

**THE FOLLOWING IS A LIST OF ANTICIPATED COI CLAUSES AND PROVISIONS THAT WILL BE INCLUDED IN RFP# PR-HQ-09-14157 AND ANY RESULTANT CONTRACTS AND TASK ORDERS AS NECESSARY. THIS LIST MAY NOT REPRESENT THE FINAL LIST OF ALL COI CLAUSES AND PROVISIONS. INTERESTED PARTIES SHOULD REVIEW THE FINAL RFP FOR THE FINAL COI REQUIREMENTS.**

<b>INCLUDED IN S/C/TO</b>	<b>PROVISION/CLAUSE</b>
S/C/TO	ORGANIZATIONAL CONFLICT OF INTEREST CERTIFICATION (EPAAR 1552.209-72)
S/C/TO	ORGANIZATIONAL CONFLICTS OF INTEREST NOTIFICATION (EPAAR 1552.209-70)
S/C/TO	ORGANIZATIONAL CONFLICTS OF INTEREST (EPAAR 1552.209-71)
S/C/TO	NOTIFICATION OF CONFLICTS OF INTEREST REGARDING PERSONNEL (EPAAR 1552.209-73)
S/C/TO	LIMITATION OF FUTURE CONTRACTING (HEADQUARTERS SUPPORT) (EPAAR 1552.209-74 Alt. V)
S	MINIMUM STANDARDS FOR CONFLICT OF INTEREST PLANS
S	SUBMITTAL OF CONFLICT OF INTEREST PLAN

S-Solicitation

C-Contract

TO-Task Order Request for Offer

**1552.209-70 Organizational conflict of interest notification.**

As prescribed in 1509.507–1(b) insert the following solicitation provision in all solicitations.

Organizational Conflict of Interest Notification (APR 1984)

(a) The prospective Contractor certifies, to the best of its knowledge and belief, that it is not aware of any information bearing on the existence of any potential organizational conflict of interest. If the prospective Contractor cannot so certify, it shall provide a disclosure statement in its proposal which describes all relevant information concerning any past, present, or planned interests bearing on whether it (including its chief executives and directors, or any proposed consultant or subcontractor) may have a potential organizational conflict of interest.

(b) Prospective Contractors should refer to FAR subpart 9.5 and EPAAR part 1509 for policies and procedures for avoiding, neutralizing, or mitigating organizational conflicts of interest.

(c) If the Contracting Officer determines that a potential conflict exists, the prospective Contractor shall not receive an award unless the conflict can be avoided or otherwise resolved through the inclusion of a special contract clause or other appropriate means. The terms of any special clause are subject to negotiation.

(End of provision)

**1552.209-71 Organizational conflicts of interest.**

As prescribed in 1509.507–2, insert the following contract clause in all contracts except:

(a) When specific clauses are required per EPAAR part 1509;

(b) When the procurement is with another Federal agency (however, the provision is included in contracts with SBA and its subcontractor under the 8(a) program); and

(c) When the procurement is accomplished through simplified acquisition procedures, use of the clause is optional.

Organizational Conflicts of Interest (MAY 1994)

(a) The Contractor warrants that, to the best of the Contractor's knowledge and belief, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest, as defined in FAR subpart 9.5, or that the Contractor has disclosed all such relevant information.

(b) Prior to commencement of any work, the Contractor agrees to notify the Contracting Officer immediately that, to the best of its knowledge and belief, no actual or potential conflict of interest exists or to identify to the Contracting Officer any actual or potential conflict of interest the firm may have. In emergency situations, however, work may begin but notification shall be made within five (5) working days.

(c) The Contractor agrees that if an actual or potential organizational conflict of interest is identified during performance, the Contractor will immediately make a full disclosure in writing to the Contracting Officer. This disclosure shall include a description of actions which the Contractor has taken or proposes to take, after consultation with the Contracting Officer, to avoid, mitigate, or neutralize the actual or potential conflict of interest. The Contractor shall continue performance until notified by the Contracting Officer of any contrary action to be taken.

(d) Remedies—The EPA may terminate this contract for convenience, in whole or in part, if it deems such termination necessary to avoid an organizational conflict of interest. If the Contractor was aware of a potential organizational conflict of interest prior to award or discovered an actual or potential conflict after award and did not disclose it or misrepresented relevant information to the Contracting officer, the Government may terminate the contract for default, debar the Contractor from Government contracting, or pursue such other remedies as may be permitted by law or this contract.

