

Subpart 3509.5—Organizational Conflicts of Interest

3509.500 Scope of subpart.

This subpart establishes Commission policy and procedures for identifying, evaluating, and resolving organizational conflicts of interest. It is the Commission's policy to avoid, neutralize, or mitigate organizational conflicts of interest. If the Commission is unable to neutralize or mitigate the effects of a potential conflict of interest, it will disqualify the prospective contractor or will terminate the contract when potential or actual conflicts are identified after award.

3509.502 Applicability.

This subpart applies to all Commission contracts except agreements with other Federal agencies.

3509.503 Waiver.

The Commission's General Counsel is designated as the authority to waive any general rule or procedure of this subpart by determining that its application in a particular situation would not be in the Commission's interest. Any request for waiver must be in accordance with FAR 9.503.

3509.504 Contracting officer responsibilities.

(a) Contracting officers will be responsible for determining the existence of actual and potential organizational conflicts of interest which would result from the award of the contract. The contracting officer will be guided by information submitted by offerors and by the contracting officer's own judgment. The contracting officer may obtain the advice of legal counsel and the assistance of technical specialists in evaluating potential organizational conflicts.

(b) If it is determined that organizational conflicts of interest will be created by the award of the contract, the contracting officer may find an offeror nonresponsible.

(c) Notwithstanding the existence of organizational conflicts of interest, it may be determined that the award of the contract would be in the best interest of the Commission. In that case, the contracting officer may, with the

approval of the cognizant Head of the Contracting Activity, set terms and conditions which will reduce the organizational conflicts of interest to the greatest extent possible.

(d) The contracting officer shall, in addition to any certifications required by this subpart, require in all solicitations for consulting services that the offeror submit as part of an offer a statement which discloses all relevant facts relating to existing or potential organizational conflicts of interest surrounding the contract, including disclosure of such conflicts of interest with respect to proposed subcontractors.

3509.506 Information sources.

(a) *Disclosure.* At the request of the contracting officer, prospective Commission contractors responding to solicitations or submitting unsolicited proposals shall provide information to the contracting officer for use in identifying, evaluating, or resolving potential organizational conflicts of interest. The submittal may be a certification or a disclosure, pursuant to paragraphs (a)(1) or (2) of this section.

(1) If the prospective contractor is not aware of any information bearing on the existence of any organizational conflict of interest, the contractor shall so certify.

(2) Prospective contractors not certifying in accordance with paragraph (a)(1) of this section must provide a disclosure statement which describes concisely all relevant facts concerning any past, present, or planned interests relating to the work to be performed and bearing on whether they, including their chief executives, directors, or any proposed consultant or subcontractor, may have a potential organizational conflict of interest.

(b) *Failure to disclose information.* Any prospective contractor failing to provide full disclosure, certification, or other required information will not be eligible for award. Nondisclosure or misrepresentation of any relevant information may also result in disqualification from award, termination of the contract for default, or debarment from Government contracts, as well as other legal action or prosecution. In response to solicitations requesting the