

SUPPORTING STATEMENT

ACQUISITION SERVICES INFORMATION REQUIREMENTS

(OMB No. 3064-0072)

BACKGROUND

The collection of information involves the submission of various forms by contractors who wish to do business with the FDIC or are currently under contract with the FDIC, and by government agencies or commercial businesses that provide FDIC with past performance information. The information is used to ensure compliance with established contractor ethics regulations (12 CFR Part 366); obtain information on a contractor's past performance for proposal evaluation purposes; review a potential lessor's fitness and integrity prior to entering into a lease transaction; perform background investigations on contractors and contractor personnel; and review the good faith efforts of contractors to employ minorities and women in their workforce.

A. JUSTIFICATION

1. Circumstances and Need

The Federal Deposit Insurance Act (12 U.S.C. Section 1819) empowers the FDIC to enter into contracts using private sector contractors to provide goods or services. This Act also provides that FDIC may promulgate policies and procedures to administer the powers granted to it, including the power to enter into contracts. The authority to establish policies and procedures and generate the contracting program has been delegated by the Board of Directors to the Director, Division of Administration. Therefore, pursuant to such policies, the Acquisition and Corporate Services Branch, Division of Administration, FDIC Headquarters in Washington D.C., has developed forms and clauses to facilitate the procurement of goods and services from private sector contractors.

The FDIC Fitness and Integrity Certifications, the FDIC Leasing Representations and Certifications and the FDIC Background Investigation Questionnaires for Contractors and Contractor Personnel are a result of the implementation of 12 CFR Part 366. The FDIC adopted 12 CFR Part 366 pursuant to Section 12(f)(3) and (4) of the Federal Deposit Insurance Act, 12 U.S.C. 1822(f)(3) and (4), and the rulemaking authority of the FDIC found at 12 U.S.C. 1819. Pursuant to those sections and consistent with the goals and purposes of titles 18 and 41 of the U.S. Code, the rule establishes the minimum standards of integrity and fitness that contractors, subcontractors, and employees of contractors and subcontractors must meet if they perform any service or function on behalf of the FDIC. This rule includes regulations governing conflicts of interest, ethical responsibility, and use of confidential information in accordance with 1822(f)(3); and the prohibitions and the submission of information in accordance with 1822(f)(4). This rule applies to a person

who submits an offer to perform or performs, directly or indirectly, a contractual service or function on behalf of the FDIC. Pursuant to section 342 (c)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. § 5452, contractors shall make a good faith effort to employ minorities and women in the workforce, and provide a written statement attesting to their commitment.

In addition, the FDIC's Acquisition Policy Manual requires the evaluation of an offeror's past performance under formal contracting procedures and is a mandatory technical evaluation criterion in our standard solicitation document. In support of the evaluation of the past performance criterion, the FDIC Past Performance Questionnaire was developed to be submitted by other government agencies or commercial businesses who are doing business, or have done business, with the contractor FDIC is evaluating. FDIC Acquisition Policy Manual requires all contracts over \$100,000 to contain a Certification Regarding Fair Inclusion of Minorities and Women and the Fair Inclusion Clause. The contractor, upon written request, shall provide documentation that demonstrates its good faith effort to employ and develop minority and women employees.

2. Use of Information Collected

The information requested is used to determine the qualifications, fitness and integrity of contractors wishing to enter into contracts or leases with the FDIC and to obtain past performance information pertaining to specific contractors. The forms have legal significance since their submission represents formal offers and/or averments, which, if fraudulent, are punishable under provisions of both civil and criminal law. The past performance information collected is used to compare and evaluate technical capabilities of multiple offerors. Such evaluations may take place on items ranging in complexity from routine office equipment to highly specialized services. The Fair Inclusion documentation collected will be used to help determine whether a contractor has made a good faith effort to include minorities and women in its workforce.

Two of the forms associated with this collection of information are being revised. FDIC Form 3700/59, Fair Inclusion of Minorities and Women, is a contract clause implementing Section 342(c)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5452). The contract clause seeks a commitment from an FDIC Contractor to ensure, to the maximum extent possible consistent with applicable law, the fair inclusion of minorities and women in its workforce and the workforces of its applicable subcontractors. Further, the clause asserts the FDIC's right to request documentation from the Contractor that demonstrates the Contractor's good faith effort to include minorities and women in its workforce and subcontractors' workforces, and requires the Contractor to annually certify that it has made such good faith efforts.

FDIC Form 3700/04A, Contractor Representations and Certification, must be completed by any offeror that responds to a solicitation for an award over \$100,000. The Form is being revised to add two certifications, "Certification Regarding Fair Inclusion of Minorities and Women" and "Representation by Corporations Regarding an Unpaid Delinquent Federal

Tax Liability.” The “Certification Regarding Fair Inclusion of Minorities and Women” implements § 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5452) and requires an offeror to certify to its commitment to equal opportunity in employment and contracting and that it has made and will continue to make a good faith effort to ensure, to the maximum extent possible, the fair inclusion of minorities and women in its workforce and in the workforce of its applicable subcontractors. The “Representation by Corporations Regarding an Unpaid Delinquent Federal Tax Liability” implements Section 744 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235)), by requiring an offeror to represent whether it is or is not “a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.”

