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Quick Reference Guide to Organizational Conflicts of Interest

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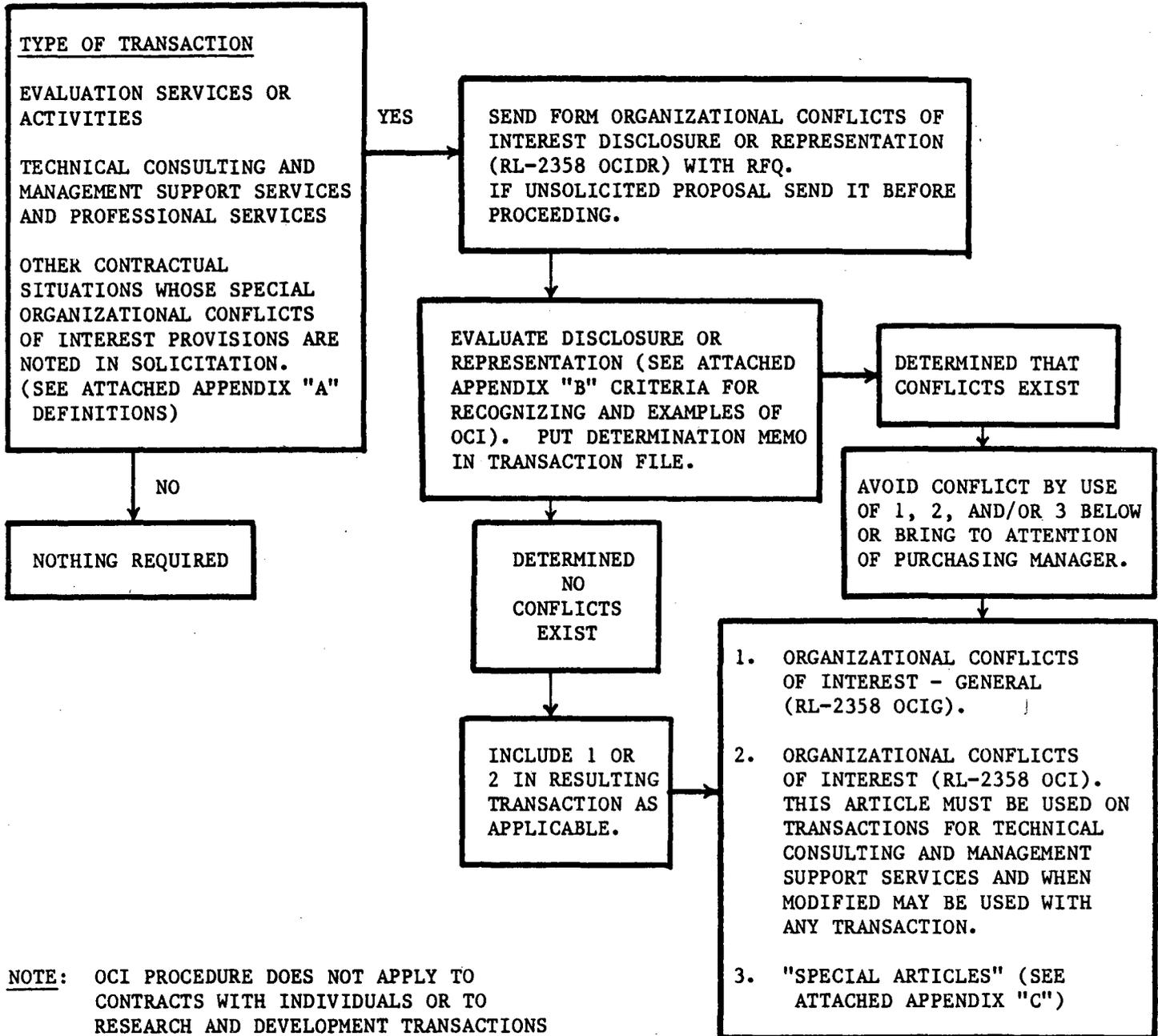
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INTRODUCTION

This quick reference guide was developed to fill the information gap between the practitioner who deals with the subject frequently and the person who only rarely encounters the subject but needs to know enough to recognize it and begin to deal with and understand it. The guide is by no means meant to make the reader an expert on the subject, but should serve as a handy reference on the major aspects of the topic. The decision chart should assist the reader in understanding the "big picture" and making the proper determinations relative to the subject.

