



Section 5 : SERVICE AND SUPPLY CONTRACT CLAUSES

540. Guidelines for Service Contractors Having Contact With the U.S. Government (Including Foreign Military Sales) (Professional Services) (10/1/96). While performing services on behalf of Buyer under this contract, Seller agrees to abide by the provisions of this clause.

(a) Purpose of Guidelines. Although Seller's contract with McDonnell Douglas Corporation (Buyer) may describe Seller as a consultant, representative, lobbyist, or other type of professional advisor, Seller is part of a broader class that Buyer calls its "Service Contractors." Since it is a Service Contractor who will interface (directly or indirectly) with the U.S. Government to perform work on Buyer's behalf, Seller is receiving this particular set of guidelines. The U.S. Government has many complex rules which affect the retention and use of Service Contractors by Buyer. These guidelines, which are made a part of this contract, address the application of those rules to Seller.

(b) Buyer Rules Applying to Service Contractor Organizations and Their Employees and Agents That Perform Services for Buyer. These guidelines apply to Seller, its employees, and anyone else retained by Seller to perform services on Buyer's behalf.

(c) Buyer Code of Ethics for Service Contractors. Seller is required by this contract to abide by a "Code of Ethics." These guidelines will help Seller understand its obligations. The Code of Ethics principles prevail over any direction to the contrary.

(d) Conflicts of Interest Warranty and Representation. The "Conflict of Interest Warranty and Representation Restriction" clause of this contract prohibits Seller from using certain current or former U.S. Government procurement officials or advisers on Buyer's behalf without the approval of Buyer. Such persons may be restricted in what they can do on Buyer's behalf. Buyer can develop appropriate performance limitations or determine whether such persons are ineligible under the law to perform under this contract. Since it will be dealing with the U.S. Government on Buyer's behalf, Seller is required to fill out a "Conflicts of Interest Questionnaire" for Buyer. When completed, this form and Seller's continuing compliance with the "Conflicts of Interest Warranty and Representation Restriction" clause should provide the visibility Buyer needs to prevent serious conflicts of interest without having to interfere in Seller's personnel decisions related to performance of this contract.

(e) Restrictions on Duties Persons With Current or Former U.S. Government Related Duties May Perform on Buyer's Behalf. While Buyer will attempt to identify any post-U.S. Government-employment restrictions applicable to Seller's performance, Seller should understand the basic post-employment conflict-of-interest rules that may limit its performance. Federal laws and regulations and Buyer policy establish a number of restrictions on duties persons with current or former Government duties may perform for, or as, a Service Contractor on Buyer's behalf. Note that these restrictions can pertain not only to full-time current or former military or civilian employees of the Government, but also to persons such as reservists, consultants, contractor employees who advise the Government about procurement, or Government advisory board members. Such persons shall not be placed in positions or assignments that violate these restrictions. The potential impact of these restrictions should be considered when deciding to hire, transfer, or re-assign personnel.

(1) Prohibitions Against Former U.S. Government Employees Representing Buyer (Directly or Indirectly) in Contacts With the Government.

(A) Definitions.

"Official responsibility" means the direct administrative or operating authority, whether intermediate or final, exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or direct the Government's actions.

"Personally" means involving the employee's direct participation and may include a subordinate's participation when directed by the former Government employee.

"Substantially" means the employee's involvement must be, or appear to be, significant to the matter.

"Representation" means communicating with, or appearing in any way on any matter before, an agency on behalf of a party (e.g., the Government or a company) for the purpose of influencing the agency.

"Senior Government officials" include military officers in grades O-7 and above and individuals in positions in the Senior Executive Service (SES) or with a basic pay rate at least equal to a GS-17, Step 1.

"Very senior Government officials" include SES Level I officials, SES Level II officials on the President's staff, and certain other very high-ranking officials, up to and including the Vice President.

(B) Representation Restrictions. Former Government employees are prohibited from representing Buyer, directly or indirectly, formally or informally, in contacts with the Government, whether by telephone, mail, meeting, appearance, or otherwise:

I. For life in connection with a particular matter involving a specific party or parties (e.g., a particular contract or investigation), in which the employee participated personally and substantially while in Government service;

II. For two years from the date of leaving Government service in connection with a particular matter actually pending under the employee's official responsibility during the employee's last year of Government service.

(C) Additional Representation Restrictions Applicable to Senior Government Officials.

I. For one year after leaving Government service, "senior Government officials" are prohibited from representing Buyer, directly or indirectly, either formally or informally, in any matter before the official's former agency or department. Administrative interpretations may be available to distinguish between the former official's parent agency or department as a whole and subordinate agencies. For instance, a former senior executive in the Navy has in the past been permitted to represent parties before the Air Force within this one-year period.

II. Former "very senior Government officials" may not represent any party before any Senior Executive Service officials, Levels I-V, or certain other very high-ranking Government officials, anywhere in the U.S. Government, for one year after leaving office.

(D) Legislative Lobbying and Trade/Treaty Restrictions.

