



University of California
Lawrence Berkeley National Laboratory

REPRESENTATIONS AND CERTIFICATIONS

(For Procurements under LBNL Contract No. DE-AC02-05CH11231 with the Department of Energy)

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

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Table with 2 columns listing sections: 1. OFFEROR INFORMATION, 2. SMALL BUSINESS PROGRAM REPRESENTATIONS, 3. PREVIOUS CONTRACTS AND COMPLIANCE REPORTS, 4. AFFIRMATIVE ACTION COMPLIANCE, 5. COMPLIANCE WITH VETERANS' EMPLOYMENT REPORTING REQUIREMENTS, 6. CERTIFICATION AND DISCLOSURE ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS, 7. CERTIFICATION ON RESPONSIBILITY MATTERS, 8. BUY AMERICAN ACT CERTIFICATION, 9. REPRESENTATION OF LIMITED RIGHTS DATA AND RESTRICTED COMPUTER SOFTWARE

1. OFFEROR INFORMATION

(Complete and check all that applies.)

Name: The Pennsylvania State University

Taxpayer Identification Number (TIN): 24-6000376

Dun & Bradstreet D-U-N-S® Number: 00-340-3953

Type of Domestic Organization

- For-Profit, Educational Institution, Other Non-Profit, Sole Proprietorship, Partnership, Corporation, Limited Liability Co. (LLC), incorporated or organized in the State of: Pennsylvania, Government entity, Joint Venture

# of employees (If known and not a government entity): 17,780

Type of Foreign Organization

- Foreign Government entity, Non-U.S. company, Nonresident alien or foreign corporation, Other

2. SMALL BUSINESS PROGRAM REPRESENTATIONS

(Per FAR 52.219-1)

(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: 541712

(2) The small business size standard, per the solicitation, is: 500 employees

NOTE: The small business size standard for a concern which submits an offer in its own name for other than construction or services, 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 not, a small business concern.

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

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

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

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

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

(6) It 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 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 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:]

NOTE: 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 DY-2012-05

Table with 4 columns: Date (7/20/2012), Signature, Company (The Pennsylvania State University), Title (Associate Vice President for Research & Director of OSP)

"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" 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).

"Service-disabled veteran-owned small business concern" means a small business concern:

(1) 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

(2) 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.

(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)*

*(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 such 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)*

*(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)*

*(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)*

(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)

(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 [X] presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have [ ], have not [X], 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 [X] 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 [X], 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 [X], 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, OF THE UNITED STATES CODE.

(b) The Offeror shall provide immediate written notice to the University Procurement Representative if, at any time prior to 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 resulting contract for default.

8. BUY AMERICAN ACT CERTIFICATION

(Per FAR 52.225-2)

(a) The Offeror certifies that each end product to be delivered or construction material to be incorporated into the work, except those listed in paragraph (b) of this provision, is a domestic end product or construction material, mined, produced, or manufactured in the United States. Components thereof of unknown origin, other than commercially available off-the-shelf (COTS) items, have been considered as mined, produced, or manufactured outside the United States.

The items listed in paragraph (b) are not mined, produced, or manufactured in the United States or are mined, produced, or manufactured in the United States but are not a COTS item and do not meet the component test of the domestic end product or construction material definitions.

(b) Foreign End Products or Construction Material:

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

NOTE: The terms used in this provision are defined in FAR Clause 52.225-1, Buy American Act-Supplies, or FAR Clause 52.225-9, Buy American Act-Construction Materials, of this solicitation. The University will consider applicable provisions of FAR Subpart 25.1 in evaluating offers for foreign end products or construction material.

9. REPRESENTATION OF LIMITED RIGHTS DATA AND RESTRICTED COMPUTER SOFTWARE

(Per FAR 52.227-15, and definitions in DEAR 927.409)

(Applies if data will be produced, furnished, or acquired)

(a) This solicitation sets forth the known requirements for data. Any data delivered under the resulting contract will be subject to the Rights in Data-General clause at FAR 52.227-14. Under that clause, data that qualifies as limited rights data or restricted computer may be withheld from delivery, with form, fit, and function data delivered in lieu thereof, or delivered as limited rights data or restricted computer software per Alternates II or III of the clause, provided it is marked with the appropriate limited rights or restricted rights notice. Use of Alternate V with the clause provides the University and 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)

[X] 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 or delivered as limited rights data or restricted computer software:

Blank lines for listing data to be withheld.

(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 contract 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.