



University of California
Lawrence Berkeley National Laboratory

REPRESENTATIONS AND CERTIFICATIONS

(This solicitation is issued under Contract No. DE-AC02-05CH11231 with the Department of Energy)

The following Representation & Certification solicitation provisions must be completed and this form must be signed and returned with the Offeror's proposal. As used herein, the term "contract" shall mean the UC/LBNL Subcontract resulting from this solicitation; "subcontract" shall mean the Offeror's subcontract, "offer" includes "bid," "proposal," and "quotation," and "Offeror" includes "bidder," "proposer," and "quoter", as may be applicable.

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1. OFFEROR INFORMATION

(Complete and check all that applies.)

Name: _____

Taxpayer Identification Number (TIN): _____

Dun & Bradstreet D-U-N-S® Number: _____

Type of Domestic Organization

- Checkboxes for Sole Proprietorship, Partnership, Corporation, Limited Liability Co. (LLC), Educational institution, Other non-profit organization, Government entity (Federal, state, or local), Joint Venture, with: _____

Number of employees (If not a government entity): _____

Type of Foreign Organization

- Checkboxes for Foreign Government entity, Non-U.S. company, institution, or organization, Nonresident alien or foreign corporation or partnership that does not have an office or a place of business in the U.S or personnel located in the U.S in furtherance of its trade or business, Other (describe): _____

2. SMALL BUSINESS PROGRAM REPRESENTATIONS

(Per FAR 52.219-1, MAY 2004)

(Applies if any performance will be in the U.S. or its outlying areas.)

(a) (1) The North American Industry Classification System (NAICS) code for this acquisition, per the solicitation, is: _____

(2) The small business size standard, per the solicitation, 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) Representations.

The Offeror represents as part of its offer that:

(1) It [] is, [] is not, a small business concern.

[Complete the following sections of (b) only if the Offeror represents in paragraph (b)(1) that it is a small business concern.]

(2) It [] is, [] is not, a small disadvantaged business concern as defined in 13 CFR 124.1002.

(3) It [] is, [] is not, a women-owned small business concern.

(4) It [] is, [] is not, a veteran-owned small business concern.

(5) It [] is, [] is not, a service-disabled veteran-owned small business concern.

(6) It [] is, [] is not, an 8(a) concern listed, on the date of this representation, on the list of qualified 8(a) concerns maintained by the Small Business Administration, and it continues to meet all eligibility criteria of 13 CFR 124, Subpart A for 8(a) business development program participation.

(7)(i) It [] is, [] is not, a HUBZone small business concern listed, on the date of this representation, on the list of qualified HUBZone small business concerns maintained by the Small Business Administration, and no material change in ownership and control, principal office, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR Part 126; and

(ii) It [] is, [] is not, a joint venture that complies with the requirements of 13 CFR Part 126, and the representation in paragraph (b)(7)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture.

[The Offeror shall enter the name of the HUBZone small business concern or concerns participating in the joint venture:] _____

Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

(c) Definitions. As used in this provision-

"Small business concern" means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR Part 121 and the size standard in paragraph (a) of this provision. SOLICITATION NUMBER

SOLICITATION NUMBER _____

Table with 4 columns: Date, Signature, Company, Title

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"Women-owned small business concern" means a small business concern (1) that is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and (2) whose management and daily business operations are controlled by one or more women.

"Veteran-owned small business concern" means a small business concern (1) not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and (2) the management and daily business operations of which are controlled by one or more veterans.

"Service-disabled veteran-owned small business concern"

(1) Means a small business concern-

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

(d) Notice.

(1) If this solicitation is for supplies and has been set aside, in whole or in part, for small business concerns, then the clause in this solicitation providing notice of the set-aside contains restrictions on the source of the end items to be furnished.

