

U.S. Department of Energy
Washington, D.C.

ORDER

DOE 4220.4

5-19-86

SUBJECT: ORGANIZATIONAL CONFLICT OF INTEREST PROCESSING PROCEDURES

1. PURPOSE. To establish processing procedures for implementing the policy of the Department of Energy (DOE) as expressed in DOE Acquisition Regulation (DEAR) 909.5 to identify and avoid organizational conflicts of interest before entering into contracts, agreements, and other arrangements.
2. SUCCESSION. HQ N 2030.1A, ORGANIZATIONAL CONFLICTS OF INTEREST PROCESSING PROCEDURES, of 8-12-81.
3. APPLICABILITY. These procedures apply to contracts of any dollar amount. However, for contracts awarded pursuant to the source evaluation board procedures of DEAR 915.613 the source selection official, pursuant to DEAR 909.570-9(a), rather than the contracting officer, is the finder of the potential for organizational conflicts of interest.
4. BACKGROUND. DEAR 909.5, Organizational Conflicts of Interest, establishes Departmental policy and procedures with respect to the avoidance of organizational conflicts of interest. This Order is intended to aid the Department in identifying and avoiding contractual relationships that might lead contractors to give advice and assistance that are not unbiased, impartial, objective, and technically sound, and to eliminate any unfair competitive advantage that might accrue to the contractor. The regulation requires prospective contractors to disclose pertinent information bearing upon possible organizational conflicts of interest and requires the inclusion of contract clauses designed to prevent such conflicts during and after contract performance. This Order establishes the internal implementation procedures to assure compliance with DOE's statutory obligations.
5. REFERENCES.
 - a. DEAR 909.5 which establishes policy for the avoidance of organizational conflicts of interest.
 - b. Public Law 93-275, Federal Energy Administration Act of 1974, which authorizes certain research and development efforts, subject to organizational conflicts of interest concerns.

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Management

- c. Public Law 95-39, which establishes statutory requirements for avoiding organizational conflicts of interest for functions of the Department derived from the Energy Research and Development Administration.
 - d. Public Law 95-70, which establishes statutory requirements for avoiding organizational conflicts of interest for functions of the Department derived from the Federal Energy Administration,
6. DEFINITIONS.
- a. Affiliate is a concern or individual which either directly or indirectly controls or possesses the power to control another, or a third party which controls or has the power to control both.
 - b. Contract is, for the purposes of implementing policy on organizational conflicts of interest, any contract, agreement, or other arrangement entered into by the DOE.
 - c. Contractor is any person, firm, unincorporated association, joint venture, partnership, corporation, or affiliate thereof, which is a party to a contract with the Department.
 - d. Heads of Field Organizations. for the purposes of this Order, includes the administrators of the power administrations and the managers of DOE operations offices.
 - e. Offeror is any person, firm, unincorporated association, joint venture, partnership, corporation, or affiliate thereof, that submits a bid or proposal, solicited or unsolicited, to the Department to obtain a contract or modification thereof.
 - f. Organizational Conflict of Interest describes a relationship or situation in which an offeror or a contractor (including chief executives and directors, to the extent that they will or do become involved in the performance of the contract, and proposed consultants or subcontractors in which they may be performing services similar to the services provided by the prime contractor) has past, present, or currently planned interests that either directly or indirectly relate to the work to be performed under a Departmental contract and that (1) may diminish the capacity of the offeror or contractor to give impartial, technically sound, objective assistance and advice, or (2) may result in an unfair competitive advantage. The term does not include the normal flow of benefit; from the performance of the contract.

5-19-86

- g. Secretarial Officers are the Assistant Secretarial Level officials that report directly to the Office of the Secretary. These officials along with the Secretary, Deputy Secretary, and Under Secretary (Office of the Secretary) comprise "the Secretary or the Secretary's designee" for the purposes of the determination authorized by DEAR 909.570-9(a)(3).
- h. Subcontractor, for the purposes of this Order, includes any subcontractor, at any tier, that performs work under a DOE contract.

