

PART 909-CONTRACTOR QUALIFICATIONS

Subpart 909.1-Responsible Prospective Contractors

909.104 Standards.

909.104-1 General standards.

(h) For solicitations ~~for involving~~ contract work ~~subject to the provisions of covered by~~ 10 CFR part 707, Workplace Substance Abuse Programs at DOE sites, the prospective contractor ~~must is required to agree, in accordance~~ consistent with 970.5226-4, Agreement Regarding Workplace Substance Abuse Programs at DOE Sites, ~~to provide the contracting officer with its written workplace substance abuse program in order to be determined.~~ The contractor is required to do so to be considered responsible and, ~~thus,~~ eligible to ~~receive the~~ for contract award.

909.104-3 Application of standards.

(e) Guaranteeing corporate entities. The Department of Energy (DOE) may select an entity ~~which was newly created to perform the prospective contract, including, but not limited to, such as a joint venture or other similarly similar~~ binding corporate partnership. ~~In such instances when making the determination of~~ When determining responsibility pursuant to 48 CFR under FAR 9.103, the contracting officer ~~may evaluate the financial resources of other entities may be evaluated only to the extent that when those entities are legally bound,~~ jointly and severally if more than one, by means of ~~through~~ a performance guarantee or other ~~equivalent enforceable commitment to supply. Those entities is required to guarantee they will provide the necessary resources to the prospective contractor and to and assume all contractual obligations of the prospective contractor. The guaranteeing corporate entity(ies) must be found or entities are required to have sufficient resources in order to satisfy its~~ the guarantee.

Subpart 909.4-Debarment, Suspension, and Ineligibility

Source: 61 FR 39857, July 31, 1996, unless otherwise noted.

909.400 Scope of subpart.

This subpart—

(a) ~~Prescribes~~ Establishes the policies and procedures governing the DOE and National Nuclear Security Administration (NNSA) debarment and suspension of organizations and individuals from participating in Department of Energy (DOE) and National Nuclear Security Administration (NNSA) contracts, procurement sales contracts, and real property purchase agreements, and from participating in DOE and, NNSA approved as well as DOE- and NNSA-approved subcontracts and subagreements;

- (b) ~~— Sets forth~~ Identifies the causes, procedures, and requirements for determining the scope, duration, and effect of DOE and NNSA debarment and suspension actions; and
- (c) Implements and supplements 48 CFR subpart 9.4 ~~with respect to~~ regarding the exclusion of organizations and individuals from procurement contracting and ~~Government approved~~ Government-approved subcontracting.

909.401 Applicability.

~~The provisions of~~ This subpart apply ~~applies~~ to all DOE and NNSA procurement debarment and suspension actions initiated by ~~DOE and NNSA~~ on or after the subpart's effective date ~~of this subpart.~~ Nonprocurement debarment and suspension rules ~~are codified~~ appear in 2 CFR part 901.

909.403 Definitions.

In addition to the definitions ~~set forth at~~ in 48 CFR 9.403, the following ~~definitions~~ apply to this subpart:

Debarring and suspending official, ~~for the.~~ For DOE, the designees are:

- (1) Debarring Official means. The Debarring Official for DOE contracts is the Director, Office of Acquisition Management, DOE, or designee. The Debarring Official for NNSA contracts is the Deputy Associate Administrator for the Office of Partnership and Acquisition Services, or designee.
- (2) Suspending Official means. The Suspending Official for DOE contracts is the Director, Office of Acquisition Management, DOE, or designee. The Suspending Official for NNSA contracts is the Deputy Associate Administrator for the Office of Partnership and Acquisition Services, or designee.

909.405 Effect of listing.

(e) ~~— The Department of Energy~~ DOE may not solicit offers from, award contracts to, or consent to subcontracts with contractors who are debarred, suspended, or proposed for debarment unless the Senior Procurement Executive makes a written determination justifying that there is a compelling reason for such action in accordance with ~~exists, consistent~~ with 48 CFR 9.405(a). For NNSA, the Head of the Contracting Activity (HCA) makes ~~the~~ this written determination justifying the compelling reason.

