209.572 Conflicts of interest in certain consulting services.

(a) *Scope*.

(1) This section implements section 812 of the National Defense Authorization Act for Fiscal Year 2024 (Pub. L. 118-31).

(2) To the extent that this section is inconsistent with FAR subpart 9.5, this section takes precedence.

(b) *Definitions*. As used in this section—

“Consulting services” means advisory and assistance services, except that “consulting services” does not include the provision of products or services related to—

(i) Compliance with legal, audit, accounting, tax, reporting, or other requirements of the laws and standards of countries; or

(ii) Participation in a judicial, legal, or equitable dispute resolution proceeding.

“Contract oversight entity” means any of the following:

(i) The contracting officer.

(ii) The contracting officer’s representative.

(iii) The Defense Contract Management Agency.

(iv) The Defense Contract Audit Agency.

(v) The DoD Office of Inspector General or any subcomponent of that office.

(vi) The Government Accountability Office.

“Covered contract” means a DoD contract involving consulting services.

“Covered foreign entity” means any of the following:

(i) The government of the People’s Republic of China, the Chinese Communist Party, the People’s Liberation Army, the Ministry of State Security, or other security service or intelligence agency of the People’s Republic of China.

(ii) The government of the Russian Federation or any entity sanctioned by the Secretary of the Treasury under Executive Order 13662, Blocking Property of Additional Persons Contributing to the Situation in Ukraine.

(iii) The government of any country if the Secretary of State determines that such government has repeatedly provided support for acts of international terrorism pursuant to any of the following:

(A) Section 1754(c)(1)(A) of the Export Control Reform Act of 2018 (50 U.S.C. 4318(c)(1)(A)).

(B) Section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371).

(C) Section 40 of the Arms Export Control Act (22 U.S.C. 2780).

(D) Any other provision of law.

(iv) Any entity included on any of the following lists maintained by the Department of Commerce (see the Export Administration Regulations at 15 CFR subchapter C):

(A) The Entity List in supplement no. 4 to 15 CFR part 744.

(B) The Denied Persons List as described in 15 CFR 764.3(a)(2).

(C) The Unverified List in supplement no. 6 to 15 CFR part 744.

(D) The Military End User List in supplement no. 7 to 15 CFR part 744.

(v) Any entity identified by the Secretary of Defense pursuant to section 1237(b) of the National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105-261; 50 U.S.C. 1701 note).

(vi) Any entity on the Non-Specially Designated Nationals Chinese Military-Industrial Complex Companies List maintained by the Office of Foreign Assets Control of the Department of the Treasury under Executive Order 14032, Addressing the Threat From Securities Investments That Finance Certain Companies of the People's Republic of China.

(c) *Prohibition*. The contracting officer shall not award a contract assigned a North American Industry Classification System (NAICS) code beginning with 5416 that involves consulting services to an offeror that both—

(1) Cannot certify that neither the offeror nor its subsidiaries or affiliates hold a contract or subcontract involving consulting services with one or more covered foreign entities; and

(2) Does not have a conflict-of-interest mitigation plan that is auditable by a contract oversight entity and approved by the contracting officer.

(d) *Waiver*.

(1) If the prospective contractor(s) certified, in response to paragraph (c) of the provision at 252.209-7012, Prohibition Relating to Conflicts of Interest in Consulting Services—Certification, that it or its subsidiaries or affiliates hold a contract or subcontract involving consulting services with one or more covered foreign entities and the offeror has not submitted an acceptable conflict-of-interest mitigation plan, the contracting officer shall—

(i) Notify the offeror of the potential withholding of award due to the unmitigated conflict of interest; and

(ii) Specify that the offeror has 10 days to respond to the notification.

(2) If the contracting officer determines that it is in the best interests of the United States to award the contract, notwithstanding the conflict of interest, the contracting officer shall request a waiver in accordance with 209.503-70.

(3) The prohibition may be waived on a case-by-case basis if an official listed at 209.503-70 determines that a waiver is necessary for national security purposes.

(4) The contracting officer shall include the waiver request and the waiver in the contract file.

(5) Not later than 30 days after approval of the waiver, the agency shall provide written notification to the House and Senate Armed Services Committees of the use of such waiver authority. The notification shall include—

(i) The specific justification for providing the waiver;

(ii) The number of offerors that did not require a waiver;

(iii) The number of offerors that were granted a waiver;

(iv) Identification of the covered foreign entity that is the subject of the waiver; and

(v) The total dollar value of the covered contract.

(e) *Solicitation provision*. Use the provision at 252.209-7012, Prohibition Relating to Conflicts of Interest in Consulting Services—Certification, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial services, assigned a NAICS code beginning with 5416. Do not include the provision in solicitations for the acquisition of commercial products.

Parent topic: Subpart 209.5 - ORGANIZATIONAL AND CONSULTANT CONFLICTS OF INTEREST