

SECTION K
ORAU/ORISE REPRESENTATIONS AND CERTIFICATIONS (LONG)
(Applicable to procurement actions which are anticipated to exceed the Simplified Acquisition Threshold)

SUPPLIER/OFFEROR REPRESENTS AND CERTIFIES AS PART OF ITS OFFER THAT:
(Check or complete all applicable boxes or blocks.)

K-0 ANNUAL REPRESENTATIONS AND CERTIFICATIONS

- a. For Federal tax reporting purposes, ORAU requires that each supplier provide a current IRS Form W-9, Request for Taxpayer Identification Number and Certification and that each supplier maintains a current W-9 at ORAU. The complete Form W-9 with instructions is available at www.irs.gov/pub/irs-pdf/fw9.pdf?portlet=3. ORAU reserves the right to make payment withholdings for failure to provide tax reporting information.
- b. If the Offeror has completed the ORCA process electronically, the Offeror may choose to use paragraph b. of this provision instead of completing the corresponding individual representations and certifications in this solicitation. The Offeror shall indicate which option applies by checking one of the following boxes:
 - i. Paragraph b. applies. Insert DUNS _____ and proceed to provision K-10.
 - ii. Paragraph b. does not apply and the Offeror has completed the individual representations and certifications in the solicitation.
- c. The Offeror has completed the annual representations and certifications electronically via Online Representations and Certifications Application (ORCA) website at <http://orca.bpn.gov>. After reviewing the ORCA database information, the Offeror verifies by submission of the offer that the representations and certifications currently posted electronically have been entered or updated within the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code reference for this solicitation), as of the date of this offer and are incorporated in this offer by reference (see FAR 4.1201).

K-1 TAXPAYER IDENTIFICATION

- a. Definitions.
 - Common parent, as used herein, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the Offeror is a member.
 - Corporate status, as used herein, means a designation as to whether the Offeror is a corporate entity, an unincorporated entity, (e.g., sole proprietorship or partnership), or a corporation providing mental and health care services.
 - Taxpayer Identification Number (TIN), as used herein, means the number required by the IRS to be used by the Offeror in reporting income tax and other returns.
- b. All Offerors are required to submit the information required in paragraphs c. through e. of this subparagraph.
- c. Taxpayer Identification Number (TIN) :
- d. Type of organization.
 - Sole proprietorship;
 - Partnership;
 - Corporate entity (not tax-exempt) incorporated under the laws of the State of _____
 - Corporate entity (tax-exempt) incorporated under the laws of the State of _____
 - Government entity (Federal, State, or local
 - Nonprofit organization
 - Individual
 - Other: _____

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e. Common Parent.

Offeror is not owned or controlled by a common parent as defined in paragraph (a) of this clause.

Name and TIN of common parent:

Name of Parent: _____

Street Address of Parent: _____

TIN of Parent: _____

K-2 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS

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 a 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 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.

(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 officers, directors, owners, partners, and persons 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 ORAU Contract Specialist 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 ORAU Contract Specialist 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.

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- e. The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed in making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to the other remedies available to ORAU, the ORAU Contract Specialist may terminate any resulting contract for default.

K-3 SMALL BUSINESS PROGRAM REPRESENTATIONS

(a)(1) The North American Industry Classification System (NAICS) code for this acquisition is _____ [insert NAICS code].

(2) The small business size standard is _____ [insert size standard].

(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

(1) The offeror represents as part of its offer that it is, is not a small business concern. ***(NOTE: If offeror is an individual or sole proprietor then you are considered a small business concern for purposes of this clause. Individuals and sole proprietors should check the box above to indicate that they are a small business concern and complete (b)(2) through (7) below.)***

(2) [Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.] The offeror represents, for general statistical purposes, that it is, is not, a small disadvantaged business concern as defined in 13 CFR 124.1002.

(3) [Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.] The offeror represents as part of its offer that it is, is not a women-owned small business concern.

(4) [Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.] The offeror represents as part of its offer that it is, is not a veteran-owned small business concern.

(5) [Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (b)(4) of this provision.] The offeror represents as part of its offer that it is, is not a service-disabled veteran-owned small business concern.