(2) Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a small, HUBZone small, small disadvantaged, or women-owned small business concern in order to obtain a contract to be awarded under the preference programs established pursuant to section 8(a), 8(d), 9, or 15 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall-

(i) Be punished by imposition of fine, imprisonment, or both;

(ii) Be subject to administrative remedies, including suspension and debarment; and

(iii) Be ineligible for participation in programs conducted under the authority of the Act.

3. PREVIOUS CONTRACTS AND COMPLIANCE REPORTS

(Per FAR 52.222-22, FEB 1999)

(Not Applicable if performance will be on an Indian Reservation or outside the U.S. by employees not recruited in the U.S.)

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 lower-tier subcontract awards.

(d) If (a) is answered "has participated" and (b) is answered "has not filed all required compliance reports", the Offeror certifies as the reason that: it has less than 50 employees ; it has not received a Federal Government prime contract or first-tier subcontract of \$50,000 or more ; or other (explain):

4. AFFIRMATIVE ACTION COMPLIANCE

(Per FAR 52.222-25, APR 1984)

(Not applicable if the offer is for construction work or work on an Indian Reservation or outside the U.S. by employees not recruited in the U.S.)

The Offeror represents that:

(a) It has previously had contracts or subcontracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2) and it has developed and has on file, has not developed and does not have on file, at each establishment, an affirmative action program as required by the rules and regulations of the Secretary of Labor, or

(b) It has not previously had contracts or subcontracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

(c) If (a) is answered "has not developed", the Offeror certifies as the reason that: it has less than 50 employees ; it has not received a Federal Government prime contract or first-tier subcontract of \$50,000 or more ; or other (explain):

5. COMPLIANCE WITH VETERANS' EMPLOYMENT REPORTING REQUIREMENTS

(Per FAR 52.222-38, SEP 2010)

(Applies to offers >\$150,000)

By submission of its offer, the offeror represents that, if it is subject to the reporting requirements of 38 U.S.C. 4212(d) (i.e., if it has any contract containing Federal Acquisition Regulation clause 52.222-37, Employment Reports on Veterans), it has submitted the most recent VETS-100A Report required by that clause.

6. CERTIFICATION AND DISCLOSURE ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS

(Per FAR 52.203-11, SEP 2007)

(Applies to offers >\$150,000)

(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 the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" (52.203-12).

(b) Prohibition. The prohibition and exceptions contained in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" (52.203-12) 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 the 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 the 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 entering into the 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.

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7. CERTIFICATION ON RESPONSIBILITY MATTERS

(Per FAR 52.209-5, APR 2010)
(Applies to offers >\$150,000)

(a) (1) The Offeror certifies, to the best of its knowledge and belief, that:

(i) The Offeror and/or any of its Principals:

(A) Are [], are not [] presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have [], have not [], within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;

(C) Are [], are not [] presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(1)(i)(B) of this provision;

(D) Have [], have not [], within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied.

(See Clause 52.209-5 in the FAR for information and examples on delinquent Federal taxes.)

(ii) The Offeror has [] has not [], within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) "Principals," for the purposes of this certification, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division, or business segment, and similar positions).

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER SECTION 1001, TITLE 18, UNITED STATES CODE.

(b) The Offeror shall provide immediate written notice to the University Procurement Representative if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the University may render the Offeror nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other available remedies, the

University may terminate the contract resulting from this solicitation for default.

8. BUY AMERICAN ACT CERTIFICATE

(Per FAR 52.225-2, FEB 2009)

(Not applicable to solicitations for Construction Work)

(a) The Offeror certifies that each end product, except those listed in paragraph (b) of this provision, is a domestic end product and that, for other than COTS items, the Offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States.

The Offeror shall list as foreign end products those end products not mined, produced, or manufactured in the United States or those end products manufactured in the United States that do not qualify as domestic end products, i.e., an end product that is not a COTS item and does not meet the component test in paragraph (2) of the definition of "domestic end product". The terms "commercially available off-the-shelf (COTS) item", "component", "domestic end product", "end product", "foreign end product", and "United States" are defined in FAR Clause 52.225-1 of this solicitation entitled "Buy American Act-Supplies".

