

## ORGANIZATIONAL CONFLICTS OF INTEREST (July 2010)

(a) Purpose. The purpose of this clause is to ensure that the Seller (1) is not biased because of its financial, contractual, organizational, or other interests which relate to the work under this Agreement, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this Agreement.

(b) Scope. The restrictions described herein shall apply to performance or participation by the Seller and any of its affiliates or their successors in interest (hereinafter collectively referred to as "Seller") in the activities covered by this clause as a prime contractor, subcontractor, co-sponsor, joint venturer, consultant, or in any similar capacity. For the purpose of this clause, affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both.

(1) Use of Seller's Work Product. (i) The Seller shall be ineligible to participate in any capacity in Company or DOE contracts, subcontracts, or proposals therefore (solicited and unsolicited) which stem directly from the Seller's performance of work under this Agreement for a period of five years after the completion of this Agreement. Furthermore, unless so directed in writing by the Company, the Seller shall not perform any advisory and assistance services work under this Agreement on any of its products or services or the products or services of another firm if the Seller is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the Seller from competing for follow-on subcontracts for advisory and assistance services.

(ii) If, under this Agreement, the Seller prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the Seller shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such statement of work or specifications. The Seller shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the Company, in which case the restriction in this subparagraph shall not apply.

(iii) Nothing in this paragraph shall preclude the Seller from offering or selling its standard and commercial items to the Company or the Government.

(2) Access to and use of information. (i) If the Seller, in the performance of this Agreement, obtains access to information, such as Company or DOE plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or data which has not been released or otherwise made available to the public, the Seller agrees that without prior written approval of the Company, it shall not—

(A) use such information for any private purpose unless the information has been released or otherwise made available to the public;

(B) compete for work for the Company or DOE based on such information for a period of six (6) months after either the completion of this Agreement or until such information is released or otherwise made available to the public, whichever is first;

(C) submit an unsolicited proposal to the DOE which is based on such information until one year after such information is released or otherwise made available to the public; and

(D) release such information unless such information has previously been released or otherwise made available to the public by the Company or the Government.

(ii) In addition, the Seller agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or other confidential or privileged technical, business, or financial information under this Agreement, it shall treat such information in accordance with any restrictions imposed on such information.

(iii) The Seller may use technical data it first produces under this Agreement for its private purposes consistent with paragraphs (b)(2)(i)(A) and (D) of this clause and the patent, rights in data, and security provisions of this Agreement.

(c) Disclosure after award. (1) The Seller agrees that, if changes, including additions, to the facts disclosed by it prior to award of this Agreement, occur during the performance of this Agreement, it shall make an immediate and full disclosure of such changes in writing to the Subcontract Administrator. Such disclosure may include a description of any action which the Seller has taken or proposes to take to avoid, neutralize, or mitigate any resulting conflict of interest. The Company may, however, terminate the Agreement for convenience if it deems such termination to be in the best interest of the Company or the Government.

(2) In the event that the Seller was aware of facts required to be disclosed or the existence of an actual or potential organizational conflict of interest and did not disclose such facts or such conflict of interest to the Subcontract Administrator, the Company may terminate this Agreement for default.

(d) Remedies. For breach of any of the above restrictions or for nondisclosure or misrepresentation of any facts required to be disclosed concerning this Agreement, including the existence of an actual or potential organizational conflict of interest at the time of or after award, the Company may terminate the Agreement for default, disqualify the Seller from subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this Agreement.

(e) Waiver. Requests for waiver under this clause shall be directed in writing to the Subcontract Administrator and shall include a full description of the requested waiver and the reasons in support thereof. If it is determined to be in the best interests of the Company or DOE, the Company may grant such a waiver in writing.

(f) Subcontracts. (1) The Seller shall include a clause, substantially similar to this clause, including this paragraph (f), in subcontracts expected to exceed the simplified acquisition threshold determined in accordance with 48 CFR part 13 and involving performance of advisory and assistance services as that term is defined at 48 CFR 2.101. The terms "Agreement," "Seller," and "Subcontract Administrator" shall be appropriately modified to preserve the Company's and the DOE's rights.

(2) Prior to the award under this Agreement of any such subcontracts for advisory and assistance services, the Seller shall obtain from the proposed subcontractor or consultant the disclosure required by 48 CFR 909.507-1, and shall determine in writing whether the interests disclosed present an actual or significant potential for an organizational conflict of interest. Where an actual or significant potential organizational conflict of interest is identified, the Seller shall take actions to avoid, neutralize, or mitigate the organizational conflict to the satisfaction of the Seller. If the conflict cannot be avoided or neutralized, the Seller must obtain the approval of the Company prior to entering into the subcontract.