



**Homeland
Security**

JUL 21 2004

**MEMORANDUM FOR DHS HEADS OF THE CONTRACTING ACTIVITIES
USCG, USSS, FLETC, ICE, CBP, TSA, OPO, FEMA**

FROM:

Gregory D. Rothwell
Chief Procurement Officer

A handwritten signature in black ink that reads "Gregory D. Rothwell".

SUBJECT:

Organizational Conflicts of Interest

When the Homeland Security Acquisition Regulation (HSAR) was published as an interim rule, public comments were requested. Several public comments were received addressing the broadness of the provision found at 3052.209-72 "Disclosure of Conflicts of Interest," and the burden providing requested information placed on contractors. To ease this burden, and to better clarify the Department's intention with respect to OCI, I have approved a class deviation to interim HSAR. The clause and provision should be used as prescribed immediately. Modification of existing contracts is not required.

3052.209-72 Organizational conflicts of interest.

The contracting officer may insert a this provision in solicitations and contracts where a potential organizational conflict of interest may exist and mitigation may be considered. The contracting officer shall ensure the conditions enumerated in (FAR) 48 CFR Subpart 9.5 warrant inclusion. The contracting officer shall insert the applicable information required by FAR 9.507-1 in paragraph (a).

**ORGANIZATIONAL CONFLICT OF INTEREST
(Jul 2004) (Deviation)**

(a) Determination. The Government has determined that this effort may result in an actual or potential conflict of interest, or may provide one or more offerors with the potential to attain an unfair competitive advantage. The nature of the conflict of interest and the limitation on future contracting _____ (description)

(b) If any such conflict of interest is found to exist, the Contracting Officer may (1) disqualify the offeror, or (2) determine that it is otherwise in the best interest of the United States to contract with the offeror and include the appropriate provisions to mitigate or avoid such conflict in the contract awarded. After discussion with the offeror, the Contracting Officer may determine that the actual conflict cannot be avoided, neutralized, mitigated or otherwise resolved to the satisfaction of the Government, and the offeror may be found ineligible for award.

(c) Disclosure: The offeror hereby represents, to the best of its knowledge that:

___ (1) It is not aware of any facts which create any actual or potential organizational conflicts of interest relating to the award of this contract, or

___ (2) It has included information in its proposal, providing all current information bearing on the existence of any actual or potential organizational conflicts of interest, and has included the mitigation plan in accordance with paragraph (d) of this provision.

(d) Mitigation/Waiver. If an offeror with a potential or actual conflict of interest or unfair competitive advantage believes it can be mitigated, neutralized, or avoided, the offeror shall submit a mitigation plan to the Government for review. Award of a contract where an actual or potential conflict of interest exists shall not occur before Government approval of the mitigation plan. If a mitigation plan is approved, the restrictions of this provision do not apply to the extent defined in the mitigation plan. If not defined, then this provision applies fully.

(e) Other Relevant Information: In addition to the mitigation plan, the Contracting Officer may require further relevant information from the offeror. The Contracting Officer will use all information submitted by the offeror, and any other relevant information known to DHS, to determine whether an award to the offeror may take place, and whether the mitigation plan adequately neutralizes or mitigates the conflict.

(f) Corporation Change. The successful offeror shall inform the Contracting Officer within thirty (30) calendar days of the effective date of any corporate mergers, acquisitions, and/or divestures that may affect this provision.

(g) Flow-down. The contractor shall insert the substance of this clause in each first tier subcontract that exceeds the simplified acquisition threshold.

3052.209-73 Limitation of future contracting.

The contracting officer may insert this clause in solicitations and contracts when a potential organizational conflict of interest exists and mitigation is not feasible.

**LIMITATION OF FUTURE CONTRACTING
(Jul 2004) (Deviation)**

(a) The Contracting Officer has determined that this acquisition may give rise to a potential organizational conflict of interest. Accordingly, the attention of prospective offerors is invited to FAR Subpart 9.5--Organizational Conflicts of Interest.

(b) The nature of this conflict is [describe the conflict].

(c) The restrictions upon future contracting are as follows:

(1) If the Contractor, under the terms of this contract, or through the performance of tasks pursuant to this contract, is required to develop specifications or statements of work that are to be incorporated into a solicitation, the Contractor shall be ineligible to perform the work described in that solicitation as a prime or first-tier subcontractor under an ensuing DHS contract. This restriction shall remain in effect for a reasonable time, as agreed to by the Contracting Officer and the Contractor, sufficient to avoid unfair competitive advantage or potential bias (this time shall in no case be less than the duration of the initial production contract). DHS shall not unilaterally require the Contractor to prepare such specifications or statements of work under this contract.

(2) To the extent that the work under this contract requires access to proprietary, business confidential, or financial data of other companies, and as long as these data remain proprietary or confidential, the Contractor shall protect these data from unauthorized use and disclosure and agrees not to use them to compete with those other companies.