PART 5809 - CONTRACTOR QUALIFICATIONS

Revised: April 2024

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SUBPART 5809.1 – RESPONSIBLE PROSPECTIVE CONTRACTORS

5809.104-1 General Standards

(g)(i) *Ownership or control by the government of a country that is a state sponsor of terrorism. (*See DARS 5825.771-4)

(g)(ii) *Ownership or control by a foreign government when access to proscribed information is required.*

(B) Submit the request for advice to the PS21, Contract Policy Branch to serve as the liaison between DISA and Deputy Director, DPC/ Contract Policy and International Contracting (CPIC).

(C) Submit waiver request to the PS21, Contract Policy Branch to serve as the liaison between DISA

and DPC.

SUBPART 5809.2 – QUALIFICATIONS REQUIREMENTS

5809.202 Policy

(a)(1) The HCA is the designee.

(e) The HCA is the designee.

5809.206-1 General

(b) The HCA is the designee.

(e)(3) Request a written decision from the Mission Partner that established the requirement not to enforce a qualification requirement. The determination shall be placed in the official contract file.

SUBPART 5809.4 – DEBARMENT, SUSPENSION, AND INELIGIBILITY

5809.405 Effect of Listing

(a) The contracting officer, CoCO, HCO, and PS21 Contract Policy Branch shall work collaboratively with the DISA General Counsel Acquisition attorney-advisors to develop a written determination explaining the compelling reasons to continue to do business with a suspended or debarred contractor The HCA, after concurrence, will recommend review and approval to the DISA General Counsel. If approved, the GC will notify the GSA Suspension and Debarment Official, Office of Acquisition before submission to the GSA Office of Acquisition Policy.

(b)(ii) The contracting officer shall provide a written determination for a Code "H" exemption to the PS21, Contract Policy Branch for review and approval by the HCA, and notification to the Environmental Protection Agency.

5809.406-3 Procedures

(a) *Investigation and referral.* Refer any matter that may be a cause for debarment to the HCA and the GC IAW DFARS PGI 5809.406-3.

SUBPART 5809.5 – ORGANIZATIONAL AND CONSULTANT

CONFLICTS OF INTEREST

5809.502 Applicability

(a) This subpart applies to all DISA's contracting organizations, prime contractors, and subcontractors.

5809.503 Waiver

The HCA is the designee. The DISA/PSD Procurement Integrity (PI) Ombudsman shall review prior to HCA approval. The Designation and Delegation of Authority for the PI Ombudsman is available at https://dod365.sharepoint-mil.us/sites/disa-PL2/Delegation%20Memos/Form....

5809.504 Contracting officer responsibilities

(b) Review the contractor's Organizational and Consultant Conflicts of Interest Plan (OCCIP) to determine if a potential or actual conflict exists.

(d) IAW Special Contract Requirement H1 OCCI (See DARS PGI Attachment 1), if a prime or subcontractor breaches any of the OCCI restrictions, does not disclose, and/or misrepresents any relevant facts required to be disclosed concerning the contract, the contracting officer may terminate the contract, disqualify the contractor from subsequent related contractual efforts, and pursue any remedies as may be permitted by the contract or law.

5809.506 Procedures

(b)(1) A sample OCCI Memorandum for Record template is located at https://disa.deps.mil/org/PL2/Pages/DITCORefs.aspx?RootFolder=%2Forg%2FPL2%2FOther%2FPROCEDURES%20GUIDES%20AND%20INSTRUCTIONS%20%28PGI%29&FolderCTID=0x012000175D246D4A108E42B091C3F17BE4BDFE&View=%7B998EB6D7%2DDD02%2D4224%2D9626%2D13F9934F7F4C%7D DARS PGI 5809.506(b)(1)

5809.508 Examples

(S-90) Contractor participation in more than one of the following 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 following is not an inclusive list, but represents some potential circumstances where OCCIs may occur:

Providing systems engineering, technical direction, or product support. Services or end items required to meet the mission requirements of DISA's activities and programs. This includes, for

example: concept exploration and development; system design/engineering; system development and integration; COTS procurement and integration; internal development testing; deployment; installation; operations; and maintenance. When a contractor provides such services but does not have contractual responsibility for related development, integration, assembly or production for that system, that contractor is prohibited from competing either as a prime or subcontractor for a contract to supply that system.

(1) *Preparing specifications and work statements*. With certain exceptions, a contractor who assists with, prepares, and/or furnishes contract specifications for a government requirement may not compete for the subsequent award because this may give that contractor an unfair competitive advantage. 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.

(2) *Providing evaluation services*. Contractors cannot evaluate their own proposals, products and services, or those of their market competitors whose development or marketing contractor is or has been substantially involved because the contractor is placed in a position whereby their judgment may be biased. For example, it would be inappropriate for a contractor to assist in the evaluation of proposals if it will financially benefit from the selection of one company over another. Further, increased attention should be given to situations where a contractor is in a position to assess or evaluate a competitor where detrimental findings could serve, directly or indirectly, the interest of the advising contractor. Further, the contractor could have inappropriate access to competitors privileged and confidential business information. Therefore, all parties involved must ensure proper safeguards are taken and integrity of the process to protect the Government's best interest.

(3) *Obtaining access to proprietary information*. When a contractor requires proprietary information from others to perform on a Government contract and can use the leverage of the contract to obtain it, the contractor may gain an unfair competitive advantage unless restrictions are imposed. These restrictions protect the information and require companies to provide it when appropriate and necessary for contract performance. For example, services which, by their very nature, give the contractor or subcontractor access to extensive data about the contracts and business operations of competitor contractors. Such an advantage could be perceived as being unfair by a competing contractor who is not given similar access to the same relevant information.