



DEFENSE ADVANCED RESEARCH PROJECTS AGENCY
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ARLINGTON, VA 22203-2114

MAY 5 - 2014

DARPA Instruction No. 70

CMO

SUBJECT: Contractor Relationships: Inherently Governmental Functions, Prohibited Personal Services and Organizational Conflicts of Interest

- References:**
- (a) DARPA Instruction No. 70, "Contractor Relationships: Inherently Governmental Functions, Prohibited Personal Services, and Organizational Conflicts of Interest," May 12, 2008 (hereby canceled)
 - (b) Federal Acquisition Regulation, Subpart 7.5, "Inherently Governmental Functions," current edition
 - (c) FAR, Subpart 9.5, "Organizational and Consultant Conflicts of Interest," current edition
 - (d) Defense Federal Acquisition Regulation Supplement, Subpart 203.70, "Contractor Standards of Conduct," current edition
 - (e) DoD Directive 5500.07, "Standards of Conduct," November 29, 2007
 - (f) DoD Instruction 5025.01, "DoD Directives Program," September 26, 2012, incorporating Change 1, August 20, 2013

1. PURPOSE

This Instruction cancels Reference (a) and updates the Defense Advanced Research Projects Agency (DARPA) policy regarding actual and potential organizational conflicts of interest, prohibited personal services, and the utilization of contract employees; and is subject to the requirements and limitations set forth in the Federal Acquisition Regulation (FAR), Defense Federal Acquisition Regulation Supplement (DFAR) and DoD Directive 5500.07 (References (b) through (e)).

2. APPLICABILITY AND SCOPE

The provisions of this Instruction apply to all DARPA government employees. Government employees shall ensure that their relationships with contractor and subcontractor employees are in accordance with (IAW) this Instruction. Further, this Instruction also applies to all DARPA contractor employees, as defined at Section 3.A, in as much as they must comply with FAR Subpart 9.5. This Instruction spells out DARPA's procedures for complying with FAR Subpart 9.5.

3. DEFINITIONS

3.A. Contractor Employee. "Contractor Employee" includes, but is not limited to, general and administrative support personnel; technical consultants; financial analysts; Scientific, Engineering and Technical Assistance (SETA) contractors; and Research and Development

RELEASABILITY: UNLIMITED. This Instruction is authorized for public release.

(R&D) performers. The term encompasses all contractor personnel providing contract support to DARPA.

3.A.1. R&D Performer. An “R&D Performer” is a contractor that is under contract to DARPA to perform specific R&D related to a specific program. This definition includes both prime and subcontractors.

3.A.2. SETA Contractor. “SETA” stands for Systems, Engineering and Technical Assistance and is defined at DFARS 209.571-1. The term SETA contractor as used at DARPA is more expansive than the DFARS definition. DARPA SETA contractors provide support to a program as a technical, management, financial, and/or administrative specialist.

3.A.3. Consultant. The “Consultant” is generally recognized as a Subject Matter Expert and will be called upon on an ad hoc basis to provide advice, alternatives or recommendations on a specific matter. He or she may also be tasked with conducting studies or analyses of specific issues. Consultants do not have routine physical access through a DARPA badge nor do they have virtual access through DARPA computer and network accounts. This definition does not include contractors referred to as “independent consultants,” which are contracted through a SETA contract and are covered by the definition of SETA Contractor above.

3.B. Federally Funded Research and Development Center (FFRDC). “Federally Funded Research and Development Center” (FFRDC) means activities that are sponsored and funded by the U.S. Government to meet long-term technical needs that cannot be met as effectively by existing governmental or contractor resources. Under FAR 35.017, FFRDCs meet special, long-term R&D needs that are integral to the mission of the sponsoring agency—work that existing in-house or contractor resources cannot fulfill as effectively. FFRDCs typically assist government agencies with scientific research and analysis, systems development, and systems acquisition. The FFRDC has access to government and supplier data, employees, and facilities beyond that common in a normal contractual relationship. The Master List of FFRDCs is maintained by the National Science Foundation (NSF) at <http://www.nsf.gov/statistics/nsf05306/>

3.C. Independent Verification and Validation. “Independent Verification and Validation” (IV&V) is the verification and validation of a system or software product performed by an organization that is technically, managerially, and financially independent from the organization responsible for developing the product.