(f) DOE or NNSA may ~~disapprove~~ reject or not withhold consent ~~to the~~ for a contractor's selection ~~(by a contractor) of an individual to serve as a principal investigator, as a project manager, in a position of responsibility for the administration of individual responsible for administering Federal funds, or in another other key personnel position, if the that individual is listed in the System for Award Management (SAM) exclusions.~~

(g) DOE or NNSA ~~shall will~~ not conduct business with ~~an~~ a contractor's agent or representative ~~of a contractor if the agent's or representative's name who has an active SAM exclusion in SAM.~~

(h) DOE or NNSA ~~shall will~~ review SAM before conducting a pre-award survey ~~or~~ soliciting proposals; ~~awarding contracts, renewing, or otherwise extending the duration of existing contracts;~~ or approving or consenting to the award, extension, or renewal of subcontracts.

909.406 Debarment.

909.406-2 Causes for debarment.

(c) The DOE and NNSA Debarring Official may debar a contractor for any ~~other cause of so serious or compelling a nature that it affects enough to affect the contractor's present responsibility of a contractor.~~ Such ~~cause~~ causes may include, but is ~~are~~ not limited to:

- (1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a private contract or subcontract.
- (2) ~~Inexcusable~~ Repeated, prolonged, or ~~repeated~~ inexcusable failure to pay a debt owed to DOE (including disallowed costs and overpayments) owed to DOE, ~~provided the contractor has been notified of the determination after receiving notice of indebtedness, and further provided that after the time period for initiating any administrative or legal action to oppose or appeal the determination of indebtedness has expired or that such action, if initiated, has been any appeal has concluded.~~
- (d) The Debarring Official may also debar a contractor:
- (1) ~~On the basis that~~ Because an individual or organization is an affiliate of a debarred contractor, subject to ~~the requirements of 48 CFR 9.406-1(b) and 9.406-3(c); or~~
- (2) For ~~failure failing to observe~~ comply with the material ~~provisions~~ terms of a voluntary exclusion (see 10 CFR § 1036.315 ~~for discussion of voluntary exclusion~~).

909.406-3 Procedures.

- (a) Investigation and referral.
- (1) Offices responsible for ~~the award awarding and administration of~~ administering contracts are responsible for reporting required to ~~the appropriate Senior Procurement Executive and the DOE Inspector General~~ report information about possible fraud, waste, abuse, or other wrongdoing ~~which to the Senior Procurement Executive and the DOE Inspector General~~ when such conduct may constitute or contribute to a cause(s) for debarment ~~under this subpart. Circumstances that involve~~ Offices are required to report possible criminal or fraudulent ~~activities must be reported~~ activity to the Office of ~~the Inspector General in accordance~~ consistent with 10 CFR part 1010, Conduct of Employees, § 1010.103, Reporting Wrongdoing.
- (2) At a minimum, referrals for consideration ~~of debarment action~~ should be in writing and ~~should include the following information:~~
- (i) The recommendation and rationale ~~for the referral;~~
- (ii) A statement of facts;
- (iii) Copies of documentary evidence ~~and~~, a list of all witnesses, including addresses and telephone numbers, together with a statement concerning their contact information, statements on availability to appear at a fact-finding proceeding and ~~the~~ testify, and subject matter of ~~their~~ testimony;
- (iv) A list of parties involved, including ~~the contractor~~ contractors, principals, and affiliates (including with last known home and business addresses, zip codes and DUNS Number or other identifying number for an individual numbers);
- (v) ~~DOE's~~ DOE's and ~~NNSA's~~ NNSA's acquisition history with the contractor, including recent ~~experience under contracts~~ contract performance and copies of pertinent relevant contracts;
- (vi) ~~A list of~~ Any known active ongoing or potential criminal investigations, ~~criminal or civil proceedings,~~ or administrative ~~claims before the Civilian Board of Contract Appeals or other fact-finding body~~ proceedings; and
- (vii) A statement regarding on the potential impact of ~~the debarment action~~ on DOE and NNSA programs. ~~This statement is (not required for referrals by the Inspector General, referrals).~~
- (3) Referrals may be returned ~~to the originator for further~~ additional information or development.
- (b) Decisionmaking process. Contractors proposed for debarment ~~shall~~ will be afforded an opportunity to may submit information and argument in opposition to the proposed debarment arguments opposing the action.
- (1) ~~In actions~~ If the action is based upon on a conviction or civil judgment, or ~~in which there is~~ if no genuine dispute ~~over of~~ material ~~facts~~ fact exists, the Debarring Official ~~shall make a decision on the basis of all the information in~~ will decide the matter based on the administrative record, including any contractor submissions ~~made by~~. ~~If the contractor~~. ~~If the respondent fails to~~ does not submit a timely written response to a notice of proposed debarment, the Debarring Official ~~shall~~ will notify the respondent in accordance with contractor under FAR 9.406-3(e) that ~~the contractor it~~ is debarred.
- (2) ~~In actions~~ If the action is not based upon on a conviction or civil judgment, the contractor may request a fact-finding hearing to resolve a genuine dispute of material fact. In its request, the contractor must and is required to identify the disputed material facts ~~in dispute~~ and the basis for ~~disputing the facts~~ dispute. If the Debarring Official determines that there is a genuine dispute of material fact, the Debarring Official ~~shall~~ will appoint, and, they will refer the matter to; a Fact-Finding Official for a fact-finding conference.