(e) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder, except for subcontracts or consultant agreements for well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services, provisions which shall conform substantially to the language of this clause, including this paragraph (e), unless otherwise authorized by the Contracting Officer.

(End of clause)

*Alternate I.* Contracts for other than Superfund work shall include Alternate I in this clause in lieu of paragraph (e).

(e) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder provisions which shall conform substantially to the language of this clause, including this paragraph, unless otherwise authorized by the contracting officer.

[49 F 8867, Mar. 8, 1994, as amended at 59 FR 18620, Apr. 19, 1994; 61 FR 57339, Nov. 6, 1996; 63 FR 46899, Sept. 3, 1998]

**1552.209-72 Organizational conflict of interest certification.**

As prescribed in 1509.507–1(b), insert the following provision in all solicitation documents when applicable.

Organizational Conflict of Interest Certification (APR 1984)

The offeror [ ] is [ ] is not aware of any information bearing on the existence of any potential organizational conflict of interest. If the offeror is aware of information bearing on whether a potential conflict may exist, the offeror shall provide a disclosure statement describing this information. (See section L of the solicitation for further information.)

(End of provision)

[49 FR 8867, Mar. 8, 1994, as amended at 59 FR 18620, Apr. 19, 1994]

**1552.209-73 Notification of conflicts of interest regarding personnel.**

As prescribed in 1509.507–2(b) insert the following clause:

Notification of Conflicts of Interest Regarding Personnel (MAY 1994)

(a) In addition to the requirements of the contract clause entitled “Organizational Conflicts of Interest,” the following provisions with regard to employee personnel performing under this contract shall apply until the earlier of the following two dates: the termination date of the affected employee(s) or the expiration date of the contract.

(b) The Contractor agrees to notify immediately the EPA Project Officer and the Contracting Officer of (1) any actual or potential personal conflict of interest with regard to any of its employees working on or having access to information regarding this contract, or (2) any such conflicts concerning subcontractor employees or consultants working on or having access to information regarding this contract, when such conflicts have been reported to the Contractor. A personal conflict of interest is defined as a relationship of an employee, subcontractor employee, or consultant with an entity that may impair the objectivity of the employee, subcontractor employee, or consultant in performing the contract work.

(c) The Contractor agrees to notify each Project Officer and Contracting Officer prior to incurring costs for that employee's work when an employee may have a personal conflict of interest. In the event that the personal conflict of interest does not become known until after performance on the contract begins, the Contractor shall immediately notify the Contracting Officer of the personal conflict of interest. The Contractor shall continue performance of this contract until notified by the Contracting Officer of the appropriate action to be taken.

(d) The Contractor agrees to insert in any subcontract or consultant agreement placed hereunder, except for subcontracts or consultant agreements for well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services, provisions which shall conform substantially to the language of this clause, including this paragraph (d), unless otherwise authorized by the Contracting Officer.

(End of clause)

[59 FR 18620, Apr. 19, 1994]

**1552.209-74 Limitation of Future Contracting, Alternate V (Headquarters Support) (APR 2004)**

(a) The parties to this contract agree that the Contractor will be restricted in its future contracting in the manner described below. Except as specifically provided in this clause, the Contractor shall be free to compete for contracts on an equal basis with other companies.

(b) If the Contractor, under the terms of this contract, or through the performance of work pursuant to this contract, is required to develop specifications or statements of work and such specifications or statements of work are incorporated into an EPA solicitation, the Contractor shall be ineligible to perform the work described in that solicitation as a prime Contractor or subcontractor under an ensuing EPA contract.

(c) Work to be performed under this contract will include advisory and assistance, policy support, and regulatory support for environmental laws including the Resource Conservation and Recovery Act (RCRA), Toxic Substances Control Act (TSCA), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Clean Air Act (CAA), and the Hazardous and Solid Waste Amendments of 1984 (HSWA). If the contractor is awarded a Task Order under this contract for work related to one of these laws, the contractor will be ineligible to:

(i) Enter into a contract with EPA to perform response action work (e.g., Response Action Contract (RAC)), Emergency and Rapid Response Services (ERRS), Superfund Technical Assistance and Removal Team (START), and Enforcement Support Services (ESS) contracts; and

(ii) Enter into a business or financial relationship with any individual or company which may support or affect any efforts to contest, oppose, or influence the contents or limitations of regulations or policies relating to the subject act.

