



---

## **National Reconnaissance Office Office of Contracts Notice to Industry Partners**

Notice 2009-04

26 June 2009

Subject: NRO Corporate Organizational Conflict of Interest Agreement Program

Last month, President Obama signed into law the Weapon Systems Acquisition Reform Act of 2009. Section 207, *Organizational Conflicts of Interest in Major Defense Acquisition Programs*, is designed to prevent the occurrence of conflicts created when the same contractor is used for both support services and development on a Major Defense Acquisition Program (MDAP). The current National Reconnaissance Office (NRO) organizational conflict of interest (OCI) policy is consistent with the spirit of Section 207, and establishes the NRO preference to avoid actual or potential OCI. The primary objectives of the NRO OCI policy are to protect the integrity of the NRO acquisition decision making process, and to protect the NRO development contractor base through the use of non-conflicted support contractors.

### Corporate Organizational Conflicts of Interest Plan

As defense contractors realign and transform their organizations to comply with the legislation and policy changes, questions have arisen on how these changes will be implemented. Accordingly, the NRO intends to initiate a program to negotiate corporate OCI agreements with companies that are "non-conflicted" support service providers in accordance with the NRO OCI policy, and who assert they will remain non-conflicted with regard to their support of the NRO.

The agreement will take the form of a corporate OCI plan submitted to the Director, NRO Office of Contracts (D/OC), and will follow the guidelines in the NRO Acquisition Manual (NAM) Sub-part 9.5 and NAM Form 9.5061, *OCI Mitigation Plan Checklist*. The submitting contractor will be required to describe, at a corporate level, the measures taken to prevent instances of OCI within the context of the NRO OCI policy and the definitions below:

- *Support Services* means management support, consultant, and professional services; studies, analysis and evaluations; systems engineering, technical direction, and assistance; and other services that may provide contractor employees access to sensitive or proprietary information.
- *Development* means the systematic use of scientific and technical knowledge in the design, development, testing, or evaluation of a potential new product or service (or improvement of an existing product or service) to meet specific performance requirements or objectives. It includes the functions of design engineering, prototyping, and engineering testing; it excludes subcontracted technical effort that is for the sole purpose of developing an additional source for an existing product. Development does not include the creation of databases, techniques, models, methodologies, or related software in support of a study, analysis, or evaluation conducted as part of a support services contract task.

Subject: NRO Corporate Organizational Conflict of Interest Agreement Program

Proposed plans will be reviewed and approved by the D/OC, and the Office of Contracts Policy (OCP) will maintain all approved plans on file. Upon approval, the submitting contractor will be considered available to perform **support services requiring a non-conflicted prime contractor, or to perform tasks other than source selection activities as a non-conflicted subcontractor.** The contractor will be notified and their status will be conveyed to the Government and contractor workforces by posting that information on the Acquisition Research Center website and in the Epx Contract Writing Tool, and by incorporating a new search criterion in the NRO Contractor Registry. It will be the responsibility of the contractor to update their corporate capabilities statement in the Contractor Registry to include the following approval statement required for a search: “[*Company name*] finalized a corporate organizational conflict of interest agreement with the NRO on [*Date*], and is considered non-conflicted for purposes of NRO support services.” Any proposed plan that is not approved will be returned to the submitting contractor.

Contractors with approved plans may be required to submit an acquisition-specific addendum to the plan for new competitive or sole-source support services acquisitions, but will not be required to submit a complete new plan. Each addendum will contain any additional conflict and mitigation information applicable to that acquisition, to include a description of the approach to accomplishing any discrete tasks that create conflicts for subcontractors. On competitive contract actions, prime contractors with approved plans will be rated “High” on the OCI evaluation scale found in NAM Table 15-6 unless the proposed addendum injects additional OCI risk or requires greater Government oversight to implement. If participation in an acquisition results in deviation from their approved plan, the contractor will be required to submit a complete OCI plan for evaluation on that acquisition rather than an addendum. The contractor’s non-conflicted status will be suspended and the company will be removed from the ARC and Epx listings until the corporate plan is updated and approved. If a contractor chooses to withdraw from this program, the D/OC-approved plan and the contractor’s non-conflicted status will be rescinded, the company will be removed from the listings, and they will be required to delete the approval statement above from their corporate capabilities statement in the Contractor Registry prior to award of any new contract action. The contractor will also be prohibited from bidding on or participating in any NRO contract to supply the system(s), or any major component thereof, or from serving as a subcontractor, vendor, or consultant to the system supplier or major component suppliers, on any system related to the work performed while in a non-conflicted status.