(6) [Complete only if offeror represented itself as a small business concern in paragraph (b)(1) of this provision.] The offeror represents, as part of its offer, that-

(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)(6)(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 or names of the HUBZone small business concern or concerns that are participating in the joint venture.

_____.]

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

(7) [Complete if offeror represented itself as disadvantaged in paragraph (b)(2) of this provision.] The offeror shall check the category in which its ownership falls:

_____ Black American.

_____ Hispanic American.

_____ Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).

_____ Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Japan, Indonesia, Singapore, Brunei, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).

_____ Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).

_____ Individual/concern, other than one of the preceding.

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

"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).

"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.

"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.

"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

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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.

(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.

K-4 PREVIOUS CONTRACTS AND COMPLIANCE REPORTS

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.

K-5 WOMEN-OWNED BUSINESS (OTHER THAN SMALL BUSINESS)

- a. Definition. Women-owned business concern, as used in this provision, means a concern 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 its stock is owned by one or more women; and whose management and daily business operations are controlled by one or more women.
- b. Representation. [Complete only if the offeror is a women-owned business concern and has not represented itself as a small business concern in paragraph K-3 b. (1) Small Business Program Representations, of this solicitation.] The offeror represents that it is a women-owned business concern.

K-6 CERTIFICATE OF INDEPENDENT PRICE DETERMINATION

- a. The Offeror certifies that -
 - (1) The prices in this offer have been arrived at independently, without, for the purpose 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 offeror, or (iii) the methods or factors used to calculate the prices offered;

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- (2) The prices in this offer have not been and will not knowingly be disclosed by the Offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) 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 submit an offer for the purpose of restricting competition.
- b. Each signature on the offer is considered to be a certification by the signatory that the signatory -
 - (1) Is the person in the Offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (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:

Full Name	Title
_____	_____
_____	_____

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

- (ii) As an authorized agent, does certify that the principals named in subparagraph (b)(2)(i) above have not participated, and will not participate 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.
- c. If the Offeror deletes or modifies subparagraph (a)(2) above, the Offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

K-7 CERTIFICATE AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS

- a. The definitions and prohibitions contained in the clause at FAR 52.203-12, Limitations on Payments to Influence Certain Federal Transactions, are 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 awarding of this contract;
 - (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, 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,

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- OMB standard form LLL, Disclosure of Lobbying Activities, to the ORAU Contract Specialist; 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 contract 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.

K-8 AFFIRMATIVE ACTION COMPLIANCE

The offeror represents that -

- a. 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,
- b. It has not previously had subcontracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

K-9 CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING

- 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

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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 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.

K-10 SUPPLIER NAME ON INVOICES

To ensure prompt and accurate payment of invoices submitted under any resulting contract ORAU must have the supplier name as it will appear on invoices. Enter the individual or company name as it will appear on invoices submitted to ORAU in the blank below:

INVOICES SUBMITTED UNDER ANY RESULTING CONTRACT WILL BE SUBMITTED UNDER THE FOLLOWING NAME:

K-11 UNCLASSIFIED FOREIGN VISITS AND ASSIGNMENTS (FV&A) CERTIFICATION

This certification is required if work under any resulting subcontract will require subcontractor employees to work onsite either on DOE property or in facilities where DOE work is being performed.

a. Definitions.

“Foreign national,” as used herein, means any person who is not a U.S. citizen, including permanent resident aliens. Foreign nationals may include, but are not limited to, the following:

- (1) Officials or other personnel employed by foreign governments or other foreign institutions, who may or may not be involved in cooperation under international agreements.
- (2) Foreign students at U.S. institutions.
- (3) Employees of DOE or other U.S. government agencies or their contractors or subcontractors at any tier, of universities, of companies (professional or service staff), or of other institutions.
- (4) Prospective employees of DOE or DOE contractors or subcontractors at any tier.

“U.S. Citizen,” as used herein, means a citizen of the U.S., including naturalized citizens.

b. All Offerors are required to submit the information required in paragraph (c) of this subparagraph.

c. The Offeror certifies that:

- (1) All personnel employed by the Offeror who will be assigned to work under the proposed subcontract are U.S. Citizens; or

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- (2) A list of foreign nationals employed by the Offeror who will be assigned to work under the proposed subcontract are listed below:

<u>Name of Foreign National</u>	<u>Country of Citizenship</u>	<u>Country of Birth</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

- d. If it is determined that foreign nationals are required in the performance of work under this agreement, additional information may be requested. Up to 45 days may be required to obtain the necessary approvals for those listed in paragraph (c) above.