3.D. Inherently Governmental Function. “Inherently Governmental Function” means functions that are so intimately related to the public interest as to mandate performance by a government employee. This definition is a legal determination; an inherently governmental function means the function requires either the exercise of discretion in applying government authority, or the making of value judgments in making decisions for the U.S. Government. Governmental functions normally fall into two categories: the act of governing (i.e., the discretionary exercise of Government authority), and monetary transactions and entitlements.

3.E. Organizational Conflict of Interest. “Organizational Conflict of Interest” means that, due to other activities or relationships with other persons, a person is rendered unable or potentially unable to provide impartial assistance or advice to the U.S. Government, or the person’s objectivity in performing the contract work is or might be otherwise impaired, or a person or entity has an unfair competitive advantage, or any combination thereof.

3.F. Personal Services Contract. A “Personal Services Contract” is a contract that, by its express terms or as administered, makes contractor employees appear to be, in effect, government employees. By contrast, a “non-personal services contract” is a contract in which the personnel rendering services are not subject—either by the contract’s terms or by the manner of its administration—to the supervision and control normally present in relationships between the U.S. Government and its employees.

3.G. Service Contract. A “Service Contract” is a contract to perform an identifiable task, rather than to furnish an end item of supply. A service contract may be either a personal or non-personal services contract. A service contract can cover services performed by either professional or nonprofessional personnel, whether on an individual or organizational basis, and includes tasks that are identifiable and specifically described in a Statement of Work (SOW).

3.H. Solicitation. “Solicitation” means any request to submit bids, proposals, quotations, or other offers to the U.S. Government. As used in this Instruction, solicitation may include requests for proposals, broad agency announcements, research announcements, and other program announcements.

3.I. University Affiliated Research Center (UARC). “University Affiliated Research Center” (UARC) means a college or university laboratory that receives sole source funds under authority of 10 U.S.C. § 2304(c)(3)(B) to establish or maintain an essential engineering, research, or development capability and has been designated a UARC by the Assistant Secretary of Defense for Research and Engineering (ASD(R&E)).

4. POLICY

4.A. General

4.A.1. This Instruction provides policy guidance on proper use of contractor employees at DARPA. Three areas are addressed: Inherently Governmental Functions, Prohibited Personal Services and Organizational Conflicts of Interest (OCI).

4.A.2. The typical role of a contractor employee at DARPA is to provide support to a program or a particular DARPA office by providing technical and/or financial expertise, administrative assistance, or all three, that is not presently available to DARPA from within its own employee structure.

4.A.3. Due to the inherent potential for OCI, IAW FAR 9.503, a contractor, FFRDC, or UARC cannot concurrently be a SETA contractor employee and R&D Performer, without prior written approval or a waiver from the DARPA Deputy Director. Additional guidance on OCI is provided in Section 4.D. of this Instruction.

4.B. Inherently Governmental Functions

4.B.1. Contractor employees shall not be assigned functions that are inherently governmental. Subpart 7.5 of the FAR provides more information on what is and what is not considered inherently governmental functions. The following list from the FAR, Subpart 7.5, contains examples of functions common at DARPA that are inherently governmental. The list is not intended to be exhaustive, but merely illustrative:

4.B.1.a. Determining and approving Agency policy; for example, approving content and application of DARPA Instructions, Guides, and Policy Memoranda;

4.B.1.b. Determining and approving Federal program priorities for budget requests;

4.B.1.c. Finalizing or signing congressional testimony or responses to congressional correspondence, or determining Agency responses to audit reports from the Inspector General, the Government Accountability Office, or other Federal audit entity;

4.B.1.d. Directing and controlling Federal employees, including the selection or non-selection of individuals for Federal Government employment, interviewing individuals for employment, and approving position descriptions and performance standards for Federal employees;

