

**SPECIAL PROVISIONS - ORGANIZATIONAL
CONFLICTS OF INTEREST
SP-9 REV 1 August 5, 2013**

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PREAMBLE

- A. These Special Provisions are requirements of any contract in which this Special Provision document is incorporated. These Special Provisions are applicable in their entirety unless specifically deleted or amended in the Contract and are in addition to the General Provisions and other Special Provisions that apply to this Contract. In the event of a conflict between these Special Provisions and the General Provisions, these Special Provisions shall take precedence.
- B. Without in any way limiting the Federal Acquisition Regulation (FAR) and Department of Energy Acquisition Regulation (DEAR) clauses which may be applicable to this action by law or regulation, the FAR, DEAR and other regulation references herein are specifically incorporated into this contract. Applicability instructions and comments are provided for convenience only. Contractor is responsible for reviewing the full text of each clause and requesting clarification if the intent or applicability to this specific contract is not clear.
- C. In the referenced clauses, the obligations of CHPRC to the Government as provided in said clauses shall be deemed to be the obligations of the Contractor to CHPRC unless otherwise noted below:
- D. Whenever necessary to make the context of the FAR/DEAR clauses applicable to this contract, the term "disputes" shall mean "claims" and the terms "Government," "Contracting Officer," and equivalent phrases shall mean CHPRC except the terms "Government," and "Contracting Officer" do not change:
 - 1. in the phrases referencing "Government Property" and "Government-Owned Equipment,"
 - 2. in the clauses referring to "intellectual property rights", "Stop Work", "nuclear hazards indemnity"
 - 3. when a right, act, authorization, or obligation can be granted or performed only by the Government or the Prime Contract Contracting Officer or duly authorized representative,
 - 4. when access to proprietary financial information or other proprietary data is required for purposes other than CHPRC's obligation to evaluate Cost/Price data submitted by Contractor in conjunction with any provision of this contract,
 - 5. when title to property is to be transferred directly to the Government
- E. If there is a conflict between the referenced clauses and the terms and conditions found elsewhere in this Contract, the below FAR/DEAR and Regulatory references shall take precedence.
- F. Contractor shall flowdown to its subcontracts at all tiers the applicable portions of these provisions and referenced FAR/DEAR clauses. Referenced Clauses are available at:

<https://www.energy.gov/pppo/pppo-services/pppo-program-management/contracts-procurement>

1.0 ORGANIZATIONAL CONFLICT OF INTEREST - WARRANTY

Contractor warrants that, to the best of his knowledge and belief, and except as otherwise disclosed, there are no relevant facts which could give rise to organizational conflicts of interest as defined in the Department of Energy (DOE) Acquisition Regulation 952.209-72, during performance of work under this Contract, or that Contractor has disclosed all such relevant information to CHPRC prior to award of this Contract.

2.0 DEAR 952.209-72, ORGANIZATIONAL CONFLICTS OF INTEREST ALTERNATE I (JUNE 1997)

A. Purpose

The purpose of this Clause is to ensure that the Contractor (1) is not biased because of its financial, contractual, organizational, or other interests which relate to the work under this Contract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this Contract.

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 a prime contractor, subcontractor, cosponsor, joint venture, consultant, or in any similar capacity. For the purpose of this Clause, affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both.

1. Use of Contractor's Work Product.

- a. The Contractor shall be ineligible to participate in any capacity in Department contracts, subcontracts, or proposals therefore (solicited and unsolicited) which stem directly from the Contractor's performance of work under this Contract for a period of (tbd) years after the completion of this Contract. Furthermore, unless so directed in writing by CHPRC, the Contractor shall not perform any advisory and assistance services work under this Contract on any of its 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. Nothing in this subparagraph shall preclude the Contractor from competing for follow-on contracts for advisory and assistance services.
- b. If, under this Contract, the Contractor prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the Contractor shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such statement of work or specifications. The Contractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by CHPRC, in which case the restriction in this subparagraph shall not apply.
- c. Nothing in this paragraph shall preclude the Contractor from offering or selling its standard and commercial items to CHPRC and the Government.

2. Access to and use of information.

- a. If the Contractor, in the performance of this Contract, obtains access to information, such as Department plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act

of 1974 (5 U.S.C. 552a), or data which has not been released or otherwise made available to the public, the Contractor agrees that without prior written approval of CHPRC 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 work for the Department based on such information for a period of six (6) months after either the completion of this Contract or until such information is released or otherwise made available to the public, whichever is 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 Department.
- b. In addition, the Contractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or other confidential or privileged technical, business, or financial information under this Contract, it shall treat such information in accordance with any restrictions imposed on such information.
- c. The Contractor may use technical data it first produces under this contract for its private purposes consistent with paragraphs B. 2. a. (A) and (D) of this Clause and the patent, rights in data, and security provisions of this Contract.

C. Disclosure after award.

1. The Contractor agrees that, if changes, including additions, to the facts disclosed by it prior to award of this Contract, occur during the performance of this Contract, it shall make an immediate and full disclosure of such changes in writing to CHPRC. Such disclosure may include a description of any action which the Contractor has taken or proposes to take to avoid, neutralize, or mitigate any resulting conflict of interest. CHPRC may, however, terminate the Contract for convenience if it deems such termination to be in the best interest of CHPRC and the Government.
2. In the event that the Contractor was aware of facts required to be disclosed or the existence of an actual or potential organizational conflict of interest and did not disclose such facts or such conflict of interest to CHPRC, CHPRC may terminate this Contract for default.

D. Remedies.

For breach of any of the above restrictions or for nondisclosure or misrepresentation of any facts required to be disclosed concerning this Contract, including the existence of an actual or potential organizational conflict of interest at the time of or after award, CHPRC may terminate the 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.

E. Waiver.

Requests for waiver under this Clause shall be directed in writing to CHPRC and shall include a full description of the requested waiver and the reasons in support thereof. If it is determined to be in the best interests of CHPRC and the Government, the contracting officer through CHPRC may grant such a waiver in writing.

F. Subcontracts.

1. The Contractor shall include a clause, substantially similar to this Clause, including this paragraph (F.), in subcontracts expected to exceed the simplified acquisition threshold determined in accordance with FAR Part 13 and involving the performance of advisory and assistance services as that term is defined at FAR 37.201. The terms "Contract," "Contractor," and "CHPRC" shall be appropriately modified to preserve the Government's rights.
2. Prior to the award under this Contract of any such subcontracts for advisory and assistance services, the Contractor shall obtain from the proposed subcontractor or consultant the disclosure required by DEAR 909.507-1, and shall determine in writing whether the interests disclosed present an actual or significant potential for an organizational conflict of interest. Where an actual or significant potential organizational conflict of interest is identified, the Contractor shall take actions to avoid, neutralize, or mitigate the organizational conflict to the satisfaction of the Contractor. If the conflict cannot be avoided or neutralized, the Contractor must obtain the approval of CHPRC prior to entering into the subcontract.