(3) Meeting. Upon receipt of receiving a timely request from a contractor proposed for debarment, the Debarment Official shall will schedule a meeting between the Debarment Official and with the respondent, to be held no later than 30 days from the date the request is received. The Debarment Official may postpone the date of the meeting with the contractor if the respondent contractor requests a postponement in writing within 30 days of receiving the meeting schedule notification. At the meeting, the respondent, appearing personally or through an attorney or other authorized representative, contractor, or its attorney, may present and explain evidence that causes for debarment do not exist, evidence of any, mitigating factors, and arguments concerning on the imposition, scope, or duration of a proposed debarment or debarment.

(4) Fact-finding conference. The purpose of a fact-finding the conference under this section is to provide allow the respondent an opportunity contractor to dispute material facts through the submission of with oral and written evidence; resolve facts in dispute; and provide the Debarment Official with findings of fact based, as applicable, on adequate evidence or on a preponderance of the evidence. The fact-finding conference shall be conducted in accordance with. The Fact-Finding Official will conduct the proceeding under rules consistent with 48 CFR FAR 9.406-3(b). The Fact-Finding Official will, notify the affected parties of the schedule for the hearing. The Fact-Finding Official shall, and deliver written findings of fact to the Debarment Official (together with a transcription of the proceeding, if made) within a certain time period after the hearing record closes as the specified by the Fact-Finding Official timeline. The findings shall will resolve any disputes over material facts. Findings will be based upon on a preponderance of the evidence, if the case involves a proposal to debar, for debarment cases or on adequate evidence, if the case involves a suspension. Since for suspensions, Convictions or civil judgments generally usually establish the cause for debarment by a preponderance of the evidence, there usually is no genuine dispute over a material fact that would warrant a fact-finding conference for those proposed debarments based on convictions or civil judgments and generally eliminate the need for fact-finding.

(d) Debarment Official's decision.

(4) The Debarment Official's Official's final decision shall be based is required to rely on the administrative record. In those actions where additional proceedings are necessary as to addressed disputed material facts, written findings of fact shall will be prepared and included in the final decision. In those cases where the contractor has requested and received a fact-finding conference, the written findings of fact shall will be those findings prepared by the Fact-Finding Official. If a fact-finding conference occurred, the Debarment Official shall adopt the Fact-Finding Official's findings. Findings of fact shall be final and conclusive unless; reconsideration is requested within 15 days of receipt of the findings, the Department or the respondent requests reconsideration, or unless set aside by or unless a court of competent jurisdiction; overturns them. The Fact-Finding Official shall be provided receive a copy of the Debarment Official's final decision.

909.406-70 Requests for reconsideration of debarment.

(a) — At any time during a period of debarment, A respondent may submit to the Debarment or Suspending Official a written request for reconsideration of the debarment's scope, duration, or effects of at any time during the suspension/debarment action because of period by submitting new information or describing changed circumstances, as discussed at consistent with 48 CFR 9.406-4(c).

(b) — In When reviewing a request for reconsideration request, the Debarment or Suspending Official may, in his or her discretion, utilize use any of the procedures (meeting and fact-finding) set forth in 909.406-3 and 909.407-3. The Debarment or Suspending Official's final disposition of the reconsideration request shall be in writing and shall set forth written decision will explain the reasons why for granting or denying the request has been granted or denied. A notice transmitting. A copy of the disposition of the request for reconsideration shall decision will be sent to the respondent.

