

SUBPART 209.5—ORGANIZATIONAL AND CONSULTANT CONFLICTS OF INTEREST

(Revised May 22, 2013)

209.571 Organizational conflicts of interest in major defense acquisition programs.

209.571-0 Scope of subpart.

This subpart implements section 207 of the Weapons System Acquisition Reform Act of 2009 (Pub. L. 111-23).

209.571-1 Definitions.

As used in this section—

“Lead system integrator” is defined in the clause at [252.209-7007](#), Prohibited Financial Interests for Lead System Integrators.

“Major Defense Acquisition Program” is defined in 10 U.S.C. 2430.

“Major subcontractor” is defined in the clause at [252.209-7009](#), Organizational Conflict of Interest—Major Defense Acquisition Program.

“Pre-Major Defense Acquisition Program” means a program that is in the Materiel Solution Analysis or Technology Development Phases preceding Milestone B of the Defense Acquisition System and has been identified to have the potential to become a major defense acquisition program.

“Systems engineering and technical assistance.”

(1) “Systems engineering” means an interdisciplinary technical effort to evolve and verify an integrated and total life cycle balanced set of system, people, and process solutions that satisfy customer needs.

(2) “Technical assistance” means the acquisition support, program management support, analyses, and other activities involved in the management and execution of an acquisition program.

(3) “Systems engineering and technical assistance”—

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(i) Means a combination of activities related to the development of technical information to support various acquisition processes. Examples of systems engineering and technical assistance activities include, but are not limited to, supporting acquisition efforts such as—

- (A) Deriving requirements;
 - (B) Performing technology assessments;
 - (C) Developing acquisition strategies;
 - (D) Conducting risk assessments;
 - (E) Developing cost estimates;
 - (F) Determining specifications;
 - (G) Evaluating contractor performance and conducting independent verification and validation;
 - (H) Directing other contractors' (other than subcontractors) operations;
 - (I) Developing test requirements and evaluating test data;
 - (J) Developing work statements (but see paragraph (ii)(B) of this definition).
- (ii) Does not include—

(A) Design and development work of design and development contractors, in accordance with FAR 9.505-2(a)(3) or FAR 9.505-2(b)(3), and the guidance at [PGI 209.571-7](#); or

(B) Preparation of work statements by contractors, acting as industry representatives, under the supervision and control of Government representatives, in accordance with FAR 9.505-2(b)(1)(ii).

209.571-2 Applicability.

- (a) This subsection applies to major defense acquisition programs.
- (b) To the extent that this section is inconsistent with FAR subpart 9.5, this section takes precedence.

209.571-3 Policy.

It is DoD policy that—

(a) Agencies shall obtain advice on major defense acquisition programs and pre-major defense acquisition programs from sources that are objective and unbiased; and

(b) Contracting officers generally should seek to resolve organizational conflicts of interest in a manner that will promote competition and preserve DoD access to the expertise and experience of qualified contractors. Accordingly, contracting officers should, to the extent feasible, employ organizational conflict of interest resolution strategies that do not unnecessarily restrict the pool of potential offerors in current or future acquisitions. Further, contracting activities shall not impose per se restrictions or limitations on the use of particular resolution methods, except as may be required under [209.571-7](#) or as may be appropriate in particular acquisitions.

209.571-4 Mitigation.

(a) Mitigation is any action taken to minimize an organizational conflict of interest. Mitigation may require Government action, contractor action, or a combination of both.

(b) If the contracting officer and the contractor have agreed to mitigation of an organizational conflict of interest, a Government-approved Organizational Conflict of Interest Mitigation Plan, reflecting the actions a contractor has agreed to take to mitigate a conflict, shall be incorporated into the contract.

(c) If the contracting officer determines, after consultation with agency legal counsel, that the otherwise successful offeror is unable to effectively mitigate an organizational conflict of interest, then the contracting officer, taking into account both the instant contract and longer term Government needs, shall use another approach to resolve the organizational conflict of interest, select another offeror, or request a waiver in accordance with FAR 9.503 (but see statutory prohibition in [209.571-7](#), which cannot be waived).

(d) For any acquisition that exceeds \$1 billion, the contracting officer shall brief the senior procurement executive before determining that an offeror's mitigation plan is unacceptable.

209.571-5 Lead system integrators.

For limitations on contractors acting as lead systems integrators, see [209.570](#).

209.571-6 Identification of organizational conflicts of interest.

When evaluating organizational conflicts of interest for major defense acquisition programs or pre-major defense acquisition programs, contracting officers shall consider—

(a) The ownership of business units performing systems engineering and technical assistance, professional services, or management support services to a major defense acquisition program or a pre-major defense acquisition program by a contractor who simultaneously owns a business unit competing (or potentially competing) to perform as—

(1) The prime contractor for the same major defense acquisition program; or

(2) The supplier of a major subsystem or component for the same major defense acquisition program.

(b) The proposed award of a major subsystem by a prime contractor to business units or other affiliates of the same parent corporate entity, particularly the award of a subcontract for software integration or the development of a proprietary software system architecture; and

(c) The performance by, or assistance of, contractors in technical evaluation.

209.571-7 Systems engineering and technical assistance contracts.

(a) Agencies shall obtain advice on systems architecture and systems engineering matters with respect to major defense acquisition programs or pre-major defense acquisition programs from Federally Funded Research and Development Centers or other sources independent of the major defense acquisition program contractor.

(b) *Limitation on Future Contracting.*

(1) Except as provided in paragraph (c) of this subsection, a contract for the performance of systems engineering and technical assistance for a major defense acquisition program or a pre-major defense acquisition program shall prohibit the contractor or any affiliate of the contractor from participating as a contractor or major subcontractor in the development or production of a weapon system under such program.

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(2) The requirement in paragraph (b)(1) of this subsection cannot be waived.

(c) *Exception.*

(1) The requirement in paragraph (b)(1) of this subsection does not apply if the head of the contracting activity determines that—

(i) An exception is necessary because DoD needs the domain experience and expertise of the highly qualified, apparently successful offeror; and

(ii) Based on the agreed-to resolution strategy, the apparently successful offeror will be able to provide objective and unbiased advice, as required by [209.571-3\(a\)](#), without a limitation on future participation in development and production.

(2) The authority to make this determination cannot be delegated.

209.571-8 Solicitation provision and contract clause.

(a) Use the provision at [252.209-7008](#), Notice of Prohibition Relating to Organizational Conflict of Interest—Major Defense Acquisition Program, if the solicitation includes the clause at [252.209-7009](#), Organizational Conflict of Interest—Major Defense Acquisition Program; and

(b) Use the clause at [252.209-7009](#), Organizational Conflict of Interest—Major Defense Acquisition Program, in solicitations and contracts for systems engineering and technical assistance for major defense acquisition programs or pre-major defense acquisition programs.