

## 909.507

cannot be avoided, neutralized, or mitigated. Before determining to withhold award based on organizational conflict of interest considerations, the contracting officer shall notify the offeror, provide the reasons therefor, and allow the offeror a reasonable opportunity to respond. If the conflict of interest cannot be avoided, neutralized, or mitigated to the contracting officer's satisfaction, the contracting officer may disqualify the offeror from award and undertake the disclosure, evaluation, and determination process with the firm next in line for award. If the contracting officer finds that it is in the best interest of the United States to award the contract notwithstanding a conflict of interest, a request for waiver shall be submitted in accordance with 48 CFR 909.503. The waiver request and decisions shall be included in the contract file.

### **909.507 Solicitation provisions and contract clause.**

#### **909.507-1 Solicitation provisions. (DOE coverage-paragraph (e)).**

(e) The contracting officer shall insert the provision at 48 CFR 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 individual procurements, the Head of the Contracting Activity may increase the period subject to disclosure in 952.209-8 (c)(1) up to 36 months.

#### **909.507-2 Contract Clause.**

(a)(1) The contracting officer shall insert the clause at 48 CFR 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 to address the potential for organizational conflicts of interest in individual contracts. Contracting officers shall determine the appropriate term of the bar of paragraph (b)(1)(i) of the clause at 48 CFR 952.209-72 and enter that term in the blank provided. In the usual case of a contract for advisory

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and assistance services a period of three, four, or five years is appropriate; however, in individual cases 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 subcontracting for advisory and assistance services is expected.

(b) Contracts, which are not subject to part 970 but provide for the operation of a DOE site or facility or environmental remediation of a specific DOE site or sites, shall contain the organizational conflict of interest clause at 48 CFR 952.209-72. The organizational conflicts of interest clause in such contracts shall include Alternate I to that clause.

## **PART 911—DESCRIBING AGENCY NEEDS**

### **Subpart 911.6—Priorities and Allocations**

Sec.

911.600 Scope of subpart.

911.602 General.

911.604 Solicitation provision and contract clause.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

### **Subpart 911.6—Priorities and Allocations**

#### **911.600 Scope of subpart.**

This subpart implements and supplements FAR Subpart 11.6, Priorities and Allocations, and implements the regulations and procedures of the Defense Priorities and Allocations System (DPAS) in solicitations and contracts in support of authorized national defense programs and those energy programs which maximize domestic energy supplies. (See 15 CFR part 700).

[52 FR 38422, Oct. 16, 1987, as amended at 59 FR 9105, Feb. 25, 1994. Redesignated and amended at 61 FR 21976, May 13, 1996; 61 FR 30823, June 18, 1996]

#### **911.602 General.**

(d) Programs which maximize domestic energy supplies are eligible for priorities and allocations support depending on an executive decision made on a

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case-by-case basis. Eligibility is pursuant to section 104(a) of the Energy Conservation and Policy Act, Pub. L. 94-163, which added a new section 101(c) to the Defense Production Act. Guidance is provided by 10 CFR part 216 and Department of Energy publication DOE/MA-0192, "Priorities and Allocations Support for Energy: Keeping Energy Programs on Schedule," dated August 1985. Rated orders placed in support of authorized energy programs are equivalent to orders placed in support of authorized defense programs under the DPAS and receive the same preferential treatment throughout the industrial supply chain.

(e) The Heads of Contracting Activities shall ensure that members of their staffs and contractors under their jurisdiction are advised of the provisions of the DPAS regulation and that the related procedures are followed to ensure adherence to the regulation throughout the industrial supply chain. Under DPAS, it is mandatory that the priority rating be extended through the industrial chain from supplier to supplier.

[52 FR 38422, Oct. 16, 1987, as amended at 59 FR 9105, Feb. 25, 1994. Redesignated at 61 FR 21976, May 13, 1996]

### 911.604 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 952.211-70, Priorities and Allocations (Atomic Energy), in solicitations that will result in the placement of rated orders for authorized DOE atomic energy programs.

(b) The contracting officer shall insert the clause at 952.211-71, Priorities and Allocations (Atomic Energy) in contracts that are placed in support of authorized DOE atomic energy programs.

(c) The use of the provisions at 952.211-70 and the clause at 952.211-71 is optional for industrial delivery orders of \$5,000 or less.

(d) The contracting officer shall insert the provision at 952.211-70, Priorities and Allocations (Domestic Energy Supplies), with its Alternate I, in solicitations that may result in the placement of rated orders for authorized energy programs, and in solicitations for all management and operating contracts.

(e) The contracting officer shall insert the clause at 952.211-71, Priorities and Allocations (Domestic Energy Supplies), with its Alternate I, if it is believed the contract involves a program the purpose of which is to maximize domestic energy supplies, and in all management and operating contracts.

[52 FR 38422, Oct. 16, 1987, as amended at 59 FR 9105, Feb. 25, 1994. Redesignated and amended at 61 FR 21976, May 13, 1996; 65 FR 81006, Dec. 22, 2000]

## PART 912—ACQUISITION OF COMMERCIAL ITEMS

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

### Subpart 912.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

#### 912.302 Tailoring of provisions and clauses for the acquisition of commercial items. (DOE coverage—paragraph (c))

(c) The waiver required by 48 CFR 12.302(c) shall be in writing and approved by the contracting officer.

[62 FR 53757, Oct. 16, 1997]