

3052.209-74

(End of clause)

[71 FR 25774, May 2, 2006]

3052.209-74 Limitations on contractors acting as lead system integrators.

As prescribed in (HSAR) 48 CFR 3009.570-4(a), use the following provision:

LIMITATIONS ON CONTRACTORS ACTING AS LEAD SYSTEM INTEGRATORS (JUL 2010)

(a) *Definitions.* “Direct financial interest,” “lead system integrator,” “lead system integrator with system responsibility,” and “lead system integrator without system responsibility,” as used in this provision, have the meanings given in the clause of this solicitation entitled “Prohibited Financial Interests for Lead System Integrators” (HSAR) 48 CFR 3052.209-75).

(b) *General.* Unless an exception is granted, no contractor performing lead system integrator functions in the acquisition of a major system by the Department of Homeland Security may have any direct financial interest in the development or construction of any individual system or element of any system of systems.

(c) *Representations.* (1) The offeror represents that it does [] does not [] propose to perform this contract as a lead system integrator with system responsibility.

(2) The offeror represents that it does [] does not [] propose to perform this contract as a lead system integrator without system responsibility.

(3) If the offeror answered in the affirmative in paragraph (c)(1) or (2) of this provision, the offeror represents that it does [] does not [] have any direct financial interest in the development or construction of any system(s), subsystem(s), system of systems, element of any system of systems, or services it proposes or intends to seek to satisfy this solicitation.

(d) If the offeror answered in the affirmative in paragraph (c)(3) of this provision, the offeror should contact the Contracting Officer for guidance on whether an exception may apply and what responsibilities the offeror may have in qualifying for an exception.

(e) If the offeror does have a direct financial interest, the offeror shall be prohibited from receiving an award under this solicitation, unless:

(1) The offeror submits to the Contracting Officer appropriate evidence that the offeror was selected by a subcontractor to serve as a lower-tier subcontractor through a process over which the offeror exercised no control; or

(2) the conditions described in (HSAR) 48 CFR 3009.570-2(b)(1)(i) and (ii) exist, after an

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opportunity is afforded to the offeror to provide information or commitments as may be necessary to meet (HSAR) 48 CFR 3009.570-2(b)(1)(ii), assuming any such information or commitment will allow DHS to meet that standard.

(f) This provision implements the requirements of 6 U.S.C. 396, as added by Section 6405 of the U.S. Troop Readiness, Veterans’ Care, Katrina Recovery, And Iraq Accountability Appropriations Act, 2007 (Pub. L. 110-28).

(End of provision)

[75 FR 41100, July 15, 2010]

3052.209-75 Prohibited financial interests for lead system integrators.

As prescribed in (HSAR) 48 CFR 3009.570-4(b), use the following clause:

PROHIBITED FINANCIAL INTERESTS FOR LEAD SYSTEM INTEGRATORS (JUL 2010)

(a) *Definitions.* As used in this clause—

(1) “Direct financial interest,” for the purpose of this clause and contract, and subject to exceptions set forth 6 U.S.C. 396(b) as implemented, means:

(i) Developing or constructing any individual system or element of any system of systems for which the Contractor is the lead system integrator;

(ii) Owning or being in a position to exert corporate control over a subcontractor at any level under the prime contract;

(iii) Owning, or being in a position to exert corporate control over an entity that either—

(A) Is a subcontractor at any level under the prime contract, or

(B) Owns or is in a position to control another entity that is a subcontractor at any level under the prime contract; and

(iv) Participating or sharing in the profits of another firm’s development or construction of any individual system or element of any system of systems for which the Contractor is the lead system integrator or agreeing to participate in the profits of the firm from such development or construction.

(2) “Lead system integrator” includes “lead system integrator with system responsibility” and “lead system integrator without system responsibility.”

(3) “Lead system integrator with system responsibility” means a prime contractor for the development or production of a major system, if the prime contractor is not expected at the time of award to perform a substantial portion of the work on the system and the major subsystems.