K-12 TECHNICAL DATA CERTIFICATION

- a. The Offeror certifies that it has not delivered or is not obligated to deliver to ORAU/ORISE or the Government under any contract or subcontract the same or substantially the same technical data included in its offer, except as set forth below:

- none
 Contract No. (and Subcontract No., if applicable)

Agency name and place of delivery

- b. The work to be performed and the known requirements for technical data as set forth in the solicitation have been reviewed. To the best of the Offeror's knowledge:

- There will be no technical data withheld from delivery as being proprietary data.
 The technical data listed on page _____ of the proposal may be used in conjunction with the performance of the work under the contract and is represented as being proprietary data to be protected from unauthorized use and disclosure and therefore to be withheld from delivery in a report not having a restrictive legend.

K-13 CONTRACT COMPLIANCE CONDITIONS

The Offeror certifies that information and data received or otherwise obtained in connection with any resulting award and any amendments thereto will only be used for performance of the contract requirements related to the contract and that it will be treated in confidence except to the extent that the information is available to the general public without restriction as to its use from any source, including ORAU/ORISE and DOE. Further, seller agrees to comply with any notice or restriction placed on the information or data provided in connection with this contract. Upon completion of the contract, seller shall return all copies of all information or data as directed by the ORAU/ORISE Technical Contact. Seller shall not contact any other party having knowledge or interest concerning any aspect of the work performed under this contract except as directed by the ORAU/ORISE Contact.

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K-14 CONFIDENTIALITY OF INFORMATION AND DATA

The U.S. Department of Energy and Oak Ridge Associated Universities/Oak Ridge Institute for Science and Education receive and generate materials containing privileged and proprietary information and data in confidence and are responsible for protecting the confidentiality of their contents. For this reason, seller shall not copy, quote, or otherwise use material evolving from this contract effort.

All materials pertinent to this contract are privileged information for use only by persons having a need to know for contract compliance. The undersigned agrees not to copy, quote, or otherwise use or release materials evolving from this contract effort without the express approval and direction of the ORAU/ORISE Technical Contact.

Certification (Signature) of Individual Performing Work under the Contract _____

Typed Name: _____

Title: _____

Date Certified: _____

(Required for EACH Individual Performing Work under the Contract)

K-15 AGREEMENT REGARDING WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE FACILITIES

- a. Any subcontract awarded as a result of this solicitation may be subject to the policies, criteria, and procedures of 10 CFR part 707, Workforce Substance Abuse Programs at DOE Sites.
- b. Offeror certifies that it has, has not developed a written workplace substance abuse program consistent with the requirements of 10 CFR part 707 and agrees to develop (as required) and provide a written copy of the program to the ORAU/ORISE Contract Specialist within 30 days of notice of award and notice of applicability of this provision to this subcontract.
- c. Failure of the Offeror to agree to the condition of responsibility set forth in paragraph b. of this provision, renders the Offeror unqualified and indigible for award.

K-16 FACILITY CLEARANCE

(NOTE: If offeror is an individual or sole proprietor using their Social Security Number as their tax identification number then this clause is not applicable.)

FACILITY CLEARANCE (MAY 2002)

NOTICES

Section 2536 of title 10, United States Code, prohibits the award of a contract under a national security program to an entity controlled by a foreign government if it is necessary for that entity to be given access to information in a proscribed category of information in order to perform the contract unless a waiver is granted by the Secretary of Energy. In addition, a Facility Clearance and foreign ownership, control and influence (FOCI) information are required when the contract or subcontract to be awarded is expected to require employees to have access authorizations.

Offerors who have either a Department of Defense or a Department of Energy Facility Clearance

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generally need not resubmit the following foreign ownership information unless specifically requested to do so. Instead, provide your DOE Facility Clearance code or your DOD assigned commercial and government entity (CAGE) code. If uncertain, consult the office which issued this solicitation.