These restrictions apply for the life of the contract. These restrictions may be waived by written authorization from the cognizant EPA Contracting Officer.

(d) The Contractor agrees in advance that if any bids/proposals are submitted for any work that would require written approval of the Contracting Officer prior to entering into a contract subject to the restrictions of this clause, then the bids/proposals are submitted at the Contractor's own risk. Therefore, no claim shall be made against the Government to recover bid/proposal costs as a direct cost whether the request for authorization to enter into the contract is denied or approved.

(e) To the extent that the work under this contract requires access to proprietary or confidential business or financial data of other companies, and as long as such data remains proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure.

(f) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder, except for subcontracts or consultant agreements for nondiscretionary technical or engineering services, including treatability studies, well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services, provisions which shall conform substantially to the language of this clause, including this paragraph (f) unless otherwise authorized by the Contracting Officer. The Contractor may request in writing that the Contracting Officer exempt from this clause a particular subcontract or consultant agreement for nondiscretionary technical or engineering services not specifically listed above, including laboratory analysis. The Contracting Officer will review and evaluate each request on a case-by-case basis before approving or disapproving the request.

(g) If the Contractor seeks an expedited decision regarding its initial future contracting request, the Contractor may submit its request to both the Contracting Officer and the next administrative level within the Contracting Officer's organization.

(h) A review process available to the Contractor when an adverse determination is received shall consist of a request for reconsideration to the Contracting Officer or a request for review submitted to the next administrative level within the Contracting Officer's organization. An adverse determination resulting from a request for reconsideration by the Contracting Officer will not preclude the Contractor from requesting a review by the next administrative level. Either a request for review or a request for reconsideration must be submitted to the appropriate level within 30 calendar days after receipt of the initial adverse determination.

(End of clause)

## **MINIMUM STANDARDS FOR CONFLICT OF INTEREST PLANS**

### **1. PURPOSE**

The Environmental Protection Agency (EPA) has identified a need to avoid, neutralize, or mitigate actual and potential contractor conflicts of interest (COI). To accomplish this, contractors are required to have a COI plan for identifying and reporting actual and potential COI. The purpose of this document is to set forth the minimum standards for a contractor's COI plan.

### **2. COI PLAN**

The contractor's COI Plan is a document which describes the procedures a company uses to identify and report COI. Generally, a contractor's corporate COI plan will describe how a company, in its entirety, addresses

conflicts, and will not be contract or program specific. The plan may also describe the options a company will consider proposing to avoid, neutralize, or mitigate a COI whenever a conflict is identified. The plan will be evaluated and approved by the applicable EPA Contracting Officer (CO) if the COI Plan meets the EPA's minimum requirements for detecting and reporting conflicts of interest. Contractor's COI Plans should be identified by a version number, date, and applicable CO for any previously approved COI Plan.

### 3. MINIMUM STANDARDS FOR CONTRACTORS' COI PLANS

#### A. Corporate Structure

The COI Plan shall describe any parent relationship and list all affiliates, subsidiaries, and sister companies, etc. Generally this need not exceed three corporate tiers, unless a relationship exists beyond three tiers that would potentially create a conflict. In such a case, relationships beyond three tiers should also be included in the COI Plan. Contractors should report changes in its corporate structure to the Agency throughout contract performance.

Contractors are invited to include under this section a company profile. The profile should discuss all pertinent information relevant to COI including a summary of a contractor's primary and/or environmental business functions and activities. This background information will be very useful to COS when evaluating whether or not a contractor has a COI.

#### B. Searching and Identifying COI

The COI Plan shall include a requirement describing when a COI search must be performed by company personnel and clearly identify the procedures to be followed. The searching requirement shall encompass all work related to all clients for whom work was performed over the last three years, all current work, all sites (if applicable) and any future work reflected in marketing proposals. Contractors must search their records over the past 36 months, or through all available records for a new company until 36 months of records are accumulated, from the time of receipt of the work from EPA. However, contractors are encouraged to search back as far as a company's records cover.

