

FDIC Contractor Representations and Certifications

SUBMITTED BY

CONTRACTOR NAME

FDIC CONTRACTOR REPRESENTATIONS AND CERTIFICATIONS

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FDIC CONTRACTOR REPRESENTATIONS AND CERTIFICATIONS

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The FDIC is authorized to request this information from you by 12 U.S.C. §§ 1819, and 1821. The purpose for collecting this information is to examine a contractor's eligibility for potential FDIC contract awards. Furnishing the requested information is voluntary, but failure to provide the requested information in whole or in part may delay or prohibit you from receiving an FDIC contract. The information provided by individuals is protected by the Privacy Act, 5 U.S.C. 552a. The information you provide may be provided to appropriate Federal, state, local or foreign law enforcement authorities; to a court, administrative tribunal, or a party in litigation; to contractors, agents and other third parties as authorized by law; and in accordance with any of the other routine uses described in the FDIC Financial Information System (30-64-0012) System of Records available at www.fdic.gov/about/privacy. If you have questions or concerns about the collection or use of the information, you may contact the FDIC's Chief Privacy Officer at Privacy@fdic.gov.

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FDIC CONTRACTOR REPRESENTATIONS AND CERTIFICATIONS

PREAMBLE:

Contractors receiving awards from the FDIC are subject to the provisions of 12 Code of Federal Regulations Chapter III, Part 366, which may be found at: <http://www.fdic.gov/buying/goods/acquisition/index.html>. The representations and certifications set out in this solicitation / document must be completed by an official authorized to bind the offeror, and must be returned with its proposal. These representations and certifications concern matters within the jurisdiction of an agency of the United States, and the making of a false, fictitious, or fraudulent certification may render the offeror and certifying official subject to prosecution under 18 United States Code §§ 1001, 1007, and 1014. (For purposes of these certifications, the Federal Deposit Insurance Corporation (FDIC) is considered an agency of the United States only with respect to its rights and remedies under Title 18 of the United States Code). In addition, any misrepresentations or false, fictitious, or fraudulent certifications may render the offeror and the certifying official subject to administrative remedies available to the FDIC, which include suspension and/or exclusion from contracting, or termination of the contract, (12 CFR 366.16; 12 CFR Part 367).

The offeror must provide notice to the Contracting Officer, or the FDIC point of contact for the solicitation, within 10 business days of discovery or at any time prior to contract award, if the contractor learns that one or more of its representations and certifications were erroneous when submitted or have become erroneous by reason of changed circumstances.

The signature of the offeror in the Signature section of this document constitutes the making of the applicable representations and certifications.

The applicable representations and certifications will be incorporated by reference into any contract awarded to the offeror pursuant to this solicitation.

1. CERTIFICATION OF REGISTRATION IN SYSTEM FOR AWARD MANAGEMENT (SAM) (Applicable to all acquisitions)

- a. The offeror certifies that it is registered in the System for Award Management (SAM) at www.sam.gov, and that all information in SAM is correct, including its socioeconomic-economic status.

☐ Yes ☐ No

An offeror that marks "No" must also complete the certification in paragraph b.

- b. The offeror certifies that it is in the process of registering in the System for Award Management (SAM) at www.sam.gov, and will enter correct information in SAM, including its socioeconomic-economic status.

☐ Yes ☐ No

- c. The socioeconomic-economic groups in SAM are as follows:

Women-Owned Business
Minority-Owned Business
Small Disadvantaged Business

For Minority-Owned Businesses, the ethnic/racial categories are as follows:

Asian-Pacific American Owned
Subcontinent Asian (Asian-Indian) American Owned
Black American Owned
Hispanic American Owned
Native American Owned
Other than one of the preceding

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2. CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (Applicable to acquisitions over \$250,000)

a. The offer certifies that:

- (1) The prices in this proposal have been arrived at independently, without, for the purposes of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to (i) those prices, (ii) the intention to submit an offer or (iii) the methods or factors used to calculate the prices offered;
- (2) The prices in this proposal have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before contract award unless otherwise required by law; and
- (3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit a proposal for the purpose of restricting competition.

b. Each signature on the proposal is considered to be a certification by the signatory that the signatory:

(1) Is the person in the offeror's organization responsible within that organization for determining the prices being offered in this proposal, and that the signatory has not participated and will not participate in any action contrary to a. (1) through a. (3) above, or

(2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs a. (1) through a. (3) above

(insert full name of person(s) in the offeror's organization responsible for determining the prices offered in this proposal, and the title of his or her position in the offeror's organization.);

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(ii) As an authorized agent, certifies that the principals named in subdivision b.(2)(I) above have not participated, and will not participate I, in any action contrary to subparagraphs a.(1) through a.(3) above; and

(iii) As an agent, has not personally participated, and will not participate, in any action contrary to subparagraphs a.(1) through a.(3) above. (iii) As an agent, has not personally participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above.

c. A proposal will not be considered for award where a.(1), a.(3) or b. above has been deleted or modified. If the offeror deleted or modifies a.(2) above, the offeror must furnish with its proposal a signed statement setting forth in detail the circumstances of the disclosure.

3. CONTINGENT FEE REPRESENTATION

(Applicable to acquisitions over \$250,000, except for the acquisition of commercial items.)

The offeror represents that except for full-time bona fide employees working solely for the offeror, the offeror (a) ☐ has ☐ has not employed or retained any person or company to solicit or obtain this contract; and (b) ☐ has ☐ has not paid or agreed to pay any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract. The offeror agrees to provide information relating to this Representation as requested by the Contracting Officer when either (a) or (b) herein is answered affirmatively. As used herein, "bona fide employee" means a person employed by an offeror or contractor and subject to the offeror's or the contractor's supervision and control as to time, place and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain FDIC contracts nor holds out as being able to obtain any FDIC contract or contracts through improper influence.

4. EQUAL OPPORTUNITY CERTIFICATION

(Applicable to acquisitions over \$10,000)

The offeror represents that:

- a. It ☐ has ☐ has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation;
- b. It ☐ has ☐ has not filed all required compliance reports; and
- c. Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

The offeror also represents that:

- d. It ☐ has developed and has on file ☐ has not developed and does not have on file, at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2); or
- e. It ☐ has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

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5. CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS

(Applicable to acquisitions over \$150,000, when FDIC is acting in its Corporate Capacity)

- a. **Definitions.** As used in this provision "Lobbying contact" has the meaning provided at 2 U.S.C. § 1602(8). The terms "agency," "influencing or attempting to influence," "officer or employee of an agency," "person," "reasonable compensation," and "regularly employed" are defined in clause 7.3.2-58 entitled "Limitation on Payments to Influence Certain Federal Transactions."
- b. **Prohibition.** The prohibition and exceptions contained in clause 7.3.2-58 entitled "Limitation on Payments to Influence Certain Federal Transactions" are hereby incorporated by reference in this provision.
- c. **Certification.** The offeror, by signing its offer, hereby certifies to the best of its knowledge and belief that no federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with the awarding of this contract.
- d. **Disclosure.** If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this contract, the offeror shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. The offeror need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.
- e. **Penalty.** Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by 31 U.S.C. §1352. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure required to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

6. REPRESENTATION BY CORPORATIONS REGARDING AN UNPAID DELINQUENT FEDERAL TAX LIABILITY

(Applicable to acquisitions over \$100,000)

- a. FDIC may not enter into a contract with any corporation that -

Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless the agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government.

- b. The Offeror represents that -

It is ☐ is not ☐ a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

(Authority: Section 744 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235)).

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7. CERTIFICATION REGARDING FAIR INCLUSION OF MINORITIES AND WOMEN (Applicable to acquisitions over \$100,000)

a. The Contractor certifies to the following: ☐ Yes ☐ No

- (1) It is committed to equal opportunity in employment and contracting.
- (2) It has made and will continue to make, or will make during the course of this contract, a good faith effort to ensure, to the maximum extent possible, the fair inclusion of minorities and women in its workforce and in the workforces of its applicable subcontractors.
- (3) For purposes of this certification,

“Minority” shall have the meaning set forth in Section 342 (g) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010); and “Applicable Subcontractor” refers to all tiers of subcontractors under this contract whose subcontract exceeds \$100,000 in value; and “Good faith effort,” may include actions by the contractor intended to identify and, if present, remove barriers to minority and women within its workforce or expand employment opportunities for minorities and women within its workforce. Efforts to remove such barriers or expand employment opportunities may include, but are not limited to, recruiting minorities and women, providing job-related training, or other activity that could lead to those results.

b. If the Contractor answers “No” to paragraph (a) above, an explanation must be provided:

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8. COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES-REPRESENTATION

(Applicable to all acquisitions)

a. Definitions. As used in this provision, "covered telecommunications equipment or services" and "reasonable inquiry" have the meaning provided in the clause 7.1.2-2, 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.

