



DARPA INSTRUCTION 70

CONTRACTOR RELATIONSHIPS: INHERENTLY GOVERNMENTAL FUNCTIONS, PROHIBITED PERSONAL SERVICES AND ORGANIZATIONAL CONFLICTS OF INTEREST

**Office of Primary
Responsibility:**

Contracts Management Office

Releasability:

Cleared for Public Release. This Instruction has been reviewed pursuant to DARPA Instruction (DI) 65, "Clearance of DARPA Information for Public Release," and has been cleared for public release.

Cancels and Reissues:

DI 70, "Contractor Relationships: Inherently Governmental Functions, Prohibited Personal Services and Organizational Conflicts of Interest," May 5, 2014

Purpose: This Instruction:

- Updates the Defense Advanced Research Projects Agency (DARPA) policy regarding actual and potential organizational conflicts of interest, prohibited personal services, and the utilization of contract employees.
- Is subject to the requirements and limitations set forth in the Federal Acquisition Regulation (FAR), Defense Federal Acquisition Regulation Supplement (DFARS), and DoD Directive 5500.07, "Standards of Conduct."

<p><u>Releasability:</u> Cleared for public release. This DARPA issuance has been reviewed pursuant to DARPA Instruction 65 and has been cleared for public release.</p>
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SECTION 1: GENERAL ISSUANCE INFORMATION

1.1. APPLICABILITY.

- a. This Instruction applies to all DARPA Government employees.
- b. Government employees will ensure that their relationships with contractor and subcontractor personnel are in accordance with this Instruction. Further, this Instruction also applies to all DARPA contractor personnel, as defined in the Glossary, in as much as they must comply with FAR Subpart 9.5. This Instruction spells out DARPA's procedures for complying with FAR Subpart 9.5.

1.2. POLICY.

- a. This Instruction provides policy guidance on the appropriate role(s) of contractor personnel at DARPA. Three areas are addressed: Inherently Governmental Functions, Prohibited Personal Services and Organizational Conflicts of Interest (OCI).
- b. The typical role of a contractor employee at DARPA is to provide support to a program or a particular DARPA office by providing technical and/or financial expertise, administrative assistance, or all three.
- c. Due to the inherent potential for an OCI, in accordance with FAR 9.503, a contractor, a Federally Funded Research and Development Center (FFRDC), or a University Affiliated Research Center (UARC) cannot concurrently be a support contractor and a research and development (R&D) Performer without prior written approval or a waiver from the DARPA Deputy Director. Section 3.3 of this Instruction provides additional guidance on OCI matters.

SECTION 2: RESPONSIBILITIES

2.1. DEPUTY DIRECTOR, DARPA. Deputy Director, DARPA:

- a. Assesses and, as appropriate, either approves or disapproves, in writing, all situations in which an individual or entity wishes to act concurrently as a support contractor and as a DARPA R&D Performer.
- b. Grants or denies written OCI waivers requested by a Contracting Officer (CO) in accordance with FAR 9.503 and applicable law.

2.2. DARPA GENERAL COUNSEL (GC). DARPA GC:

- a. Provides counsel to DARPA personnel regarding all OCI legal matters.
- b. Coordinates on mitigation plans, as needed, prior to submission to the Deputy Director, DARPA for consideration.
- c. Provides guidance to the Director, DARPA on appropriate matters covered by this Instruction.

2.3. OFFICE DIRECTORS. Office Directors, or their authorized representatives:

- a. Ensure Government employees are not supervising contractor personnel as employees.
- b. Ensure contractor personnel are not performing tasks that are considered inherently Governmental functions.
- c. Ensure each Agent solicitation that could result in a DARPA-funded support contract contains appropriate language describing the requirement for proposers to disclose whether they are currently providing support to any DARPA office through an active contract and which office(s) the proposer supports.
- d. Review DARPA support contracts awarded by Agents to ensure DARPA OCI language is present, appropriate, and effective.
- e. Ensure Military Interdepartmental Purchase Requests/Purchase Requests (MIPRs/PRs) are reviewed and approved by Government employees.
- f. Ensure access to the DARPA financial database is restricted to authorized contractor personnel.
- g. Inquire of the contractor employee whether he or she has signed the contractually-required non-disclosure agreement (included as Section 5) before beginning official duties at DARPA.

