

## REPRESENTATIONS AND CERTIFICATIONS (Nov 2009)

**NOTICE:** Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a small, small disadvantaged, HUBZone small, or women-owned small business concern in order to obtain a contract to be awarded under the preference programs established pursuant to Sections 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 (1) be punished by imposition of a fine, imprisonment, or both; (2) be subject to administrative remedies including suspension and debarment; and (3) be ineligible for participation in programs conducted under the authority of the Act.

The Offeror represents and certifies as part of its offer that: *(Check or complete all applicable items.)*

**1. TYPE OF ORGANIZATION.** It operates as the following: *(check one)*

**U.S./Domestic**

- individual
- sole proprietorship
- partnership
- educational institute/nonprofit organization
- corporation
- professional corporation (licensed professionals such as doctors, lawyers, accountants, etc.)
- limited liability company
- state or local government
- federal government

**Foreign**

- individual
- sole proprietorship
- partnership
- educational institute/nonprofit organization
- corporation
- limited liability company
- government

Organized in the State of \_\_\_\_\_

Organized in the Country of \_\_\_\_\_

**2. SMALL BUSINESS.** It  is,  is not a small business concern and that  all,  not all end items to be furnished will be manufactured or produced by a small business concern in the United States or its outlying areas as defined in 48 CFR subpart 2.101. "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 121.

**3. VETERAN-OWNED SMALL BUSINESS.** It  is,  is not a veteran-owned small business concern. "Veteran-owned small business concern" means a small business concern (a) 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 (b) the management and daily business operations of which are controlled by one or more veterans.

**4. SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS.** It  is,  is not a service-disabled veteran-owned small business concern. (a) "Service-disabled veteran-owned small business concern" 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. (b) "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).

**5. HUBZone SMALL BUSINESS.** It  is,  is not a HUBZone small business concern appearing, 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.

**6. SMALL DISADVANTAGED BUSINESS CONCERN.** It  is,  is not a small disadvantaged business concern. "Small disadvantaged business concern" means a small business concern that meets the criteria of social and economic disadvantage and other eligibility requirements for disadvantaged status set forth in 13 CFR 124.1002.

**7. WOMEN-OWNED SMALL BUSINESS.** It  is,  is not a women-owned small business concern. "Women-owned small business concern" means a small business concern that (a) 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 (b) the management and daily business operations of which are controlled by one or more women.

**8. ANTI-KICKBACK.** By submission of this offer, the Offeror certifies that it has not provided, attempted to provide, offered to provide, solicited, accepted, or attempted to accept any kickback; and has not included, directly or indirectly, the amount of any kickback in the offer. "Kickback" means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind that is provided, directly or indirectly, to any Government prime contractor (e.g., the Company), prime contractor employee, subcontractor at any tier, or employee of a subcontractor at any tier, for the purpose of improperly obtaining or rewarding favorable

treatment in connection with a Government prime contract or in connection with a subcontract at any tier relating to a Government prime contract.

**9. BUY AMERICAN.** (Applicable if offer for supplies exceeds \$3,000. Not applicable to construction subcontracts.)

(a) 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 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 the clause of this solicitation entitled "Buy American Act – Supplies."

(b) Foreign end products:

<u>Line Item No.</u>	<u>Country of Origin</u>
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(c) The Company will evaluate offers in accordance with the policies and procedures of Part 25 of the Federal Acquisition Regulation.

**10. EQUAL OPPORTUNITY.** (Applicable if offer exceeds \$10,000.)

(a) It  has,  has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation, or the clause contained in Section 201 of Executive Order No. 11114;

(b)(1) It  has filed all required compliance reports, or

(2) It is not required by regulations of the Office of Federal Contract Compliance Programs at 41 CFR 60-1 to file compliance reports because:

It  has less than 50 employees, or

It  does not have a Government contract or first-tier subcontract of \$50,000 or more, or

It  does not have a Government contract of \$50,000 or more below the first tier for construction work at the site of construction, or

(3) It  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.

**11. AFFIRMATIVE ACTION.** (Applicable if offer exceeds \$10,000. Not applicable to construction subcontracts.)

(a) It  has developed and has 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),

(b) It  has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor because it has not had 50 or more employees and a Government contract or subcontract of \$50,000 or more, or

(c) It  has not developed and does not have on file at each establishment a required affirmative action program.

**12. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS.** (Applicable if offer exceeds \$25,000.)

(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 at present 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, or receiving stolen property; and

(C)  Are,  are not at present indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (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.

(1) Federal taxes are considered delinquent if both of the following criteria apply:

(i) The tax liability is finally determined. The liability is finally determined if it has been assessed.

A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(ii) The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in a case where enforced collection is precluded.

(2) Examples are provided in FAR 52.209-5.

(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) "Principal," for the purposes of this certification, means 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 subsidiary, 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 Company if, at any time prior to subcontract 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 Company may render the Offeror non-responsible.

(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 remedies available to the Company, the Company may terminate the subcontract resulting from this solicitation for default.

### 13. PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS. (Applicable if offer exceeds \$100,000.)

(a) The definitions and prohibitions contained in the Limitation on Payments to Influence Certain Federal Transactions clause, included in this solicitation, are hereby incorporated by reference in paragraph (b) of this certification.

(b) The Offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989:

(1) 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 his or her behalf in connection with the awarding of this subcontract;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) 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 his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to the Company; and

(3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this subcontract imposed by Section 1352, Title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form 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.

### 14. TOXIC CHEMICAL RELEASE REPORTING. (Applicable if offer exceeds \$100,000.)

(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 subcontract 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 subcontract 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 subcontract 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 subcontract 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.

Offeror (legal business name): \_\_\_\_\_

DUNS Number: \_\_\_\_\_ DUNS+4 Number: \_\_\_\_\_

EMPLOYER IDENTIFICATION NUMBER (EIN): \_\_\_\_\_

By: \_\_\_\_\_  
Printed/Typed Name

\_\_\_\_\_  
Signature

Title:    \_\_\_\_\_

Date: \_\_\_\_\_