

Department of Commerce

1309.507-2

(i) Suspension by any other agency; or

(ii) Debarment by any agency.

(4) The suspending official's decision shall be sent to the contractor and any affiliates involved, in writing, by certified mail, return receipt requested.

(e) Procurement counsel shall assist and advise the suspending official at each stage of the decision-making process.

Subpart 1309.5—Organizational and Consultant Conflicts of Interest

1309.503 Waiver.

1309.503-70 Waiver.

(a) The need for a waiver of an organizational conflict of interest (OCI) may be identified by the contracting officer or by a written request submitted by an offeror or contractor. The contracting officer shall review all of the relevant facts and shall refer the matter to the Senior Bureau Procurement Official, who shall make a written recommendation to the Head of Contracting Activity whether a waiver should be granted to allow for a contract award or for continuation of an existing contract.

(b) Criteria for Waiver of OCIs. Issuance of a waiver shall be limited to those situations in which:

(1) The work to be performed under contract is vital to the agency;

(2) There is no party other than the conflicted party that can perform the contract at issue; and

(3) Contractual and/or technical review and supervision methods cannot be employed to mitigate the conflict.

1309.506 Procedures.

The contracting officer shall resolve an actual or potential OCI in a manner consistent with the approval or direction of the designee authorized in CAM 1301.70. If the responsible contracting officer is also the authorized designee in CAM 1301.70, the contracting officer must obtain approval from the Senior Bureau Procurement Official.

1309.507 Solicitation provisions and contract clauses.

1309.507-1 Solicitation provisions.

(a) Insert provision 1352.209-70, *Potential Organizational Conflict of Interest*, substantially as written, in solicitations when the contracting officer determines there is a potential organizational conflict of interest.

(b) Insert the clause with its Alternate I when the contracting officer determines the basic clause should not be modified.

1309.507-2 Contract clauses.

(a) In accordance with FAR 9.507-2, insert clause 1352.209-71, *Limitation of Future Contracting*, substantially as written, when the contractor's eligibility for future prime contract or sub-contract awards shall be restricted because of services being provided as stated in FAR 9.505-1 through 9.505-4.

(1) Insert the basic clause when the contractor will be providing systems engineering and/or technical direction. (See FAR 9.505-1)

(2) Insert the clause with its Alternate I when the contractor will be preparing specifications or work statements. (See FAR 9.505-2)

(3) Insert the clause with its Alternate II when the contractor will be providing technical evaluation or advisory and assistance services. (See FAR 9.505-3)

(4) Insert the clause with its Alternate III when the contractor will be obtaining access to proprietary information. (See FAR 9.505-4)

(5) Insert the clause with its Alternate IV when the contract is a task order contract. The contracting officer may modify Alternate IV to include a list of systems for which task orders may be issued and indicate which organizational conflict of interest provision in paragraph (a)(2) of this clause shall apply.

(6) Insert the clause with its Alternate V when the contract provides for delivery orders. The contracting officer shall indicate in each delivery order which organizational conflict of interest provision in paragraph (a)(2) of this clause shall apply.

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(7) Insert the language in Alternate VI when it is necessary to have the restrictions of this clause included in all or some subcontracts, teaming arrangements, and other agreements calling for performance of work related to the contract.

(b) Insert clause 1352.209-72, *Restrictions against Disclosure*, in service contracts, including architect-engineer contracts, and supply and construction contracts requiring a restriction on the release of information developed or obtained in connection with performance of the contract.

(c) Insert the clause 1352.209-73, *Compliance with the Laws*, in all solicitations and contracts.

(d) Insert the clause 1352.209-74, *Organizational Conflict of Interest*, in all solicitations and contracts.

(e) Insert clause 1352.209-75, *Title 13 and Non-Disclosure Requirements*, in all solicitations and contracts for services where the contractor will have access to Title 13 data.

PART 1311—DESCRIBING AGENCY NEEDS

Subpart 1311.1—Selecting and Developing Requirements Documents

Sec.

1311.103 Market acceptance.

Subpart 1311.5—Liquidated Damages

1311.501 Policy.

AUTHORITY: 41 U.S.C. 414; 48 CFR 1.301-1.304.

SOURCE: 75 FR 10570, Mar. 8, 2010, unless otherwise noted.

48 CFR Ch. 13 (10-1-12 Edition)

Subpart 1311.1—Selecting and Developing Requirements Documents

1311.103 Market acceptance.

The designee authorized as the head of the agency is set forth in CAM 1301.70.

Subpart 1311.5—Liquidated Damages

1311.501 Policy.

The designee authorized as the head of the agency is set forth in CAM 1301.70.

PART 1312—ACQUISITION OF COMMERCIAL ITEMS

Subpart 1312.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

Sec.

1312.302 Tailoring of provisions and clauses for the acquisition of commercial items.

AUTHORITY: 41 U.S.C. 414; 48 CFR 1.301-1.304.

SOURCE: 75 FR 10570, Mar. 8, 2010, unless otherwise noted.

Subpart 1312.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

1312.302 Tailoring of provisions and clauses for the acquisition of commercial items.

The authority for approving a request for waiver to tailor a clause, or otherwise include any additional terms or conditions in a solicitation or contract in a manner that is inconsistent with customary commercial practice, is set forth in CAM 1301.70.