



TRICARE  
MANAGEMENT  
ACTIVITY

**OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE  
HEALTH AFFAIRS**  
SKYLINE FIVE, SUITE 810, 5111 LEESBURG PIKE  
Falls Church, Virginia 22041-3206

## **TRICARE ACQUISITION DIRECTIVE**

**TAD 09-01, Rev. 000  
November 8, 2011**

**SUBJECT: ORGANIZATIONAL CONFLICTS OF INTEREST**

- References:
- (a) [Federal Acquisition Regulation, Subpart 9.5, "Organizational and Consultant Conflicts of Interest," current edition](#)
  - (b) [Defense Federal Acquisition Regulation Supplement, Subpart 209.5, "Organizational and Consultant Conflicts of Interest," current edition](#)
  - (c) [Defense Federal Acquisition Regulation Supplement, Subpart 203.171, "Senior Department of Defense Officials Seeking Employment with Defense Contractors." Current edition](#)
  - (d) [TRICARE Management Activity Memorandum, "Policy for the Acquisition of Non-Purchased Care Services," October 1, 2009](#)
  - (e) [Federal Acquisition Regulation, Subpart 2.101, "Definitions," current edition](#)

1. **PURPOSE.** This TRICARE Acquisition Directive (TAD) establishes Organizational Conflicts of Interest (OCI) policy for TRICARE Management Activity (TMA), in accordance with References (a) through (d). Additionally, this Directive provides policy on dealing with OCI's, including the use of Enclosure 1 (TMA OCI Provisions) and Enclosure 2 (TMA OCI Clauses).

2. **APPLICABILITY.** This Directive applies to all members of the TMA acquisition workforce that participate in the procurement of supplies and/or services under the authority of the Head of Contracting Activity.

3. **POLICY.** It is TMA policy that:

3.1. Each OCI, as defined in Reference (e), shall be examined on the basis of its particular facts and the nature of the proposed contract. Contracting Officers (COs) shall exercise good business judgment to determine whether a significant potential OCI exists.

3.2. COs shall consider the input from requiring Program Offices, Office of General Counsel (OGC), and other government and non-government sources, when determining the need for and nature of the TMA OCI Provisions and TMA OCI Clauses.

3.3. COs shall include the TMA OCI Provisions and TMA OCI Clauses, in the respective solicitation and contract, when the CO has determined that the nature of the work to be performed in the contract resulting from the solicitation is such that it may give rise to an OCI. When developing an appropriate means of resolving an OCI, CO shall use sound discretion when inserting options and fill-in language into the TMA OCI Provisions and TMA OCI Clauses.

3.4. COs shall ensure that contractors represent in writing whether actual or potential OCI exists, and that the contractor submit an OCI mitigation plan, if such plan is warranted.

3.5. COs shall review all OCI mitigation plans, and make a final determination as to whether the contractor is eligible to participate in the competition or contract.

3.6. COs shall document and submit for storage in a central repository, all OCI analysis, determinations, and names of awardees, including the services that they provide for TMA.

#### 4. RESPONSIBILITIES.

4.1. COs fulfill the responsibilities listed in Reference (a).

4.2. Program Office assist CO in identifying and evaluating potential OCI, including the review of OCI mitigation plans.

4.3. OGC provides assistance in evaluating potential OCIs, including mitigation plans, and advises CO in the completion of fill-in language in the TMA OCI Provisions and TMA OCI Clauses.

5. EFFECTIVE DATE. This Directive is effective immediately.



Michael P. Fischetti  
Head of Contracting Activity

#### Enclosures

- 1 Solicitation Provisions
- 2 Contract Clauses

E.1. ENCLOSURE 1

SOLICITATION PROVISIONS

SECTION L: INSTRUCTIONS, CONDITIONS, AND NOTICES TO OFFERORS

L.[X] ORGANIZATIONAL CONFLICTS OF INTEREST

L.[X].1 The Offeror’s attention is directed to FAR, Subpart 9.5, “Organizational and Consultant Conflicts of Interest.”

L.[X].2 For the purpose of these provisions, the term “Offeror” means the offeror, its subsidiaries, affiliates, partners, marketing consultants, as defined by FAR, Subpart 9.501, or any of its successors or assignees.

