

Organizational Conflicts of Interest



Guiding Principles

- ✓ Thorough analysis and mitigation of potential offeror conflicts of interest ensure impartiality and objectivity in the performance of the Government's contractual objectives.

[Reference: FAR 9.5, DEAR 909.5, 952.209-72, 970.0905 and 970.5204-15]

Overview

This section discusses the analysis of organizational conflicts of interest disclosures.

Background

In the Department of Energy, solicitations for advisory and assistance services include the disclosure provision from 952.209-8. That provision requires the apparently successful offeror to submit a disclosure of interests relating to the work to be performed under the contract. This disclosure would consist of any past (within twelve months), current, or presently planned financial, contractual, organizational or other interests.

The purpose of the disclosure is to provide a basis upon which the contracting officer can determine whether any such interests reasonably indicate that the offeror is unable, or potentially unable, to render impartial assistance or advice to the Government, or if the offeror's objectivity in performing the contract work is or might be otherwise impaired.

Where the Contracting Officer determines that the Organizational Conflicts of Interest clause should flow down to subcontracts for advisory and assistance services, Alternate 1 to the clause at 952.209-72 is used. Alternate 1 is also for use in all management and operating contracts.

DEAR 970.0905 addresses requirements relating to conflicts of interest in management and operating contracts.

Guidelines

Contracting officers review information in the offeror's proposal likely to present such interests, e.g., past performance of related contracts. Should that review disclose any relevant interests not included in the disclosure, the offeror should be notified and given the opportunity to amend its disclosure.

Contracting officers analyze the potential effect of any known interests on the ability of the apparently successful offeror to provide an objective and accurate work product. That ability can be compromised in two significant ways.

- The first occurs in a situation in which an offeror would be put in a position to review its own work product. This would most likely occur when the offeror has an existing contract in the same subject matter as the prospective contract and, under the existing contract, is responsible for reviewing the actions or work product resulting from the prospective contract.

For example, Contractor X, the apparently successful offeror under a current solicitation, has a contract at DOE Headquarters involving the assessment of safety and health plans of DOE's operations offices. The current solicitation is for advisory and assistance services for the Albuquerque Operations Office and will include the drafting of the safety and health plan for that office.

Contractor X would, if awarded the contract, be put in the position of reviewing its own work product. The review to be performed under the existing contract would then be suspect with a real likelihood that the review is not objective. This situation presents the likelihood of an organizational conflict of interest that must be avoided, neutralized, or mitigated before proceeding with the award of the contract.

In this case, the apparently successful offeror could be disqualified from the pending award or DOE could mitigate the potential conflict by creating alternate review procedures for the Albuquerque safety and health report, using additional Federal personnel or an outside party.

These mitigation plans create additional work and detract from the ability of Contractor X to perform the prospective contract.

One additional consideration is how much of the prospective contract consists of the preparation of the safety and health report. If it is a significant portion, disqualification may be more appropriate. If the report is a rather small portion of the prospective contract, actions to mitigate the organizational conflict of interest are more appropriate.

- The second type of situation arises if the disclosure or proposal review of financial, contractual, organizational, or other interests that relate to the subject of the contract reveals information that raises concerns about bias or lack of objectivity on the part of the apparently successful offeror.

For instance, a solicitation calls for the provision of advisory and assistance services in support of the Office of Environmental Management, including the assessment of technologies available to remediate toxic wastes.

Apparently successful Offeror Y discloses among other relevant interests that it has an existing internal research and development effort in vitrification of toxic wastes. This presents an organizational conflict of interest with the expectation that the analysis performed under the prospective contract may well be biased toward the vitrification process that Offeror Y is developing. The contracting officer should disqualify Offeror Y.

There may be ways to avoid, neutralize, or mitigate the organizational conflict, but the ability to achieve them seems remote, since they would likely entail the exclusion from the statement of work of the vitrification process Offeror Y is attempting to perfect and any overall analysis would be compromised.

Even where that technology is deleted from the analysis performed by Offeror Y, it will still be assessing competing technologies which the corporation has expressed by its actions to be less promising than the vitrification it is attempting to perfect.