909.407 Suspension.

909.407-2 Causes for suspension.

(d) The Suspending Official may suspend an organization or individual—

- (1) Indicted for, or suspected, ~~upon~~ (based on adequate evidence,) of, the causes described in 909.406-2(c)(1);
- (2) ~~On the basis of~~ For the causes set forth listed in 909.406-2(d)(2); or
- (3) ~~On the basis that~~ Because an organization or individual is an affiliate of a suspended or debarred contractor.

909.407-3 Procedures.

(b) Decisionmaking process.

- (1) ~~In actions~~ If the action is based on an indictment, the Suspending Official ~~shall make a decision will decide the matter based upon~~ the administrative record, ~~which shall include including contractor submissions made by the contractor in accordance~~ consistent with 909.406-3(b)
(1) and 909.406-3(b)(3).
- (2) For actions not based on an indictment, the procedures in 909.406-3(b)(2) and ~~48 CFR FAR~~ 9.407-3(b)(2) apply.
- (3) Coordination with ~~the~~ Department of Justice. ~~Whenever (DOJ). When~~ a meeting or fact-finding conference is requested, the Suspending Official's ~~Official's~~ legal representative ~~shall obtain the advice of appropriate Department of Justice officials concerning the impact~~ is required to consult with the DOJ to ~~determine whether~~ disclosure of evidence at the meeting or fact-finding conference could have on any ~~pending civil or criminal~~ affect an ongoing investigation or legal proceeding. If such Department of Justice ~~official~~ If DOJ requests in writing that evidence needed to establish the existence of a cause for suspension not be disclosed to the respondent, the Suspending Official shall—
 - (i) Decline to rely on ~~such that~~ evidence and withdraw ~~(without prejudice)~~ the suspension or proposed debarment ~~without prejudice~~ until ~~such time as~~ disclosure of the evidence is authorized; or
 - (ii) Deny the request for a meeting or fact-finding and base the suspension decision solely ~~upon the information in~~ on the administrative record, ~~including any submission made by the respondent.~~
- (e) Notice of suspending official's decision. ~~In actions in which~~ After any additional proceedings have been held, following such proceedings, the Suspending Official shall notify ~~the~~ respondent, as applicable, in accordance with ~~under~~ paragraphs (e)(1) or (e)(2) of this section:
 - (1) ~~Upon deciding to sustain~~ If sustaining a suspension, the Suspending Official shall promptly send ~~each affected respondent~~ a notice containing the following information:
 - (i) A reference to the ~~notice of suspension, the notice,~~ meeting, and the fact-finding conference;
 - (ii) ~~The Suspending Official's~~ Findings of fact and conclusions of law;
 - (iii) The reasons for sustaining ~~at~~ the suspension;
 - (iv) A reference to ~~the Suspending Official's~~ waiver authority under 909.405;
 - (v) A statement that the suspension ~~is effective~~ applies throughout the Executive Branch as provided in ~~per~~ 48 CFR 9.407-1(d);
 - (vi) ~~Modifications, if any, Any modification~~ of the initial terms of the suspension terms;
 - (vii) ~~A statement~~ Notice that the respondent's ~~respondent's~~ name and address will be ~~added to~~ entered into the SAM exclusion list; and
 - (viii) ~~If less than an entire organization is suspended, specification of the~~ Identification of any individuals or organizational element(s) or individual(s) included within the scope of elements covered if the suspension applies to less than the entire organization.
 - (2) If ~~the Suspending Official decides to terminate~~ terminating a suspension, the Suspending Official ~~shall~~ will promptly send, by certified mail, return receipt requested, each affected respondent a copy of the final decision ~~required under this section~~ by certified mail.

Subpart 909.5-Organizational and Consultant Conflicts of Interest

Source: 62 FR 40751, July 30, 1997, unless otherwise noted.

909.503 Waiver.

Heads of Contracting Activities are delegated the ~~authorities~~ authority in 48 CFR FAR 9.503 regarding the ~~waiver of~~ to waive organizational and consultant ~~conflicts of interest~~ conflict-of-interest requirements.