2.4. DIRECTOR, CONTRACTS MANAGEMENT OFFICE (CMO). The Director, CMO:

- a. Ensures each DARPA CMO-issued solicitation contains appropriate language describing the requirement for proposers to disclose whether they are currently providing support to any DARPA office through an active contract and which office(s) the proposer supports.
- b. Reviews support contracts issued by DARPA to ensure OCI language is present, appropriate, and effective.
- c. Ensures a mitigation plan has been submitted to the CO when an individual or entity wishes to act both as a support contractor and as a DARPA R&D Performer.
- d. Assists COs in determining whether to request written OCI waivers from the Deputy Director, DARPA.
- e. If the decision is made to pursue a waiver under this OCI policy, ensure the mitigation plan and necessary waiver are submitted to the Deputy Director, DARPA for approval.
- f. Provides training to DARPA Government employees to ensure full understanding of appropriate use of support contracts and OCI issues.

2.5. CONTRACTING OFFICERS, PROGRAM MANAGERS, AND CONTRACTING OFFICER'S REPRESENTATIVES. Contracting Officers, Program Managers, and Contracting Officer's Representatives:

- a. Analyze planned acquisitions to identify and evaluate potential OCI as early in the acquisition process as possible and in conjunction with DARPA GC, if necessary. All personnel will avoid, neutralize, or mitigate significant potential conflicts before contract award.
- b. Review all proposals received under DARPA-issued solicitations to determine whether the potential for OCI exists.

2.6. DARPA GOVERNMENT EMPLOYEES. DARPA Government employees:

- a. Comply with procurement integrity, ethics, and standards of conduct laws and regulations.
- b. Will not send contractor personnel as their substitute to Government employee-required meetings, trainings, or informational sessions.
- c. Ensure that contractor personnel identify themselves as contractor personnel at all times, including in e-mail and telephone communications, and particularly in situations where they could be perceived as Government or DARPA representatives.
- d. Will not request or require contractor personnel to perform tasks outside of the scope of work in their existing contract that could be perceived as a conflict of interest. Additional

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tasks are negotiated through the CO.

e. Will not participate in the hiring or firing of contractor personnel. Government employees may review and discuss resumes of prospective contractor personnel to determine whether the proposed candidate is adequately qualified to meet program requirements. Government employees are not authorized to conduct job interviews or perform reference checks on proposed contractor personnel.

f. Will not supervise, counsel, or otherwise discipline contractor personnel.

g. Will not approve leave requests or work hours for contractor personnel; rather, Government employees shall direct contractor personnel to their employer's contractor program manager or task manager for appropriate guidance.

SECTION 3: PROCEDURES

3.1. INHERENTLY GOVERNMENTAL FUNCTIONS.

a. Contractor personnel will not be assigned functions that are inherently Governmental. Subpart 7.5 of the FAR provides more information on what is and what is not considered inherently Governmental functions. The following list from the FAR, Subpart 7.503(c), contains examples of functions common at DARPA that are inherently Governmental. The list is not intended to be exhaustive but merely illustrative:

(1) Determining and approving Agency policy, for example, approving content and application of DARPA Instructions, Guides, and Policy Memoranda.

(2) Determining and approving Federal program priorities for budget requests.

(3) Finalizing or signing congressional testimony or responses to congressional correspondence or determining Agency responses to audit reports from the Inspector General, the Government Accountability Office, or other Federal audit entity.

(4) Directing and controlling Federal employees, including the selection or non-selection of individuals for Federal Government employment, interviewing individuals for employment, and approving position descriptions and performance standards for Federal employees.

(5) Awarding, administering, or terminating Government contracts, including determining whether contract costs are reasonable, allocable, and allowable.

(6) Participating as a voting member on any board that determines source selection award or award fee.

(7) Determining and approving the terms of disposal of Government property (although DARPA may authorize contractor personnel to dispose of property at prices within specified ranges and subject to other reasonable conditions deemed appropriate by the Agency or required by higher authority).

(8) Determining and approving which supplies or services are to be acquired by the U.S. Government (although DARPA may authorize contractor personnel to acquire supplies at prices within specified ranges and subject to other reasonable conditions deemed appropriate by the Agency or required by higher authority).

(9) Approving Agency responses to Freedom of Information Act (FOIA) requests (other than routine responses that, because of statute, regulation, or Agency policy, do not require the exercise of judgment in determining whether documents are to be released or withheld), and approving Agency responses to administrative appeals of denials of FOIA requests.

