

# FDIC Integrity and Fitness Representations and Certifications

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CONTRACTOR NAME

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SUBMITTED BY

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# FDIC INTEGRITY AND FITNESS REPRESENTATIONS AND CERTIFICATIONS

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# FDIC INTEGRITY AND FITNESS REPRESENTATIONS AND CERTIFICATIONS

## ESTIMATED REPORTING BURDEN

Public reporting burden for this collection of information is estimated to average 20 minutes per response, including the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Paper Reduction Act Clearance Officer, Legal Division, Federal Deposit Insurance Corporation, Washington, D.C. 20429; and to the Office of Management and Budget, Paperwork Reduction Project (3064-0072), Washington, D.C. 20503. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

## PRIVACY ACT STATEMENT

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

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# FDIC INTEGRITY AND FITNESS REPRESENTATIONS AND CERTIFICATIONS

## I. Preamble

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

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

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

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

Answer all questions and fill in the information asked for. The offeror certifies to the following:

## II. Identifying Information

### 1. Type of Organization

The contractor operates as  an individual,  a State or local agency,  a partnership,  a joint venture,  a nonprofit organization,  an educational institution,  a corporation organized and existing under the state of: statedropdown

### 2. Parent Information

The contractor  is  is not owned or controlled by a parent company. If it is, complete the fields below and include an organizational chart of parent company.

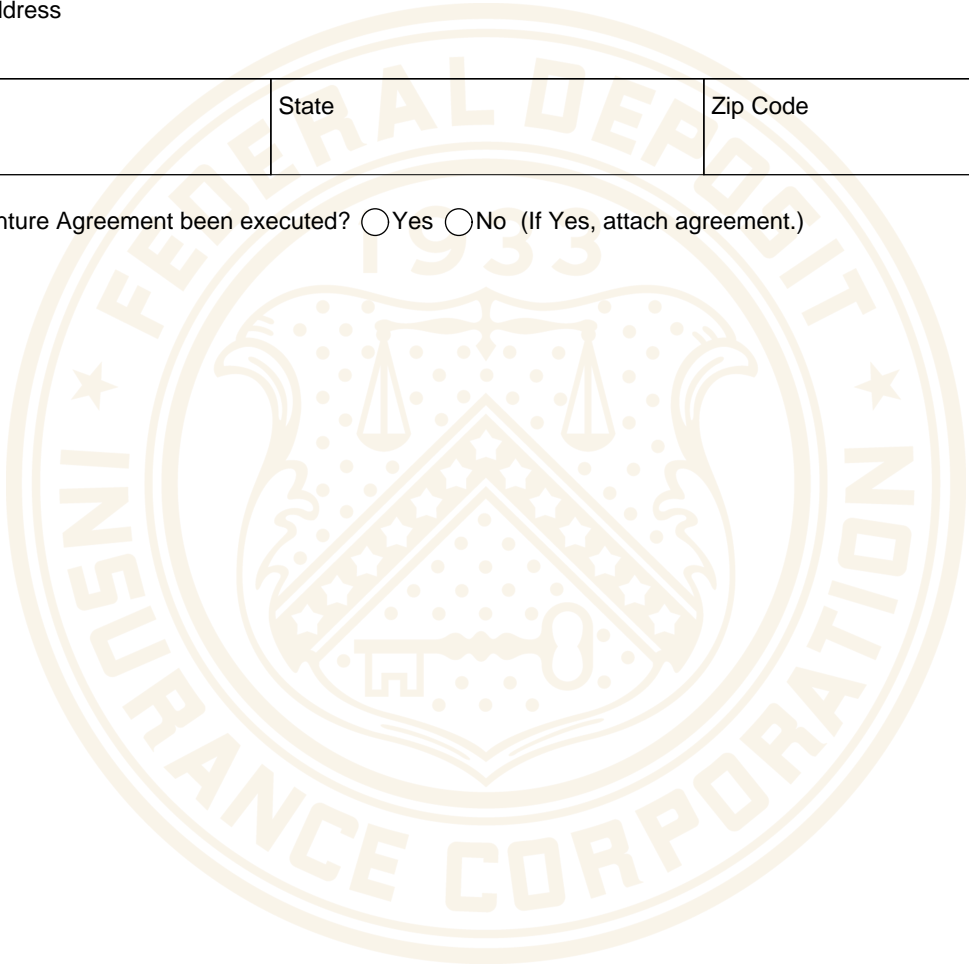
|                        |       |                                       |  |
|------------------------|-------|---------------------------------------|--|
| Name of Parent Company |       | Unique Entity Identifier (UEI) Number |  |
| Address                |       |                                       |  |
| City                   | State | Zip Code                              |  |