(4) “Lead system integrator without system responsibility” means a prime contractor under a contract for the procurement of services, the primary purpose of which is

to perform acquisition functions closely associated with inherently governmental functions (see section 7.503(d) of the Federal Acquisition Regulation) with regard to the development or production of a major system.

(5) The phrase “substantial portion of the work,” as used in the definition of “lead system integrator with system responsibility,” may relate to the dollar value of the effort or to the criticality of the effort performed.

(b) *Limitations.* The Contracting Officer has determined that the Contractor meets the definition of lead system integrator with [] without [] system responsibility. Unless an exception is granted, the Contractor shall not have any direct financial interest in the development or construction of any individual system or element of any system of systems while performing lead system integrator functions in the acquisition of a major system by the Department of Homeland Security under this contract.

(c) *Agreement.* The Contractor agrees that during performance of this contract it will not acquire any direct financial interest as described in paragraph (b) of this clause, or, if it does acquire or plan to acquire such interest, it will immediately notify the Contracting Officer. The Contractor further agrees to provide to the Contracting Officer all relevant information regarding the change in financial interests so that the Contracting Officer can determine whether an exception applies or whether the Contractor will be allowed to continue performance on this contract. If an organizational conflict of interest in the performance of this contract that is attributable to the Contractor’s direct financial interest cannot be avoided, eliminated, or mitigated to the Contracting Officer’s satisfaction, the Contracting Officer may terminate this contract for default or may take other remedial measures as appropriate in the Contracting Officer’s sole discretion.

(d) Notwithstanding any other clause of this contract, if the Contracting Officer determines that the Contractor misrepresented its financial interests at the time of award or has violated the agreement in paragraph (c) of this clause, the Government may terminate this contract for default or may take other remedial measures as appropriate in the Contracting Officer’s sole discretion.

(e) This clause implements the requirements of 6 U.S.C. 396, as added by Section 6405 of the U.S. Troop Readiness, Veterans’ Care, Katrina Recovery, And Iraq Accountability Appropriations Act, 2007 (Pub. L. 110-28).

(End of clause)

[75 FR 41100, July 15, 2010]

3052.209-76 Prohibition on Federal Protective Service guard services contracts with business concerns owned, controlled, or operated by an individual convicted of a felony.

As prescribed at (HSAR) 48 CFR 3009.171-9, insert the following clause:

PROHIBITION ON FEDERAL PROTECTIVE SERVICE GUARD SERVICES CONTRACTS WITH BUSINESS CONCERNS OWNED, CONTROLLED, OR OPERATED BY AN INDIVIDUAL CONVICTED OF A FELONY (DEC 2009)

(a) *Prohibitions.* Section 2 of the Federal Protective Service Guard Contracting Reform Act of 2008, Public Law 110-356, generally prohibits the Department of Homeland Security from entering into a contract for guard services under the Federal Protective Service (FPS) guard services program with any business concern owned, controlled, or operated by an individual convicted of a serious felony.

(b) *Definitions.* As used in this clause:

Business concern means a commercial enterprise and the people who constitute it.

Felony means an offense which, if committed by a natural person, would be punishable by death or imprisonment for a term exceeding one year.

Individual means any person, corporation, partnership, or other entity with a legally independent status.

Convicted of a felony means any conviction of a felony in violation of state or federal criminal statutes, including the Uniform Code of Military Justice, whether entered on a verdict or plea, including a plea of *nolo contendere*, for which a sentence has been imposed.

(c) A business concern that is owned, controlled, or operated by an individual who has been convicted of any felony, and that wishes to submit a bid, proposal, or other offer on a solicitation to obtain a FPS contract for guard services, must submit with its offer an award request as specified in paragraph (d) of this clause.

(1) A financial, voting, operational, or employment interest in the business concern of the individual’s spouse, child, or other family member, or person with whom the individual shares his or her household, will be imputed to the individual in determining whether the individual owns, controls, or operates a business concern.

(2) An individual owns, controls, or operates a business concern by fulfilling or holding the following types of roles or interests with respect to the business concern:

(i) Director or officer, including incumbents of boards and offices that perform duties ordinarily performed by a chairman or member of a board of directors, a secretary, treasurer, president, a vice president, or