ORGANIZATIONAL CONFLICTS OF INTEREST



NOTE: OCI PROCEDURE DOES NOT APPLY TO CONTRACTS WITH INDIVIDUALS OR TO RESEARCH AND DEVELOPMENT TRANSACTIONS UNLESS FINANCED AND CONDUCTED PURSUANT TO THE FEDERAL ENERGY ADMINISTRATION ACT OF 1974

APPENDIX "A"

Definitions:

(As used herein, the term "Subcontract" includes "Purchase Order" and "Agreement", and the term "Subcontractor" includes "Seller", and "Consultant".

- A. "Organizational conflicts of interest" means that a relationship or situation exists whereby quoter or a subcontractor (including chief executives and directors, to the extent that they will or do become involved in the performance of the subcontract, and proposed consultants or sub-subcontractors where they may be performing services similar to the services provided by the subcontractor) has past, present, or currently planned interests that either directly or indirectly, through a client relationship, relate to the work to be performed under a University subcontract and which (1) may diminish its capacity to give impartial, technically sound, objective assistance and advice, or (2) may result in it being given an unfair competitive advantage. It does not include the normal flow of benefits from the performance of the subcontract.
- B. "Research and development" means any work or effort, the principal purpose of which involves (1) theoretical analysis, exploration, or experimentation; or (2) extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.
- C. "Evaluation services or activities" means any work or effort, the principal purpose of which involves the independent study of technology, process, product, or policy which entails the assessment, appraisal, or survey of such technology, process, product, or policy.
- D. "Technical consulting and management support services" means any work or effort, the principal purpose of which is to provide internal assistance to any program element or other organizational component of the University in the formulation or administration of its programs, projects, or policies, which requires the subcontractor to be given access to internal or proprietary data. Such services typically include assistance in the preparation of program plans; evaluation, monitoring or review of subcontractors' activities or proposals submitted by prospective subcontractors; preparation of preliminary designs, specifications, or statements of work.
- E. "Architect-engineering services" means the work or effort of a professional nature associated with the study, test, design, supervision, and construction, alteration, or repair of real property including utilities and appurtenances thereto. Such services embrace conceptual design and Title I, Title II and Title III work.
- F. "Subcontract" for purposes of implementing policy on organizational conflicts of interest, means any subcontract, purchase order, agreement or other arrangement with the University.
- G. "Subcontractor" means any person, firm, unincorporated association, joint venture, partnership, corporation or affiliates thereof, which is a party to a subcontract with the University.
- H. "Affiliates" mean business concerns which are affiliates of each other when either directly or indirectly one concern or individual controls or has the power to control another, or when a third party controls or has the power to control both.

APPENDIX "A"

Definitions: continued

- I. "Sub-subcontractor" means any sub-subcontractor of any tier which performs work under a sub-subcontract.
- J. "Quoter" means any person, firm, unincorporated association, joint venture, partnership, corporation or affiliates thereof, submitting a quote, bid, or proposal, solicited or unsolicited, to the University to obtain a subcontract or modification thereof.

APPENDIX "B"

Criteria For Recognizing Organizational Conflicts Of Interest:

Two questions should generally be asked in determining whether organizational conflicts of interest exist:

- 1) Are there conflicting roles which might bias a subcontractor's judgment in relation to its work for the University?
- 2) Is the subcontractor being given an unfair competitive advantage based on the performance of the subcontract?

The ultimate determination as to whether organizational conflicts of interest exist should be made in the light of common sense and good business judgment based upon the relevant facts and the work to be performed. While it is difficult to identify, and to prescribe in advance, a specific method for avoiding all the various situations or relationships which might involve potential organizational conflicts of interest, purchasing personnel must pay particular attention to proposed contractual requirements which call for the rendering of advice, or consultation or evaluation services, or similar activities that lay direct groundwork for the University's decisions on future procurements, research and development programs, production and regulatory activities (see Appendix A for examples of Organizational Conflicts of Interest Situations or Relationships).

Examples of Contractual Situations or Relationships - Organizational Conflicts of Interest

GENERAL

In development work it is normal to select firms which have done the most advanced work in the field. It is to be expected that these firms will design and develop around their own prior knowledge. Development subcontractors can frequently start production earlier and more knowledgeably than can firms which did not participate in the development, and this affects the time and quality of production, both of which are important to the University. In many instances the University may have financed such development. Thus, the development subcontractor may have an unavoidable competitive advantage which is not considered unfair and no prohibition should be imposed.

EXAMPLES

The following examples illustrate types of situations and relationships where organizational conflict of interest questions frequently arise, but they are not all-inclusive.

Example 1

Subcontractor A, in connection with the performance of a study subcontract, is given information by the University regarding University plans for future procurements. This information is not available to interested industrial firms.