(10) Serving as Contracting Officer's Representative (COR).

b. In addition to the above examples from FAR Subpart 7.503(c), certain decision-making activities described in FAR Parts 15 and 35 relative to source selection, scientific review, and cost and price analysis are also considered inherently Governmental functions that contractor personnel may not perform. Contractor involvement in these situations would be advisory and/or administrative.

c. FAR 7.503(d) contains a list of functions that are generally not considered inherently Government but may approach that category because of the nature of the function, the manner in which the contractor performs the contract, or the manner in which the Government administers contractor performance.

3.2. PERSONAL SERVICES. DARPA will not award personal services contracts unless specifically authorized by statute and with the prior written approval of the Director, Contracts Management Office, in accordance with DFARS 237.104(b)(iii)(A)(2).

3.3. ORGANIZATIONAL CONFLICTS OF INTEREST (OCI).

a. Two underlying principles of avoiding OCI are contained in FAR Subpart 9.505:

(1) Anticipating and preventing the existence of conflicting roles that might bias the contractor personnel's judgment; and

(2) Preventing unfair competitive advantage created by exposing an employee of a contractor that intends to bid on a DARPA solicitation to proprietary information or source selection information relevant to said DARPA solicitation that is not available to all competitors.

b. When OCI situations become apparent, DARPA will identify the particular source of conflict, eliminate the conflict whenever possible, and, when elimination without endangering the mission objectives is not possible, mitigate the conflict to an acceptable risk level.

c. When a contractor organization has employees or subcontractors working, or seeking to work, as both a DARPA support contractor and a performer on a DARPA R&D program, particular care must be taken to prevent, eliminate, or mitigate the potential for OCI. Even if the contractor personnel work was concluded prior to issuance of the solicitation for related R&D performance, an unfair competitive advantage may already have been gained.

d. If an individual or entity wishes to perform concurrently as a support contractor and as a DARPA R&D Performer, prior written approval of the DARPA Deputy Director is required. As with any other potential conflict situation, a mitigation plan must be submitted to and approved by the Contracting Officer (CO) who has cognizance over the action that is potentially creating the conflict. If the CO makes a written determination that the mitigation plan sufficiently avoids, neutralizes, or mitigates the OCI, approval from the Director, CMO is

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required prior to forwarding the mitigation plan to the DARPA Deputy Director for review and approval of a waiver. The DARPA Deputy Director will sign the appropriate endorsement on the CO's written determination, indicating approval or disapproval of a waiver. The CO may consult with DARPA GC whenever the CO believes consultation would be beneficial. If the decision is made to request an OCI waiver determination from the DARPA Deputy Director, the request will be coordinated in advance with DARPA GC. The process described above occurs only if DARPA selects a company for potential award, not prior to the proposer submitting a proposal to DARPA.

e. Administrative procedures for handling potential OCIs created by the submission of proposals in response to DARPA-issued solicitations include:

(1) For early identification of potential conflicts, every DARPA solicitation must require the proposer and any proposed subcontractors to affirm whether they are providing support contractor or similar contractor support to any DARPA Technical Office(s) through an active contract or subcontract, including contracts or subcontracts awarded by DARPA Agents. All affirmations must state which office(s) the proposer supports and identify the prime contract numbers. Affirmations shall be furnished at the time of proposal submission.

(2) Whether or not there are ongoing contracts, all facts relevant to potential OCI (FAR 9.5) must be disclosed by proposers. The disclosure will include the proposer's proposed mitigation plan. Proposals that fail to fully disclose potential conflicts of interest and/or do not include plans to mitigate such conflicts may be returned without technical evaluation and withdrawn from further consideration for award.

(3) Once the CO identifies, or is alerted to, a potential OCI, the CO must take necessary steps to avoid, neutralize, or mitigate the OCI. This generally will involve reviewing the proposer's mitigation plan, conferring with the affected Technical Office personnel, consulting with DARPA GC, and making a written determination as to whether the plan sufficiently avoids, neutralizes, or mitigates the OCI. A sample written determination memorandum is included as Section 4. See 3.3.d. above for actions requiring higher-level approval of the mitigation plan.

f. Government employees must approve any DARPA-issued solicitation before publication. If a contractor assists in preparing a solicitation document to be used in competitively acquiring R&D or contractor support services—or provides material leading directly and predictably to such a solicitation—that same contractor may not perform the R&D work or the contractor support services.