#### C. Data Base

The COI Plan shall require a data base that includes all necessary information for a contractor to review its past work (at a minimum over the past 36 months or through all available records for a new company until 36 months of records are accumulated), work in progress, and work the company may be pursuing under any marketing proposals. This requirement does not establish any particular type or kind of retrieval system, however, the data base shall contain, at a minimum, the following information and capabilities.

- (1) a list of the company's past and public clients;
- (2) a description of the type(s) of work that was performed and any other pertinent information;
- (3) a list of the past sites (when applicable) a contractor has worked on;
- (4) a list of site name(s) (when applicable) related to any work performed;
- (5) the ability to search and retrieve the information in the data base; and
- (6) dollar value of work performed.

If applicable, the COI Plan shall include provisions for supplemental searches of parent, affiliate, subsidiary, or sister company records. The COI Plan shall also describe any cross-checks used by the company when searching COI issues.

#### D. Personal Certification

At a minimum, the COI Plan shall require ALL employees of the company performing work under an EPA Superfund and/or Non-Superfund contract, including work on a site, work relating to a site, work pertaining to a CERCLA/RCRA action, or work that may endanger a CERCLA enforcement action, to sign a personal certification. EPA recommends a policy whereby all company employees are required to sign such a certification rather than only those employees working under an EPA contract. The certification shall require at a minimum, that the individual

agrees to report to the proper company authority any personal COI and that the individual has read and understands the company's COI Plan and procedures. Employee certifications shall be retained by the company.

#### E. Work Assignment (WA), Technical Direction Document (TDD), or Delivery Order (DO) Notification and Certification

The COI Plan shall describe the process the company requires for notifying the Agency prior to beginning work, and for submission of its WA/TDD/DO certification within 20 days of receipt of the work from EPA.

NOTE: WA/TDD/DO certifications are NOT required if the contract contains an annual certification requirement. Nevertheless, the contractor's COI Plan should address the procedures to be followed for WA/TDD/DO certifications.

#### F. Annual Certification

The COI Plan shall describe the process the company requires for submission of its annual certification.

NOTE: Annual certification is NOT required if the contract contains a WA/TDD/DO certification requirement. Nevertheless, the contractor's COI Plan should address the procedures to be followed for annual certifications.

#### G. Notification and Documentation

The COI Plan shall clearly delineate the official within the company responsible for making COI determinations. Generally, this would be someone at a middle to upper level of management. The responsible official shall be free of any personal conflicts for the purpose of making COI determination, e.g., a program manager who receives bonuses based on the total amount of sales may not be free of conflicts.

The plan shall clearly identify the process that is required when notifying the EPA of any actual or potential COI and the actions that the company has taken or will take to avoid, neutralize, or mitigate the conflict. In addition, the contractor shall document all COI searches related to EPA work, whether or not an actual or potential COI has been identified.

#### H. Training

The COI Plan shall require all employees of the company to receive basic COI training and that each employee receive COI awareness training at least annually. The company's COI Plan shall be available for all employees to review. Annual awareness training shall include, at a minimum, a review of the certification language and any changes that may have occurred in the company's COI Plan. In addition, companies are encouraged to routinely disseminate to their employees current COI information.

#### I. Subcontractor's COI Plans

The COI Plan shall describe the process and mechanism by which the company will monitor its subcontractors to ensure all subcontractors are complying with the COI provisions in their contracts. It is important that subcontractors identify and report COI as well as submit Limitation of Future Contracting (LOFC) requests for approval.

### **Submittal of Conflict of Interest Plan**

As part of the initial offer, offerors should submit an Organizational Conflict of Interest (COI) Plan which outlines the procedures in place to identify and report conflicts of interest, whether actual or potential, throughout the period of contract performance. The plan shall address step by step the checks and balances in place to detect potential or actual conflict of interests, organizationally and with personnel that could result from activities covered by the Statement of Work. The COI plan shall be incorporated into any resulting contract.

The COI plan will be evaluated in accordance with the provision in Section M entitled, "EVALUATION OF ORGANIZATIONAL CONFLICT OF INTEREST PLAN".

The Agency's minimum standards for Organizational Conflict of Interest Plans can be found in the RFP attachment entitled, "Minimum Standards for EPA Contractor's Conflict of Interest Plans".