

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

BPA NO.

1. CONTRACT ID CODE

PAGE

OF PAGES

1

5

2. AMENDMENT/MODIFICATION NO. 04	3. EFFECTIVE DATE	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable)
6. ISSUED BY USAID/Vietnam Office of Acquisition and Assistance (OAA) 15/F Tung Shing Building, 2 Ngo Quyen Hanoi, Vietnam	CODE See Block 16 C	7. ADMINISTERED BY (If other than Item 6)	CODE

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code) To all Offerors	(X)	9A. AMENDMENT OF SOLICITATION NO. IFB No. 72044021B00001
		9B. DATED (SEE ITEM 11)
		10A. MODIFICATION OF CONTRACT/ORDER NO.
		10B. DATED (SEE ITEM 13)
CODE	FACILITY CODE	

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers is extended, is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:
 (a) By completing Items 8 and 15, and returning one copies of the amendment; (b) By acknowledging receipt of this amendment of each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

(X)	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (Such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
	D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor is not, is required to sign this document and return one copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

Amendment No. 4 to Invitation for Bids (IFB) No. 72044021B00001 USAID Civil Works for Dioxin Remediation at Bien Hoa Airbase Area – Phase 1

The purpose of this amendment is to:

- Extend the "Closing Date to Receive Bids" from "February 11, 2022" to "February 18, 2022 at 4.00 pm Hanoi local time" and the "Virtual Bid Opening" from "February 16, 2022" to "February 23, 2022". The Virtual Bid Opening event detail will be shared to all Bidders at a later date.
- Delete in its entirety paragraph "H.26 FAR PART 4.21 PROHIBITION ON CONTRACTING FOR CERTAIN COVERED TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (SECTION 889) (JANUARY 2021)";
- Replace in its entirety Attachment J.2 BID FORM with the version attached to this Amendment No. 4;
- Replace paragraph "K.10 FAR 52.204-24 REPRESENTATION REGARDING CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (OCT 2020)"; and,
- Add paragraph "L.8 WAIVERS UNDER FAR PART 4.2101 PROHIBITION ON COVERED TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES AND EQUIPMENT (DECEMBER 2021)."

Except as so stated and as detailed in the Amendment No. 4, all other terms and conditions in the original RFP and its Amendments remain the same.

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)	16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Suzanne H. Johnson
15B. CONTRACTOR/OFFEROR (Signature of person authorized to sign)	15C. DATE SIGNED
16B. UNITED STATES OF AMERICA BY <u>/s/</u> (Signature of Contracting Officer)	16C. DATE SIGNED January 26, 2022

1. Extend the “Closing Date to Receive Bids” from “February 11, 2022” to “February 18, 2022 at 4.00 pm Hanoi local time” and the “Virtual Bid Opening” from “February 16, 2022” to “February 23, 2022”. The Virtual Bid Opening event detail will be shared to all Bidders at a later date.
2. Delete in its entirety paragraph “H.26 FAR PART 4.21 PROHIBITION ON CONTRACTING FOR CERTAIN COVERED TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (SECTION 889) (JANUARY 2021).”
3. Replace in its entirety Attachment J.2 BID FORM with the version attached to this Amendment No. 4. Below are specific changes.
 - a) Changed the quantities of bid items 03.30.03 and 03.30.05 from “30,000 m²” to “1,200 m³”

As currently shown in the Amendment No. 3 Version:

03.30.03	Asphalt Concrete C12.5 Levelling	m ²	30,000	\$ -	\$ -
03.30.05	Asphalt Concrete C19 Levelling	m ²	30,000	\$ -	\$ -

As revised in Amendment No. 4 version:

03.30.03	Asphalt Concrete C12.5 Levelling	m ³	1,200	\$ -	\$ -
03.30.05	Asphalt Concrete C19 Levelling	m ³	1,200	\$ -	\$ -

- b) Update cells for bid item 04.20.07 to show “\$ -”.

As currently shown in Amendment No. 3 Version:

04.20.07	Site Restoration - Backfilling and Compaction of Borrow Materials	m ³	47,600		
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As revised in Amendment No. 4 version:

04.20.07	Site Restoration - Backfilling and Compaction of Borrow Materials	m ³	47,600	\$ -	\$ -
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4. Replace in its entirety paragraph “K.10 FAR 52.204-24 REPRESENTATION REGARDING CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (OCT 2020)” with the following:

“K.10 REPRESENTATION REGARDING CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (NOV 2021)

The Offeror shall not complete the representation at paragraph (d)(1) of this provision if the Offeror has represented that it "does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument" in paragraph (c)(1) in the provision at [52.204-26](#), Covered Telecommunications Equipment or Services—Representation, or in paragraph (v)(2)(i) of the provision at [52.212-3](#), Offeror Representations and Certifications-Commercial Products or Commercial Services. The Offeror shall not complete the representation in paragraph (d)(2) of this provision if the Offeror has represented that it "does not use covered telecommunications equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services" in paragraph (c)(2) of the provision at [52.204-26](#), or in paragraph (v)(2)(ii) of the provision at [52.212-3](#).