g. If a contractor prepares and furnishes complete specifications covering non-developmental items to be used in a competitive acquisition, that contractor shall not be allowed to furnish these items, either as a prime contractor or a subcontractor.

h. The CO responsible for each solicitation will retain the discretion to determine the existence of, or the potential for, OCI. However, the existence of certain factors, including but not limited to the following, creates a non-rebuttable presumption of OCI: allowing contractor and DARPA personnel to maintain joint offices; allowing contractor personnel access to the

DARPA fiscal database; or allowing contractor personnel access to contractual or programmatic documentation unrelated to contracts for which they have administrative responsibilities.

i. Consultant and Independent Verification & Validation (IV&V) services will also be governed by this Instruction. Because the role of a Consultant is generally focused on a specific matter and the Consultant would not ordinarily have access to broad programmatic data, the Consultant and any firm with whom he or she may be affiliated would ordinarily be excluded only from competing as an R&D Performer on those programs relative to the “particular matter” investigated, as defined at Section 2635 Part 402(b)(3)q of Title 5, Code of Federal Regulations (CFR). Likewise, because the IV&V contractor is specifically focused on testing a specific system or software product, they would ordinarily only be excluded from competing as an R&D Performer on those programs they are verifying and validating.

j. DARPA-funded support contracts must include DARPA OCI language that is appropriate and effective. An example of OCI language is included in Section 6.

k. Contracts issued by or for DARPA shall flow down the same OCI language to each subcontractor as are applied to the prime contractor.

3.4. SWITCHING FROM SUPPORT CONTRACTOR TO R&D PERFORMER AND VICE VERSA.

a. A contractor may decide it is in its best interest to switch from being a support contractor to an R&D Performer, or vice versa. In these cases, the contractor will seek guidance from the CO regarding actions necessary to sufficiently mitigate the OCI to allow the contractor to compete in its new role. If a contractor wishes to mitigate its OCI by terminating its contract, it must submit a written request to the CO. The CO will negotiate and terminate the contract, if approved. Regardless of how the OCI is mitigated, once the contractor assumes its new role, its employees will not be permitted to participate in any programs in which the contractor participated to a significant extent in its previous role.

SECTION 4: SAMPLE WRITTEN DETERMINATION MEMORANDUM

MEMORANDUM FOR RECORD

FROM: _____/Contracting Officer

SUBJECT: Written Analysis of Potential Organizational Conflict of Interest Concerning <fill in company>

1. IAW FAR 9.506(b)(1), the following written analysis and recommendation are provided concerning the proposal for "<proposal name>" submitted by <company> under Broad Agency Announcement <announcement number>.

2. BACKGROUND. <Describe the situation, what facts have been collected>

3. REGULATORY GUIDANCE. FAR Part 9 charges the Contracting Officer to identify and evaluate potential conflicts of interest and "avoid, neutralize, or mitigate significant potential conflicts before contract award. Any situation which might bias a contractor's judgment and provide unfair competitive advantage must be closely examined." The FAR lists categories of support that could lead to a biased or unfair competitive advantage: 1) providing systems engineering and technical direction; 2) preparing specifications or work statements; 3) providing evaluation services; and 4) obtaining access to proprietary information.

4. RESULTS.

Providing systems engineering and technical direction

Preparing specifications or work statements

Providing evaluation services

Obtaining access to proprietary information

5. RECOMMENDATION. <Add recommendation here>

6. DARPA Instruction 70, "Contractor Relationships: Inherently Governmental Functions, Prohibited Personal Services and Organizational Conflicts of Interest," requires the Deputy Director, DARPA to assess and, as appropriate, either approve or disapprove all situations in which an individual or entity wishes to act both as a support contractor and as a DARPA R&D performer.

7. ENDORSEMENT. Based on the recommendation above, I hereby Approve/Disapprove (Circle one) <contractor> to perform the <fill in name of effort> effort entitled, "<proposal>" while performing as a support contractor for <fill in company>.

Peter Highnam, Ph.D.
Deputy Director

SECTION 5: DARPA NON-DISCLOSURE AGREEMENT

Various criminal statutes, the Federal Acquisition Regulation (FAR), and implementing Department of Defense (DoD) regulations govern the actions of personnel participating in the procurement process, including the solicitation, evaluation, and negotiation of proposals. The integrity of the procurement process requires that proposers be treated fairly and that neither conflicts of interest nor the appearance of impropriety taint the consideration of proposals. Proposer-provided information and official government information must be safeguarded. Unauthorized contacts, conflicts of interest, disclosure of sensitive procurement information, and the appearance of impropriety must be avoided.

