

Nuclear Regulatory Commission

2009.570-10

include the clause entitled, "Contractor Organizational Conflicts of Interest," set forth in 2052.209-72.

(b) *Other special contract clauses.* If it is determined from the nature of the proposed contract that an organizational conflict of interest exists, the contracting officer may determine that the conflict can be avoided, or, after obtaining a waiver in accordance with 2009.570-9, neutralized through the use of an appropriate special contract clause. If appropriate, the offeror may negotiate the terms and conditions of these clauses, including the extent and time period of any restriction. These clauses include but are not limited to:

(1) Hardware exclusion clauses which prohibit the acceptance of production contracts following a related non-production contract previously performed by the contractor;

(2) Software exclusion clauses;

(3) Clauses which require the contractor (and certain of its key personnel) to avoid certain organizational conflicts of interest; and

(4) Clauses which provide for protection of confidential data and guard against its unauthorized use.

2009.570-6 Evaluation, findings, and contract award.

The contracting officer shall evaluate all relevant facts submitted by an offeror and other relevant information. After evaluating this information against the criteria of 2009.570-3, the contracting officer shall make a finding of whether organizational conflicts of interest exist with respect to a particular offeror. If it has been determined that real or potential conflicts of interest exist, the contracting officer shall:

(a) Disqualify the offeror from award;

(b) Avoid or eliminate such conflicts by appropriate measures; or

(c) Award the contract under the waiver provision of 2009.570-9.

2009.570-7 Conflicts identified after award.

If potential organizational conflicts of interest are identified after award with respect to a particular contractor and the contracting officer determines that conflicts do exist and that it would not be in the best interest of the

Government to terminate the contract, as provided in the clauses required by 2009.570-5, the contracting officer shall take every reasonable action to avoid, eliminate, or, after obtaining a waiver in accordance with 2009.570-9, neutralize the effects of the identified conflict.

2009.570-8 Subcontracts.

The contracting officer shall require offerors and contractors to submit a representation statement from all subcontractors (other than a supply subcontractor) and consultants performing services in excess of \$10,000 in accordance with 2009.570-4(b). The contracting officer shall require the contractor to include contract clauses in accordance with 2009.570-5 in consultant agreements or subcontracts involving performance of work under a prime contract.

2009.570-9 Waiver.

(a) The contracting officer determines the need to seek a waiver for specific contract awards with the advice and concurrence of the program office director and legal counsel. Upon the recommendation of the Senior Procurement Executive, and after consultation with legal counsel, the Executive Director for Operations may waive the policy in specific cases if he determines that it is in the best interest of the United States to do so.

(b) Waiver action is strictly limited to those situations in which:

(1) The work to be performed under contract is vital to the NRC program;

(2) The work cannot be satisfactorily performed except by a contractor whose interests give rise to a question of conflict of interest.

(3) Disfactual and/or technical review and surveillance methods can be employed by the NRC to neutralize the conflict.

(c) The justification and approval documents for any waivers must be placed in the NRC Public Document Room.

2009.570-10 Remedies.

In addition to other remedies permitted by law or contract for a breach of the restrictions in this subpart or for any intentional misrepresentation

or intentional nondisclosure of any relevant interest required to be provided for this section, the NRC may debar the contractor from subsequent NRC contracts.

PART 2011—DESCRIBING AGENCY NEEDS

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; 41 U.S.C. 418(b).

SOURCE: 64 FR 49332, Sept. 10, 1999, unless otherwise noted.

Subpart 2011.4—Delivery or Performance Schedules—Contract Clauses

2011.104-70 NRC Clauses.

(a) The contracting officer shall insert the clause at 2052.211-70 Preparation of Technical Reports, when deliverables include a technical report.

(b) The contracting officer shall insert the clause at 2052.211-71 Technical Progress Report, in all solicitations and contracts except—

(1) Firm fixed price; or

(2) Indefinite-delivery contracts to be awarded on a time-and-materials or labor-hour basis, or that provide for issuing delivery orders for specific products/services (line items).

(c) The contracting officer shall insert the clause at 2052.211-72 Financial Status Report, in applicable cost reimbursement solicitations and contracts when detailed assessment of costs is warranted and a Contractor Spending Plan is required. The contracting officer shall use the clause at 2052.211-72 Financial Status Report—Alternate 1 when no Contractor Spending Plan is required.

(d) The contracting officer may alter clauses at 2052.211-70, 2052.211-71, 2052.211-72, and 2052.211-72, Alternate 1 before issuing the solicitation or during competition by solicitation amendment. Reporting requirements should be set at a meaningful and productive frequency. Insignificant changes may also be made by the contracting officer on a case-by-case basis during negotiations without solicitation amendment.