

Contract Clause: Organizational or Personal Conflict of Interest

(a) Definitions.

(1) "Contractor" includes the Contractor and its employees, affiliates, consultants, and subcontractors.

(2) "Impaired objectivity" includes without limitation the following situations that would cause a reasonable person with knowledge of the relevant facts to question a person's objectivity:

(A) Financial interests or reasonably foreseeable financial interests in or in connection with products, property, or services that may be currently utilized or utilized in the future by a person, organization, or institution in the course of implementing any program administered by the Department of Human Services ("the Department");

(B) Significant connections or access to program details, information, or methodologies that might require or encourage the use of specific products, property or services; or

(C) Significant identification with philosophical viewpoints or other non-public information that might require or encourage the use of specific products, property or services.

(3)(A) "Organizational Conflict of Interest" means that:

(i) Because of other activities or relationships with other persons, the Contractor is unable or potentially unable to render impartial assistance or advice to the State;

(ii) The Contractor's objectivity in performing the contract work is or might be otherwise viewed as compromised. The Contractor has or is perceived as having impaired objectivity; or

(iii) The Contractor has an unfair competitive advantage.

(3)(B) An organizational conflict of interest may result when:

(i) Activities or relationships create an actual, apparent, or potential conflict of interest related to the performance of the contract; or

(ii) The nature of the contract creates an actual, apparent, or potential conflict of interest with respect to the Contractor in relation to future contracts with the State.

(b)(1) The contractor, subcontractor, employee or consultant, shall certify that, to the best of their knowledge and belief, there are no relevant facts or circumstances which could give rise to an organizational or personal conflict of interest, be it actual, apparent, or potential, for the organization or any of its staff, AND that the contractor, subcontractor, employee or consultant has disclosed all relevant information if an actual, apparent, or potential conflict of interest appears to exist to a reasonable person with knowledge of the relevant facts or if such a person would question the impartiality of the

contractor, subcontractor, employee or consultant. Actual, apparent, or potential conflicts of interest may arise in the following situations:

(A) Unequal access to information – a potential contractor, subcontractor, employee or consultant has access to non-public information, including without limitation, data, plans, policies, and other knowledge, through its performance on a government contract;

(B) Biased ground rules – a potential contractor, subcontractor, employee or consultant has worked, in one government contract or program, on the basic structure or ground rules of another government contract or future government contract. For example, the Contractor shall not use information gained from this contract to counsel current or future beneficiaries on the provision of services provided now or in the future by the Department; or

(C) Impaired objectivity – a potential contractor, subcontractor, employee or consultant, or member of their immediate family (spouse, parent, or child) has financial or other interests that would impair, or give the appearance of impairing, impartial judgment in the evaluation of government programs, in offering advice or recommendations to the government, in performing their current or future contractual obligations, or in providing technical assistance or other services to government programs as part of its contractual responsibility.

(b)(2) Offerors shall disclose as described above regarding any actual, apparent, or potential conflict of interest regardless of their own opinion that such an actual, apparent, or potential conflict of interest would not result in impaired objectivity.

(b)(3) If an actual, apparent, or potential conflict of interest is disclosed, the Department will take appropriate actions to eliminate or address the actual, apparent, or potential conflict, including without limitation mitigating or neutralizing the conflict or requiring the offeror to provide a satisfactory mitigation plan to the Department identifying specific methods which will be imposed by the offeror to eliminate, to the extent possible, the conflict of interest. The Department may restrict or modify the work to be performed by the offeror to avoid or reduce the actual, apparent, or potential conflict of interest. In this clause, the term “potential conflict” means reasonably foreseeable conflict of interest.

(b)(4) If a Contractor anticipates working on more than one contract with the Department currently or in the future that is related in any way to this contract, the mitigation plan developed by the Contractor shall provide, at a minimum, assurances that no staff, communication, or data will be shared within the organization regarding this contract and any future contract that relates to the scope of services provided under this contract. Information gained by the Contractor from this contract shall not be used to

benefit the Contractor in gaining competitive advantage in future contracts with the State.

(c) The contractor, subcontractor, employee or consultant agrees that if impaired objectivity, or an actual, apparent, or potential conflict of interest is discovered after the award is made, it will make a full disclosure in writing to the Contracting Officer. This disclosure shall include a mitigation plan, which shall include a description of actions that the Contractor has taken or proposes to take, after consultation with the Contracting Officer, to avoid, mitigate, or neutralize the actual, apparent, or potential conflict of interest.

(d)(1) Remedies - The State may terminate this contract for convenience, in whole or in part, if it determines that termination is necessary to avoid an actual, apparent, or potential conflict of interest or if the Contractor fails to provide a mitigation plan for an actual, apparent, or potential conflict of interest that is satisfactory to the Department. If the Contractor was aware of an actual, apparent, or potential conflict of interest prior to award or discovered an actual, apparent, or potential conflict of interest after award and did not disclose or misrepresented relevant information to the Contracting Officer, the State may terminate the contract for default, or pursue such other remedies as may be permitted by law or this contract. Further remedies include suspension or debarment from contracting with the State. The Contractor may also be required to reimburse the Department for costs the Department incurs arising from activities related to conflicts of interest.

(d)(2) If the Department has accepted a mitigation plan from the Contractor to minimize any actual, apparent, or potential conflict of interest and there is a violation of the mitigation plan, the Contractor shall be liable to the Department for one hundred thousand (\$100,000) for the first violation. Any subsequent violations to the mitigation plan shall be twice the amount of the immediately preceding violation (Example, second violation = \$200,000, third violation = \$400,000).

(e) In cases where remedies short of termination have been applied, the contractor, subcontractor, employee or consultant agrees to eliminate the organizational conflict of interest, or mitigate it to the satisfaction of the Contracting Officer. This may include creating or revising a mitigation plan.

(f) The Contractor further agrees to insert in any subcontract or consultant agreement hereunder, provisions which shall conform substantially to the language of this clause, including specific mention of potential remedies and this paragraph (f).