(a) Use of Certificate Pertaining to Foreign Interests, Standard Form 328

(1) The contract work anticipated by this solicitation will require access to classified information or special nuclear material. Such access will require a Facility Clearance for the Contractor organization and access authorizations (security clearances) for Contractor personnel working with the classified information or special nuclear material. To obtain a Facility Clearance the offeror must submit a Certificate Pertaining to Foreign Interests, Standard Form 328, and all required supporting documents to form a complete Foreign Ownership, Control or Influence (FOCI) Package.

(2) Information submitted by the offeror in response to the Standard Form 328 will be used solely for the purposes of evaluating foreign ownership, control or influence and will be treated by DOE, to the extent permitted by law, as business or financial information submitted in confidence.

(3) Following submission of a Standard Form 328 and prior to contract award, the Contractor shall immediately submit to the Contracting Officer written notification of any changes in the extent and nature of FOCI which could affect the offeror's answers to the questions in Standard Form 328. Following award of a contract, the Contractor must immediately submit to the cognizant security office written notification of any changes in the extent and nature of FOCI which could affect the offeror's answers to the questions in Standard Form 328. Notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice must also be furnished concurrently to the cognizant security office.

(b) Definitions

(1) "Foreign Interest" means any of the following:

(i) A foreign government, foreign government agency, or representative of a foreign government;

(ii) Any form of business enterprise or legal entity organized, chartered or incorporated under the laws of any country other than the United States or its possessions and trust territories; and

(iii) Any person who is not a citizen or national of the United States.

(2) "Foreign Ownership, Control, or Influence (FOCI)" means the situation where the degree of ownership, control, or influence over a Contractor by a foreign interest is such that a reasonable basis exists for concluding that compromise of classified information or special nuclear material may result.

(c) Facility Clearance means an administrative determination that a facility is eligible to access, produce, use or store classified information, or special nuclear material. A Facility Clearance is based upon a determination that satisfactory safeguards and security measures are carried out for the activities being performed at the facility. It is DOE policy that all Contractors or Subcontractors requiring access authorizations be processed for a Facility Clearance at the level appropriate to the activities being performed under the contract. Approval for a Facility Clearance shall be based upon:

(1) A favorable foreign ownership, control, or influence (FOCI) determination based upon the Contractor's response to the ten questions in Standard Form 328 and any required, supporting data

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provided by the Contractor;

(2) A contract or proposed contract containing the appropriate security clauses;

(3) Approved safeguards and security plans which describe protective measures appropriate to the activities being performed at the facility;

(4) An established Reporting Identification Symbol code for the Nuclear Materials Management and Safeguards Reporting System if access to nuclear materials is involved;

(5) A survey conducted no more than 6 months before the Facility Clearance date, with a composite facility rating of satisfactory, if the facility is to possess classified matter or special nuclear material at its location;

(6) Appointment of a Facility Security Officer, who must possess or be in the process of obtaining an access authorization equivalent to the Facility Clearance; and, if applicable, appointment of a Materials Control and Accountability Representative; and

(7) Access authorizations for key management personnel who will be determined on a case-by-case basis, and must possess or be in the process of obtaining access authorizations equivalent to the level of the Facility Clearance.

(d) A Facility Clearance is required prior to the award of a contract requiring access to classified information and the granting of any access authorizations under a contract. Prior to award of a contract, the DOE must determine that award of the contract to the offeror will not pose an undue risk to the common defense and security as a result of its access to classified information or special nuclear material in the performance of the contract. The Contracting Officer may require the offeror to submit such additional information as deemed pertinent to this determination.

(e) A Facility Clearance is required even for contracts that do not require the Contractor's corporate offices to receive, process, reproduce, store, transmit, or handle classified information or special nuclear material, but which require DOE access authorizations for the Contractor's employees to perform work at a DOE location. This type facility is identified as a non-possessing facility.

(f) Except as otherwise authorized in writing by the Contracting Officer, the provisions of any resulting contract must require that the contractor insert provisions similar to the foregoing in all subcontracts and purchase orders. Any Subcontractors requiring access authorizations for access to classified information or special nuclear material shall be directed to provide responses to the questions in Standard Form 328, Certificate Pertaining to Foreign Interests, directly to the prime contractor or the Contracting Officer for the prime contract.