**3. Joint Venture Information**

The contractor  is  is not a joint venture. If contractor is a joint venture, complete the fields below.

|   |       |          |
|---|-------|----------|
| Name of Joint Venture Partner           |       |          |
| Joint Venture Partner's UEI Number      |       |          |
| Joint Venture UEI Number (If different) |       |          |
| Main Office Address                     |       |          |
| City                                    | State | Zip Code |

Has a Joint Venture Agreement been executed?  Yes  No (If Yes, attach agreement.)



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## 4. Subcontractor Information

The contractor  will  will not use subcontractors in the performance of the contract. If it will, complete the information below.

|                       |       |                                       |  |
|-----------------------|-------|---------------------------------------|--|
| Name of Subcontractor |       | Unique Entity Identifier (UEI) Number |  |
| Main Office Address   |       |                                       |  |
| City                  | State | Zip Code                              |  |

|                       |       |                                       |  |
|-----------------------|-------|---------------------------------------|--|
| Name of Subcontractor |       | Unique Entity Identifier (UEI) Number |  |
| Main Office Address   |       |                                       |  |
| City                  | State | Zip Code                              |  |

|                       |       |                                       |  |
|-----------------------|-------|---------------------------------------|--|
| Name of Subcontractor |       | Unique Entity Identifier (UEI) Number |  |
| Main Office Address   |       |                                       |  |
| City                  | State | Zip Code                              |  |

|                       |       |                                       |  |
|-----------------------|-------|---------------------------------------|--|
| Name of Subcontractor |       | Unique Entity Identifier (UEI) Number |  |
| Main Office Address   |       |                                       |  |
| City                  | State | Zip Code                              |  |

|                       |       |                                       |  |
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| Name of Subcontractor |       | Unique Entity Identifier (UEI) Number |  |
| Main Office Address   |       |                                       |  |
| City                  | State | Zip Code                              |  |

# FDIC INTEGRITY AND FITNESS REPRESENTATIONS AND CERTIFICATIONS

## III. Part 366 Integrity and Fitness

### 1. Unique Terms

Unique terms used in these representations and certifications are described in 12 CFR Part 366, as follows:

- (a) **Conflict of interest** occurs when a contractor, any entity that owns or controls a contractor, or any entity the contractor owns or controls:
- (1) Has a personal, business, or financial interest or relationship that relates to the services performed under the contract; or
  - (2) Is a party to litigation against the FDIC, or represents a party that is; or
  - (3) Submits an offer to acquire an asset from FDIC for which services were performed during the past three years, unless the contract allows for the acquisition.
- (b) **Ownership or control:**
- (1) The president or chief executive officer has control of an organization.
  - (2) A partner in a small law firm has ownership or control. A partner in a large multinational law firm may not have ownership or control.
  - (3) A general partner of a limited partnership has control. Ownership or control exists when there is an interest of twenty five percent (25%) or more in a limited partnership.
  - (4) Ownership or control is evidenced by the:
    - (i) Power to vote, directly or indirectly, 25% or more interest of any class of voting stock of a company;
    - (ii) Ability to direct in any manner the election of a majority of a company's directors or trustees; or
    - (iii) Ability to exercise a controlling influence over the company's management and policies.
- (c) **Default on a material obligation** occurs when a loan or advance with an outstanding balance of more than \$50,000 is or is or was delinquent for ninety (90) days or more.
- (d) **FDIC-insured depository institution** includes any bank or savings association the deposits of which are insured by the FDIC.
- (e) **Management official** includes any shareholder, employee, or partner who controls a company and any individual who directs the day-to-day operations of a company. With respect to a partnership whose management committee or executive committee has responsibility for the day-to-day operations of the partnership, management official includes a member of such a committee but, if no such committee exists, management official includes each of the general partners.
- (f) **A Pattern or practice of defalcation regarding obligations** under 12 CFR section 366.3(c) exists when the contractor, any person that owns or controls the contractor, or any entity the contractor owns or controls has a legal responsibility for the payment on at least two obligations that are:
- (1) To one or more FDIC-insured depository institutions;
  - (2) More than ninety (90) days delinquent in the payment of principal, interest, or a combination thereof; and
  - (3) More than \$50,000 each.
- (g) **Person** includes an individual, corporation, partnership or other entity with a legally independent existence.
- (h) **A substantial loss to Federal deposit insurance fund** under 12 CFR section 366.3(d) exists when the contractor, or any person that owns or controls the contractor, or any entity the contractor owns or controls has:
- (1) An obligation to us that is delinquent for ninety (90) days or more and on which there is an outstanding balance of principal, interest, or a combination thereof of more than \$50,000;
  - (2) An unpaid final judgment in our favor that is in excess of \$50,000, regardless of whether it becomes discharged in whole or in part in a bankruptcy proceeding;
  - (3) A deficiency balance following foreclosure of collateral on an obligation owed to us that is in excess of \$50,000, regardless of whether it becomes discharged in whole or in part in a bankruptcy proceeding; or
  - (4) A loss to us that is in excess of \$50,000 that we report on IRS Form 1099-C, Information Reporting for Discharge of Indebtedness.