L.[X].3 It is the position of TMA that the following companies, due to the nature of their performance with TMA, have an actual or potential organizational conflict of interest, which must be avoided, neutralized, or mitigated. *[Fill-in: The companies listed below may not serve as the prime contractor, subcontractor, or market consultant on this contract] and/or [Fill-in: In the event the Offeror intends to use the companies listed below as a subcontractor or market consultant on this solicitation, the Offeror shall provide a mitigation plan to the Contracting Officer no later than [Fill-in: number] calendar days prior to the proposal due date.]*

[Fill-in: Name of Companies]

[PRESCRIPTION: Insert the above paragraph for companies that currently have an organizational conflict of interest that either cannot be avoided or require mitigation. This may include conditions related to FAR 9.505-4 regarding obtaining access to proprietary information, or organizational conflicts of interest related to biased ground rules, impaired objectivity, or unfair competitive advantage. Remove the above paragraph, if not applicable]

L.[X].4 The Offeror is hereby notified that the nature of the work to be performed may create an actual or potential organizational conflict of interest in future acquisitions.

**Insert Options 1-5 (as applicable) when the nature of the work to be performed may create an actual or significant potential organizational conflict of interest in future acquisitions.**

**Option 1:** The contractor will perform systems engineering and/or technical direction, but will not have overall contractual responsibility for the *[Fill-in: insert name of system’s]* development, integration, assembly and checkout, or production. The parties recognize that the contractor will occupy a highly influential and responsible position in determining the *[Fill-in: insert name of system’s]* basic concepts and supervising their execution by other companies. To avoid conflicts which may create bias ground rules, impair the contractor’s objectivity, or give the contractor an unfair competitive advantage, it is agreed that the contractor is precluded for the life of the *[Fill-in: insert name of system]*, from award of a TMA contract to supply of the *[Fill-in: insert name*

*of system]* or any of its major components, and from acting as a subcontractor or consultant to a TMA supplier for the [*Fill-in: insert name of system]* or any of its major components.

[PRESCRIPTION: Insert the above paragraph whenever the Contracting Officer has reason to believe the conditions of FAR 9.505-1 regarding providing systems or technical direction apply.]

**Option 2:** The contractor will prepare and submit complete specifications for nondevelopmental items or services to be used in a competitive acquisition. To avoid conflicts which may create bias ground rules, impair the contractor's objectivity, or give the contractor an unfair competitive advantage, it is agreed that the contractor shall not furnish these items or services to TMA, either as a prime contractor or subcontractor, for the duration of the initial production contract plus [*Fill-in: insert a specified period of time or an expiration date*].

[PRESCRIPTION: Insert the above paragraph whenever the Contracting Officer has reason to believe the conditions of FAR 9.505-2(a)(1) regarding preparing specifications apply.]

**Option 3:** The contractor will either prepare or assist in preparing a work statement for use in competitively acquiring the [*Fill-in: identify the nondevelopmental system or service*], or provide material leading directly, predictably, and without delay to such a work statement. To avoid conflicts which may create bias ground rules, impair the contractor's objectivity, or give the contractor an unfair competitive advantage, it is agreed that the contractor may not supply [*Fill-in: identify the service, the system, or the major components of the system*] for a period [*Fill-in: state the duration of the constraint, however, the duration of the initial production contract shall be the minimum*], as either the prime contractor or subcontractor unless the contractor is the sole source, has participated in the design or development work, or more than one company has participated in preparing the work statement.

[PRESCRIPTION: Insert the above paragraph whenever the Contracting Officer has reason to believe the conditions of FAR 9.505-2(b)(1) regarding preparing work statements apply.]

**Option 4:** The contractor will participate in the evaluation of the proposals, products or services of other companies. To avoid conflicts which may create bias ground rules, impair the contractor's objectivity, or give the contractor an unfair competitive advantage, it is agreed that the contractor is precluded from award of any supply or service contract or subcontract related to said technical evaluations. This restriction shall be effective for [*Fill-in: insert a definitive period of time or event*].

[PRESCRIPTION: Insert the above paragraph whenever the Contracting Officer has reason to believe the conditions of FAR 9.505-3 regarding providing evaluation services apply.]

**Option 5:** The contractor will [*Fill-in: insert task that creates the actual or potential conflict*]. To avoid conflicts which may create bias ground rules, impair the contractor's objectivity, or give the contractor an unfair competitive advantage, it is agreed that the contractor [*Fill-in: insert restriction and term of duration*].

[PRESCRIPTION: Insert the above paragraph for situations not expressly covered in FAR 9.505 or in the examples in FAR 9.508, or those situations covered by DFARS 209.5.]