All approved plans will remain valid, subject to annual review and validation, until the D/OC notifies the contractor of a change in status. The D/OC will make a unilateral determination on any dispute resulting from these agreements.

#### Phase-In

If a contractor is working to obtain non-conflicted status via divestiture or some other means, the NRO will facilitate their transition into the program. Contractors with an actual or potential conflict may be allowed to participate in pre-acquisition activities for contracts requiring non-conflicted status if they enter into a signed agreement with the D/OC. All agreements will be reviewed by the NRO General Counsel, and must include:

- A statement that the contractor will be non-conflicted for the acquisition in accordance with NRO OCI policy prior to the proposal due date;

**Subject: NRO Corporate Organizational Conflict of Interest Agreement Program**

- A plan outlining the steps being taken to become non-conflicted, with specific milestones (e.g., signature of a corporate purchase agreement);
- Acknowledgement that failure to adhere to any portion of the signed agreement, including the plan, and failure to obtain requisite legal approvals (i.e., Department of Justice or Securities and Exchange Commission) will invalidate the contractor's qualification to be awarded an NRO contract as a non-conflicted source.
- A statement acknowledging that if the contractor is the apparent successful offeror, but is still conflicted at time of contract award, the Government will award to the next most highly rated offeror.
- Acknowledgement that a Corporate OCI Plan must be submitted to the D/OC for approval immediately upon contract award.
- A discussion of other areas of importance (e.g., rate structures, facilities, and organizational structure).

Contractors interested in participating in the phase-in portion of this program must notify the NRO Office of Contracts Policy within 48 hours after receipt of the final request for proposal (RFP). All agreements must be signed within ten days after release of the applicable RFP.

Contractors that choose to participate in this portion of the program do so at their own risk, and the Government shall not be liable for any bid and proposal costs lost due to the failure of a contractor to comply with other sections of this notice or the signed agreement discussed in this section. Participation in the program does not guarantee contract award.

Upcoming Acquisitions

To facilitate implementation of this program, the anticipated release dates for the EXPEDITION and ILIAD support services acquisitions are outlined below. Schedule information for the LANDMARK acquisition will be announced shortly. It is important to note these acquisitions are in different stages, their schedules may change, and target dates included herein are notional. The RFP will take precedence over any information or documentation provided herein. All questions regarding these schedules should be referred to the responsible Contracting Officer.

**EXPEDITION  
Communications Systems Acquisition and Operations Directorate**

| <b>Milestone</b>              | <b>Target Completion Date</b> |
|-------------------------------|-------------------------------|
| RFI                           | 11-Mar-09                     |
| Release RFI Feedback Memo     | 12-Jun-09                     |
| RFI Feedback Memo Q&A via ARC | 12-Jun-09 thru 24-Jun-09      |
| Release Draft RFP             | 22-Jul-09                     |
| Release Final RFP             | 9-Sep-09                      |
| Final Proposals Due           | 16-Oct-09                     |
| Award Announcement            | 26-Mar-10                     |
| Contract(s) Start             | 1-May-10                      |

Subject: NRO Corporate Organizational Conflict of Interest Agreement Program

**ILIAD**

**Advanced Systems and Technology Directorate**

| <b>Milestone</b>         | <b>Target Completion Date</b> |
|--------------------------|-------------------------------|
| Release Draft RFP        | 7-Jul-09                      |
| Host Bidders' Conference | 16-Jul-09                     |
| Release Final RFP        | 28-Jul-09                     |
| Final Proposals Due      | 22-Oct-09                     |
| Contract(s) Start        | 1-Mar-10                      |

Please contact Howard Byrd at (703) 808-5678 ([howard.byrd@nro.mil](mailto:howard.byrd@nro.mil)) if you have any questions.

//signed//  
DEBRA W. SCHEIDER  
Director, Office of Contracts