Guidance. Normally this would constitute an OCI and the subcontractor should not be permitted to compete with such firms for work relating to such plans.

APPENDIX "B"

Example 2

Company A, in response to a request for quotation, proposed to undertake certain analyses of an energy savings device as called for in the RFQ. The company is one of several companies considered to be technically well qualified. In response to the inquiry in the RFQ, A advises that it is currently performing similar analyses for the manufacturer of the device.

Guidance. Normally this would constitute an OCI and a subcontract for that particular work would not be awarded to Company A because it would be placed in a position in which its judgment could be biased in relationship to its work for the University. Since there are other well qualified companies available, there would be no reason for granting a waiver of the policy.

Example 3

Accounting Firm A, in response to a request for quotation, proposes to undertake an analysis of the profitability of one segment of the energy industry. The firm is one of several firms considered to be technically well qualified. In response to the inquiry in the RFQ, A advises that it derives a substantial portion of its income from the industry to be studied.

Guidance. Normally this would constitute an OCI and a subcontract would not be awarded to Firm A because it would be placed in a position in which its judgment could be biased in relationship to its work for the University.

Example 4

Company A prepares updated University specifications for a standard refrigerator to be procured competitively.

Guidance. Normally this would constitute an OCI and Company A shall not be allowed for a reasonable period of time to compete for supply of the refrigerator.

Example 5

Company A designs or develops new electronics equipment and, as a result of the design or development, prepares specifications.

Guidance. Normally this would not constitute an OCI and the company may supply the electronics equipment.

Example 6

A tool company and/or a machinery company representing the American Tool Institute works under the supervision and control of University representatives to refine specifications or to clarify the requirements of a specific procurement.

Guidance. Normally this would not constitute an OCI and these companies may supply the item.

Example 7

Prior to procurement of Automatic Data Processing (ADP) Equipment, Company A is awarded a subcontract to develop software to automate a University function. Since the software can be written to favor a particular seller's commercial ADP hardware, a potential conflict of interest exists.

APPENDIX "B"

Guidance. Normally this would constitute an OCI and Company A should be barred from at least the initial follow-on ADP hardware procurement using the software developed under its development subcontract.

Example 8

Company A receives a subcontract to define the detailed performance characteristics the University will require for the purchase of rocket fuels. A has not developed the particular fuels. At the time the subcontract is awarded, it is clear to both parties that the performance characteristics arrived at will be used by the University to choose competitively a subcontractor to develop or produce the fuels.

Guidance. Normally this would constitute an OCI and Company A shall not be permitted to bid on this procurement.

Example 9

Company A receives a subcontract to prepare a detailed plan for the procurement of services aimed at the advanced scientific and engineering training of the University's personnel. It suggests a curriculum which the University endorses and incorporates in requests for quotations to various institutions to establish and conduct such training.

Guidance. Normally this would constitute an OCI and Company A shall not be permitted to bid on this procurement.

Example 10

Consulting Firm A, in response to an RFQ, proposes to undertake an evaluation of the environmental impacts of coal-fired power plants as called for in the RFQ. The company is one of several companies considered to be technically well qualified. In response to the inquiry in the RFQ, A advises that it derives a substantial portion of its income from companies which manufacture nuclear power plants.

Guidance. Normally this would constitute an OCI and a subcontract for that particular work would not be awarded to Firm A because it would be placed in a position in which its judgment could be biased in relationship to its work for the University.

Example 11

Consulting Firm A derives a substantial portion of its income from Company B in connection with the study of natural gas production. Company B is also heavily involved with motor gasoline marketing. A discloses these facts in response to an RFQ for a study of motor gas marketing.

Guidance. Normally this would constitute an OCI and a subcontract for the study of motor gasoline marketing plants would not be awarded to Firm A because it would be placed in a position in which its judgment could be biased in relation to its work for the University.

APPENDIX "C"

Special Subcontract Articles:

- A. If it is determined from the nature of the proposed subcontract that a potential organizational conflict of interest may exist, the buyer may determine that such conflict can be avoided through the use of an appropriate special contract article. Examples of the types of articles which may be employed include, but are not limited to, the following:
- 1) Hardware exclusion articles which prohibit the acceptance of production subcontracts following a related nonproduction subcontract previously performed by the subcontractor;
 - 2) Software exclusion articles;
 - 3) Articles which require the subcontractor (and/or certain of its key personnel) to avoid certain organizational conflicts of interest;
 - 4) Articles which provide for the protection of the confidentiality of data and guard against its unauthorized use; and
 - 5) Articles that prohibit other segments or divisions of the subcontractor from becoming involved in the performance of the subcontract work or being in a position to influence such work.

