

## **ADDITIONAL OCI INSTRUCTIONS (3-95)**

### **1. REQUIREMENTS**

- a. In compliance with Public Laws 93-577 and 93-275 and Subpart 909.5 of the Department of Energy (DOE) Acquisition Regulation, which implements these laws, DOE requires that your offer must provide the information and assurances called for by the forms provided in this document.
- b. The offeror must submit the following documents from each of the entities listed in paragraph c. below:
  - (1) Either the Organizational Conflicts of Interest (OCI) Representation Statement or the OCI Disclosure Statement (copies of both statements are included in this document). If the OCI Disclosure Statement is signed, provide an attachment showing the information required.
  - (2) The attached OCI questionnaire. If you answer any question "yes," provide an attachment showing the information requested.
  - (3) If applicable\*, a copy of the most current 10K form (or equivalent form), submitted to the Securities and Exchange Commission (SEC), and the most current annual report. If not applicable, the offeror must so certify and must submit other financial statements (provide audited statements if available).
- c. The types of entities that, or individuals who, are required to complete the forms listed in paragraph b. above are as follows:
  - (1) The offeror.
  - (2) Proposed subcontractor(s) (unless the subcontractors are only providing supplies) and consultants at every tier.
  - (3) All affiliates of the foregoing.
  - (4) Any entities owned or represented by the chief executives or directors of: the offeror; any of the subcontractors, except for those only providing supplies; and any of the consultants.
  - (5) Chief executives and directors—if they will be involved in performing the proposed work of: the offeror; subcontractors at every tier, except for subcontractors that are only providing supplies; consultants at every tier; and all affiliates of the foregoing.

### **2. NOTICE**

- a. Apart from other remedies allowed by law or contract, any nondisclosure or misrepresentation of relevant facts required by the OCI regulations may result in DOE's disqualifying the violator from future DOE contracts.
- b. Your attention is directed to the provision of this solicitation entitled "Organizational Conflicts of Interest Disclosure or Representation" and to the subcontract clause entitled "Organizational Conflicts of Interest."

### **3. DISCUSSION**

- a. It is the policy of DOE to identify and avoid or mitigate organizational conflicts of interest before the Company enters

into subcontracts, agreements, and other arrangements. Generally, to determine whether an organizational conflict of interest exists, DOE considers these two questions:

- (1) Are there conflicting roles which might bias an offeror's judgment in relation to its work under the subcontract?
- (2) Will the offeror be given an unfair competitive advantage based on the performance of the subcontract?

- b. DOE personnel will examine with particular care proposed work that calls for advising, consulting, or evaluating in areas that are expected to play a part in Government or Company decisions about future procurements; programs; production activities; the formulation of policy; and regulatory activities.

Using common sense and good business judgment, DOE will determine whether an organizational conflict of interest exists after examining:

- (1) All relevant facts submitted by the offeror;
- (2) The statement of work; and
- (3) Information gained from other sources.

- c. If a conflict does exist, DOE:

- (1) Shall avoid any conflicts by requiring appropriate conditions in the subcontract;
- (2) Shall disqualify the offeror from award; or
- (3) May allow award of the subcontract if the Secretary (or Secretary's designee) determines that awarding the subcontract—despite the conflict—is in the best interest of the United States. Circumstances justifying such a determination include situations where "the public exigency will not otherwise permit" and situations where the work or services cannot otherwise be obtained. In these cases, clauses are included in the subcontract to mitigate the conflict to the extent feasible.

### **4. DEFINITIONS**

- a. The term "organizational conflicts of interest" means that a relationship or situation exists whereby an offeror or a subcontractor (including chief executives and directors, to the extent that they will or do become involved in the performance of the subcontract, and proposed consultants or lower-tier subcontractors where they may be performing services similar to the services provided by the offeror) has past, present, or currently planned interests that relate to the work to be performed and such interest or interests may reasonably (1) diminish the offeror's or subcontractor's capacity to give impartial, technically sound, and objective assistance or advice or (2) result in the offeror's or subcontractor's being given an unfair competitive advantage. It does not include the normal flow or benefits from the performance of the subcontract.
- b. The term "affiliates" means business concerns that are affiliates of each other when, either directly or indirectly, one concern or individual controls or has the power to control another or when a third party controls or has the power to control both (see Federal Acquisition Regulation 9.403).

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Every issuer of a security registered pursuant to Section 12 of 15 USC 781 must file with the SEC a financial report (10K form or equivalent type of reporting form approved by the SEC) and an annual report.