**NOTICE TO OFFERORS - CONTENTS REVIEW
(PLEASE REVIEW BEFORE SUBMITTING)**

Prior to submitting the Standard Form 328, required by paragraph (a)(1) of this clause, the offeror should review the FOCI submission to ensure that:

(1) The Standard Form 328 has been signed and dated by an authorized official of the company;

SECTION K
ORAU/ORISE REPRESENTATIONS AND CERTIFICATIONS (LONG)
(Applicable to procurement actions which are anticipated to exceed the Simplified Acquisition Threshold)

(2) If publicly owned, the Contractor's most recent annual report, and its most recent proxy statement for its annual meeting of stockholders have been attached; or, if privately owned, the audited, consolidated financial information for the most recently closed accounting year has been attached;

(3) A copy of the company's articles of incorporation and an attested copy of the company's by-laws, or similar documents filed for the company's existence and management, and all amendments to those documents;

(4) A list identifying the organization's owners, officers, directors, and executive personnel, including their names, social security numbers, citizenship, titles of all positions they hold within the organization, and what clearances, if any, they possess or are in the process of obtaining, and identification of the government agency(ies) that granted or will be granting those clearances; and

(5) A summary FOCI data sheet.

NOTE: A FOCI submission must be attached for each tier parent organization (i.e. ultimate parent and any intervening levels of ownership). If any of these documents are missing, award of the contract cannot be completed. [49 FR 12042, Mar. 28, 1984; 49 FR 38951, Oct. 2, 1984, as amended at 56 FR 41965, Aug. 26, 1991, 59 FR 6221, Feb. 10, 1994; 62 FR 2310, Jan. 16, 1997; 62 FR 42072, Aug. 5, 1997; 67 FR 14873, Mar. 28, 2002]

K-17 ORGANIZATIONAL CONFLICTS OF INTEREST-DISCLOSURE

(a) Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

(b) An offeror notified that it is the apparent successful offeror shall provide the statement described in paragraph (c) of this provision. For purposes of this provision, "apparent successful offeror" means the proposer selected for final negotiations or, where individual contracts are negotiated with all firms in the competitive range, it means all such firms.

(c) The statement must contain the following:

(1) A statement of any past (within the past twelve months), present, or currently planned financial, contractual, organizational, or other interests relating to the performance of the statement of work. For contractual interests, such statement must include the name, address, telephone number of the client or client(s), a description of the services rendered to the previous client(s), and the name of a responsible officer or employee of the offeror who is knowledgeable about the services rendered to each client, if, in the 12 months preceding the date of the statement, services were rendered to the Government or any other client (including a foreign government or person) respecting the same subject matter of the instant solicitation, or directly relating to such subject matter. The agency and contract number under which the services were rendered must also be included, if applicable. For financial interests, the statement must include the nature and extent of the interest and any entity or entities involved in the financial relationship. For these and any other interests enough such information must be provided to allow a meaningful evaluation of the potential effect of the interest on the performance of the statement of work.

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(2) A statement that no actual or potential conflict of interest or unfair competitive advantage exists with respect to the advisory and assistance services to be provided in connection with the instant contract or that any actual or potential conflict of interest or unfair competitive advantage that does or may exist with respect to the contract in question has been communicated as part of the statement required by (b) of this provision.

(d) Failure of the offeror to provide the required statement may result in the offeror being determined ineligible for award. Misrepresentation or failure to report any fact may result in the assessment of penalties associated with false statements or such other provisions provided for by law or regulation.

K-18 SIGNATURE AND CERTIFICATION

The Offeror certifies that these representations and certification are accurate, current, and complete at the time of submission of offer and that the undersigned is aware of the penalty prescribe in 18 U.S.C. 1001 for making false statements in offers. The Offeror further certifies that it will notify the ORAU Contract Specialist of any changes to these representations and certifications subsequent to execution of this document and during performance of any resultant subcontract.

(Name of Organization)

(Address)

Signature of Authorized Official: _____

Typed Name: _____

Title: _____

Date Executed: _____