If deemed appropriate, the prospective subcontractor may be given the opportunity to negotiate the terms and conditions of the article and its application including the extent and time period of any restrictions.

- B. Subcontracts for technical consulting and management support services are particularly susceptible to organizational conflicts of interest. Therefore, the contract Article "Organizational Conflict Of Interest" RL-2358 OCI) shall be included in all subcontracts for technical consulting and management support services. This Article may also be included in any subcontract for professional services and evaluation services and activities.

C. Action In Lieu Of Termination:

If, after award, a possible organizational conflict of interest is identified by the subcontractor or other sources and the buyer determines that such a conflict does in fact exist and that it would not be in the best interests of the University to terminate the subcontract as provided in the appropriate subcontract article, the buyer shall take every reasonable action to avoid or mitigate the effects of the conflict.

UNIVERSITY OF CALIFORNIA
Addendum to Request for Quotation
Issued Under Contract W-7405-ENG-48 or
Contract DE-AC03-76SF00098 With
The Department of Energy

ORGANIZATIONAL CONFLICTS OF INTEREST DISCLOSURE OR REPRESENTATION

AS USED HEREIN, THE TERM "SUBCONTRACT" INCLUDES "PURCHASE ORDER" AND "AGREEMENT", THE TERM "SUBCONTRACTOR" INCLUDES "SELLER" AND "CONSULTANT", THE TERM "QUOTATION" INCLUDES "PROPOSAL", AND THE TERM "QUOTER" INCLUDES "PROPOSER".

IT IS UNIVERSITY AND DEPARTMENT OF ENERGY POLICY TO AVOID SITUATIONS WHICH PLACE A QUOTER IN A POSITION WHERE ITS JUDGMENT MAY BE BIASED BECAUSE OF ANY PAST, PRESENT, OR CURRENTLY PLANNED INTEREST, FINANCIAL OR OTHERWISE, THE QUOTER MAY HAVE WHICH RELATES TO THE WORK TO BE PERFORMED PURSUANT TO THIS SOLICITATION OR WHERE THE QUOTER'S PERFORMANCE OF SUCH WORK MAY PROVIDE IT WITH AN UNFAIR COMPETITIVE ADVANTAGE. (AS USED HEREIN, "QUOTER" MEANS THE PROPOSER OR ANY OF ITS AFFILIATES OR PROPOSED CONSULTANTS OR SUB-SUBCONTRACTORS OF ANY TIER.) THEREFORE:

A - THE QUOTER SHALL PROVIDE A STATEMENT WHICH DESCRIBES IN A CONCISE MANNER ALL RELEVANT FACTS CONCERNING ANY PAST, PRESENT, OR CURRENTLY PLANNED INTEREST (FINANCIAL, CONTRACTUAL, ORGANIZATIONAL, OR OTHERWISE) RELATING TO THE WORK TO BE PERFORMED HEREUNDER AND BEARING ON WHETHER THE QUOTER HAS A POSSIBLE ORGANIZATIONAL CONFLICT OF INTEREST WITH RESPECT TO (1) BEING ABLE TO RENDER IMPARTIAL, TECHNICALLY SOUND, AND OBJECTIVE ASSISTANCE OR ADVICE, OR (2) BEING GIVEN AN UNFAIR COMPETITIVE ADVANTAGE. THE QUOTER MAY ALSO PROVIDE RELEVANT FACTS THAT SHOW HOW ITS ORGANIZATIONAL STRUCTURE AND/OR MANAGEMENT SYSTEMS LIMIT ITS KNOWLEDGE OF POSSIBLE ORGANIZATIONAL CONFLICTS OF INTEREST RELATING TO OTHER DIVISIONS OR SECTIONS OF THE ORGANIZATION AND HOW THAT STRUCTURE OR SYSTEM WOULD AVOID OR MITIGATE SUCH ORGANIZATIONAL CONFLICT.

B - IN THE ABSENCE OF ANY RELEVANT INTERESTS REFERRED TO ABOVE, THE QUOTER SHALL SUBMIT A STATEMENT CERTIFYING THAT TO ITS BEST KNOWLEDGE AND BELIEF NO SUCH FACTS EXIST RELEVANT TO POSSIBLE ORGANIZATIONAL CONFLICTS OF INTEREST. PROPOSED CONSULTANTS AND SUB-SUBCONTRACTORS ARE RESPONSIBLE FOR SUBMITTING INFORMATION AND MAY SUBMIT IT DIRECTLY TO THE UNIVERSITY.