4.B.1.e. Awarding, administering, or terminating government contracts, including determining whether contract costs are reasonable, allocable, and allowable;

4.B.1.f. Participating as a voting member on any board that determines source selection award or award fee;

4.B.1.g. Determining and approving the terms of disposal of government property (although DARPA may delegate authority to contractor employees to dispose of property at prices within specified ranges and subject to other reasonable conditions deemed appropriate by the Agency or required by higher authority);

4.B.1.h. Determining and approving which supplies or services are to be acquired by the U.S. Government (although DARPA may delegate authority to contractor employees to acquire supplies at prices within specified ranges and subject to other reasonable conditions deemed appropriate by the Agency or required by higher authority);

4.B.1.i. Approving Agency responses to Freedom of Information Act (FOIA) requests (other than routine responses that, because of statute, regulation, or Agency policy, do not require the exercise of judgment in determining whether documents are to be released or withheld), and approving Agency responses to administrative appeals of denials of FOIA requests; and

4.B.1.j. Serving as Contracting Officer's Representative (COR).

4.B.2. In addition to the above examples from FAR Subpart 7.5, activities described in FAR Parts 15 and 35 relative to source selection, scientific review, and cost and price analysis are also considered inherently governmental functions that may not be performed by contractor employees.

4.C. Personal Services. DARPA shall not award personal services contracts, unless specifically authorized by statute and with the prior written approval of the Director, Contracts Management Office, IAW DFARS 237.104(b)(iii)(A)(2).

4.D. Organizational Conflicts of Interest (OCI)

4.D.1. Two underlying principles of avoiding OCI are:

4.D.1.a. Anticipating and preventing the existence of conflicting roles that might bias the contractor personnel's judgment; and

4.D.1.b. Preventing unfair competitive advantage created by exposing an employee of a contractor that intends to bid on a DARPA solicitation to proprietary information or source selection information relevant to said DARPA solicitation that is not available to all competitors.

4.D.2. When OCI situations become apparent, DARPA will identify the particular source of conflict, eliminate the conflict whenever possible, and when elimination without endangering the mission objectives is not possible, mitigate the conflict to an acceptable risk level.

4.D.3. Whenever a contractor organization has employees or subcontractors performing contractor employee work and also has employees or subcontractors working, or seeking to work, as R&D Performers on a DARPA program, particular care must be taken to prevent, eliminate, or mitigate the potential for OCI. Even if the contractor employee work has been concluded prior to issuance of the solicitation for related R&D performance, an unfair competitive advantage may already have been gained.

4.D.4. If an individual or entity wishes to perform concurrently as a SETA contractor employee and as a DARPA R&D performer, prior written approval of the DARPA Deputy Director is required. As with any other potential conflict situation, a mitigation plan must be submitted to and approved by the Contracting Officer (CO) who has cognizance over the action that is creating the conflict. If the CO makes a written determination that the mitigation plan sufficiently avoids, neutralizes or mitigates the OCI, it is forwarded to the DARPA Deputy Director for higher level review and approval. The DARPA Deputy Director will sign the appropriate endorsement on the CO's written determination, indicating approval or disapproval. The CO is encouraged to consult with DARPA General Counsel (GC) whenever the CO believes such consultation would be beneficial; OCI determinations submitted for DARPA Deputy Director consideration should be coordinated in advance with the DARPA GC. The process described above need take place only if DARPA selects a company for award, not prior to the proposer submitting a proposal to DARPA.

4.D.5. Administrative procedures for handling potential OCIs created by the submission of proposals in response to DARPA-issued solicitations include:

4.D.5.a. For early identification of potential conflicts, every DARPA solicitation must require the offeror and any proposed subcontractors to affirm whether they are providing SETA or similar contractor employee support to any DARPA technical office(s) through an active contract or subcontract, including contracts or subcontracts awarded by DARPA Agents. All affirmations must state which office(s) the offeror supports and identify the prime contract numbers. Affirmations shall be furnished at the time of proposal submission.