(1) 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 FDIC in the performance of any contract, subcontract, or other contractual instrument.

(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 any equipment, system, or service that uses covered telecommunications equipment or services.

9. REPRESENTATION REGARDING CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

(Applicable to all acquisitions)

The Offeror shall not complete the representation at (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 7.3.2-76, Covered Telecommunications Equipment or Services-Representation. 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 7.3.2-76.

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 clause 7.1.2-2, 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 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 Chairman of FDIC or designee 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.

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(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 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 Chairman of FDIC or designee 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.

(1) The Offeror represents that it ☐ will, ☐ will not provide covered telecommunications equipment or services to the FDIC 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 --

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(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.

10. SMALL BUSINESS REPRESENTATION

(Applicable to all acquisitions. Contracting Officers must enter the NAICS code and small business size standard prior to providing this form to the offeror(s)).

a. NAICS code and size standard:

(1) The North American Industry Classification System (NAICS) code for this acquisition is: _____

(2) The small business size standard is: _____

(3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

b. Representation.

This acquisition is not a Small-Business Set-Aside. However, for general statistical purposes, the offeror represents as part of its quote or offer that it ☐ is, ☐ is not a small business concern.

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11. PROHIBITION ON CONTRACTING WITH ENTITIES THAT REQUIRE CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS OR STATEMENTS-REPRESENTATIONS

(Applicable to all acquisitions)

a. Definition. As used in this provision-

Internal confidentiality agreement or statement, subcontract, and subcontractor, are defined in the clause at 7.3.2-79, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements.

b. In accordance with section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions), Government agencies are not permitted to use funds to enter into contracts with an entity that requires employees or subcontractors of such entity seeking to report waste, fraud, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

c. The prohibition in paragraph (b) of this provision does not contravene requirements applicable to Standard Form 312, (Classified Information Nondisclosure Agreement), Form 4414 (Sensitive Compartmented Information Nondisclosure Agreement), or any other form governing the nondisclosure of classified information.

d. Representation. By submission of its offer, the Offeror represents that it will not require its employees or subcontractors to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting waste, fraud, or abuse related to the performance of a Government contract to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information (e.g., agency Office of the Inspector General).

12. CERTIFICATION REGARDING WHISTLEBLOWER RIGHTS AND REMEDIES

(Applicable to acquisitions over \$250,000)

The Contractor certifies to the following:

a. It is committed to protecting whistleblower rights and remedies under 41 U.S.C. § 4712.

b. It has informed and will continue to inform, or will inform during the course of this contract, its employees and any subcontractor and its employees, in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. § 4712.

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13. SIGNATURE

By signature hereto, the offeror certifies that all of the representations and certifications contained in its proposal are complete and accurate as required by this solicitation, and that it is aware of the penalty prescribed in 18 U.S.C. § 1001 for making false statements in proposals. The offeror also agrees to notify the FDIC in writing, within 10 days, after discovering that it or any person performing services under an FDIC contract has any of the disqualifying conditions contained within the representations and certifications. Such notification shall contain a detailed description of the disqualifying condition and may include a statement of how the offeror intends to resolve such condition. Further, the offeror by signature hereto gives express authorization and consent to the FDIC for the FDIC to release information contained herein to licensing authorities in the FDIC's examination of the contractor's compliance with FDIC non-ethics contracting regulations.

SOLICITATION NUMBER

NAME OF OFFEROR

UNIQUE ENTITY IDENTIFIER (UEI)

TITLE

NAME OF OFFEROR'S FIRM

OFFEROR'S TELEPHONE NUMBER

OFFICE ADDRESS

CITY

STATE

ZIP CODE

SIGNATURE

DATE SIGNED