L.[X].5 The Offeror is hereby notified that an actual or potential conflict of interest may exist with Covered DoD officials, as defined by DFARS 252.203-7000. The Offeror shall not knowingly provide compensation to a former Covered DoD official within 2 years after the official leaves DoD service, without first determining that the official has sought and received, or has not received after 30 days of seeking, a written opinion from the appropriate DoD ethics counselor regarding the applicability of post-employment restrictions to the activities that the official is expected to undertake on behalf of the Offeror. Additionally, the Offeror must disclose all intended employees on solicitation that are potential Covered DoD Officials, and get approval from the Contracting Officer prior to the involvement of Covered DoD Officials in the development of a response to the solicitation or a mitigation plan.

L.[X].6 The Offeror shall represent in writing within the proposal that, to the best of the Offeror's knowledge, there are no relevant facts or circumstances concerning any past, present, or potential contracts or financial interest relating to the work to be performed, which could give rise to an organizational conflict of interest, as described in FAR, Subpart 9.5. In the event an actual or potential organizational conflict of interest exist, the Offeror shall submit a mitigation plan to the Contracting Officer, no later than [Fill-in: number] calendar days prior to the proposal due date, that effectively demonstrates how the Offeror will mitigate any actual or potential organizational conflict of interest while supporting this contract and any other TMA contract. As a part of the proposal, the Offeror shall provide the Contracting Officer with information of previous or ongoing work that is in any way associated with this solicitation.

L.[X].7 The Contracting Officer will review all mitigation plans to determine whether award to the Offeror is consistent with FAR, Subpart 9.5. If the Contracting Officer determines that no conflict would arise or that the mitigation plan adequately protects the interest of the Government, the Offeror will be eligible for award. If the Contracting Officer determines that the mitigation plan is inadequate, remedial actions will be considered, including elimination from the solicitation process, termination of related contract efforts already awarded, or negotiation of the mitigation plan.

L.[X].8 The above restrictions shall be included in all subcontracts, teaming arrangements, and other agreements calling for performance of work which is subject to the organizational conflict of interest restrictions identified in these provisions.

L.[X].9 The Offeror acknowledges the full force and effect of these provisions. The above provisions may be modified or deleted at the discretion of the Government. The Government reserves the right, in case of a breach, misrepresentation or nondisclosure, to terminate the resultant contract, disqualify the Offeror from subsequent related contractual efforts, or pursue any remedy permitted by law, regulation or the terms and conditions of this solicitation.

## E2. ENCLOSURE 2

### CONTRACT CLAUSES

#### H.[X] ORGANIZATIONAL CONFLICTS OF INTEREST (OCI)

H.[X].1 The Contractor's attention is directed to FAR, Subpart 9.5, "Organizational and Consultant Conflicts of Interest." TMA has made a determination that an actual or significant potential organizational conflict of interest exist, or the nature of the work to be performed may create an actual or significant potential organizational conflict of interest in future acquisitions.

H.[X].2 For the purpose of these clauses, the term "Contractor" means the contractor, its subsidiaries, affiliates, partners, market consultants, as defined by FAR, Subpart 9.501, or any of its successors or assignees.

H.[X].3 **Inserts Option 1-5 (as applicable) when the nature of the work to be performed may create an actual or significant potential organizational conflict of interest in future acquisitions.**

**Option 1:** The Contractor will perform systems engineering and/or technical direction, but will not have overall contractual responsibility for the [*Fill-in: insert name of system*] development, integration, assembly and checkout, or production. The parties recognize that the Contractor will occupy a highly influential and responsible position in determining the [*Fill-in: insert name of system*] basic concepts and supervising their execution by other companies. To avoid conflicts which may create bias ground rules, impair the Contractor's objectivity, or give the Contractor an unfair competitive advantage, it is agreed that the Contractor is precluded for the life of the [*Fill-in: insert name of system*] from award of a TMA contract to supply the [*Fill-in: insert name of system*] or any of its major components, and from acting as a subcontractor or consultant to a TMA supplier for the [*Fill-in: insert name of system*] or any of its major components.

[PRESCRIPTION: Insert the above paragraph whenever the Contracting Officer has reason to believe the conditions of FAR 9.505-1 regarding providing systems or technical direction apply.]

**Option 2:** The Contractor will prepare and submit complete specifications for nondevelopmental items or services to be used in a competitive acquisition. To avoid conflicts which may create bias ground rules, impair the Contractor's objectivity, or give the Contractor an unfair competitive advantage, it is agreed that the Contractor shall not furnish these items or services to TMA, either as a prime contractor or subcontractor, for the duration of the initial production contract plus [*Fill-in: insert a specified period of time or an expiration date*].