4.D.5.b. Whether or not there are ongoing contracts, all facts relevant to potential OCI (FAR 9.5) must be disclosed by offerors. The disclosure shall include the offeror's mitigation plan, which is a description of the action the offeror has taken or proposes to take to avoid, neutralize, or mitigate such conflict. Proposals that fail to fully disclose potential conflicts of interests and/or do not include plans to mitigate this conflict will be returned without technical evaluation and withdrawn from further consideration for award.

4.D.5.c. Once the CO identifies a potential OCI, the CO must take necessary steps to avoid, neutralize, or mitigate the OCI. This generally will involve reviewing the offeror's mitigation plan, conferring with the affected technical office personnel, consulting with the DARPA GC, and making a written determination whether the plan sufficiently avoids, neutralizes or mitigates the OCI. A sample written determination memorandum is included as Attachment 1. See 4.D.4, above, for actions requiring higher level approval of the mitigation plan.

4.D.5.d. Proposal evaluation may continue while the mitigation plan is being reviewed. However, if the mitigation plan review process is completed prior to, or as part of proposal evaluation, and the offeror's mitigation plan is disapproved, their proposal will not be evaluated.

4.D.6. Government personnel should, to the maximum extent practicable, prepare DARPA's SOW. If a contractor assists in preparing a SOW to be used in competitively acquiring services—or provides material leading directly and predictably to such a SOW—that same contractor may not supply the services unless either (1) that contractor is the sole source for the services, or (2) that contractor did not participate in preparing that part of the SOW to which it plans to propose.

4.D.7. If a contractor prepares and furnishes complete specifications covering non-developmental items to be used in a competitive acquisition, that contractor shall not be allowed to furnish these items, either as a prime contractor or a subcontractor.

4.D.8. The CO responsible for each solicitation will retain the discretion to determine the existence of, or the potential for, OCI. However, the existence of certain factors, including, but not limited to the following, creates a rebuttable presumption of OCI: allowing contractor

and DARPA personnel to maintain joint offices or frequently occupy physical office space together at any location; allowing contractor employees access to the DARPA fiscal database; or allowing contractor employees access to contractual or programmatic documentation unrelated to contracts for which they have administrative responsibilities.

4.D.9. Consultant and IV&V services shall also be governed by this Instruction. Because the role of a Consultant is generally focused on a specific matter and the Consultant would not ordinarily have access to broad programmatic data, the Consultant and any firm he or she may be affiliated with would ordinarily be excluded only from competing as an R&D performer on those programs relative to the "particular matter" investigated, as defined at 5 C.F.R. 2635.402(b)(3)q. Likewise, because the IV&V contractor is specifically focused on testing a specific system or software product, they would ordinarily only be excluded from competing as an R&D Performer on those programs they are verifying and validating.

4.D.10. DARPA support contracts should include DARPA OCI clauses that are appropriate and effective. An example of OCI clauses is included in Attachment 3.

4.D.11. Contracts issued for DARPA shall flow down the same OCI clauses to each subcontractor as are applied to the prime contractor.

4.E. Switching from SETA to R&D Performer and Vice Versa. A contractor may decide it is in its best interest to switch from being a SETA to an R&D Performer, or vice versa. In these cases, the contractor will seek guidance from the CO regarding actions necessary to sufficiently mitigate the OCI to allow the contractor to compete in its new role. If a contractor wishes to mitigate its OCI by terminating its contract, it must submit a written request to the CO. The CO and cognizant Technical Office Director will then provide input to the Deputy Director, DARPA regarding the impact of such a termination. The Deputy Director, DARPA provides written approval or disapproval to the CO regarding the request. The CO will negotiate and terminate the contract, if approved. Regardless of how the OCI is mitigated, once the contractor assumes its new role, its employees will not be permitted to participate in any programs in which the contractor participated to a significant extent in its previous role.

5. RESPONSIBILITIES

5.A. The Deputy Director, DARPA, shall:

5.A.1. Assess and, as appropriate, either approve or disapprove in writing, all situations in which an individual or entity wishes to act concurrently as a SETA and as a DARPA R&D performer.

5.A.2. Grant or deny written OCI waivers requested by a CO IAW FAR 9.503 and applicable law.