7. POLICY AND OBJECTIVES.

- a. To identify and analyze possible organizational conflicts of interest related to the procurement or the offeror,
- b. To assure, in accordance with statutory and regulatory requirements, that the Department's contractors are unbiased and receive no unfair competitive advantage.
- c. To coordinate the efforts of senior program staff and the Director of Procurement and Assistance Management (MA-4), in order to avoid delays in the award and execution of contracts.

8. RESPONSIBILITIES AND AUTHORITIES.

- a. Secretarial Officers shall:
 - (1) Designate a senior program official who will review and concur in each DOE F 2030.2, "organizational Conflicts of Interest Information Abstract" (See Attachment 2) originated by their respective organizations.
 - (2) With regard to all contract actions initiated by Headquarters program offices, exercise, where appropriate, the authority set forth in DEAR 909.570-9(a)(3) to determine that award of a contract is in the best interests of the United States, notwithstanding the existence of an organizational conflict of interest, in those cases in which such conflict cannot be avoided.
- b. Heads of Field Organizations shall:
 - (1) Designate a senior official(s) who will review and concur in each DOE F 2030.2 originate by their field offices.
 - (2) Exercise, where appropriate, the authority set forth in DEAR 909.570-9(a)(3), discussed in paragraph 8a(2) above, for all contract actions not initiated by a Headquarters program office, to be awarded by their respective field offices.

c. Contracting Officers shall:

- (1) Assure that all procurement requests are reviewed for potential organizational conflicts of interest and that procurement solicitations contain organizational conflicts of interest provisions, when they are needed.
- (2) Assist with organizational conflicts of interest matters in all phases of the procurement cycle.
- (3) Assure, by the inclusion of contract provisions and other appropriate means, that all contractors, whose contracts fall within any of the categories specified at paragraph 9a below, including management and operating contractors, establish procedures to assure review and appropriate treatment of the organizational conflicts of interest aspects of their subcontracts. The ultimate decision in all subcontract cases will be made by the DOE contracting officer, after consultation with the cognizant program office.

d. General Counsel or Chief Counsel, as appropriate, shall:

- (1) Provide legal advice on organizational conflicts of interest issues as part of the general servicing of the procurement process.
- (2) Review the Secretarial Officer's or Head of Field Organization's written findings and determinations on organizational conflicts of interest prior to publication in the "Federal Register" (see page 6, paragraphs 9h(1) and (2)).

e. Heads of Contracting Activities shall establish internal procedures to assure that all determinations by contracting officers pursuant to DEAR 909.570-9(a) are reviewed either by the Office of Chief Counsel (or Office of General Counsel, as appropriate) or by a specially appointed organizational conflicts of interest reviewing official within the contracting activity,9. PROCESSING PROCEDURES.

- a. Requesting Official shall complete DOE F 2030.1, "Pre-procurement Organizational Conflicts of Interest Fact Sheet," (See Attachment 1) at the time the procurement request is initiated, provided the proposed contract falls within one of the categories listed below. If the requesting official is uncertain about whether a procurement falls within one of the categories, he or she should consult with the contracting officer prior to preparing the factsheet. The categories are:

DOE 4220.4
5-19-86

- (1) Evaluation services or activities,
 - (2) Technical, consulting, management support, and professional services.
 - (3) Research and development authorized pursuant to Federal Energy Administration Act of 1974 (Public Law 93-275) as amended. Other proposed research and development contracts do not require the formal organizational conflicts of interest review established by this Order.
 - (4) Services which, by their nature, require organizational conflicts of interest coverage. Such services are more fully described in DEAR 909.570-4,
- b. If the requesting official is uncertain about whether a procurement falls within one of the above categories, he or she should consult with the contracting officer prior to preparing the factsheet.
- c. Contract Specialist shall
- (1) Review the completed DOE F 2030.1 in order to determine any possible organizational conflicts of interest problem areas in relation to the proposed procurement request.
 - (2) Advise the requesting official of any changes (e.g., revision of the statement of work), if any, are needed in order to mitigate or eliminate real or potential organizational conflicts of interest.
 - (3) Include in solicitations necessary and appropriate provisions to assure disclosure of all relevant interests by all potential offerors.
- d. Requesting Officials and Contract Specialists, shall, after receipt of proposals, complete DOE F 2030.2 in accordance with the instructions on the form. Use of the abstract is not required when the contracting officer has determined that the procurement does not fall within any of the four categories listed in paragraph 9a above, or when review of the factsheet has indicated that there is no potential for organizational conflicts of interest under the Procurement.
- e. Contracting Officers shall :
- (1) Review the completed DOE F 2030.2 and supporting file, organized in accordance with Section A of the abstract, together with any other relevant information, and make the finding required by DEAR 909.570-9(a) that a potential organizational conflict of interest exists or that there is little or no likelihood that a conflict exists with respect to a particular offeror.

- (2) Forward such finding and contract file information for review in accordance with the procedures established pursuant to paragraph 8e above.
 - (3) Record the basis for their conclusions in cases in which they intend to proceed in the face of a differing evaluation by the designated program organizational conflicts of interest reviewing official, as stated in paragraph 9f(2) below.
 - (4) For procurements which are to be awarded pursuant to source evaluation board procedures, forward the organizational conflicts of interest file with their recommendations to the source selection official.
- f. Designated Program Organizational Conflicts of Interest Reviewing Officials (see page 3, paragraph 8a(1)) shall :
- (1) Review the contracting officer's written determination.
 - (2) Document the reasons for their positions where they differ from the finding by the contracting officer.
- g. Source Selection Officials shall, in the case of procurements which are to be awarded pursuant to source evaluation board procedures, review the recommendation(s) of the contracting officer and the designated program organizational conflicts of interest reviewing official, and make the finding required by DEAR 909.570-9(a) that a potential for organizational conflicts of interest does exist or that little or no likelihood of a conflict exists.
- h. Secretarial Officers and Heads of Field Organizations, as appropriate, may exercise the authority set forth in DEAR 909.570-9(a)(3) to determine that award of the contract is in the best interests of the United States notwithstanding the likelihood of an organizational conflict of interest, in those cases in which such conflict cannot be avoided.
- (1) In the case of procurement actions initiated by a Headquarters program office and to be awarded either at Headquarters or by a field office, the written finding and determination required by DEAR 909.570-9(a)(3) shall be prepared and executed by the Secretarial Officer, as appropriate. The contracting officer and the General Counsel shall review the written finding and determination prior to publication in the "Federal Register." However, their concurrence is not necessary. The executed finding and determination shall then be forwarded to the Director of Procurement and Assistance Management (MA-4), for information purposes, who shall then provide it to the Federal Register Management Team Leader (MA-213.12) for publication in the "Federal Register."

5-19-86

- (2) In the case of procurement actions to be awarded by field offices, not initiated by a Headquarters program office, the written finding and determination shall be prepared by the field office's senior cognizant program official, reviewed by the field organization's legal staff and the contracting officer, and signed by the Head of the Field Organization. The signed finding and determination then shall be forwarded to the Assistant Secretary, Management and Administration (MA-1), for approval. Upon execution, the finding and determination shall be forwarded to the Director of Procurement and Assistance Management (MA-4) for information purposes who shall then provide it to the Federal Register Management Team Leader (MA-213.12) for publication in the "Federal Register,"
- (3) In both cases the file and the originally signed copy of the determination shall be returned to the contracting officer for the official contract file.

BY ORDER OF THE SECRETARY OF ENERGY



HARRY L. PEEBLES
Director of Administration

EXAMPLE OF FACTSHEET

DOE F 2030.1
(1-86)

U.S. DEPARTMENT OF ENERGY
PRE-PROCUREMENT ORGANIZATIONAL CONFLICTS OF INTEREST
FACT SHEET

The Fact Sheet is designed to provide an early recognition of possible organizational conflicts of interest (OCI) problem areas in relation to the planned procurement. The three sections of the Fact Sheet (Section A, Procurement Description; Section B, Potential Organizational Conflicts of Interest Problem Areas; and Section C, Special Instructions and Pertinent Information) are to be completed by the Requesting Official at the time each procurement request is initiated if the contract will involve one or more of the following categories. See Department of Energy Acquisition Regulation (DEAR) Subsection 808.570-7 (Check the applicable category.)