909.504 Contracting officer's responsibility.

(d) ~~The contracting officer shall~~ Will evaluate the statement (See 952.209-8) submitted by the apparent successful offeror, ~~where individual contracts are negotiated with offeror—~~ or by all firms in the competitive range, ~~all such firms~~ for interests relating to a potential organizational conflict ~~conflicts~~ of interest in performing the performance of the proposed contract. Using that information and ~~any other credible information~~ sources, the contracting officer shall ~~make written determination of~~ determine in writing whether ~~those interests create~~ an actual or significant potential ~~organizational conflict of interest~~ conflicts and identify ~~any actions that may be taken to avoid, neutralize, or mitigate such conflict. In fulfilling their responsibilities for identifying and resolving potential conflicts, it.~~ Contracting officers should ~~avoid creating~~ perform these responsibilities without causing unnecessary delays, delay, excessive documentation, or burdensome information requirements, and excessive documentation.

(e) The contracting officer shall award the contract to the apparent successful offeror unless a conflict of interest ~~is determined to exist~~ exists that cannot be avoided, neutralized, or mitigated. Before ~~determining to withhold~~ withholding an award based on organizational conflict of interest considerations ~~these grounds~~, the contracting officer shall notify the offeror, ~~provide~~ explain the reasons ~~therefor~~, and allow ~~the offeror a reasonable opportunity to respond.~~ time for a response. If the conflict of interest cannot be ~~avoided, neutralized, or mitigated to the contracting officer's satisfaction~~ addressed satisfactorily, the contracting officer may disqualify the offeror from award and ~~undertake the disclosure, and begin evaluation, and determination process with the next firm next in line for award. If the contracting officer finds that it awarding the contract despite the conflict is in the best interest of the United States to award the contract notwithstanding a conflict of interest, a.~~ the contracting officer shall request for a waiver shall be submitted in accordance with under 909.503. The waiver request and decisions shall be included decision is required to be documented in the contract file.

909.507 Solicitation provisions and contract clause.

909.507-1 Solicitation provisions.

(e) The contracting officer shall ~~insert~~ include the provision at 952.209-8, Organizational Conflicts of Interest Disclosure-Advisory and Assistance Services, in solicitations for advisory and assistance services expected to exceed the simplified acquisition threshold. ~~In~~ For individual procurements, the Head of the Contracting Activity may ~~increase~~ extend the ~~period subject to disclosure~~ period in 952.209-8(c)(1) up to 36 months. ~~(1) up to 36 months.~~

909.507-2 Contract clause.

(a)

(1) The contracting officer shall ~~insert~~ include the clause at 952.209-72, Organizational Conflicts of Interest, in each solicitation and contract for advisory and assistance services expected to exceed the simplified acquisition threshold.

(2) Contracting officers may ~~make appropriate modifications where necessary~~ modify the clause to address the specific potential for organizational conflicts of interest in individual contracts. Contracting officers. They shall determine the appropriate term ~~of~~ for the bar ~~of~~ in paragraph (b)(1) (i) of the clause at 952.209-72 and ~~enter that term~~ insert it in the blank provided. In the usual case of a contract for advisory and assistance services a period of service contracts, three, four, or to five years is appropriate; however, in individual cases, but longer or shorter terms may be used.

(3) The contracting officer ~~may insert a term of greater or lesser duration.~~

(3) — The contracting officer shall include Alternate I with the clause in instances in which a meaningful amount of when significant subcontracting for advisory and assistance services is expected.

(b) Contracts, which that are not subject to part 970 but provide for the involve operation of a DOE site or facility, or environmental remediation of a specific DOE site or sites, shall contain, will include the organizational conflict of interest clause at 952.209-72. The organizational conflicts conflict-of-interest clause in such contracts shall include at 952.209-72, including Alternate I to that clause.

PART 952-SOLICITATION PROVISIONS AND CONTRACT CLAUSES

952.209 Clauses related to contractor's qualifications.

952.209-8 Organizational conflicts of interest-disclosure.

As prescribed in 909.507-1(e), insert the following provision:

Organizational Conflicts of Interest Disclosure-Advisory and Assistance Services (~~JUN 1997~~ DEVIATION MAY 2026)

(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~~ will provide the statement described in paragraph (c) of this provision. For purposes of this provision, "apparent successful offeror" means the proposer selected for final negotiations or, where individual contracts are negotiated with all firms in the competitive range, it means all such firms.