C - THE UNIVERSITY WILL REVIEW THE STATEMENT SUBMITTED AND MAY REQUIRE ADDITIONAL RELEVANT INFORMATION FROM THE QUOTER. ALL SUCH INFORMATION, AND ANY OTHER RELEVANT INFORMATION KNOWN TO THE UNIVERSITY, WILL BE USED TO DETERMINE WHETHER AN AWARD TO THE QUOTER MAY CREATE AN ORGANIZATIONAL CONFLICT OF INTEREST. IF SUCH ORGANIZATIONAL CONFLICT OF INTEREST IS FOUND TO EXIST, THE UNIVERSITY MAY (1) IMPOSE APPROPRIATE CONDITIONS WHICH AVOID SUCH CONFLICT, (2) DISQUALIFY THE QUOTER, OR (3) DETERMINE THAT IT IS OTHERWISE IN THE BEST INTERESTS OF THE UNIVERSITY TO CONTRACT WITH THE QUOTER BY INCLUDING APPROPRIATE CONDITIONS MITIGATING SUCH CONFLICT IN THE SUBCONTRACT AWARDED.

D - THE REFUSAL TO PROVIDE THE DISCLOSURE OR REPRESENTATION AND ANY ADDITIONAL INFORMATION AS REQUIRED SHALL RESULT IN DISQUALIFICATION OF THE QUOTER FOR AWARD. THE NONDISCLOSURE OR MISREPRESENTATION OF ANY RELEVANT INTEREST MAY ALSO RESULT IN THE DISQUALIFICATION OF THE QUOTER FOR AWARD, OR IF SUCH NONDISCLOSURE OR MISREPRESENTATION IS DISCOVERED AFTER AWARD, THE RESULTING SUBCONTRACT MAY BE TERMINATED FOR DEFAULT. THE QUOTER MAY ALSO BE DISQUALIFIED FROM SUBSEQUENT RELATED UNIVERSITY SUBCONTRACTS, AND BE SUBJECT TO SUCH OTHER REMEDIAL ACTION AS MAY BE PERMITTED OR PROVIDED BY LAW OR IN THE RESULTING SUBCONTRACT. THE ATTENTION OF THE QUOTER IN COMPLYING WITH THIS PROVISION IS DIRECTED TO 18 U.S.C. 1001.

**UNIVERSITY OF CALIFORNIA
PURCHASE ORDER**

**FOR CONTRACT NO. W-7405-ENG-48 OR
CONTRACT DE-AC03-76SF00098 WITH
THE DEPARTMENT OF ENERGY**

ORGANIZATIONAL CONFLICTS OF INTEREST

AS USED HEREIN, THE TERM "SUBCONTRACT" INCLUDES "PURCHASE ORDER" AND "AGREEMENT", AND THE TERM "SUBCONTRACTOR" INCLUDES "SELLER", AND "CONSULTANT".

A - PURPOSE. THE PRIMARY PURPOSE OF THIS ARTICLE IS TO AID IN ENSURING THAT THE SUBCONTRACTOR (1) IS NOT BIASED BECAUSE OF ITS PAST, PRESENT, OR CURRENTLY PLANNED INTERESTS (FINANCIAL, CONTRACTUAL, ORGANIZATIONAL, OR OTHERWISE) WHICH RELATE TO THE WORK UNDER THIS SUBCONTRACT, AND (2) DOES NOT OBTAIN ANY UNFAIR COMPETITIVE ADVANTAGE OVER OTHER PARTIES BY VIRTUE OF ITS PERFORMANCE OF THIS SUBCONTRACT.

B. SCOPE. THE RESTRICTIONS DESCRIBED HEREIN SHALL APPLY TO PERFORMANCE OR PARTICIPATION BY THE SUBCONTRACTOR AND ANY OF ITS AFFILIATES OR THEIR SUCCESSORS IN INTEREST (HEREINAFTER COLLECTIVELY REFERRED TO AS THE "SUBCONTRACTOR") IN THE ACTIVITIES COVERED BY THIS ARTICLE AS A SUBCONTRACTOR, SUB-SUBCONTRACTOR, COSPONSOR, JOINT VENTURER, CONSULTANT, OR IN ANY SIMILAR CAPACITY.