- EVALUATION SERVICES OR ACTIVITIES** (Any work or effort, the principal purpose of which involves the independent study of a technology, process, product, or policy which entails the assessment, appraisal, or survey of such technology, process, product, or policy.)
- TECHNICAL CONSULTING AND MANAGEMENT/SUPPORT SERVICES AND PROFESSIONAL SERVICES** (Any work or effort, the principal purpose of which is to provide internal assistance to any program element or other organizational component of the department in the formulation or administration of its programs, projects, or policies, which requires the contractor to be given access to internal or proprietary data. Such services typically include assistance in the preparing of program plans; evaluation, monitoring, or review of contractor's activities or proposals submitted by prospective contractors; preparation of preliminary designs, specifications, or statements of work.)
- Research and development** conducted pursuant to the authority of the Federal Energy Administration Act of 1974 (Pub. L. 93-275), as amended.
- Services** which, by their nature, require special OCI coverage (If this category is checked, please explain in Section C.)

The Fact Sheet is to be forwarded with the procurement request to the Procurement Operations Office. Procurement Operations will utilize the Fact Sheet as their reference to elicit complete and accurate information from the offeror concerning a possible OCI. This information, in turn, is used by the Contracting Officer's Technical Representative and the Contract Specialist to complete the OCI Information Abstract.

SECTION A
PROCUREMENT DESCRIPTION

1. PROCUREMENT REQUEST NO.: DE-AC01-85MA37017		
2. DOE OFFICES TO BE SERVED BY THE CONTRACTOR		
(a) All offices of the Controller	(b)	
(b)	(c)	
(c)	(d)	
(d)	(e)	
3. BRIEF DESCRIPTION OR PURPOSES OF PROCUREMENT AND USES OF CONTRACTOR SERVICES AND WORK PRODUCTS Analysis, design, development, and implementation of DOE (manual and automated) management information processes and systems.		
4. IF THIS IS A FOLLOW-ON EFFORT TO ANOTHER DOE CONTRACT, PLEASE STATE		
(a) Contract No. DE-AC01-83MA10001	(b) Completion Date 12/21/84	(c) Contract Amount \$ 9,000,000
5. BRIEF DESCRIPTION OF WORK: Program/Project MIS development: Business MIS development		

**SECTION B
POTENTIAL ORGANIZATIONAL PROBLEM AREAS**

INSTRUCTIONS - Listed below are factors used to determine whether the possibility of an OCI situation exists in the context of the planned procurement action. If a factor indicating a possible OCI problem is present to any degree, your response should be affirmative. Use additional sheets as necessary.

