

Attachment H ORGANIZATIONAL CONFLICT OF INTEREST

TRICARE Management Activity (TMA) has categorized all its non-purchased care requirements into three broad categories, as defined below, for purposes of identifying, avoiding or mitigating against Organizational Conflicts of Interest (OCIs) in accordance with FAR Subpart 9.5. These categories are defined as follows:

- Category 1: TMA Internal Support: Services which, by their very nature, give the Contractor access to extensive data about the contracts of all other TMA Contractors.
- Category 2: Program Management Support: Services which assist TMA in planning and managing its activities and programs. This includes, for example: requirements analysis, acquisition support, budget planning and management, business process reengineering, program planning and execution support, and independent technical management support.
- Category 3: Product Support. Services or end items required to meet the mission requirements of TMA's non-purchased care activities and programs. This includes, for example: concept exploration and development; system design; system development and integration; COTS procurement and integration; internal development testing; deployment; installation; operations; and maintenance.

Contractor participation in more than one of these areas may give rise to an unfair competitive advantage resulting from access to advance acquisition planning, source selection sensitive or proprietary information. Furthermore, Contractor participation in more than one area may give rise to a real or apparent loss of Contractor impartiality and objectivity where its advisory or planning assistance in one area potentially affects its present or future participation in another area.

The purpose of this categorization is to accomplish the following three objectives: (1) to inform prospective Offerors (Quoters) that TMA presumes that award of a contract or order in the subject category will give rise to real or apparent OCIs with respect to requirements in the other two categories; (2) to assist current Contractors and prospective Offerors in developing their own business strategies regarding participation in TMA requirements and in identifying and, where possible, avoiding or mitigating against OCIs; and (3) to ensure that all current Contractors and prospective Offerors are afforded the maximum practicable opportunity to compete for all TMA requirements consistent with the restrictions required under FAR Subpart 9.5 and sound business practices.

For purposes of identifying, avoiding and / or mitigating against OCIs, TMA will examine all its non-purchased care requirements and acquisitions regardless of the cognizant contracting activity (e.g., USAMRAA, GSA, other agency Multiple Award Schedules, etc.) or the type of contract vehicle used (e.g., FSS order, Fair Opportunity competitive order under Multiple Award ID/IQ Contracts, competitively negotiated awards under FAR Part 15, etc.).

Each TMA non-purchased care solicitation will therefore be designated as falling within one of the three above defined categories. The work called for under this contract / order has been determined by TMA to fall within the following non-purchased care OCI category:

Category 2: Program Management

TMA will administer this clause for purposes of award eligibility for each solicitation as follows:

An Offeror that has never provided support to TMA in any of the categories is eligible for award in any category without any further action required under this clause.

An Offeror that provides or has provided support to TMA in only one category of work and has never supported TMA in any other category (a single-category Contractor) is eligible for award for any future requirement in that single category without further action under this clause.

A single-category Offeror/Contractor wishing to submit an offer in a different category, or any Offeror/Contractor which now provides or previously has provided support in more than one category, *must include the following as part of its offer*:

- Perform a comparative analysis of the potential new work against *all* current and previous work performed in support of TMA in *any category other than that of the new work being offered*. The comparative analysis must be included in the quote for the new work, and must include a statement certifying whether the Contractor believes that its performance of the quoted new work would create a real or apparent OCI. If the Contractor believes that no real or perceived OCI will result from an award of the quoted work, no additional action by the Contractor is required.
- If the Offeror/Contractor believes that a real or apparent OCI may exist as a result of an award, the Contractor shall also submit an OCI Avoidance or Mitigation Plan with its quote.

Inclusion of the comparative analysis and OCI Avoidance or Mitigation Plan will not be counted against any offer page limitations otherwise stated in the solicitation.

The Contracting Officer (and when applicable the appropriate program office, acquisition manager, and legal counsel) will review the comparative analysis and, if provided, the Avoidance or Mitigation Plan, in accordance with the requirements of FAR Subpart 9.5 (Organizational Conflict of Interest) to determine whether award to that Offeror would be consistent with those requirements. If it is unilaterally determined by the Contracting Officer that no OCI would arise or that the OCI Avoidance or Mitigation Plan adequately protects the interests of the government in the event of award to that Offeror, the Offeror will be determined, for purposes of this clause, to be eligible for award. If the Contracting Officer reasonably determines that a Contractor has not provided either a comparative analysis or avoidance/mitigation plan, or both, or that the analyses or plan provided is inadequate, sanctions including elimination from the award process, or termination of the related contract effort already awarded, as well as other appropriate actions will be considered.

If the Offeror/Contractor knows of no OCI in accepting work under this contract, it shall certify its OCI status and submit the certification at the end of this clause with its quote and any later award, if awarded the contract. The Contractor shall also obtain a similar certification of OCI status from all subcontractors, teaming partners or consultants prior to tasking any such party under this contract. The Contractor shall appropriately modify and include this clause, including this paragraph, in all consulting agreements and subcontracts of any tier to preserve the rights of the Government.

For breach of any of the above restrictions or for nondisclosure or misrepresentation of any relevant facts required to be disclosed concerning this contract, the Government may terminate this contract, disqualify the Contractor from subsequent related contractual efforts, and pursue any remedies as may be permitted by law or this contract.

Prior to a contract modification involving a change to the Statement of Work, or an increase in the level of effort or extension of the term of the contract, the Contractor shall submit any applicable organizational conflict of interest disclosure or an update of the previously submitted disclosure or representation.

The Offeror/Contractor should review the considerations below in determining whether or not a conflict of interest exists.

- Does the Offeror or any intended subcontractors, teaming partners, quoted employees, or affiliates have Unequal Access to Information? Would award to the Offeror result in the Offeror having the opportunity to access nonpublic information that may give the Offeror a competitive advantage in