1. TECHNICAL CONSULTING AND MANAGEMENT SUPPORT SERVICES.

a. SUBCONTRACTOR SHALL BE INELIGIBLE TO PARTICIPATE IN ANY CAPACITY IN UNIVERSITY SUBCONTRACTS, SUB-SUBCONTRACTS, OR PROPOSALS THEREFOR (SOLICITED OR UNSOLICITED) WHICH STEM DIRECTLY FROM SUBCONTRACTOR'S PERFORMANCE OF WORK UNDER THIS SUBCONTRACT. FURTHERMORE, UNLESS SO DIRECTED IN WRITING BY UNIVERSITY, SUBCONTRACTOR SHALL NOT PERFORM ANY TECHNICAL CONSULTING OR MANAGEMENT SUPPORT SERVICES WORK UNDER THIS SUBCONTRACT ON ANY OF ITS PRODUCTS OR SERVICES OR THE PRODUCTS OR SERVICES OF ANOTHER FIRM IF SUBCONTRACTOR IS OR HAS BEEN SUBSTANTIALLY INVOLVED IN THEIR DEVELOPMENT OR MARKETING. NOTHING IN THIS SUBPARAGRAPH SHALL PRECLUDE SUBCONTRACTOR FROM COMPETING FOR FOLLOW-ON CONTRACTS FOR TECHNICAL CONSULTING AND MANAGEMENT SUPPORT SERVICES.

b. IF SUBCONTRACTOR UNDER THIS SUBCONTRACT PREPARES A COMPLETE OR ESSENTIALLY COMPLETE STATEMENT OF WORK OR SPECIFICATIONS TO BE USED IN COMPETITIVE PROCUREMENTS, SUBCONTRACTOR SHALL BE INELIGIBLE TO PERFORM OR PARTICIPATE IN ANY CAPACITY IN ANY CONTRACTUAL EFFORT WHICH IS BASED ON SUCH STATEMENT OF WORK OR SPECIFICATIONS. SUBCONTRACTOR SHALL NOT INCORPORATE ITS PRODUCTS OR SERVICES IN SUCH STATEMENT OF WORK OR SPECIFICATIONS UNLESS SO DIRECTED IN WRITING BY UNIVERSITY, IN WHICH CASE THE RESTRICTION IN THIS SUBPARAGRAPH SHALL NOT APPLY.

c. NOTHING IN THIS PARAGRAPH SHALL PRECLUDE SUBCONTRACTOR FROM OFFERING OR SELLING ITS STANDARD COMMERCIAL ITEMS TO UNIVERSITY.

**UNIVERSITY OF CALIFORNIA
PURCHASE ORDER**

**FOR CONTRACT NO. W-7405-ENG-48 OR
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2. ACCESS TO AND USE OF INFORMATION.

a. IF SUBCONTRACTOR, IN THE PERFORMANCE OF THIS SUBCONTRACT, OBTAINS ACCESS TO INFORMATION, SUCH AS UNIVERSITY PLANS, POLICIES, REPORTS, STUDIES, FINANCIAL PLANS, INTERNAL DATA PROTECTED BY THE PRIVACY ACT OF 1974 (PUB. L. 93-579), OR DATA WHICH HAS NOT BEEN RELEASED OR OTHERWISE MADE AVAILABLE TO THE PUBLIC, SUBCONTRACTOR AGREES THAT WITHOUT PRIOR WRITTEN APPROVAL OF UNIVERSITY IT SHALL NOT: (a) USE SUCH INFORMATION FOR ANY PRIVATE PURPOSE UNLESS THE INFORMATION HAS BEEN RELEASED OR OTHERWISE MADE AVAILABLE TO THE PUBLIC: (b) COMPETE FOR WORK FOR THE UNIVERSITY BASED ON SUCH INFORMATION FOR A PERIOD OF SIX (6) MONTHS AFTER EITHER THE COMPLETION OF THIS SUBCONTRACT OR UNTIL SUCH INFORMATION IS RELEASED OR OTHERWISE MADE AVAILABLE TO THE PUBLIC, WHICHEVER IS FIRST: (c) SUBMIT AN UNSOLICITED PROPOSAL TO UNIVERSITY WHICH IS BASED ON SUCH INFORMATION UNTIL ONE YEAR AFTER SUCH INFORMATION IS RELEASED OR OTHERWISE MADE AVAILABLE TO THE PUBLIC: AND (d) RELEASE SUCH INFORMATION UNLESS SUCH INFORMATION HAS PREVIOUSLY BEEN RELEASED OR OTHERWISE MADE AVAILABLE TO THE PUBLIC BY THE UNIVERSITY.

b. IN ADDITION, SUBCONTRACTOR AGREES THAT TO THE EXTENT IT RECEIVES OR IS GIVEN ACCESS TO PROPRIETARY DATA, DATA PROTECTED BY THE PRIVACY ACT OF 1974 (PUB. L. 93-579), OR OTHER CONFIDENTIAL OR PRIVILEGED TECHNICAL, BUSINESS, OR FINANCIAL INFORMATION UNDER THIS SUBCONTRACT, IT SHALL TREAT SUCH INFORMATION IN ACCORDANCE WITH ANY RESTRICTIONS IMPOSED ON SUCH INFORMATION.

