

Environmental Protection Agency

1509.507-2

(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, EPA will consider any inadvertent failure to provide disclosure certification as a “minor informality” (as explained in FAR 14.405); however, the prospective contractor must correct the omission promptly.

(c) *Exception.* Where the Contractor has previously submitted a conflict of interest certification or disclosure for a contract, only an update of such statement is required when the contract is modified.

[49 FR 8839, Mar. 8, 1994. Redesignated at 59 FR 18619, Apr. 19, 1994]

1509.507-1 Solicitation provisions.

(a) *Advance notice of limitations.* The Contracting Officer shall alert prospective contractors by placing a notice in the solicitation whenever a particular acquisition might create an organizational conflict of interest. The notice will:

(1) Include the information prescribed in (FAR) 48 CFR 9.507-1;

(2) Refer prospective contractors to this subpart; and

(3) Require proposers to disclose relevant facts concerning any past, present, or currently planned interests relating to the work described in the solicitation.

(b) *Required solicitation provision.* The Contracting Officer shall include the provisions at 1552.209-70 and 1552.209-72

in all solicitations, except where the following applies:

(1) An Organizational Conflict of Interest provision is drafted for a particular acquisition (see Section 1509.507-1(a));

(2) When the procurement is with another Federal agency (however, the provision is included in solicitations issued under the Small Business Administration’s (SBA) 8(a) program); and

(3) When the procurement is accomplished through simplified acquisition procedures, use of the provision is optional.

[49 FR 8839, Mar. 8, 1994. Redesignated and amended at 59 FR 18619, Apr. 19, 1994; 61 FR 57337, Nov. 6, 1996; 62 FR 33572, June 20, 1997]

1509.507-2 Contract clause.

(a) The Contracting Officer shall include the clause at 1552.209-71 in all contracts in excess of the simplified acquisition threshold and, as appropriate, in simplified acquisition procedures. Contracts for other than Superfund work shall include Alternate I in this clause in lieu of paragraph (e).

(b) The Contracting Officer shall include the clause at 1552.209-73 in all solicitations and contracts for Superfund work in excess of the simplified acquisition threshold and, as appropriate, in small purchases for Superfund work.

(c) The Contracting Officer shall include the clause at 1552.209-74 or its alternates in the following solicitations and contracts for Superfund work in excess of the simplified acquisition threshold and, as appropriate, in simplified acquisition procedures for Superfund work. The Contracting Officer shall include the clause at 1552.209-74 in all Response Action Contract (RAC) solicitations and contracts, except Site Specific solicitations and contracts. The term “RAC” in the Limitation of Future Contracting clauses includes not only RAC solicitations and contracts but other long term response action solicitations and contracts that provide professional architect/engineer, technical, and management services to EPA to support remedial response, enforcement oversight and non-time critical removal activities under the Comprehensive Environmental Response Compensation and

Liability Act of 1980, as amended by the Superfund Amendments Reauthorization Act of 1986; and the Robert T. Stafford Natural Disaster Act pursuant to the Federal Response Plan and other laws to help address and/or mitigate endangerment to the public health, welfare or environment during emergencies and natural disasters, and to support States and communities in preparing for the responses to releases of hazardous substances.

(1) Alternate I shall be used in all Emergency and Rapid Response Services (ERRS) solicitations and contracts, except site specific solicitations and contracts. The term "ERRS" in the Limitation of Future Contracting clauses includes not only ERRS solicitations and contracts but other emergency response type solicitations and contracts that provide fast responsive environmental cleanup services for hazardous substances/wastes/contaminants/material and petroleum products/oil. Environmental cleanup response to natural disasters and terrorist activities may also be required. ERRS pilot scale studies are included in the term "treatability studies."

(2) Alternate II shall be used in all Superfund Technical Assistance and Removal Team (START) solicitations and contracts. The term "START" in the Limitation of Future Contracting clauses include not only START solicitations and contracts but other site removal and technical support solicitations and contracts that include activities related to technical analyses in determining the nature and extent of contamination at a site and making recommendations regarding response technologies.

(3) Alternate III shall be used in all Environmental Services Assistance Team (ESAT) solicitations and contracts.

(4) Alternate IV shall be used in all Enforcement Support Services (ESS) solicitations and contracts. The term "ESS" in the Limitation of Future Contracting clauses not only includes ESS solicitation and contracts but other enforcement support type solicitations and contracts that involve removal actions, mandatory notices to Potentially Responsible Parties (PRPs), penalty assessments, public

comment periods, negotiations with PRPs, and statutes of limitations for pursuing cost recovery. The enforcement support services required under the contract may be conducted to support EPA enforcement actions under any environmental statute.

(5) Alternate V shall be used in all Superfund Headquarters Support solicitations and contracts. The Contracting Officer is authorized to modify paragraph (c) of Alternate V to reflect any unique limitations applicable to the program requirements.

(6) Alternate VI shall be used in all Site Specific solicitations and contracts.

(d) The Contracting Officer shall insert the clause at 1552.209-75 in Superfund solicitations and contracts in excess of the simplified acquisition threshold, where the solicitation or contract does not include (EPAAR) 48 CFR 1552.211-74, Work Assignments, Alternate I, or a similar clause requiring conflict of interest certifications during contract performance. This clause requires an annual conflict of interest certification from contractors when the contract does not require the submission of other conflict of interest certifications during contract performance. Contracts requiring annual certifications include: Site Specific contracts, the Contract Laboratory Program (CLP), and the Sample Management Office (SMO) contracts. The annual certification requires a contractor to certify that all organizational conflicts of interest have been reported, and that its personnel performing work under EPA contracts or relating to EPA contracts have been informed of their obligation to report personal and organizational conflicts of interest to the Contractor. The annual certification shall cover the one-year period from the date of contract award for the initial certification, and a one-year period starting from the previous certification for subsequent certifications. The certification must be received by the Contracting Officer no later than 45 days after the close of the certification period covered.

[59 FR 18619, Apr. 19, 1994, as amended at 61 FR 57337, Nov. 6, 1996; 70 FR 61569, Oct. 25, 2005]