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### 2. Representations as to Eligibility (12 CFR 366.3)

To the best of the contractor's knowledge:

- (a) Has the contractor been convicted of a felony?

Yes  No

If Yes, Explain:

- (b) Has the contractor been removed from or prohibited from participating in the affairs of an FDIC-insured depository institution because of a Federal banking agency action?

Yes  No

If Yes, Explain:

- (c) Has the contractor demonstrated a pattern or practice of defalcation regarding obligations?

Yes  No

If Yes, Explain:

- (d) Is the contractor responsible for a substantial loss to a Federal deposit insurance fund?

Yes  No

If Yes, Explain:

As used herein, "pattern or practice of defalcation" is described in 12 CFR 366.4 and "a substantial loss to a Federal deposit insurance fund" is described in 12 CFR 366.5 both are reproduced in Part III of these representations and certifications for your convenience.

### 3. Representations as to Conflicts of Interest (12 CFR 366.9)

Answers to the following four (4) questions regarding conflicts of interest are provided for the contractor, any persons that own or control the contractor or you own or control; and any officers, management officials, employees, agents, or subcontractors who will perform services under the contract:

- (a) Do any such person(s) have a personal, business, or financial interest or relationship that relates to the services you perform under the contract?

Yes  No

If Yes, Explain:



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(b) Are any such person(s) a party to litigation against us, or represents a party that is?

Yes  No

If Yes, Explain:

(c) Are any such person(s) submitting an offer to acquire an asset from us for which services were performed during the past three years, unless the contract allows for the acquisition?

Yes  No

If Yes, Explain:

(d) Does the contractor recognize that it generally may not later purchase assets it will manage under this contract and performance of this contract may disqualify the contractor from follow-up work where information obtained in the performance of the contract gives the contractor an unfair competitive advantage?

Yes  No

If No, Explain:

*If the contractor cannot certify that there are no conflicts of interest, it may describe the circumstances of any conflicts and request a waiver in accordance with CFR 366.10 or propose a method for the elimination of the conflict.*

### 4. Representations as to Defaults (12 CFR 255.14(b))

Has the contractor or any company under the contractor's control defaulted on a material obligation during the five (5) years proceeding the submission of this offer? (A "default on a material obligation" occurs when a loan or advance with an outstanding balance of more than \$50,000 is or was delinquent for ninety (90) days or more.)

Yes  No

If Yes, describe or attach all such instances:

### 5. Representations as to Employees and Subcontractors (12 CFR 366.14(d))

Does the contractor agree that without a waiver, it will employ only persons who meet the requirements of 12 CFR part 366 to perform services on behalf of FDIC?

Yes  No

If No, Explain:

### 6. Retention of Information

A contractor must retain the information upon which it relied in preparing its integrity and fitness representations and making its certifications during the term of the contract and for a period of three (3) years following the termination or expiration of the contract, and make such information available for review by FDIC upon request.

# FDIC INTEGRITY AND FITNESS REPRESENTATIONS AND CERTIFICATIONS

## IV. SIGNATURE

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

|                     |       |  |
|---------------------|-------|--|
| Solicitation Number |       |  |
| Name of Contractor  |       | Contractor's Unique Entity Identifier (UEI) Number |
| Title               |       | Contractor's Telephone Number                      |
| Office Address      |       |  |
| City                | State | Zip Code   |
| Signature           |       | Date Signed  |