(c) The statement ~~must~~ is required to contain the following:

(1) A statement of any past (within the past ~~twelve~~ 12 months), present, or currently planned financial, contractual, organizational, or other interests relating to the performance of the statement of work. For contractual interests, such statement ~~must~~ is required to include 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 about the services rendered to each client, if, in the 12 months preceding the date of the statement, services were rendered to the Government or any other client (including a foreign government or person) respecting the same subject matter of the instant solicitation, or directly relating to such subject matter. The agency and contract number under which the services were rendered ~~must~~ is required to also be included, if applicable. For financial interests, the statement ~~must~~ is required to include the nature and extent of the interest and any entity or entities involved in the financial relationship. For these and any other interests enough such information ~~must~~ is required to be provided to allow a meaningful evaluation of the potential effect of the interest on the performance of the statement of work.

(2) A statement that no actual or potential conflict of interest or unfair competitive advantage exists with respect to the advisory and assistance services to be provided in connection with the instant contract or that any actual or potential conflict of interest or unfair competitive advantage that does or may exist with respect to the contract in question has been communicated as part of the statement required by (b) of this provision.

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

(End of provision)

952.209-71 [Reserved]

952.209-72 Organizational conflicts of interest.

As prescribed at 909.507-2, insert the following clause:

Organizational Conflicts of Interest (~~AUG 2009~~ DEVIATION MAY 2026)

(a) Purpose. The purpose of this clause is to ensure that the Contractor

(1) is not biased because of its financial, contractual, organizational, or other interests which relate to the work under this contract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this contract.

(b) Scope. The restrictions described herein shall ~~apply~~ applies to performance or participation by the Contractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as "Contractor") in the activities covered by this clause as a prime Contractor, subcontractor, cosponsor, 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 contractor's work product.

(i) The Contractor ~~shall~~ will be ineligible to participate in any capacity in Department contracts, subcontracts, or proposals therefore (solicited and unsolicited) which stem directly from the Contractor's performance of work under this contract for a period of (Contracting Officer see 48 CFR 909.507-2 and enter specific term) years after the completion of this contract. Furthermore, unless so directed in writing by the Contracting Officer, the Contractor ~~shall~~ will not perform any advisory and assistance services work under this contract on any of its products or services or the products or services of another firm if the Contractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the Contractor from competing for follow-on contracts for advisory and assistance services.

(ii) If, under this contract, the Contractor prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the Contractor 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 Contractor ~~shall~~ will not incorporate its products or services in such statement of work or specifications unless so directed in writing by the Contracting Officer, in which case the restriction in this subparagraph ~~shall~~ do not apply.

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

(2) Access to and use of information.

(i) If the Contractor, in the performance of this contract, obtains access to information, such as Department 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 Contractor agrees that without prior written approval of the Contracting Officer it ~~shall~~ will 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 Department based on such information for a period of six (6) months after either the completion of this contract or until such information is released or otherwise made available to the public, whichever is first;

(C) Submit an unsolicited proposal to the Government 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 Department.

(ii) In addition, the Contractor 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 contract, it ~~shall~~will treat such information in accordance with any restrictions imposed on such information.

(iii) The Contractor may use technical data it first produces under this contract 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 contract.

(c) Disclosure after award.

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

(2) In the event that the Contractor 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 Contracting Officer, DOE may terminate this contract 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 contract, including the existence of an actual or potential organizational conflict of interest at the time of or after award, the Government may terminate the contract for default, disqualify the Contractor from subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this contract.

(e) Waiver. Requests for waiver under this clause ~~shall~~will be directed in writing to the Contracting Officer 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 Government, the Contracting Officer may grant such a waiver in writing.

(End of clause)

Alternate I: In accordance with 909.507-2 and 970.0905, include the following alternate in the specified types of contracts.

(f) Subcontracts.

(1) The Contractor ~~shallis required to~~ 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 the performance of advisory and assistance services as that term is defined at 48 CFR 2.101. The terms "contract," "Contractor," and "contracting officer" ~~shall~~will be appropriately modified to preserve the Government's rights.

(2) Prior to the award under this contract of any such subcontracts for advisory and assistance services, the Contractor ~~shallis required to~~ 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 Contractor ~~shall~~will take actions to avoid, neutralize, or mitigate the organizational conflict to the satisfaction of the Contractor. If the conflict cannot be avoided or neutralized, the Contractor ~~mustis required to~~ obtain the approval of the DOE Contracting Officer prior to entering into the subcontract.

(End of alternate)