

POTENTIAL ORGANIZATIONAL CONFLICT OF INTEREST (APR 2010)

(a) There is a potential organizational conflict of interest (*see* FAR Subpart 9.5, Organizational and Consultant Conflicts of Interest) due to [*state the nature of the potential conflict*]. Accordingly:

(1) Restrictions are needed to ensure that (*state the nature of the proposed restraint and the applicable time period*).

(2) As a part of the proposal, the offeror shall provide the Contracting Officer with complete information regarding previous or ongoing work that is in any way associated with the contemplated acquisition.

(b) If award is made to the offeror, the resulting contract may include an organizational conflict of interest limitation applicable to subsequent Government work, at either a prime contract level, at any sub-contract tier, or both. During evaluation of proposals, the Government may, after discussions with the offeror and consideration of ways to avoid the conflict of interest, insert a provision in the resulting contract that shall disqualify the offeror from further consideration for award of specified future contracts.

(c) The organizational conflict of interest clause included in this solicitation may be modified or deleted during negotiations.

Alternate 1 (Date). At the discretion of the Contracting Officer, substitute the following paragraph (b) for paragraphs (b) and (c) in the basic provision:

(b) The organizational conflict of interest clause in this solicitation may not be modified or deleted.

(End of clause)

[75 FR 10570, Mar. 8, 2010; 75 FR 14496, Mar. 26, 2010]

1352.209-71 Limitation of future contracting.

As prescribed in 48 CFR 1309.507-2(a), insert the following clause:

LIMITATION OF FUTURE CONTRACTING (APR 2010)

(a) The following restrictions and definitions apply to prevent conflicting roles, which may bias the contractor's judgment or objectivity, or to preclude the contractor from obtaining an unfair competitive advantage in concurrent or future acquisitions.

(1) Descriptions or definitions:

(i) "Contractor" means the business entity receiving the award of this contract, its parents, affiliates, divisions and subsidiaries, and successors in interest.

(ii) "Development" means all efforts towards solution of broadly defined problems. This may encompass research, evaluating

technical feasibility, proof of design and test, or engineering of programs not yet approved for acquisition or operation.

(iii) "Proprietary Information" means all information designated as proprietary in accordance with law and regulation, and held in confidence or disclosed under restriction to prevent uncontrolled distribution. Examples include limited or restricted data, trade secrets, sensitive financial information, and computer software; and may appear in cost and pricing data or involve classified information.

(iv) "System" means the system that is the subject of this contract.

(v) "System Life" means all phases of the system's development, production, or support.

(vi) "Systems Engineering" means preparing specifications, identifying and resolving interface problems, developing test requirements, evaluating test data, and supervising design.

(vii) "Technical Direction" means developing work statements, determining parameters, directing other contractors' operations, or resolving technical controversies.

(2) Restrictions: The contractor shall perform systems engineering and/or technical direction, but will not have overall contractual responsibility for the system's development, integration, assembly and checkout, or production. The parties recognize that the contractor shall occupy a highly influential and responsible position in determining the system's basic concepts and supervising their execution by other contractors. The contractor's judgment and recommendations must be objective, impartial, and independent. To avoid the prospect of the contractor's judgment or recommendations being influenced by its own products or capabilities, it is agreed that the contractor is precluded for the life of the system from award of a DOC contract to supply the system or any of its major components, and from acting as a subcontractor or consultant to a DOC supplier for the system or any of its major components.

Alternate 1 (Date). As prescribed in CFR 1309.507-2(a)(2), either substitute paragraph (a)(2) of the basic clause with one or both of the following paragraphs, or use one or both in addition to the basic paragraph (a)(2).

(a)(2)(i) The contractor shall prepare and submit complete specifications for non-developmental items to be used in a competitive acquisition. The contractor shall not furnish these items to DOC, either as a prime contractor or subcontractor, for the duration of the initial production contract plus [*insert a specific period of time or an expiration date*].

