

## Federal Acquisition Regulation

52.209-7

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 Contracting Officer 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 Contracting Officer 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 remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

(End of provision)

[54 FR 19827, May 8, 1989, as amended at 61 FR 2633, Jan. 26, 1996]

### **52.209-6 Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment.**

As prescribed in 9.409(b), insert the following clause:

PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JUL 1995)

(a) The Government suspends or debar Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of \$25,000 with a

Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

(b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed \$25,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(c) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the List of Parties Excluded From Federal Procurement and Nonprocurement Programs). The notice must include the following:

(1) The name of the subcontractor.

(2) The Contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded From Federal Procurement and Nonprocurement Programs.

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded From Federal Procurement and Nonprocurement Programs.

(4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

(End of clause)

[56 FR 29138, June 25, 1991, as amended at 57 FR 44269, Sept. 24, 1992; 60 FR 33066, June 26, 1995; 60 FR 34761, July 3, 1995]

### **52.209-7 Organizational Conflicts of Interest Certificate—Marketing Consultants.**

As prescribed in 9.507-1(b), insert the following provision:

ORGANIZATIONAL CONFLICTS OF INTEREST CERTIFICATE—MARKETING CONSULTANTS (OCT 1995)

(a) Definitions.

(1) *Marketing consultant* means any independent contractor who furnishes advice, information, direction, or assistance to an offeror or any other contractor in support of the preparation or submission of an offer for a government contract by that offeror. An independent Contractor is not a marketing consultant when rendering—

(i) Services excluded in subpart 37.2;

(ii) Routine engineering and technical services (such as installation, operation, or maintenance of systems, equipment, software, components, or facilities);

(iii) Routine legal, actuarial, auditing, and accounting services; or  
 (iv) Training services.

(2) *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 individual or firm that employs, retains, or engages contractually one or more marketing consultants in connection with a contract, shall submit to the contracting officer, with respect to each marketing consultant, the certificates described below, if the individual or firm is notified that it is the apparent successful offeror.

(c) The certificate must contain the following:

(1) The name of the agency and the number of the solicitation in question.

(2) The name, address, telephone number, and federal taxpayer identification number of the marketing consultant.

(3) The name, address and telephone number of a responsible officer or employee of the marketing consultant who has personal knowledge of the marketing consultants involvement in the contract.

(4) A description of the nature of the services rendered by or to be rendered by the marketing consultant.

(5) The name, address, and telephone number of the client or clients, and the name of a responsible officer or employee of the marketing consultant who is knowledgeable about the services provided to such client(s), and a description of the nature of the services rendered to such client(s), if, based on information provided to the Contractor by the marketing consultant, any marketing consultant is rendering or, in the 12\* months preceding the date of the certificate, has rendered services respecting the same subject matter of the instant solicitation, or directly relating to such subject matter, to the Government or any other client (including any foreign government or person).

(6) A statement that the person who signs the certificate for the prime Contractor has informed the marketing consultant of the existence of subpart 9.5 and Office of Federal Procurement Policy Letter 89-1.

(7) The signature, name, title, employer's name, address, and telephone number of the persons who signed the certificates for both the apparent successful offeror and the marketing consultant.

(d) In addition, the apparent successful offeror shall forward to the Contracting Officer a certificate signed by the marketing consultant that the marketing consultant has been told of the existence of subpart 9.5 and Office of Federal Procurement Policy

Letter 89-1, and the marketing consultant has made inquiry, and to the best of the consultant's knowledge and belief, the consultant has provided no unfair competitive advantage to the prime Contractor with respect to the services rendered or to be rendered in connection with the solicitation, or that any unfair competitive advantage that, to the best of the consultant's knowledge and belief, does or may exist, has been disclosed to the offeror.

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

(End of provision)

\* If approved by the head of the contracting activity, this period may be increased up to 36 months.

[55 FR 42687, Oct. 22, 1990, as amended at 56 FR 55377, Oct. 25, 1991; 60 FR 49723, Sept. 26, 1995]

#### **52.209-8 Organizational Conflicts of Interest Certificate—Advisory and Assistance Services.**

As prescribed in 9.507-1(c), insert the following provision:

ORGANIZATIONAL CONFLICTS OF INTEREST CERTIFICATE—ADVISORY AND ASSISTANCE SERVICES (NOV 1991)

(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 certificate described in paragraph (c) of this provision.

(c) The certificate must contain the following:

(1) Name of the agency and the number of the solicitation in question.

(2) The name, address, telephone number, and federal taxpayer identification number of the apparent successful offeror.

(3) A description of the nature of the services rendered by or to be rendered on the instant contract.

(4) 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