[PRESCRIPTION: Insert the above paragraph whenever the Contracting Officer has reason to believe the conditions of FAR 9.505-2(a)(1) regarding preparing specifications apply.]

**Option 3:** The Contractor will either prepare or assist in preparing a work statement for use in competitively acquiring the [*Fill-in: identify the nondevelopmental system or service*], or provide

material leading directly, predictably, and without delay to such a work statement. To avoid conflicts which may create bias ground rules, impair the Contractor's objectivity, or give the Contractor an unfair competitive advantage, it is agreed that the Contractor may not supply [*Fill-in: identify the service, the system, or the major components of the system*] for a period [*Fill-in: state the duration of the constraint, however, the duration of the initial production contract shall be the minimum*], as either the prime or subcontract unless the Contractor is the sole source, has participated in the design or development work, or more than one company has participated in preparing the work statement.

[PRESCRIPTION: Insert the above paragraph whenever the Contracting Officer has reason to believe the conditions of FAR 9.505-2(a)(2) regarding preparing work statements apply.]

**Option 4:** The Contractor will participate in the evaluation of the proposals, products or services of other companies. To avoid conflicts which may create bias ground rules, impair the Contractor's objectivity, or give the Contractor an unfair competitive advantage, it is agreed that the Contractor is precluded from award of any supply or service contract or subcontract related said technical evaluations. This restriction shall be effective for [*Fill-in: insert a definitive period of time or event*].

[PRESCRIPTION: Insert the above paragraph whenever the Contracting Officer has reason to believe the conditions of FAR 9.505-3 regarding providing evaluation services apply.]

**Option 5:** The Contractor will [*Fill-in: insert task that creates the actual or potential conflict*]. To avoid conflicts which may create bias ground rules, impair the Contractor's objectivity, or give the Contractor an unfair competitive advantage, it is agreed that the Contractor [*Fill-in: insert restriction and term of duration*].

[PRESCRIPTION: Insert the above paragraph for situations not expressly covered in FAR 9.505 or in the examples in FAR 9.508.]

H.[X].4 The Contractor is hereby notified that an actual or potential conflict of interest may exist with Covered DoD officials, as defined by DFARS 252.203-7000. The Contractor shall not knowingly provide compensation to such former Covered DoD official within 2 years after the official leaves DoD service, without first determining that the official has sought and received, or has not received after 30 days of seeking, a written opinion from the appropriate DoD ethics counselor regarding the applicability of post-employment restrictions to the activities that the official is expected to undertake on behalf of the Contractor. Additionally, the Contractor must get approval from the Contracting Officer prior to the involvement of the covered DoD official in the performance of this contract or the approval of a mitigation plan. Failure by the Contractor to comply may subject the Contractor to rescission of this contract, suspension, or debarment in accordance with 41 U.S.C. 423(e)(3).

H.[X].5 It may become necessary in the performance of this contract to review proprietary information from other contractors. The Contractor shall protect all proprietary information from unauthorized use or disclosure and refrain from using the information for any purpose other than that for which it was furnished. At the request of the Contracting Officer, the Contractor

agrees to execute agreements with third party companies furnishing data in connection with work performed under this contract. Safeguards shall be implemented to restrict access to proprietary information and to avoid, neutralize, or mitigate potential conflicts of interest. Non-disclosure agreements shall be completed by the Contractor, all employees, and subcontractors who obtain access to proprietary information, and provided to the Contracting Officer.

H.[X].6 The Contractor agrees that if an actual or potential organizational conflict of interest is discovered after the award of this contract, the Contractor will immediately notify the Contracting Officer, in writing, of the nature of the conflict. The Contractor shall submit a mitigation plan to the Contracting Officer within 30 days of notification, outlining the actions the Contractor has taken or proposes to take to avoid, neutralize, or mitigate the actual or potential organizational conflict of interest.

H.[X].7 The above restrictions shall be included in all subcontracts, teaming arrangements, and other agreements calling for performance of work which is subject to the organizational conflict of interest restrictions identified in these clauses.

H.[X].8 The Contractor acknowledges the full force and effect of the above clauses. The Government reserves the right, in case of a breach, misrepresentation or nondisclosure, to terminate this contract, disqualify the Contractor from subsequent related contractual efforts, or pursue any remedy permitted by law or this contract.