By signing this agreement, I agree to protect all proprietary, business sensitive, and government non-public information (including but not limited to information marked "Source Selection Information," see FAR 2.101 and 3.104, contractor bid or proposal information, hereinafter referred to as "information"), either written or verbal, supplied to me or coming into my possession through my duties in support of DARPA. Specifically, information that may come into my possession as a part of my duties, or about which I gain knowledge during the course of my duties, will be used only for performance of those duties, and I will not communicate, transmit, or otherwise divulge any such information for any other purpose. Upon the termination of my duties, I agree to surrender any materials in any form that contain such information to the government office that initially furnished them to me.

I understand that my violation of the terms and conditions of this agreement may result in disciplinary action against me. I acknowledge that I may incur criminal or civil liability to the United States Government for the improper disclosure of information.

This agreement is effective as of the date I assumed my duties at DARPA.

Date _____

Printed Name _____

Signature _____

Name of Company _____ Phone Number _____

Mailing Address _____

SECTION 6: SAMPLE ORGANIZATIONAL CONFLICT OF INTEREST LANGUAGE (IAW FAR 9.5)

ORGANIZATIONAL CONFLICT OF INTEREST

- a. Purpose: The primary purpose of this requirement is to ensure that:
1. The Contractor's objectivity and judgment are not biased because of its past, present, or currently planned interests (financial, contractual, organizational, or otherwise) which relate to work performed under this Contract;
 2. The Contractor does not obtain an unfair competitive advantage by virtue of its access to non-public information regarding the Government's program plans and actual, or anticipated, resources; and
 3. By virtue of its access to proprietary information belonging to others, the Contractor does not obtain any unfair competitive advantage.
- b. Scope: The restrictions described herein shall apply to performance or participation by the Contractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as "Contractor") in the activities covered by this requirement as prime contractor, subcontractor, co-sponsor, joint venture, or in any similar capacity.
1. Maintenance of Objectivity: The Contractor shall be ineligible to participate (in any capacity) in any DARPA procurements other than those for contractor support services. A DARPA support contractor cannot simultaneously be a DARPA performer on other non-support contractor efforts.
 2. Access To and Use of Government Information: If the Contractor, in performance of this Contract, obtains access to information such as plans, policies, reports, studies, financial plans, or data that has not been released or otherwise made available to the public, the Contractor agrees that, without prior written approval from the Contracting Officer, it shall not:
 - i. Use such information for any private purpose unless the information has been released or otherwise made available to the public;
 - ii. Compete for, or accept, work based on such information until such information is released or otherwise made available to the public, whichever occurs first;
 - iii. Submit an unsolicited proposal to the Government which is based on such information; and
 - iv. Release such information unless such information has previously been released or otherwise made available to the public by the Government.
 3. Access To and Protection of Proprietary Information: The Contractor agrees that, to the extent it receives or is given access to proprietary data, trade secrets, or other confidential or privileged technical, business, or financial information (hereinafter, referred to as "proprietary data") under this Contract, it shall treat such information in accordance with any restrictions imposed on such information. The Contractor further agrees to enter into a written agreement for the protection of the proprietary data of other contractors and to exercise diligent effort to protect such proprietary data from unauthorized disclosure. In addition, the Contractor shall obtain from each employee who has access to proprietary data under this Contract, a written agreement which shall provide that such employee shall not, during his/her employment by the Contractor or

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thereafter, disclose to others or use for their benefit, proprietary data received in conjunction with the work under this Contract.