<i>Indicate answer by placing "X" in proper column, and if the answer to any of the following three questions (1, 2 or 3) is "Yes", complete 4</i>		YES	NO
1. Does the work involve the preparation of specifications?			X
2. Does the work involve the preparation of a statement of work?			X
3. Does the work involve the formulation of a detailed plan for specific approaches or methodologies which are to be employed in or incorporated into future procurements or access to such specifications, statements of work, or plans?			X
4. Briefly state the relationship between 1, 2, and 3 and any possible future procurement(s). Indicate whether other contractors, DOE personnel, or third parties are to assist the contractor in the development of 1, 2, or 3 (above).			
8a. Will the Contractor Provide Software? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		8b. Will the Use of the Software Require the Acquisition of New ADPE? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
6. Will Performance of the Contract Provide Access to Internal Information Concerning DOE Plans or Programs, and Related Opinions, Clarifications, Interpretations and Positions? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
6a. If Yes, identify categories of information and the Program Elements involved. In order to develop systems, the contractor will have to understand office plans or programs.			
7. Will Performance of the Contract Provide Access to Confidential or Proprietary Information of others (particularly private institutions, corporations, and individuals) including Technical, Business, or Financial Information? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
7a. If Yes, Identify Categories of Information			
8. Does Performance of the Contract Involve Advice or Assistance on Regulatory Matters or Provide Access to Internal DOE Regulatory Information? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
8a. If performance will Provide Access to Internal DOE Regulatory Information, Please Describe Such Information and Its Use for Regulatory Purposes.			
9. Will the Contractor's Work Product be Employed in Connection with the Formulation of DOE Policy Plans or Strategies? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
9a. If Yes, Please Describe the Work Products and the Manner in which they will be used.			
10. Will the Contractor's Performance Include the Review, Analysis, or Evaluation of the Services or Products of DOE Contractors? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
10a. If Yes, Briefly Identify Such Services and Products. To the extent that DOE is requesting an up-rating of systems developed by previous contractors			

**SECTION C
SPECIAL INSTRUCTIONS AND PERTINENT INFORMATION**

INSTRUCTIONS - Set forth below, or on a separate sheet, any special OCI-related instructions to Procurement or any information which you believe pertinent to OCI processing:

12/14/84 _____
Date Requesting Official

J. E. Smith

Add name information on attached sheets:

EXAMPLE OF INFORMATION ABSTRACT

DOE F2030.2
(1-86)

U.S. DEPARTMENT OF ENERGY
ORGANIZATIONAL CONFLICTS OF INTEREST INFORMATION ABSTRACT

Two sections of the Information Abstract (Section A, Contract File Information; Section B, Abstract Questions) are to be completed by the Contracting Officer's Technical Representative and the Contract Specialist for (1) all offerors in the competitive range for Source Evaluation Board procurement; (2) for all other competitive procurements after selection but prior to award, and (3) for noncompetitive procurements prior to award.

Once completed, these two sections are an Information Abstract of the procurement and of potential areas of OCI encompassing both the proposed work and the proposed contractor. The Information Abstract becomes the principal basis upon which the Contracting Officer's finding (Section C) as to the existence of a possible conflict is made and is the principal basis of review of that finding by the Procurement Organizational Conflict of Interest Reviewing Official. Note that for Source Evaluation Board procurements, the Source Selection Official makes the Organizational Conflicts of Interest Finding in the Selection Statement.

SECTION A
CONTRACT FILE INFORMATION

INSTRUCTION — Careful examination of the following documents is necessary since they provide most of the information needed to complete Section B, Abstract Questions, and Section C, Contracting Officer's Finding. The documents are to be placed in the contract file under tabs. Should there be any doubt as to the nature or extent of the Offeror's activities in any area of possible conflict (bias or unfair competitive advantage), the missing information should be obtained from the offeror.

TITLE AND DESCRIPTION	TAB NO.
1. The Procurement Request and the Pre-Procurement OCI Fact Sheet	A
2. The latest revised statement of work (or proposed contract)	B
3. Relevant portions of the contractor's proposal describing the offeror's work for others, experience pertinent to the proposed DOE effort, as well as the resumes of key personnel, a current annual report and 10K statement (if filed by the offeror).	C
4. The disclosure and representation statements and any other information bearing on the organizational conflict of interest determination which has been submitted or disclosed by any of the following: (a) The offeror; (b) Intended consultants or subcontractors at any tier where they may be performing services similar to the services performed by the prime contractor; (c) Affiliates of the foregoing; (d) Chief executives and directors of any of the foregoing who will be involved in the performance of the contract.	D E F G
5. A listing of prior or existing contracts with the proposed contractor, taken from the DOE computer list of contractors and any other such contractor data that Procurement or the program office may maintain.	H
6. Abstract Questions	I

DOE F2000.2 (Cont'd)

