORM MUST BE FULLY EXECUTED AND RETURNED TO TRIAD WITH YOUR PROPOSAL.

The undersigned personally asserts that he or she is authorized to execute this Agreement on behalf of the OFFEROR.

Solicitation / RFP Number: _____

OFFEROR acknowledges receipt, understanding and full consideration of the following Amendments to the Solicitation: _____

Date of Proposal: _____

OFFEROR: _____
(Name of legal entity submitting a proposal)

By: _____ (Signature)

_____ (Printed name)

_____ (Title)

State of incorporation: _____ (If Offeror is a corporation)

Business address: _____

_____

Dun and Bradstreet No.: _____

Note: the following information is only required for construction subcontracts:

Contractor License No.: _____ State: _____

License Expiration Date: _____