5.B. The DARPA GC shall:

5.B.1. Provide counsel to DARPA personnel regarding all OCI legal matters.

5.B.2. Coordinate on all mitigation plans prior to submission to the DARPA Deputy Director for consideration.

5.B.3. Recommend policy to the Director, DARPA for OCI matters.

5.C. Office Directors shall:

5.C.1. Ensure government employees are not supervising contractor employees.

5.C.2. Ensure contractor employees are not performing tasks that are considered inherently governmental functions.

5.C.3. Ensure each Agent solicitation contains appropriate language describing the requirement for offerors to disclose whether they are currently providing support to any DARPA office through an active contract and which office(s) the offeror supports.

5.C.4. Review Agent support contracts to ensure DARPA OCI clauses are present, appropriate, and effective.

5.C.5. Ensure Military Interdepartmental Purchase Requests/Purchase Requests (MIPRs/PRs) are reviewed and approved by government employees. Contractor employee access to the DARPA financial database is restricted to authorized contractor employees.

5.C.6. Inquire of the contractor employee whether he or she has signed the contractually-required non-disclosure agreement (included as Attachment 2) before beginning official duties at DARPA.

5.D. The Director, Contracts Management Office (CMO), shall:

5.D.1. Ensure each DARPA CMO-issued solicitation contains appropriate language describing the requirement for offerors to disclose whether they are currently providing support to any DARPA office through an active contract and which office(s) the offeror supports.

5.D.2. Review support contracts issued by DARPA to ensure OCI clauses are present, appropriate, and effective.

5.D.3. Ensure a mitigation plan has been submitted to the CO and to the Deputy Director, DARPA, when an individual or entity wishes to act both as a SETA and as a DARPA R&D performer.

5.D.4. Assist COs in determining whether to request written OCI waivers from the Deputy Director, DARPA.

5.D.5. Provide training, in conjunction with DARPA, to DARPA government personnel to ensure full understanding of appropriate use of support contracts and OCI issues.

5.E. Contracting Officers, Program Managers and Contracting Officer's Representatives shall:

5.E.1. As early in the acquisition process as possible and in conjunction with the DARPA GC, analyze planned acquisitions in order to identify and evaluate potential OCI. All personnel shall avoid, neutralize, or mitigate significant potential conflicts before contract award.

5.E.2. For each solicitation, review all proposals to determine whether the potential exists for OCI.

5.F. DARPA government employees shall:

5.F.1. Comply with procurement integrity, ethics, and standards of conduct laws and regulations.

5.F.2. Not send contractor employees as their substitute to government employee-required meetings, training, or informational sessions.

5.F.3. Ensure that contractor employees identify themselves as contractor employees at all times, including in e-mail and phone communications, and particularly in situations where they could be perceived as government or DARPA representatives.

5.F.4. Not request or require contractor employees to perform tasks outside of the SOW for their existing contract that could be perceived as a conflict of interest. Additional tasks are negotiated through the CO.

5.F.5. Not participate in the hiring or firing of contractor employees. Government personnel may review and discuss resumes of prospective contractor employees to determine whether the proposed contractor employee is adequately qualified to meet program requirements, but government personnel are not authorized to conduct job interviews or perform reference checks on proposed contractor employees.

5.F.6. Not supervise, counsel, or otherwise discipline contractor employees.

5.F.7. Not approve leave requests or work hours for contractor employees; rather, government personnel shall direct contractor employees to the contractor program manager or task manager for appropriate guidance.

6. RELEASABILITY. UNLIMITED. This Instruction is approved for public release.

7. EFFECTIVE DATE

7.A. This Instruction is effective immediately.

7.B. This Instruction must be reissued, cancelled or certified current within 5 years of its original publication date, IAW DoD Instruction 5025.01 (Reference (f)). If not, it will expire effective 10 years from its publication date and be removed from the DARPA Policy Portal, unless the Director, Mission Services Office approves an extension.

A handwritten signature in black ink, appearing to read 'Steven H. Walker', with a large circular flourish at the end.