- c. Subcontracts: The Contractor shall include this requirement, including this paragraph, in subcontracts of any tier. The terms “Contract,” “Contractor,” and “Contracting Officer” will be appropriately modified to preserve the Government’s rights.
- d. Representations and Disclosures:
 - 1. The Contractor represents that it has disclosed to the Contracting Officer, **prior to award**, all facts relevant to the existence or potential existence of organizational conflict of interest as that term is used in FAR Subpart 9.5.
 - 2. The Contractor agrees that if, after award, it discovers an organizational conflict of interest with respect to this Contract, a prompt and full disclosure shall be made in writing to the Contracting Officer, which shall include a description of the action the Contractor has taken or proposes to take to avoid or mitigate such conflict(s).
- e. Remedies and Waiver:
 - 1. For breach of any of the above restrictions, or for nondisclosure or misrepresentation of any relevant facts required to be disclosed concerning this Contract, the Government may terminate this Contract for default, disqualify the Contractor from subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this Contract. If, however, in compliance with this requirement, the Contractor discovers and promptly reports an organizational conflict of interest (or the potential therefore) subsequent to contract award, the Contracting Officer may terminate this Contract for convenience of the Government if such termination is deemed to be in the best interest of the Government.
 - 2. The Parties recognize that this requirement has potential effects which will survive the performance of this Contract and that it is impossible to foresee each circumstance to which it might be applied in the future. Accordingly, the Contractor may, at any time, seek a waiver from the Contracting Officer by submitting a full written description of the requested waiver and the reasons in support thereof. If it is determined to be in the best interests of the Government, the Contracting Officer will grant such a waiver.
- f. Modification: Prior to a contract modification involving a change to the Statement of Work, or an increase in the level of effort, or extension of the term of the Contract, the Contractor shall be required to submit either an organizational conflict of interest disclosure or an update of the previously submitted disclosure or representation.

Substitute (b)(1) Language (NOTE: This language is used when contractor has access to enterprise-wide financial or acquisition sensitive information for other support contractor requirements)

(b)(1) Maintenance of Objectivity: Commensurate with contract award and ending at contract completion, due to the Contractor’s unrestricted access to the Agency’s financial database or acquisition sensitive information for other support contractor requirements, the Contractor shall be ineligible to participate in any capacity on any other DARPA procurements without express written permission from the Contracting Officer. The Contractor shall be ineligible to participate in any capacity in proposals, contracts, subcontracts, grants, cooperative agreements, technology investment agreements, other transactions for prototype, or any other agreements, solicited or unsolicited.

SECTION 7: SIGNATURE

DARPA Instruction 70, “Contractor Relationships: Inherently Governmental Functions, Prohibited Personal Services and Organizational Conflicts of Interest,” will have a duration of 10 years from the date of publication and thereafter will be cancelled unless otherwise reissued or extended in accordance with DARPA Instruction 1, “DARPA Policy Issuances and Forms.”

Peter Highnam, Ph.D.
Deputy Director

REFERENCES

- Code of Federal Regulations, Title 5, Section 2635 Part 402(b)(3)q, “Disqualifying financial interests,” current edition
- DARPA Instruction 1, “DARPA Policy Issuances and Forms,” July 30, 2019
- DARPA Instruction 65, “Clearance of DARPA Information for Public Release,” July 27, 2015
- DARPA Instruction 70, “Contractor Relationships: Inherently Governmental Functions, Prohibited Personal Services and Organizational Conflicts of Interest,” May 5, 2014 (hereby canceled)
- Defense Federal Acquisition Regulation Supplement, Subpart 209.5, “Organizational and Consultant Conflicts of Interest,” October 31, 2019
- Defense Federal Acquisition Regulation Supplement, Subpart 237.104, “Personal Services Contracts,” current edition
- DoD Directive 5500.07, “Standards of Conduct,” November 29, 2007
- Federal Acquisition Regulation, Subpart 7.5, “Inherently Governmental Functions,” current edition
- Federal Acquisition Regulation, Subpart 9.5, “Organizational and Consultant Conflicts of Interest,” current edition
- Federal Acquisition Regulation, Subpart 35.017, “Federally Funded Research and Development Centers,” current edition
- United States Code, Title 10, 2304(c)(3)(B), “Contracts: Competition Requirements,” current edition

GLOSSARY

G.1. DEFINITIONS. Unless otherwise noted, these terms and their definitions are for the purpose of this issuance.

Agent. An “Agent” in this document refers to a Government organization, other than DARPA’s Contracts Management Office, that has awarded a DARPA-funded effort.

Contractor Personnel. “Contractor Personnel” are individuals who are employed by a non-Federal entity under a contract directly with the U.S. Government to furnish services, supplies, or construction to DARPA. DARPA contractor personnel are either Research and Development (R&D) Performers or Support Contractors but cannot perform both duties simultaneously. This definition also includes Subcontractor personnel.

a. **R&D Performer.** An “R&D Performer” is a contractor that is under contract to DARPA to perform specific R&D related to a specific program. This definition includes both prime and subcontractors.

b. **Support Contractor, or Contractor Support.** A “Support Contractor” is a contractor or subcontractor under a DARPA-funded contract, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government’s management and oversight of a program, effort, or agency activity, rather than to directly furnish an end item or service to accomplish a program or effort. Within DARPA, support contractors support DARPA personnel and programs, including R&D programs, but do not perform R&D activities.