3. Use of Technology to Reduce Burden

Electronic copies of the following forms are available on FDIC's external website. These forms will be used by contractors that propose on FDIC contracts, contractors doing business with FDIC, and government agencies or commercial businesses that provide past performance information to FDIC. All of the forms, except 3700/57, require a signature. FDIC currently does not have electronic signature capability.

FDIC Background Investigation Questionnaire for Contractor Personnel and Subcontractors, Form 1600/04
FDIC Background Investigation Questionnaire for Contractors, Form 1600/07
FDIC Contractor Representations and Certifications, Form 3700/04A
FDIC Integrity and Fitness Representations and Certifications, Form 3700/12
FDIC Leasing Representations and Certifications, Form 3700/44
FDIC Past Performance Questionnaire, 3700/57
FDIC Fair Inclusion of Minorities and Women, 3700/59

4. Efforts to Identify Duplication

The information collected does not duplicate information existing elsewhere. In addition, the FDIC uses option provisions in contracts when an increase in the same or similar products and services can be reasonably anticipated. This approach eliminates excessive solicitation of the same or similar items when competition was used initially and a determination that the price obtained through the option is reasonable.

5. Minimize the Burden on Small Entities

The amount of information collected varies with the competitiveness and complexity of the procurement. In general, procurement requirements are less complex for small firms. Therefore, the amount of information collected from a small firm is generally less burdensome than for a major solicitation responded to by a large firm.

6. Consequences of Less Frequent Collections

The information is collected on an "as-needed" basis to support legislative requirements.

7. Special Circumstances

None.

8. Summary of Public Comments; Consultation

On August 28, 2015, the FDIC published a *Federal Register* notice proposing to extend, without revision, the acquisition Services Information Requirements (80 FR 52274). The FDIC received one comment addressing this collection of information

The commenter suggested FDIC make it clear efforts to employ minorities and women should be in compliance with the various federal laws that prohibit discrimination. Also, employment decisions should focus on the most qualified candidate regardless of race, ethnicity or gender.

FDIC does not believe that a specific reference to Title VII of the 1964 Civil Rights Act is necessary. Further our contracts contain a separate clause, Equal Opportunity that expressly prohibits discrimination on the basis of race, ethnicity or sex. In addition, the clause language states, "to the maximum extent possible consistent with applicable law," contractors shall ensure the fair inclusion of minorities and women in the workforce.

9. Payment or Gift to Respondents

Not applicable.

10. Confidentiality

Information provided on the forms that are the basis of this submission will be kept private to the extent permitted by law.

11. Information of a Sensitive Nature

No information of a sensitive nature is collected.

12. Estimates of Annualized Burden

The burden for this collection is as follows:

<u>FDIC Document</u>	<u>Hours Per Unit</u>	<u>No. of Respondents</u>	<u>Burden Hours</u>
Background Investigation Questionnaire Contractor Personnel & Subcontractors (1600/04)	.33	3,000	990
Background Investigation Questionnaire Contractors (1600/07)	.50	200	100
Contractor Representations & Certifications (3700/04A)	.50	360	180
Integrity and Fitness Representations & Certifications (3700/12)	.33	360	119
FDIC Past Performance Questionnaire (3700/57)	.75	1,080	810
Leasing Representations and Certifications (3700/44)	1.0	35	35
Fair Inclusion of Minorities and Women (3700/59)	1.0	100	100
Total		6,135	2,334

13. Total Annual Cost Burden

None.

14. Annual Cost to the Federal Government

<u>FDIC Document</u>	<u>Hourly Rate (\$)</u>	<u>Hours Per Unit</u>	<u>No. of Units Per Year</u>	<u>Annual Cost(\$)</u>
----------------------	-------------------------	-----------------------	------------------------------	------------------------

Background Investigation Questionnaire Contractor Personnel & Subcontractors+ (1600/04)	20.82	.50	3,000	31,230
Background Investigation Questionnaire Contractor (1600/07)	20.82	.50	200	2,082
Contractor Representations & Certifications (3700/04A)	44.50	.50	360	8,010
Integrity and Fitness Represent- ations & Certifications (3700/12)	44.50	.50	360	8,010
FDIC Past Performance Questionnaire (3700/57)	44.50	.25	1,080	12,015
Leasing Representations and Certifications (3700/44)	58.49	.25	35	512
Fair Inclusion of Minorities and Women (3700/59)	44.50	1.00	100	4,450
Total				66,309

15. Reason for Program Changes or Adjustments

The change is burden is due to FDIC's estimate of reduced number of respondents due to a return to normal operating workload from a temporary increase due to the recent financial crisis.

16. Publication

The information collected is for internal use and is not published.

17. Display of Expiration Date

The OMB Number and expiration date is displayed on all forms.

18. Exceptions to Certification

None.

B. STATISTICAL METHODS

Not applicable.