(ii) The contractor shall either prepare or assist in preparing a work statement for use in competitively acquiring the [*identify the system or services*], or provide material leading directly, predictably, and without delay

to such a work statement. The contractor may not supply [*identify the services, the system, or the major components of the system*] for a period [*state the duration of the constraint, however, the duration of the initial production contract shall be the minimum*], as either the prime or subcontractor unless it becomes the sole source, has participated in the design or development work, or more than one contractor has participated in preparing the work statement.

Alternate II (Date). As prescribed in 48 CFR 1309.507-2(a)(3), either substitute paragraph (a) (2) of the basic clause with the following paragraph, or add the following in addition to the basic restriction. Redesignate the paragraphs as needed if more than one restriction applies.

(a)(2) The contractor shall participate in the technical evaluation of other contractors' proposals or products. To ensure objectivity, the contractor is precluded from award of any supply or service contract or subcontract for the system or its major components. This restriction shall be effective for (*insert a definite period of time*).

Alternate III (Date). As prescribed in 48 CFR 1309.507-2(a)(4), add the following paragraph (b) to the basic clause:

(b) The contractor may gain access to proprietary information of other companies during contract performance. The contractor agrees to enter into company-to-company agreements to protect another company's information from unauthorized use or disclosure for as long as it is considered proprietary by the other company, and to refrain from using the information for any purpose other than that for which it was furnished. For information purposes, the contractor shall furnish copies of these agreements to the Contracting Officer. These agreements are not intended to protect information which is available to the Government or to the contractor from other sources and information furnished voluntarily without restriction.

Alternate IV (Date). As prescribed in 48 CFR 1309.507-2(a)(5), add the following paragraph (b) to the basic clause substantially as written. If Alternate III is also used, designate this paragraph (c).

(b) The contractor agrees to accept and to complete all issued task orders, and to not contract with Government prime contractors or first-tier subcontractors in such a way as to create an organizational conflict of interest.

Alternate V (Date). As prescribed in 48 CFR 1309.507-2(a)(6), add the following paragraph (b) to the basic clause. If more than one Alternate is used, redesignate this paragraph accordingly.

(b) The contractor agrees to accept and to complete issued delivery orders, provided that no new organizational conflicts of interest are created by the acceptance of such or-

ders. The Contracting Officer shall identify any and all organizational conflicts of interest in each order. The contractor shall not contract with Government prime contractors or first-tier subcontractors in such a way as to create an organizational conflict of interest.

Alternative VI (Date). As prescribed in 48 CFR 1309.507-2(a)(7), add the following paragraph (b) to the basic clause. If either Alternate III or IV or both are used, redesignate this paragraph accordingly.

(b) The above restrictions shall be included in all subcontracts, teaming arrangements, and other agreements calling for performance of work which is subject to the organizational conflict of interest restrictions identified in this clause, unless excused in writing by the Contracting Officer.

(End of clause)

[75 FR 10570, Mar. 8, 2010; 75 FR 14496, Mar. 26, 2010]

1352.209-72 Restrictions against disclosure.

As prescribed in 48 CFR 1309.507-2(b), insert the following clause:

RESTRICTIONS AGAINST DISCLOSURE (APR 2010)

(a) The contractor agrees, in the performance of this contract, to keep the information furnished by the Government or acquired/developed by the contractor in performance of the contract and designated by the Contracting Officer or Contracting Officer's Representative, in the strictest confidence. The contractor also agrees not to publish or otherwise divulge such information, in whole or in part, in any manner or form, nor to authorize or permit others to do so, taking such reasonable measures as are necessary to restrict access to such information while in the contractor's possession, to those employees needing such information to perform the work described herein, *i.e.*, on a "need to know" basis. The contractor agrees to immediately notify the Contracting Officer in writing in the event that the contractor determines or has reason to suspect a breach of this requirement has occurred.

(b) The contractor agrees that it will not disclose any information described in subsection (a) to any person unless prior written approval is obtained from the Contracting Officer. The contractor agrees to insert the substance of this clause in any consultant agreement or subcontract hereunder.

(End of clause)

[75 FR 10570, Mar. 8, 2010; 75 FR 14496, Mar. 26, 2010]