Consultant. The “Consultant” is generally recognized as a Subject Matter Expert and will be called upon on an ad hoc basis to provide advice, alternatives, or recommendations on a specific matter. They may also be tasked with conducting studies or analyses of specific issues. Consultants do not have routine physical access through a DARPA badge nor do they have virtual access through DARPA computer and network accounts. This definition does not include contractors referred to as “independent consultants,” who are contracted through a support contract and are covered by the definition of Support Contractor above.

Federally Funded Research and Development Center (FFRDC). “Federally Funded Research and Development Center” (FFRDC) means activities that are sponsored and funded by the U.S. Government to meet long-term technical needs that cannot be met as effectively by existing governmental or contractor resources. Under FAR Subpart 35.017, FFRDCs meet special, long-term R&D needs that are integral to the mission of the sponsoring agency—work that existing in-house or contractor resources cannot fulfill as effectively. FFRDCs typically assist government agencies with scientific research and analysis, systems development, and systems acquisition. The FFRDC has access to government and supplier data, employees, and facilities beyond that common in a normal contractual relationship. The Master List of FFRDCs is maintained by the National Science Foundation (NSF) at <https://www.nsf.gov/statistics/ffrdclist/>.

Independent Verification and Validation. “Independent Verification and Validation” (IV&V) is the verification and validation of a system or software product performed by an organization that is technically, managerially, and financially independent from the organization responsible for developing the product.

Inherently Governmental Function. “Inherently Governmental Function” means a function that is so intimately related to the public interest as to mandate performance by a Government employee. This definition is a legal determination; an inherently Governmental function means the function requires either the exercise of discretion in applying Government authority or the making of value judgments in making decisions for the U.S. Government. Governmental functions normally fall into two categories: the act of governing (i.e., the discretionary exercise of Government authority) and monetary transactions and entitlements.

Mitigation Plan. A “Mitigation Plan” is the document that outlines the process for identifying and implementing actions to reduce or eliminate an organization’s conflict of interest.

Organizational Conflict of Interest. “Organizational Conflict of Interest” means that, due to other activities or relationships with other persons, a person is rendered unable or potentially unable to provide impartial assistance or advice to the U.S. Government, or the person’s objectivity in performing the contract work is or might be otherwise impaired, or a person or entity has an unfair competitive advantage, or any combination thereof.

Personal Services Contract. A “Personal Services Contract” is a contract that, by its express terms or as administered, makes contractor personnel appear to be, in effect, Government employees. By contrast, a “non-personal services contract” is a contract in which the personnel rendering services are not subject—either by the contract’s terms or by the manner of its administration—to the supervision and control normally present in relationships between the U.S. Government and its employees.

Service Contract. A “Service Contract” is a contract to perform an identifiable task, rather than to furnish an end item of supply. A service contract may be either a personal or non-personal services contract. A service contract can cover services performed by either professional or nonprofessional personnel, whether on an individual or organizational basis, and includes tasks that are identifiable and specifically described during solicitation.

Solicitation. “Solicitation” means any request to submit bids, proposals, quotations, or other offers to the U.S. Government. As used in this Instruction, solicitation may include requests for proposals, broad agency announcements, research announcements, and other program announcements.

University Affiliated Research Center (UARC). “University Affiliated Research Center” (UARC) means a college or university laboratory that receives sole source funds under authority of 10 U.S.C. § 2304(c)(3)(B) to establish or maintain an essential engineering, research, or development capability and has been designated a UARC by the Under Secretary of Defense for Research and Engineering (USD(R&E)).

G.2. ABBREVIATIONS.

CMO	Contracts Management Office
CO	Contracting Officer
COR	Contracting Officer's Representative
DI	DARPA Instruction
FOIA	Freedom of Information Act
FFRDC	Federally Funded Research and Development Center
GC	General Counsel
OCI	Organizational Conflicts of Interest
UARC	University Affiliated Research Center
USD(R&E)	Under Secretary of Defense for Research and Engineering