

## **H115 ORGANIZATIONAL CONFLICTS OF INTEREST (JAN 2023)**

(a) The purpose of this clause is to ensure that:

(1) In providing services to the Government and its customers under this contract, the Contractor's objectivity and judgment are not biased because of its present, or future, financial, contractual, organizational, or other interests;

(2) The Contractor does not obtain an unfair competitive advantage by virtue of its access to non-public Government information regarding the Government's program plans and resources;

(3) The Contractor does not obtain any unfair competitive advantage by virtue of its access to proprietary or competition sensitive information belonging to others;

(4) The Contractor ensures no bias or unfair competitive advantage exists while aggressively addressing any perception issue that may arise; and

(5) The contract complies with Section 207 of the Weapon Systems Acquisition Reform Act of 2009, Pub. L. No. 111-23 (May 22, 2009).

(b) Definitions for purposes of this clause:

(1) "Contractor" means the business entity receiving the award of this contract, as well as its parents, affiliates, divisions, subsidiaries and successor entities. The term "affiliates" is defined in FAR 2.101 and 9.403. The term "Contractor" includes the firm, or firms, who were required to sign the contract document (see FAR 4.102). The term Contractor also includes participants in any formal contractor team arrangement as defined in FAR 9.601. Examples of formal Contractor team arrangements include, but are not limited to, partnerships, joint ventures, and alliances. Finally, the term "Contractor" includes the Contractor's subcontractors who

(i) Operate Arnold Engineering and Development Complex (AEDC) test and evaluation facilities, or

(ii) Handle, receive, reduce, interpret, or transmit data obtained, utilized, or produced in conjunction with testing and evaluation or analysis.

(2) "Development" means all efforts taken toward the solution of broadly-defined problems. Development may encompass research, evaluating technical feasibility, proof of design and test, or engineering of programs not yet approved for acquisition or operation.

(3) "Organizational conflict of interest," or "OCI," means that a relationship or situation exists where an offeror or 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 where they may be performing services similar to the services provided by the prime) has past, present, or currently planned interests that may directly or indirectly relate to the

work to be performed under a Department of Defense (DoD) or other Federal agency contract which

(i) May diminish its capacity to give impartial, technically sound, and objective assistance and advice, or

(ii) May result in it having an unfair competitive advantage. OCI does not include the normal flow of benefits from the performance of the contract.

(4) "OCI mitigation plan" means a plan, submitted in accordance with FAR 9.505, identifying and listing all DoD contracts held by the Contractor, along with all other Federal agency contracts involving aerospace systems, major subsystems, or components thereof. The plan shall contain either an explanation for why the cited work does not create an OCI, or a formal written description of the actions the Contractor has agreed to take to mitigate any actual, potential, or perceived OCIs arising from such contracts. The plan shall also contain a discussion of any Contractor involvement, as either a prime or subcontractor, in competitions for any DoD contract and for contracts with other Federal agencies that involve aerospace systems, major subsystems or components thereof, regardless of the stage of the acquisition. The OCI mitigation plan submitted with the Contractor's proposal will be maintained throughout contract performance and shall be regularly updated by the Contractor to reflect involvement in existing, potential, and new contracts and programs to ensure all actual or perceived OCIs arising during performance of this Test Operations and Sustainment (TOS) II contract are identified and subsequently avoided, neutralized, or mitigated. The Government is responsible for approval and enforcement of the Contractor's plan. While implementation of the mitigation plan rests largely with the Contractor, the Government bears responsibility for ensuring the plan is properly implemented.

(5) "Proprietary information" means all information designated as proprietary in accordance with law and regulation, and held in confidence or disclosed under restriction to prevent uncontrolled distribution and unauthorized use. Examples include, but are not limited to, marked information, information submitted in confidence to the Government, limited or restricted data, trade secrets, sensitive financial information, and computer software. Proprietary information may also appear in cost and pricing data or involve classified information. Refer to FAR 3.104-1 for the definition of contractor bid and proposal information requiring protection. Refer to FAR 3.104-4 for disclosure, protection, and marking of contractor bid or proposal information and source selection information.

(i) Proprietary information shall not include information which

(A) Was known to the Contractor prior to its receipt from a company or the Government,

(B) Was independently developed by the Contractor without access to a company's proprietary data,

(C) Is or becomes public knowledge without the fault of the Contractor,

(D) Has been lawfully obtained by the Contractor without restrictions on disclosure from a source other than a company or the Government, or

(E) Is or becomes available to a third party from a company on an unrestricted basis.

(ii) Other limitations set forth in this contract may apply to the use of information and data. The burden of proof as to the applicability of any of the exceptions described in paragraph (b)(5)(i) shall rest on the Contractor.

(6) "System" means a combination of two or more interrelated pieces of equipment (or sets) arranged in a functional package to perform an operational function or to satisfy a requirement. A system can include a grouping of hardware, software, and materials to perform a designated function with specified results. A "major subsystem" means a functional grouping of components that combine to perform a key function within an element such as electrical power, attitude control, sensor imaging, and propulsion. "Component" means any sub-part of a system or major subsystem that performs a specific function, but is not capable of executing the primary function of the system or major subsystem independent of other components. Systems and major subsystems include, but are not limited to, aircraft, missiles, bombs or other weapons, air-breathing engines, liquid and solid propellant rockets, rocket motors, spacecraft, reentry vehicles, satellite mission payloads, solar arrays, and power generating systems. Components include, but are not limited to, electrical harnesses, star trackers, gyroscopes, line replaceable units, linkages, integrated circuits, and bolts.