(b) Foreign End Products:

Table with 2 columns: Line Item, Country of Origin. Includes blank rows for data entry.

(c) The University will take into consideration applicable provisions of FAR Subpart 25.1 in evaluating offers for foreign end products)

9. REPRESENTATION OF LIMITED RIGHTS DATA AND RESTRICTED COMPUTER SOFTWARE

(Per FAR 52.227-15, DEC 2007, with definitions from DEAR 927.409)
(Applies if data will be produced, furnished, or acquired in performance of the subcontract)

(a) This solicitation sets forth the University's/DOE's known requirements for data (as that term is defined in DEAR 927.409). Any data delivered under the resulting subcontract will be subject to the Rights in Data-General clause at 52.227-14 to be included in the subcontract. Under the latter clause, a subcontractor may withhold from delivery data that qualify as limited rights data or restricted computer software, and deliver form, fit, and function data in lieu thereof. The latter clause also may be used with its Alternates II and/or III to obtain delivery of limited rights data or restricted computer software, marked with limited rights or restricted rights notices, as appropriate. Use of Alternate V with the latter clause provides the University/DOE the right to inspect such data at the Subcontractor's facility.

(b) By completing the remainder of this paragraph, the Offeror represents that it has reviewed the requirements for data, including technical data and computer software, and states:

(check appropriate box)

- None of the data proposed for fulfilling the requirements for data qualifies as limited rights data or restricted computer software; or
The following data proposed to be used for fulfilling the requirements for data will be withheld from delivery as limited rights data or restricted computer software:

Blank lines for providing details of withheld data.

c) Any identification of limited rights data or restricted computer software in the Offeror's response is not determinative of the status of the data should a subcontract be awarded to the Offeror.

NOTE: The terms "data", "limited rights data", "restricted computer software", "computer software", "technical data", and "form, fit, and function data" are defined in DEAR 927.409 as follows:

Data means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include data incidental to the administration of the contract, such as financial, administrative, cost and pricing, or management information.

Limited Rights Data means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. (The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of subparagraph (g)(2) of the Rights in Data - General clause.)

Restricted Computer Software means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. (The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of subparagraph (g)(3) of the *Rights in Data - General* clause.)

Computer Software means (i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations, and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.

Technical data means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.

Form, Fit, and Function Data means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.

**10. CERTIFICATION OF TOXIC CHEMICAL
RELEASE REPORTING**

(Per FAR 52.223-13, AUG 2003)

(Applies to competitive solicitations >\$100,000, except those for commercial items)

(a) Executive Order 13148 of April 21, 2000, Greening the Government through Leadership in Environmental Management, requires submission of this certification as a prerequisite for contract award.

(b) By signing this offer, the Offeror certifies that—

(1) As the owner or operator of facilities that will be used in the performance of this contract that are subject to the filing and reporting requirements described in section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C 11023) and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106), the Offeror will file and continue to file for such facilities for the life of the contract the Toxic Chemical Release Inventory Form (Form R) as described in sections 313 (a) and (g) of EPCRA and section 6607 of PPA; or

(2) None of its owned or operated facilities to be used in the performance of this contract is subject to the Form R filing and reporting requirements because each such facility is exempt for at least one of the following reasons:

[Check each block that is applicable.]

(i) The facility does not manufacture, process, or otherwise use any toxic chemicals listed in 40 CFR 372.65;

(ii) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

(iii) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

(iv) The facility does not fall within the following Standard Industrial Classification (SIC) codes or their corresponding North American Industry Classification System sectors:

(A) Major group code 10 (except 1011, 1081, and 1094)

(B) Major group code 12 (except 1241).

(C) Major group codes 20 through 39.

(D) Industry code 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce).

(E) Industry code 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C (42 U.S.C. 6921, *et seq.*), or 5169, or 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); or

(v) The facility is not located in the United States or its outlying areas.