Steven H. Walker, Ph.D.
Deputy Director

Attachments – 3

- A1. Sample Written Determination Memorandum
- A2. Individual Nondisclosure Agreement for DARPA
- A3. Sample Organizational Conflicts Of Interest Clause

A1. SAMPLE WRITTEN DETERMINATION MEMORANDUM

MEMORANDUM FOR RECORD

FROM: _____/Contracting Officer

SUBJECT: Written Analysis of Potential Organizational Conflict of Interest Concerning <fill in company>

1. IAW FAR 9.506(b)(1), the following written analysis and recommendation is provided concerning the proposal for “<proposal name>” submitted by <company> under Broad Agency Announcement <announcement number>.

2. BACKGROUND. <Describe the situation, what facts have been collected>

3. REGULATORY GUIDANCE. FAR Part 9 charges the Contracting Officer to identify and evaluate potential conflicts of interest and “avoid, neutralize, or mitigate significant potential conflicts before contract award. Any situation which might bias a contractor’s judgment and provide unfair competitive advantage must be closely examined.” The FAR lists categories of support which could lead to a biased or unfair competitive advantage: 1) providing systems engineering and technical direction; 2) preparing specifications or work statements; 3) providing evaluation services; and 4) obtaining access to proprietary information.

4. RESULTS.

Providing systems engineering and technical direction

Preparing specifications or work statements

Providing evaluation services

Obtaining access to proprietary information

5. RECOMMENDATION. <Add recommendation here>

6. DARPA Instruction 70, requires the Deputy Director, DARPA to assess and, as appropriate, either approve or disapprove all situations in which an individual or entity wishes to act both as a SETA and as a DARPA R&D performer.

7. ENDORSEMENT. Based on the recommendation above, I hereby Approve/Disapprove (Circle one) <contractor> to perform the <fill in name of effort> effort entitled, "<proposal>" while performing as a SETA for <fill in company>.

Steven H. Walker, Ph.D.
Deputy Director

A2. INDIVIDUAL NONDISCLOSURE AGREEMENT FOR DARPA

Various criminal statutes, the Federal Acquisition Regulation (FAR), and implementing Department of Defense (DoD) regulations govern the actions of personnel participation in the procurement process, including the solicitation, evaluation, and negotiation of proposals. The integrity of the procurement process requires that proposers be treated fairly and that neither conflicts of interest nor the appearance of impropriety taint the consideration of proposals. Proposer-provided information and official government information must be safeguarded. Unauthorized contacts, conflicts of interest, disclosure of sensitive procurement information, and the appearance of impropriety must be avoided.

By signing this agreement, I agree to protect all proprietary, business sensitive, and government non-public information (including, but not limited to information marked "Source Selection Information," see FAR 2.101 and 3.104, contractor bid or proposal information, hereinafter referred to as "information"), either written or verbal, supplied to me or coming into my possession through my duties in support of DARPA. Specifically, information that may come into my possession as a part of my duties, or about which I gain knowledge during the course of my duties, will be used only for performance of those duties and I will not communicate, transmit, or otherwise divulge any such information for any other purpose. Upon the termination of my duties, I agree to surrender any materials in any form that contain such information to the government office which initially furnished them to me.

I understand that my violation of the terms and conditions of this agreement may result in disciplinary action against me. I acknowledge that I may incur criminal or civil liability to the United States Government for the improper disclosure of information.

This agreement is effective as of the date I assumed my duties at DARPA.

Date _____

Printed Name _____

Signature _____

Name of Company _____ Phone Number _____

Mailing Address _____

A3. SAMPLE ORGANIZATIONAL CONFLICT OF INTEREST CLAUSES (IAW FAR 9.5)

A. Purpose: The primary purpose of this clause is to ensure that: (1) the Contractor's objectivity and judgment are not biased because of its past, present, or currently planned interests (financial, contractual, organizational, or otherwise) which related to work under this contract, (2) the Contractor does not obtain an unfair competitive advantage by virtue of its access to non-public information regarding the Government's program plans and actual or anticipated resources, and (3) by virtue of its access to proprietary information belonging to others, the contractor does not obtain any unfair competitive advantage.

