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Suspending Official's legal representative shall obtain the advice of appropriate Department of Justice officials concerning the impact disclosure of evidence at the meeting or fact-finding conference could have on any pending civil or criminal investigation or legal proceeding. If such Department of Justice official requests in writing that evidence needed to establish the existence of a cause for suspension not be disclosed to the respondent, the Suspending Official shall:

(i) Decline to rely on such evidence and withdraw (without prejudice) the suspension or proposed debarment until such time as disclosure of the evidence is authorized; or

(ii) Deny the request for a meeting or fact-finding and base the suspension decision solely upon the information in the administrative record, including any submission made by the respondent.

(e) Notice of suspending official's decision. In actions in which additional proceedings have been held, following such proceedings, the Suspending Official shall notify respondent, as applicable, in accordance with paragraphs (e)(1) or (e)(2) of this section.

(1) Upon deciding to sustain a suspension, the Suspending Official shall promptly send each affected respondent a notice containing the following information:

(i) A reference to the notice of suspension, the meeting and the fact-finding conference;

(ii) The Suspending Official's findings of fact and conclusions of law;

(iii) The reasons for sustaining a suspension;

(iv) A reference to the Suspending Official's waiver authority under 48 CFR (DEAR) 909.405;

(v) A statement that the suspension is effective throughout the Executive Branch as provided in FAR 9.407-1(d);

(vi) Modifications, if any, of the initial terms of the suspension;

(vii) A statement that a copy of the suspension notice was sent to GSA and that the respondent's name and address will be added to the GSA List; and

(viii) If less than an entire organization is suspended, specification of the organizational element(s) or indi-

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vidual(s) included within the scope of the suspension.

(2) If the Suspending Official decides to terminate a suspension, the Suspending Official shall promptly send, by certified mail, return receipt requested, each affected respondent a copy of the final decision required under this section.

[61 FR 39857, July 31, 1996; 61 FR 41684, Aug. 9, 1996]

Subpart 909.5—Organizational and Consultant Conflicts of Interest

SOURCE: 62 FR 40751, July 30, 1997, unless otherwise noted.

909.503 Waiver.

Heads of Contracting Activities are delegated the authorities in 48 CFR (FAR) 9.503 regarding the waiver of OCI requirements.

909.504 Contracting Officer's Responsibility. (DOE coverage-paragraphs (d) and (e)).

(d) The contracting officer shall evaluate the statement by the apparent successful offeror or, where individual contracts are negotiated with all firms in the competitive range, all such firms for interests relating to a potential organizational conflict of interest in the performance of the proposed contract. Using that information and any other credible information, the contracting officer shall make written determination of whether those interests create an actual or significant potential organizational conflict of interest and identify any actions that may be taken to avoid, neutralize, or mitigate such conflict. In fulfilling their responsibilities for identifying and resolving potential conflicts, contracting officers should avoid creating unnecessary delays, burdensome information requirements, and excessive documentation.

(e) The contracting officer shall award the contract to the apparent successful offeror unless a conflict of interest is determined to exist that cannot be avoided, neutralized, or mitigated. Before determining to withhold award based on organizational conflict

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of interest considerations, the contracting officer shall notify the offeror, provide the reasons therefor, and allow the offeror a reasonable opportunity to respond. If the conflict of interest cannot be avoided, neutralized, or mitigated to the contracting officer's satisfaction, the contracting officer may disqualify the offeror from award and undertake the disclosure, evaluation, and determination process with the firm next in line for award. If the contracting officer finds that it is in the best interest of the United States to award the contract notwithstanding a conflict of interest, a request for waiver shall be submitted in accordance with 48 CFR 909.503. The waiver request and decisions shall be included in the contract file.

909.507 Solicitation provisions and contract clause.

909.507-1 Solicitation provisions. (DOE coverage-paragraph (e)).

(e) The contracting officer shall insert the provision at 48 CFR 952.209-8, Organizational Conflicts of Interest Disclosure-Advisory and Assistance Services, in solicitations for advisory and assistance services expected to exceed the simplified acquisition threshold. In individual procurements, the Head of the Contracting Activity may increase the period subject to disclosure in 952.209-8 (c)(1) up to 36 months.

909.507-2 Contract Clause.

(a)(1) The contracting officer shall insert the clause at 48 CFR 952.209-72, Organizational Conflicts of Interest, in each solicitation and contract for advisory and assistance services expected to exceed the simplified acquisition threshold.

(2) Contracting officers may make appropriate modifications where necessary to address the potential for organizational conflicts of interest in individual contracts. Contracting officers shall determine the appropriate term of the bar of paragraph (b)(1)(i) of the clause at 48 CFR 952.209-72 and enter that term in the blank provided. In the usual case of a contract for advisory and assistance services a period of three, four, or five years is appropriate; however, in individual cases the con-

tracting officer may insert a term of greater or lesser duration.

(3) The contracting officer shall include Alternate I with the clause in instances in which a meaningful amount of subcontracting for advisory and assistance services is expected.

(b) Contracts, which are not subject to part 970 but provide for the operation of a DOE site or facility or environmental remediation of a specific DOE site or sites, shall contain the organizational conflict of interest clause at 48 CFR 952.209-72. The organizational conflicts of interest clause in such contracts shall include Alternate I to that clause.

PART 911—DESCRIBING AGENCY NEEDS

Subpart 911.6—Priorities and Allocations

Sec.

911.600 Scope of subpart.

911.602 General.

911.604 Solicitation provision and contract clause.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

Subpart 911.6—Priorities and Allocations

911.600 Scope of subpart.

This subpart implements and supplements FAR Subpart 11.6, Priorities and Allocations, and implements the regulations and procedures of the Defense Priorities and Allocations System (DPAS) in solicitations and contracts in support of authorized national defense programs and those energy programs which maximize domestic energy supplies. (See 15 CFR part 700).

[52 FR 38422, Oct. 16, 1987, as amended at 59 FR 9105, Feb. 25, 1994. Redesignated and amended at 61 FR 21976, May 13, 1996; 61 FR 30823, June 18, 1996]

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(d) Programs which maximize domestic energy supplies are eligible for priorities and allocations support depending on an executive decision made on a case-by-case basis. Eligibility is pursuant to section 104(a) of the Energy Conservation and Policy Act, Pub. L. 94-163, which added a new section 101(c) to the Defense Production Act. Guidance