

ORGANIZATIONAL CONFLICTS OF INTEREST (3-95)

(a) Purpose. The primary purpose of this clause is to aid in ensuring that the Seller (1) is not biased because of its past, present, or currently planned interests (financial, contractual, organizational, or otherwise) which relate to the work under this subcontract and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this subcontract.

(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 the "Seller") in the activities covered by this clause as a subcontractor, cosponsor, joint venturer, consultant, or in any similar capacity.

(1) Technical consulting and management support services.

(i) The Seller shall be ineligible to participate in any capacity in Department of Energy (DOE) contracts, subcontracts, or proposals therefor (solicited or unsolicited) which stem directly from the Seller's performance of work under this subcontract. Furthermore, unless so directed in writing by the Company, the Seller shall not perform any technical consulting or management support services work under this subcontract 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 contracts or subcontracts for technical consulting and management support services.

(ii) If the Seller under this subcontract prepares a complete or essentially complete statement of work or specifications to be used in competitive procurements, 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 commercial items to the Government or to the Company.

(2) Access to and use of information.

(i) If the Seller, in the performance of this subcontract, obtains access to information, such as DOE or Company plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (Pub. L. No. 93-579), 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 DOE or the Company based on such information for a period of six months after either the completion of this subcontract or until such information is released or otherwise made available to the public, whichever is first; (C) submit an unsolicited proposal to the Government or the Company 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 DOE or the Company.

(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 (Pub. L. No. 93-579); or other confidential or privileged technical, business, or financial information under this subcontract, 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 subcontract for its private purposes consistent with subparagraphs (b)(2)(i)(A) through (D) of this clause and the patent, rights in data, and security provisions of this subcontract.

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

(2) In the event that the Seller was aware of facts relevant to the performance of this subcontract and did not disclose such facts to DOE or the Company, the Company may terminate the subcontract for default.

(d) Subcontracts. The Seller shall include this clause, including this paragraph, in subcontracts of any tier which involve performance of evaluation services or activities, or technical consulting and management support services as those terms are defined in 48 CFR (DEAR) 909.570-3.

(e) Remedies. For breach of any of the above restrictions or for nondisclosure or misrepresentation of any relevant facts required to be disclosed concerning this subcontract, the Company may terminate the subcontract for default, disqualify the Seller for subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this subcontract.

(f) Waiver. Requests for waiver under this clause shall be directed in writing to the Company 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, DOE shall grant such a waiver in writing.

(g) Modifications. Prior to a subcontract modification when the statement of work is modified to add new work, the period of performance is meaningfully increased, or the parties to the subcontract are changed, the Company may request, and the Seller is required to submit, either an organizational conflict of interest disclosure or representation or an update of the previously submitted disclosure or representation. This provision does not relieve Seller of the obligation of disclosure specified in (c).