B. Scope: The restrictions described herein shall apply to performance or participation by the Contractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as "contractor") in the activities covered by this clause as prime contractor, subcontractor, cosponsor, joint venturer, consultant, or in any similar capacity.

(1) Maintenance of Objectivity: The Contractor shall be ineligible to participate in any capacity in contracts, subcontracts, or proposals therefore (solicited or unsolicited) which stem directly from the Contractor's performance of work under this contract or are directly related to this contract, for example under the same Program or Project. Furthermore, unless directed in writing by the Contracting Officer, the Contractor shall not perform any services under this contract on any of its own products or services or the products or services of another firm if the Contractor is, or has been substantially involved in their development or marketing. In addition, if the Contractor under this contract advises the Government on the preparation of, or prepares complete, or essentially complete, Statements of Work of objectives for competitive acquisitions, the Contractor shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such Statements of Work or objectives. Nothing in this subparagraph shall preclude the Contractor from competing for follow-on contracts involving the same or similar services.

(2) Access To and Use of Government Information: If the Contractor, in the performance of this contract, obtains access to information such as plans, policies, reports, studies, financial plans, or data which has not been released or otherwise made available to the public, the Contractor agrees that without prior written approval from the Contracting Officer, 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 or accept work based on such information for a period of six months after the completion of the contract, or until such information is released or otherwise made available to the public, whichever occurs first, (c) submit an unsolicited proposal to the Government 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 the Government.

(3) Access To and Protection of Proprietary Information: The Contractor agrees that, to the extent it receives or is given access to proprietary data, trade secrets, or other confidential or privileged technical, business or financial information (hereinafter referred to as "proprietary data") under this contract, it shall treat such information IAW any restrictions

imposed on such information. The Contractor further agrees to enter into a written agreement for the protection of the proprietary data of other contractors and to exercise diligent effort to protect such proprietary data from unauthorized disclosure. In addition, the Contractor shall obtain from each employee who has access to proprietary data under this contract, a written agreement which shall in substance provide that such employee shall not, during his/her employment by the Contractor or thereafter, disclose to others or use for their benefit, proprietary data received in conjunction with the work under this contract.

C. Subcontracts: The Contractor shall include this clause, including this paragraph, in consulting agreements and subcontracts of any tier when directed by the Contracting Officer. The terms "contract," "contractor," and "contracting officer" will be appropriately modified to preserve the Government's rights.

D. Representations and Disclosures:

(1) The Contractor represents that it has disclosed to the Contracting Officer, prior to award, all facts relevant to the existence or potential existence of organizational conflict or interest as that term is used in FAR Subpart 9.5.

(2) The Contractor agrees that if after award it discovers an organizational conflict of interest with respect to this contract, a prompt and full disclosure shall be made in writing to the Contracting Officer which shall include a description of the action the Contractor has taken or proposes to take to avoid or mitigate such conflict(s).

E. Remedies and Waiver:

(1) For breach of any of the above restrictions or for nondisclosure or misrepresentation of any relevant facts required to be disclosed concerning this contract, the Government may terminate this contract for default, disqualify the Contractor from subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this contract. If, however, in compliance with this clause, the Contractor discovers and promptly reports an organizational conflict of interest (or the potential therefore), subsequent to contract award, the Contracting Officer may terminate this contract for convenience of the Government if such termination is deemed to be in the best interest of the Government.

(2) The parties recognize that this clause has potential effects which will survive the performance of this contract and that it is impossible to foresee each circumstance to which it might be applied in the future. Accordingly, the Contractor may, at any time, seek a waiver from the Contracting Officer by submitting a full written description of the requested waiver and the reasons in support thereof. If it is determined to be in the best interests of the Government, the Contracting Officer will grant such a waiver.

F. Modification: Prior to a contract modification involving a change to the Statement of Work, or an increase in the level of effort or extension of the term of the contract, the Contractor shall be required to submit either an organizational conflict of interest disclosure or an update of the previously submitted disclosure or representation.