52.250-4 SAFETY Act Pre-qualification Designation Notice.

As prescribed in 50.206(c)(1), insert the following provision:

SAFETY Act *Pre-qualification Designation Notice* (Feb 2009)

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

Act of terrorism means any act determined to have met the following requirements or such other requirements as defined and specified by the Secretary of Homeland Security:

(1) Is unlawful.

(2) Causes harm, including financial harm, to a person, property, or entity, in the *United States*, or in the case of a domestic *United States* air carrier or a *United States*-flag vessel (or a vessel based principally in the *United States* on which *United States* income tax is paid and whose *insurance* coverage is subject to regulation in the *United States*), in or outside the *United States*.

(3) Uses or attempts to use instrumentalities, weapons or other methods designed or intended to cause mass destruction, injury or other loss to citizens or institutions of the *United States*.

Block certification means SAFETY Act certification of a technology class that the Department of Homeland Security (DHS) has determined to be an approved class of approved *products* for homeland security.

Block designation means *SAFETY Act designation* of a technology class that the DHS has determined to be a *Qualified Anti-Terrorism Technology (QATT*).

Pre-qualification designation notice means a notice in a *procurement solicitation* or other publication by the Government stating that the technology to be procured either affirmatively or presumptively satisfies the technical criteria necessary to be deemed a *qualified anti-terrorism technology*. A *pre-qualification designation notice* authorizes *offeror*(s) to submit streamlined SAFETY Act applications for *SAFETY Act designation* and receive expedited processing of those applications.

Qualified Anti-Terrorism Technology (QATT) means any technology designed, developed, modified, procured, or sold for the purpose of preventing, detecting, identifying, or deterring acts of terrorism or limiting the harm such acts might otherwise cause, for which a *SAFETY Act designation* has been issued. For purposes of defining a QATT, technology means any product, equipment, service (including support services), device, or technology (including *information technology*) or any combination of the foregoing. Design services, consulting services, engineering services, software development services, software integration services, threat assessments, vulnerability studies, and other analyses relevant to homeland security *may* be deemed a technology.

SAFETY Act certification means a determination by DHS pursuant to 6 U.S.C. 442(d), as further delineated in 6 CFR 25.9, that a QATT for which a *SAFETY Act designation* has been issued is an approved product for homeland security,*i.e.*, it will perform as intended, conforms to the seller's specifications, and is safe for use as intended.

SAFETY Act designation means a determination by DHS pursuant to 6 U.S.C. 441(b) and 6 U.S.C.

443(a), as further delineated in 6 CFR 25.4, that a particular Anti-Terrorism Technology constitutes a QATT under the SAFETY Act.

(b) The Support Anti-terrorism by Fostering Effective Technologies Act of 2002 (SAFETY Act), 6 U.S.C. 441-444, creates certain liability limitations for *claims* arising out of, relating to, or resulting from an *act of terrorism* where QATTs have been deployed. It also confers other important benefits. *SAFETY Act designation* and SAFETY Act certification are designed to support effective technologies aimed at preventing, detecting, identifying, or deterring acts of terrorism, or limiting the harm that such acts might otherwise cause, and which also meet other prescribed criteria.

(c)

(1) DHS has issued a SAFETY Act *pre-qualification designation notice* for the technology to be acquired under this *solicitation*.

(2) This notice is attached to this *solicitation* and contains essential information, including-

(i) A detailed description of and specification for the technology covered by the notice;

(ii) A statement that the technology described and specified in the notice satisfies the technical criteria to be deemed a QATT and the *offeror*'s proposed technology either *may* presumptively or will qualify for the issuance of a designation provided the *offeror* complies with terms and conditions in the notice and its application is approved;

(iii) The period of time within which DHS will take action upon submission of a SAFETY Act application submitted pursuant to the notice;

(iv) A listing of those portions of the application that *must* be completed and submitted by selected awardees and the time periods for such submissions;

(v) The date of expiration of the notice; and

(vi) Any other terms and conditions concerning the notice.

(3) *Offerors should* read this notice carefully to make sure they comply with the terms of the notice if they plan on taking advantage of SAFETY Act coverage for their technologies.

(d) All determinations by DHS are based on factors set forth in the SAFETY Act and its implementing regulations. A determination by DHS to issue a *SAFETY Act designation*, or not to issue a *SAFETY Act designation* for a particular Technology as a QATT is not a determination that the Technology meets, or fails to meet, the requirements of any *solicitation* issued by any Federal, State, local or tribal governments. Determinations by DHS with respect to whether to issue a *SAFETY Act designation* for Technologies submitted for DHS review are based on the factors identified in 6 CFR 25.4(b).

(e) Neither *SAFETY Act designation* nor certification is in any way a requirement of this action. Whether to seek the benefits of the SAFETY Act for a proposed product or service is entirely up to the *offeror*. Additional information about the SAFETY Act *may* be found at the SAFETY Act website at http://www.SAFETYAct.gov.

(f) Proposals in which *pricing* or any other terms or conditions are offered contingent upon *SAFETY Act designation* or certification of the proposed product(s) or service(s) will not be considered for

award.

(End of provision)

Alternate I (Feb 2009). As prescribed in 50.206 (c)(2), substitute the following paragraph (f):

(f)(1) *Offerors* are authorized to submit proposals made contingent upon *SAFETY Act designation* before award. When an *offer* is made contingent upon *SAFETY Act designation*, the *offeror* also *may* submit an *alternate offer* without the contingency.

(2) If an *offer* is submitted contingent upon receipt of *SAFETY Act designation* prior to contract award, then the Government *may* not award a contract based on such *offer* unless the *offeror* demonstrates prior to award that DHS has issued a *SAFETY Act designation* for the *offeror*'s technology.

(3) The Government reserves the right to award the contract based on a noncontingent *offer*, prior to DHS resolution of the *offeror*'s application for *SAFETY Act designation*.

Alternate II (Feb 2009). As prescribed in 50.206 (c)(3), substitute the following paragraph (f):

(f)(1) *Offerors* are authorized to submit proposals presuming *SAFETY Act designation* before or after award.

(2) An *offeror* is eligible for award only if the *offeror*-

(i) Files a *SAFETY Act designation* application, limited to the scope of the applicable prequalification designation notice, within 15 days after submission of the proposal;

(ii) Pursues its *SAFETY Act designation* application in good faith; and

(iii) Agrees to obtain the amount of *insurance* DHS requires for issuing the *offeror*'s *SAFETY Act designation*.

(3) If DHS has not issued a *SAFETY Act designation* to the successful *offeror* before contract award, the *contracting officer* will include the clause at 52.250-5 in the resulting contract.

Parent topic: 52.250 [Reserved]