c. SUBCONTRACTOR SHALL HAVE, SUBJECT TO PATENT, DATA, AND SECURITY PROVISIONS OF THIS SUBCONTRACT, THE RIGHT TO USE TECHNICAL DATA IT FIRST PRODUCES UNDER THIS SUBCONTRACT FOR ITS PRIVATE PURPOSE PROVIDED THAT, AS OF THE DATE OF SUCH USE, ALL REPORTING REQUIREMENTS OF THIS SUBCONTRACT HAVE BEEN MET.

C - DISCLOSURE AFTER AWARD.

1. SUBCONTRACTOR AGREES THAT IF AFTER AWARD IT DISCOVERS AN ORGANIZATIONAL CONFLICT OF INTEREST WITH RESPECT TO THIS SUBCONTRACT, AN IMMEDIATE AND FULL DISCLOSURE SHALL BE MADE IN WRITING TO UNIVERSITY WHICH SHALL INCLUDE A DESCRIPTION OF THE ACTION WHICH SUBCONTRACTOR HAS TAKEN OR PROPOSES TO TAKE TO AVOID OR MITIGATE SUCH CONFLICTS. UNIVERSITY MAY, HOWEVER, TERMINATE THE SUBCONTRACT FOR CONVENIENCE IF IT DEEMS SUCH TERMINATION TO BE IN THE BEST INTERESTS OF THE UNIVERSITY.

2. IN THE EVENT THAT SUBCONTRACTOR WAS AWARE OF AN ORGANIZATIONAL CONFLICT OF INTEREST PRIOR TO THE AWARD OF THIS SUBCONTRACT AND DID NOT DISCLOSE THE CONFLICT TO UNIVERSITY, THE UNIVERSITY MAY TERMINATE THE SUBCONTRACT FOR DEFAULT, WITHOUT ANY LIABILITY ON THE PART OF THE UNIVERSITY OR GOVERNMENT, AND SUBCONTRACTOR SHALL BE LIABLE FOR ANY EXCESS COSTS, INCLUDING REPROCUREMENT COSTS INCURRED BY THE UNIVERSITY, AND SUCH OTHER REMEDIAL ACTION AS MAY BE PERMITTED OR PROVIDED BY LAW OR THE TERMS AND CONDITIONS OF THIS SUBCONTRACT.

**UNIVERSITY OF CALIFORNIA
PURCHASE ORDER
FOR CONTRACT NO. W-7405-ENG-48 OR
CONTRACT DE-AC03-76SF00098 WITH
THE DEPARTMENT OF ENERGY**

D - SUB-SUBCONTRACTS.

1. SUBCONTRACTOR SHALL INCLUDE THIS ARTICLE, INCLUDING THIS PARAGRAPH, IN SUB-SUBCONTRACTS OF ANY TIER WHICH INVOLVE PERFORMANCE OR WORK OF THE TYPE SPECIFIED IN B 1. ABOVE OR ACCESS TO INFORMATION OF THE TYPE COVERED IN B 2. ABOVE. THE TERMS "CONTRACT" "SUBCONTRACTOR" AND "UNIVERSITY" SHALL BE APPROPRIATELY MODIFIED TO PRESERVE UNIVERSITY'S RIGHTS.

2. IF A SUB-SUBCONTRACT IS TO BE ISSUED FOR EVALUATION SERVICES OR ACTIVITIES, TECHNICAL CONSULTING OR MANAGEMENT SUPPORT SERVICES WORK AS DEFINED AT DOEPR 9-1.5403(d), THE SUBCONTRACTOR SHALL OBTAIN FOR THE UNIVERSITY A DISCLOSURE STATEMENT OR REPRESENTATION, IN ACCORDANCE WITH DOE REGULATIONS IN EFFECT AT THE TIME, FROM EACH INTENDED SUB-SUBCONTRACTOR OR CONSULTANT. THE SUBCONTRACTOR SHALL NOT ENTER INTO ANY SUB-SUBCONTRACT NOR ENGAGE ANY CONSULTANT UNLESS THE UNIVERSITY SHALL HAVE FIRST NOTIFIED THE SUBCONTRACTOR THAT THERE IS LITTLE OR NO LIKELIHOOD THAT AN ORGANIZATIONAL CONFLICT OF INTEREST EXISTS OR THAT DESPITE THE EXISTENCE OF A CONFLICT OF INTEREST THE AWARD IS IN THE BEST INTEREST OF THE GOVERNMENT.