I. Former members of Congress may not lobby anywhere within the Legislative Branch, in connection with any matter, for one year after leaving office. In addition, for one year after leaving office, former Congressional staff members paid at the GS-17 level or higher may not lobby the members for whom they worked, employees of the members for whom they worked, members serving on the same committees as the members for whom they worked, or members serving in a leadership capacity or their staff members.

II. Former Executive or Legislative Branch employees who were personally and substantially involved in trade-treaty negotiations within one year of leaving office may not represent, aid, or provide advice concerning those ongoing negotiations, based on confidential information, for one year after leaving office.

(E) Exemptions From Prohibitions.

I. Post-employment restriction exemptions for scientific or technical communications may be made by an agency under 18 U.S.C. 207(f). No such exchange should be undertaken, however, without an advance written authorization to proceed from the head of the agency and/or the agency's designated ethics official and from Buyer.

II. Purely social or informational communications which are not intended to influence the agency may be permitted. Prudence may dictate limiting such communications and keeping memos for the record concerning any such communications made.

(2) Prohibitions on Presenting Claims and Selling to the Government by Retired Regular Military Officers.

(A) Retired regular military officers are prohibited for two years after retirement from selling supplies or services to their former service, from representing, or from assisting in representing, Buyer (directly or indirectly) in the prosecution of claims against the United States involving their former service or involving any subject matter with which they were directly connected while in service.

(B) Retired regular military officers are prohibited for three years after retirement from "selling" supplies to DoD, the Coast Guard, the National Oceanic and Atmospheric Administration, or the Public Health Service on behalf of Buyer. "Selling" is deemed by Buyer to mean:

I. Signing a bid, proposal, or contract;

II. Negotiating a contract;

III. Contacting an officer or employee of any of the foregoing departments or agencies to seek to (i) obtain or negotiate contracts; (ii) negotiate or discuss changes in specifications, price, cost, allowance, or other terms of a contract; or (iii) settle disputes concerning performance of a contract; or

IV. Engaging in other liaison activity on behalf of Buyer with a view toward the ultimate consummation of a sale, although the actual contract for the sale is subsequently negotiated by another person.

(C) Examples of permissible activities include:

I. Communications in which no Buyer business is discussed;

II. Communications limited to discussion of progress, performance, or similar matters under awarded contracts;

III. Communications with personnel (other than those in procurement and contract administration, or their superiors) in which technical information about future needs and programs is discussed; provided the applicability of Buyer products and services to such future needs and programs is not discussed; and

IV. Communications that are purely social and personal.

(D) A retired regular military officer may engage in proposal preparation (not to include signing the proposal), operations analyses, or similar activities, provided such activities are totally internal to the Service Contractor and Buyer. These restrictions against "selling" apply to all Buyer Service Contractors -- whether their scope of responsibility is primarily focused on business/program development or on technical or other activities.

(3) Two Year Limitations on Contract Negotiations and Performance on Behalf of Buyer for Government Procurement Officials Involved With Such Contract. No employee of Seller who, while in Government service within the previous two years, participated personally and substantially in the conduct of a procurement for which Buyer was a competing contractor or reviewed and approved the award, modification, or extension of a contract resulting from that procurement may:

(A) Participate on behalf of Buyer in the negotiation of a contract resulting from such procurement, either in face-to-face negotiations or behind the scenes; or

(B) Participate substantially in the performance of such an Buyer contract with the U.S. Government.

As to negotiations, an exception exists for providing scientific, technical, or other advice unrelated to negotiation strategies.

(4) Obligation to Avoid Conflicts of Interest Between Buyer Employment and Status as a Special Government Employee or Military Retiree.

(A) Former Government employees may continue to have ongoing legal and ethical obligations to the Government, even after separation. In addition, former Government employees and others often are employed in Government service as "special Government employees," or hold positions as military retirees or reservists, or act as consultants or advisers to the Government. These relationships and activities may involve them in a variety of possibly sensitive activities with the Government, including participation on Government advisory boards, receipt of briefings from DoD as a courtesy of retired status, weekend or active duty assignments with buying activities, access to "sensitive information," etc.

(B) As an Buyer Service Contractor, Seller (and its employees) must abide strictly by all laws and by all ongoing obligations to, or restrictions imposed by, the Government and must ensure that their duties on Buyer's behalf (and any continuing Government affiliations or duties) do not conflict or create an appearance of impropriety or conflict. Seller must avoid discussing employment or business opportunities with any candidates it would like to use on Buyer's behalf if their duties directly affect Buyer interests. Service contractors acting on Buyer's behalf should disqualify themselves from any matters they encounter while continuing to serve the Government that may have a direct and predictable effect on Buyer interests. Seller will disclose, in writing and, whenever possible, prospectively, any possible conflicts of interest to Buyer's authorized purchasing representative and the Government agency involved.

(5) Obligation to Avoid Changes in Activities/Responsibilities on Behalf of Buyer Which Could Cause Violations of Post-Government-Employment Restrictions. Whether an activity is prohibited depends upon the circumstances. Seller should be alert to changes in responsibilities that may put restricted employees in changed positions under these guidelines; for example, "selling" to the Government, representing Buyer before the Government in a particular matter, or, for former high-level Government employees, contacting the Government within the proscribed periods.

