Mission Support Alliance Provision

SPECIAL PROVISIONS - ORGANIZATIONAL CONFLICTS OF INTEREST
SP-9 REV 1 March 14, 2011

1.0 PREAMBLE 2

2.0 ORGANIZATIONAL CONFLICT OF INTEREST - WARRANTY 2

3.0 DEAR CLAUSE FLOWDOWN 2

DEAR 952.209-72, ORGANIZATIONAL CONFLICTS OF INTEREST (AUG 2009) 2

1.0 PREAMBLE

These Special Provisions are requirements of any Subcontract in which this Special Provision document is incorporated. These Special Provisions are applicable in their entirety unless specifically deleted or amended in the Subcontract and are in addition to the General Provisions and other Special Provisions that apply to this Subcontract. In the event of a conflict between these Special Provisions and the General Provisions, these Special Provisions shall take precedence.

2.0 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, Chapter 9, 48 CFR paragraph 909.570-3, during performance of work under this Subcontract, or that Subcontractor has disclosed all such relevant information to Buyer prior to award of this Subcontract.

3.0 DEAR CLAUSE FLOWDOWN

The subsequent DEAR clause has been flowed down verbatim. For this clause only:

(1) Wherever necessary to make the context of the clauses set forth below applicable to this Subcontract, the term "disputes" shall mean "claims"; “Contractor” shall mean “Subcontractor”; "Government," and "Contracting Officer," and equivalent phrases shall mean “Buyer,” except the terms "Government," and "Contracting Officer" do not change: (1) in the phrases "Government Property," "Government-Owned Equipment," (2) 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, (3) when access to proprietary financial information or other proprietary data is required, (4) when title to property is to be transferred directly to the Government, and (5) as otherwise noted below.

DEAR 952.209-72, ORGANIZATIONAL CONFLICTS OF INTEREST (AUG 2009)

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 venturer, 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 (Contracting Officer see 48 CFR 909.507-2 and enter specific term) years after the completion of this contract. Furthermore, unless so directed in writing by the Contracting Officer, 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 the Contracting Officer, 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 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 the Contracting Officer it shall not—

i. Use such information for any private purpose unless the information has been released or otherwise made available to the public;

ii. 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;

iii. 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

iv. 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 the Contracting Officer. 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. The Department may, however, terminate the contract for convenience if it deems such termination to be in the best interest of 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 the Contracting Officer, DOE 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, the Government 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 the Contracting Officer 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 the Government, the Contracting Officer 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 48 CFR part 13 and involving the

performance of advisory and assistance services as that term is defined at 48 CFR 2.101. The terms ''contract, '' "Contractor," and "Contracting Officer" 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 48 CFR 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 the DOE Contracting Officer prior to entering into the subcontract.