

## Defense Nuclear Fac. Safety Board

## § 1706.11

for a contract has a substantial business relationship in technical areas unrelated to the Board's oversight authority with a contractor operating a defense nuclear facility under a DOE contract. Similar to the situation described in paragraph (e) of this section, the total value of the contracts with the DOE contractor constitutes more than half of the firm's gross revenues, even though those contracts do not represent a potential or actual conflict of interest regarding any of the particular matters to be covered by the contract with the Board.

(2) *Guidance.* The firm's substantial financial and business dependence upon the DOE contractor may give rise to a conflict of interest, in that the likelihood of the firm's rendering impartial, objective assistance or advice to the Board may be impaired by its extensive financial relationship with the DOE contractor. In this situation, the Board will review and consider the nature of the proposed Board contract, the need by the Board for the services and expertise to be provided by the firm and the availability of such services and expertise elsewhere. The Board will also review and consider the extent of the firm's financial dependence on the DOE contractor and whether the firm would be impartial and objective in providing technical evaluation and opinions to the Board, especially on matters in which the DOE contractor is involved, notwithstanding the relationship with the DOE contractor. Based on this analysis, the Board may determine that there is no actual conflict of interest and make the award. Alternatively, if the Board identifies a conflict that cannot be avoided, the Board may determine to waive the conflict in the best interests of the United States, with or without the establishment of procedures to mitigate the conflict, or it may disqualify the offeror.

[57 FR 44652, Sept. 29, 1992; 58 FR 13684, Mar. 12, 1993]

### § 1706.10 Remedies.

The refusal to provide the certificate, or upon request of the contracting officer the additional written statement, required by §§ 1706.6 and 1706.7 in connection with an award shall result in

disqualification of the offeror for that award. The nondisclosure or misrepresentation of any relevant information may also result in the disqualification of the offeror for that award. If such nondisclosure or misrepresentation by an offeror or contractor is discovered or occurs after award, or in the event of breach of any of the restrictions contained in this part, the Board may terminate the contract for convenience or default, and the offeror or contractor may also be disqualified by the Board from consideration for subsequent Board contracts and be subject to such other remedial actions as provided by law or the contract.

[57 FR 44652, Sept. 29, 1992; 58 FR 13684, Mar. 12, 1993]

### § 1706.11 Organizational conflicts of interest certificate—Advisory or assistance services.

As prescribed in or permitted by § 1706.6(a), insert the following provision in Board solicitations:

ORGANIZATIONAL AND CONSULTANT CONFLICTS OF INTEREST CERTIFICATE—ADVISORY AND ASSISTANCE SERVICES (OCT. 1990)

(a) An organizational or consultant conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

(b) In order to comply with the Office of Federal Procurement Policy Letter 89-1, Conflict of Interest Policies Applicable to Consultants, the offeror shall provide the certificate described in paragraph (c) of this provision.

(c) The certificate must contain the following:

(1) Name of the agency and the number of the solicitation in question.

(2) The name, address, telephone number, and federal taxpayer identification number of the offeror.

(3) A description of the nature of the services rendered by or to be rendered on the instant contract.

(4) The name, address, and telephone number of the client or clients, a description of the services rendered to the previous client(s), and the name of a responsible officer

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or employee of the offeror who is knowledgeable about the services rendered to each client, if, in the 12\*months preceding the date of the certification, services were rendered to the Government or any other client (including a foreign government or person) respecting the same subject matter as the instant solicitation, or directly relating to such subject matter. The agency and contract number under which the services were rendered must also be included, if applicable.

(5) A statement that the person who signs the certificate has made inquiry and that, to the best of his or her knowledge and belief, no actual or potential conflict of interest or unfair competitive advantage exists with respect to the advisory or assistance services to be provided in connection with the instant contract, or that any actual or potential conflict of interest or unfair competitive advantage that does or may exist with respect to the contract in question has been communicated in writing to the contracting officer or his or her representative; and

(6) The signature, name, employer's name, address, and telephone number of the person who signed the certificate.

(d) Persons required to certify but who fail to do so may be determined to be nonresponsible. Misrepresentation of any fact may result in suspension or debarment, as well as penalties associated with false certifications or such other provisions provided for by law or regulation.

(End of provision)

**PART 1707—TESTIMONY BY DNFSB EMPLOYEES AND PRODUCTION OF OFFICIAL RECORDS IN LEGAL PROCEEDINGS**

**Subpart A—General Provisions**

Sec.

- 1707.101 Scope and purpose.
- 1707.102 Applicability.
- 1707.103 Definitions.

**Subpart B—Requests for Testimony and Production of Documents**

- 1707.201 General prohibition.
- 1707.202 Factors DNFSB will consider.
- 1707.203 Filing requirements for demands or requests for documents or testimony.
- 1707.204 Service of subpoenas or requests.
- 1707.205 Processing demands or requests.
- 1707.206 Final determination.
- 1707.207 Restrictions that apply to testimony.

\* If approved by the head of the contracting activity, this period may be increased up to 36 months.

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1707.208 Restrictions that apply to released records.

1707.209 Procedure when a decision is not made prior to the time a response is required.

1707.210 Procedure in the event of an adverse ruling.

**Subpart C—Schedule of Fees**

1707.301 Fees.

**Subpart D—Penalties**

1707.401 Penalties.

AUTHORITY: 42 U.S.C. 2286b(c); 44 U.S.C. 3101–3107, 3301–3303a, 3308–3314.

SOURCE: 66 FR 66715, Dec. 27, 2001, unless otherwise noted.

**Subpart A—General Provisions**

**§ 1707.101 Scope and purpose.**

(a) This part sets forth policies and procedures you must follow when you submit a demand or request to an employee of the Defense Nuclear Facilities Safety Board (DNFSB) to produce official records and information, or provide testimony relating to official information, in connection with a legal proceeding. You must comply with these requirements when you request the release or disclosure of official records and information.

(b) The Defense Nuclear Facilities Safety Board intends these provisions to:

- (1) Promote economy and efficiency in its programs and operations;
- (2) Minimize the possibility of involving DNFSB in controversial issues not related to our functions;
- (3) Maintain DNFSB's impartiality among private litigants where DNFSB is not a named party; and
- (4) Protect sensitive, confidential information and the deliberative processes of DNFSB.

(c) In providing for these requirements, DNFSB does not waive the sovereign immunity of the United States.

(d) This part provides guidance for the internal operations of DNFSB. It does not create any right or benefit, substantive or procedural, that a party may rely upon in any legal proceeding against the United States.