



UNITED STATES MARINE CORPS
MARINE FORCES SPECIAL OPERATIONS COMMAND
PSC BOX 20116
CAMP LEJEUNE, NC 28542-0116

IN REPLY REFER TO:
4200
KO/RER
25 Aug 2020

Divine Imaging Inc.
ATTN: Kimberly Devane
21323 Pacific Coast Hwy, Suite 101
Malibu, CA 90265

Dear Mrs. Devane,

As a result of interim FAR rule 2019-009, published on July 14, 2020, and effective on August 13, 2020, I am sending you this letter to initiate implementation of the FY 2019 NDAA (Pub. L. 115-232) Section 889(a)(1)(B) Prohibition on Contracting with Entities Using Certain Telecommunications and Video Surveillance Services or Equipment Clauses on contract/order H92257-20-F-0092. Detailed information related to this interim rule and Section 889(a)(1)(B) can be found in the Federal Register (See Enclosure 1 attached).

To incorporate the required clauses and provisions and ensure compliance, your contract will be modified no later than 30 October 2020, with an effective date of 13 August 2020. Before the modification can be initiated, please provide to this office your representation on FAR Provision 52.204-26 no later than August 31, 2020 (see Enclosure 2 below). If you select “does” in response to the provision at 52.204-26, also complete and return the representation at FAR Provision 52.204-24 (see Enclosure (3) below). Upon receipt of your representations, the subject contract will be modified to include FAR Provision 52.204-24 and FAR Clause 52.204-25.

This letter does not constitute a change or modification to your contract. Changes to the contract will be made through an official written contract modification on Standard Form 30 no later than 30 October 2020. Lack of response to this request will impact my ability to extend the period of performance of your contract and/or issue any additional task/delivery orders after August 31, 2020.

If you have any questions, please contact Contract Specialist at 910-440-0700 or by email at geronimo.lopez.mil@socom.mil or myself at 910-440-0875.

Please acknowledge receipt of this letter below, and return via e-mail reply.

Henry Williams

Printed Name and Title

Henry Williams 8/28/2020

Signature and Date

Sincerely,

Ray E. Rawls Jr
Ray E. Rawls, MSgt.
Contracting Officer

Encl: (1) Federal Register
(2) 52.204-26
(3) 52.204-24

Enclosure (2)

FAR 52.204-26 Covered Telecommunications Equipment or Services-Representation.

As prescribed in 4.2105(c), insert the following provision:

Covered Telecommunications Equipment or Services-Representation (Dec 2019)

(a) Definitions. As used in this provision, “covered telecommunications equipment or services” has the meaning provided in the clause 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) 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”.

(c) Representation. The Offeror represents that it [] does, [] 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.

(End of provision)

I certify that the statements herein are true to the best of my knowledge.

Printed Name and Title

Signature and Date

Please return completed and signed copy to MARSOC Contracting Office via e-mail reply, no later than August 31, 2020.

Enclosure (3)

FAR 52.204-24 -- Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment.

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 the provision at 52.204-26, Covered Telecommunications Equipment or Services—Representation, or in paragraph (v) of the provision at 52.212-3, Offeror Representations and Certifications—Commercial Items.

(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) Representations. 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)

As required, please return completed copy of your representations to the MARSOC Contracting Office via e-mail reply, no later than August 31, 2020.