(f) Requirement for Post-Retention Reporting to the U.S. Government. Seller is required to file with Buyer a copy of any reports it or personnel performing services for it on Buyer's behalf are obliged to file with the U.S. Government as a consequence of past U.S. Government service (e.g., DD Form 1787). Any amendment, modification, or renewal of Seller's Statement of Work or the assignment of different personnel to perform work on behalf of Buyer might provide the occasion for such a new filing.

(g) Prohibitions and Certificates Regarding Organizational Conflicts of Interest. U.S. Government regulations (in FAR Subpart 9.5) prohibit "organizational conflicts of interest." Organizational conflicts of interest exist when the nature of the

work to be performed under a proposed U.S. Government contract may, without some restriction on future activities, (a) result in an unfair competitive advantage to the contractor or (b) impair the contractor's objectivity in performing the contract work. Thus, Seller's activities must avoid situations similar to these:

(1) (While retained by Buyer under a consulting agreement) Advising the U.S. Government regarding an Buyer proposal or Buyer's performance on a Government contract;

(2) (While or after being employed by the Government for the purpose of providing advice on the specifications, systems engineering [or its technical direction], or source selection criteria for a particular contract) Assisting or representing Buyer in its effort to win such contract; or

(3) (While retained by Buyer) Advising the U.S. Government, as a "neutral source," on products of Buyer's competitors.

(h) Acquisition and Use of Information. See Buyer's "Policy 10 User Manual: Receipt and Use of U.S. Government Procurement Related Information," which is incorporated as an attachment to this contract.

(i) Noncompetitive With Buyer. At least annually, Seller may be required under this contract to disclose to Buyer proposed or existing arrangements with potential competitors of Buyer. Disclosures are required whenever Seller plans to add a new client or duties to its client list in areas that might overlap or conflict with the services it provides Buyer. Buyer requires these disclosures to prevent possible anti-trust violations, as well as other conflicts.

(j) Business Hospitalities. Seller is expected to observe the laws, regulations, and Buyer's standards of business conduct with respect to providing gifts, entertainment, meals, transportation, and other things of value to Buyer employees or, on Buyer's behalf, to U.S. Government employees (both military and civilian) or to other potential or actual customers of Buyer, or to others who deal with Buyer (such as suppliers). A relevant excerpt from the Buyer Business Hospitalities Manual is provided as an attachment to this contract. Seller's signature on this contract is its warranty that it has not made, and will not make, any payments, nor give (directly or indirectly) anything of value, to any Buyer employee or agent to improperly influence the award or the administration of this contract.

(k) Prohibition Against Subcontracting. Services to be provided under this contract may not be subcontracted, assigned, teamed, or joint ventured without the prior written consent of Buyer. "Subcontracting" includes all formal and informal arrangements by which Seller may delegate or transfer responsibility outside of its organization or team, or associate itself with others for the purpose of performing this contract. Subcontract arrangements anticipated at the outset of this contract will be identified in the Statement of Work, particularly if Seller's efforts are U.S. Government-related or Seller's costs may be allocated to U.S. Government contracts.

(l) Required Documentation. U.S. Government regulations regarding record retention, performance, and allowability of costs incurred by Buyer for Seller's services require Buyer to obtain extensive documentation from Seller regarding its U.S. Government-related activities and Seller's costs (if allocated by Buyer to U.S. Government contracts, U.S. Foreign Military sales contracts, or Defense Security and Assistance Agency credit-financed commercial contracts). Seller's failure to provide Buyer with such documentation may result in Buyer's (and Seller's) costs being questioned or disallowed and may constitute a breach of this contract.

(1) Business Expenses. Seller will identify and document on Buyer's "Service Contractor Business Conference/Entertainment Report" form, the occurrence of, and requests for Buyer's reimbursement for, gifts, entertainment, meals, transportation, or gifts to others while it is acting on Buyer's behalf. The documentation should include the name, title, and affiliation of the participating individuals and the business purpose related to the cost. Reimbursement of improper or unlawful expenses or payments are prohibited by this contract. Buyer needs this information to be able to claim deductions available to it under federal tax law.

(2) Reports. Reports of Seller's activities for Buyer shall be written and submitted each month unless otherwise specified in the Statement of Work. Reports are considered "work products" and are required by the U.S. Government to support costs allocated to U.S. Government contracts. Seller's obligations might also include submitting trip reports, meeting minutes and memoranda. Failure to submit reports when due may be a breach of contract and can be cause for Buyer to withhold payments.

(3) Communications to Influence Award of Federal Contracts. Federal law may require Seller to identify the time it spent and describe contacts it has with Congressional or Executive Branch officials related to the award of Federal contracts. See "Service Contractor Time Tracking and Contract Report for Certain Communications With the U.S. Government," which is incorporated as an attachment to this contract.

(m) Reports of Possible Violations. Seller is expected to report possible violations of this contract or the law (as related to performance of this contract) to Buyer if Seller reasonably believes a violation has occurred.