E - REMEDIES. FOR BREACH OF ANY OF THE ABOVE RESTRICTIONS OR FOR NONDISCLOSURE OR MISREPRESENTATION OF ANY RELEVANT FACTS REQUIRED TO BE DISCLOSED CONCERNING THIS SUBCONTRACT, UNIVERSITY MAY TERMINATE THE SUBCONTRACT FOR DEFAULT, DISQUALIFY SUBCONTRACTOR FOR SUBSEQUENT RELATED CONTRACTUAL EFFORTS AND PURSUE SUCH OTHER REMEDIES AS MAY BE PERMITTED BY LAW OR THIS SUBCONTRACT.

F - WAIVER. REQUESTS FOR WAIVER UNDER THIS ARTICLE SHALL BE DIRECTED IN WRITING TO UNIVERSITY AND SHALL INCLUDE A FULL DESCRIPTION OF THE REQUESTED WAIVER AND THE REASONS IN SUPPORT THEREOF. IF IT IS DETERMINED TO BE IN THE BEST INTERESTS OF UNIVERSITY, UNIVERSITY SHALL GRANT SUCH A WAIVER IN WRITING.

**UNIVERSITY OF CALIFORNIA
PURCHASE ORDER**

**FOR CONTRACT NO. W-7405-ENG-48 OR
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ORGANIZATIONAL CONFLICTS OF INTEREST - GENERAL

AS USED HEREIN, THE TERM "SUBCONTRACT INCLUDES "PURCHASE ORDER" AND "AGREEMENT", AND THE TERM "SUBCONTRACTOR" INCLUDES "SELLER", AND "CONSULTANT".

A - SUBCONTRACTOR WARRANTS THAT, TO THE BEST OF ITS KNOWLEDGE AND BELIEF, AND EXCEPT AS OTHERWISE DISCLOSED, THERE ARE NO RELEVANT FACTS WHICH COULD GIVE RISE TO ORGANIZATIONAL CONFLICTS OF INTEREST, AS DEFINED IN 41 CFR 9-1.5403(a) OR THAT THE SUBCONTRACTOR HAS DISCLOSED ALL RELEVANT INFORMATION.

B - SUBCONTRACTOR AGREES THAT, IF AFTER AWARD, AN ORGANIZATIONAL CONFLICT OF INTEREST WITH RESPECT TO THIS SUBCONTRACT IS DISCOVERED, AN IMMEDIATE AND FULL DISCLOSURE IN WRITING SHALL BE MADE TO THE UNIVERSITY WHICH SHALL INCLUDE A DESCRIPTION OF THE ACTION WHICH THE SUBCONTRACTOR HAS TAKEN OR PROPOSES TO TAKE TO AVOID OR MITIGATE SUCH CONFLICTS. UNIVERSITY MAY, HOWEVER, TERMINATE THE SUBCONTRACT FOR ITS CONVENIENCE IF IT DEEMS SUCH TERMINATION TO BE IN THE BEST INTERESTS OF THE UNIVERSITY.

C - IN THE EVENT THAT THE SUBCONTRACTOR WAS AWARE OF AN ORGANIZATIONAL CONFLICT OF INTEREST PRIOR TO THE AWARD OF THIS SUBCONTRACT AND DID NOT DISCLOSE THE CONFLICT TO THE UNIVERSITY, THE UNIVERSITY MAY TERMINATE THE SUBCONTRACT FOR DEFAULT, WITHOUT ANY LIABILITY ON THE PART OF THE UNIVERSITY OR GOVERNMENT AND SUBCONTRACTOR SHALL BE LIABLE FOR ANY EXCESS COSTS, INCLUDING REPROCUREMENT COSTS INCURRED BY THE UNIVERSITY AND SUCH OTHER REMEDIAL ACTION AS MAY BE PERMITTED OR PROVIDED BY LAW OR THE TERMS AND CONDITIONS OF THIS SUBCONTRACT.

D - THE PROVISIONS OF THIS ARTICLE SHALL BE INCLUDED IN ALL SUB-SUBCONTRACTS FOR WORK TO BE PERFORMED SIMILAR TO THE SERVICES PROVIDED BY THE SUBCONTRACTOR, AND THE TERMS "SUBCONTRACT", "SUBCONTRACTOR," AND "UNIVERSITY" MODIFIED APPROPRIATELY TO PRESERVE THE UNIVERSITY'S RIGHTS.

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