**SECTION B
ABSTRACT QUESTIONS**

INSTRUCTIONS — After analyzing the questions below in light of the information presented in Section A, an abstract of possible OCI (bias or unfair competitive advantage) must be prepared responding to each question. Questions (1) to (5) are particularly important since they treat information related to a possible OCI. For questions (1) to (5) a statement of facts and an analysis (on a separate sheet) is to be prepared stating why the potential for conflict is unlikely where a "No" answer is given, and why there exists a possible conflict where a "Yes" answer is given. These questions apply equally to (1) the offeror, (2) intended subcontractors at any tier, (3) consultants, (4) affiliates of the foregoing, and (5) chief executives and directors of any of the foregoing who will be involved in performing the contract and, accordingly, that the term "offeror" is defined to include all five types of considerations.

<p>1. Does the offeror have any involvement with or interests in technologies which may be subjects of the contract or which are substitutable for such technologies?</p> <p>This involvement or interest could take any form, including interest in relevant proprietary processes or in patents; interests in energy consuming or producing industries (utilities) or ancillary industries (oil drilling, railroads) which could be affected by the technologies; and interests in energy resources (coal, timber, natural gas, geothermal sites)</p>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<p>2. Does the offeror depend upon industries or firms which could be affected by DOE actions related to the contract for a significant portion of its business, or have a relationship (financial, organizational, contractual or otherwise) with such industries or firms which could impair its objectivity of independence?</p>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<p>3. Would any unfair competitive advantage accrue to the offeror in either its private or government business pursuits from access to:</p> <p>(a) data generated under the contract?</p> <p>(b) information concerning DOE plans and programs?</p> <p>(c) confidential and proprietary data of others?</p>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<p>4. Where work in support of DOE's regulatory activities is contemplated, could any possible advantage or restriction flow from these regulatory activities directly to the offeror, or to its business clients?</p>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<p>5. Will the offeror perform any self-evaluation or inspection of a service or product, or evaluation or inspection of another with whom a relationship exists which could impair objectivity, including evaluation or inspection of goods or services which compete commercially with the performer's goods or services?</p>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<p>6. Will any of the offeror's chief executives, directors, or entities which they own or represent, or any of the offeror's affiliates be involved in the performance of the contract?</p> <p>If "Yes," has an adequate disclosure or representation statement been obtained from each such executive, director, entity, or affiliate?</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<p>7. What clauses pertaining to OCI are to be included in the contract? Attach copies of any OCI clauses other than those prescribed by DEAR Subsections 909.570-8(a) or 8(b)</p>	
<p>8. Are you aware of any other information relating to this proposed contract, proposed contractor, or Government personnel involved which could reasonably be construed as creating an OCI?</p> <p>If "Yes," please explain</p>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

**SECTION C
ABSTRACT QUESTIONS**

1. Based upon all information available to you, in your opinion, would award to the offeror result in a possible OCI with respect to the offeror or any of the intended subcontractors or consultants:

(a) being able to render impartial, technically sound or objective assistance or advice in light of other interests or relationships with other persons? Yes No

(b) being given an unfair competitive advantage? Yes No

R. S. O'Connell 12/28/84
Contracting Officer's Technical Representative Date

L. Byrd 12/28/84
Contract Specialist Date

Concur: J. R. Fanning 01/03/85
Assistant Secretary, Head of Field Organization's, Designee Date

**SECTION D
CONTRACTING OFFICER'S FINDING**

DEAR 909.570-9 mandates a finding by the Contracting Officer as to whether possible organizational conflicts of interest exist with respect to a particular offeror or whether there is no likelihood that such conflicts exist. The following is a finding to be used if the Contracting Officer determines there is little or no likelihood of a conflict of interest.

Based upon my review of the Contract File information, and based upon my review of the information and analysis contained in the Abstract Questions, I hereby affirmatively find, in accordance with DEAR 909.570-9, that there is little or no likelihood that a possible conflict of interest would exist if award is made to the offeror.

E. J. Harner 01/07/85
Contracting Officer Date

Concur: F. Fawcett 01/08/85
Procurement Organizational Conflicts of Interest Reviewing Official Date