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

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

(b) *Prohibition.*

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

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

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

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

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

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

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

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

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

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

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

(e) *Disclosures.*

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

(i) For covered equipment—

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

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

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

(ii) For covered services—

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

(B) If not associated with maintenance, the Product Service Code (PSC) of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors

relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

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

(i) For covered equipment—

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

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

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

(ii) For covered services—

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

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

(End of provision)

5. Add paragraph **“L.8 WAIVERS UNDER FAR PART 4.2101 PROHIBITION ON COVERED TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES AND EQUIPMENT (DECEMBER 2021).”**

“L.8 WAIVERS UNDER FAR PART 4.2101 PROHIBITION ON COVERED TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES AND EQUIPMENT (DECEMBER 2021)

(a) This solicitation and any resultant award(s) is subject to the requirements of section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232) as implemented through FAR 52.204-24 and FAR 52.204-25 of this solicitation.

(b) Waivers.

(1) The submission of an offer where the Offeror makes a representation at paragraph (d)(2) of the provision at FAR 52.204–24 that it “does” use covered telecommunications equipment or services will mean the Offeror is seeking a waiver.

As part of the disclosure requirements under the provision FAR 52.204–24 submitted as part of the offer, the Offeror/Contractor must describe the circumstances (including in-country circumstances) where the Offeror/Contractor uses covered technology. This must include an identification of whether the covered technology is provided by communications service-providers, such as internet, cell phone, landline or others; the specific country where it is used; whether a Section 889-compliant alternative is or is not available in the specific country where the covered technology is being used based on the Offeror’s/Contractor’s reasonable inquiry; and a description of the presence of any other covered technology, whether it be in any internal systems or elsewhere in the supply chain.

(2) If an existing waiver does not apply, USAID does not guarantee that waiver requests from such an offeror will be considered; USAID may make an award to an offeror that does not require a waiver. Where agency needs do not permit time to obtain a waiver, USAID may move forward and make an award to an offeror that does not require a waiver. Per FAR 4.21, USAID will not make an award to an offeror(s) that does not receive the approved waiver.

(3) Where USAID decides to initiate the formal Agency waiver process:

(i) The CO will require the apparently successful offeror(s) to submit the information in paragraph (4) of this section. Alternately, offerors may provide the information with their initial proposal, at their discretion. Offerors

must appropriately mark the appropriate portions of their submission as Proprietary Data where applicable.

(ii) For Indefinite Delivery contracts under (48 CFR) FAR subpart 16.5, waiver requests will be addressed prior to award of the basic contract.

(iii) In the event that the waiver is not approved, the Contracting Officer will notify the offeror.

(4) Additional submission requirements:

(i) A compelling justification for the additional time to implement the requirements under 889(a)(1)(B). The justification must:

- a. State the amount of additional time requested to meet the requirements of the statute (No Agency waiver will be authorized to extend beyond August 13, 2022); and
- b. Provide an explanation supporting the requested time period, to include the time required to implement the Phase out Plan described below.

(ii) A full and complete laydown of the presences of covered telecommunications or video surveillance equipment or services in the entity's supply chain to include:

- a. Complete technical design documentation of where, how, and what covered equipment or services are being used by the Offeror;
- b. Technical architecture diagram of where the covered technologies are being used (for the system, equipment, service); and
- c. Description of how the covered technologies are being used, how often the covered technology is used by the Offeror, and what data traverses the technology.

(iii) A Phase-Out Plan for eliminating the covered equipment or services from the Offeror's systems, including the covered equipment or services identified in the laydown. The Plan must include:

- a. Description of how the Offeror will eliminate all covered equipment or services by the date specified in (4)(i)(b) above;
- b. When applicable, milestones and timeframes for providing updates to the COR on the Phase-Out Plan implementation;
- c. Identification of other available options;
 - i. Replacement of covered equipment and systems, as applicable;
 - ii. Accessibility of the alternative equipment and systems, as applicable; and
 - iii. In the case of covered services, the proposed use and availability of other service provider(s) without the covered technologies in the supply chain.

(iv) Pending waiver requests/Approved waivers:

- a. Pending - Solicitation Number/title/Issuing Office (Mission or USAID/W) of those offers where the CO has requested the information under this provision.
- b. Approved Waivers - Award number/title/Issuing Office (Mission or USAID/W)"

[END OF AMENDMENT NO. 4]