(7) "Facilities similar to AEDC facilities" includes facilities, commercial or otherwise, that could perform the same or similar testing to that conducted in AEDC facilities. This term cannot be defined with any further specificity given the diversity of testing performed at AEDC and without an understanding of the systems or major subsystems to be tested. Facilities similar to AEDC facilities can be more specifically defined as part of any OCI mitigation plan.

(c) The Government will approve the Contractor's OCI mitigation plan once any actual, potential, or perceived OCIs are adequately mitigated as determined by the Contracting Officer.

(d) Except to the extent required in the performance of this contract according to its terms, the Contractor shall not, during the performance of the contract and for a period of three (3) years following completion of performance thereof, engage as an Original Equipment Manufacturer or as a prime contractor (or subcontractor without an approved OCI mitigation plan) in any design, development, or production of aerospace systems or major subsystems of a type normally developed, tested, or evaluated in AEDC facilities, or facilities similar to AEDC facilities. The Contractor also shall not engage in studies or act as a consultant in those regards during the foregoing timeframe without an approved OCI mitigation plan. These restrictions do not apply to prime contracts or subcontracts for components.

(e) The Contractor may gain access to proprietary information of other companies during contract performance. When the Contractor has access to the proprietary information of other companies, the Contractor must enter into a company-to-company agreement to:

(1) Protect another company's information from unauthorized use or disclosure; and



(2) To refrain from using the information for any purpose other than that for which it was furnished. The Contractor shall furnish these agreements to the Contracting Officer for review and approval. The Contractor is not permitted to use the proprietary information obtained in performing this contract for any other purpose without the prior approval of the Contracting Officer.

(f) The Contractor shall comply with all restrictions described in FAR 9.505. The Contractor must also thoroughly inculcate in its employees, through formal training in company policies and procedures, an awareness of the philosophy of both this clause and FAR Subpart 9.5. All Contractor employees shall be educated in and formally acknowledge the absolute necessity of refraining from divulging proprietary information from other companies received in connection with work under this contract to any unauthorized person.

(g) The Contractor shall require its employees to sign written agreements prohibiting proprietary information disclosure except in accordance with a Government-approved OCI mitigation plan. This written agreement shall be between the Contractor and its employees and shall in substance provide that such employee will not, during their employment by the Contractor or thereafter, disclose to others or use for their own behalf, proprietary information from other companies received in connection with the work under this contract. The agreement shall acknowledge the employee is trained regarding handling proprietary information and discuss penalties for violations.

(h) If the Contractor discovers an actual, potential, or perceived OCI not previously considered and adequately mitigated under this clause and a Government-approved OCI mitigation plan, the Contractor shall make a prompt and full disclosure in writing to the Contracting Officer. This disclosure shall include a description of the action the Contractor has taken or proposes to take, or actions recommended to be taken by the Government, in order to avoid, neutralize, or mitigate the conflict.

(i) The Contractor shall report any violation or suspected violation of this clause or a Government-approved OCI mitigation plan, whether by its own personnel or those of its subcontractors, to the Contracting Officer. This report shall include a description of the violation and the actions the Contractor has taken or proposes to take to mitigate and avoid repetition of the violation. The Contractor shall routinely monitor its proposed business development and shall discuss any real or perceived OCI issues with the Contracting Officer and affected AEDC customers to proactively resolve and / or mitigate potential OCI issues. After conducting any necessary discussions, the Contracting Officer and the Contractor shall agree on appropriate corrective action, if any, or the Contracting Officer shall direct such action, subject to the terms of this contract.

(j) OCI violations are a significant contract performance issue. Violations of an OCI mitigation plan or this clause may have consequences such as award fee decrements, contract termination, suspension or debarment, or other appropriate remedies or administrative actions.

(k) The Contractor may propose changes to an approved OCI mitigation plan. Such changes are subject to the mutual agreement of the parties and will become effective only upon incorporation by contract modification or written approval of the revised plan by the Contracting Officer.

(l) The Government shall require proper checks and balances in contract performance and minimization of the potential conflicts of interest between this TOS II and Test Services advisory and assistance services (A&AS) efforts. Therefore, a company cannot be a Contractor on the TOS II contract and perform work at AEDC under the Technical and Management Advisory Services (TMAS) or other Test Services A&AS contract(s).

(m) For all other AEDC support contracts, the Government realizes the potential exists for actual or perceived OCIs to develop if the same Contractor performs work on both this TOS II contract and another AEDC contract. To alleviate these concerns, a Contractor performing work in any role on this TOS II contract must have a Government approved OCI mitigation plan prior to performing any work on any other AEDC contract.

(n) The Contractor shall include paragraphs (a) through (l) of this clause in every subcontract, purchase order, or other agreement. Exceptions must be approved in writing by the Contracting Officer.