

Organizational Conflict of Interest in the Proposed UH ARL UARC

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- Like all other UARCs, the ARL serves the role of a trusted agent of the government.

DDR&E 1996 UARC Management Plan:

- Broad access to information, including proprietary data.
- Independence and objectivity.
- Freedom from real and/or perceived conflicts of interest.

UH Testimony to the Senate 22nd Legislature Regular Session, February 4, 2003:

“The UARC is an organization that is a trusted agent of the government, the Department of Defense. And, therefore, as a trusted agent should not get into any business with commercial partners, should not subcontract to any commercial partners. Because the major, major mission of the UARC is to provide independent technical assistance to the Navy.” *Vassilis Syrmos*

- As a Trusted Agent, it must avoid Organizational Conflict of Interest so that it can serve in this role without bias.

Draft ARL Contract:

C.8(b)

Upon award of this contract, the Contractor warrants that to the best of its knowledge and belief, and except as otherwise set forth in the contract, the Contractor does not have any organizational conflict of interest(s) as defined in FAR 9.5 and consistent with this Special Contract Requirement stated herein.

C.8(c)(1)

It is recognized that the effort to be performed by the Contractor under this contract may create an organizational conflict of interest on the instant contract or on a future acquisition. In order to avoid any conflict of interest, and at the same time to avoid prejudicing the best interest of the Government, the right of the Contractor to participate in future procurement of equipment and/or services that are the subject of any work under this contract shall be limited as described ...

C.8(i)

The Contractor shall promptly notify the Contracting Officer, in writing, if it has been tasked to evaluate or advise the Government concerning its own products or activities or those of a competitor in order to ensure proper safeguards exist to guarantee objectivity and to protect the Government's interest.

ETC.

- **Restrictions for Avoiding Organizational Conflict of Interest**

Reference C.8(c)(1)(A)

For systems engineering and technical direction for a system, the Contractor shall not (i) be awarded a contract to supply the system or any of its major components or (ii) be a subcontractor or consultant to a supplier of the system or of its major components.

Reference C.8(c)(1)(B)

For preparing and furnishing complete specifications covering non-developmental items to be competitively acquired, the Contractor shall not be allowed to furnish these items or their major components, including software, either as a prime contractor or subcontractor.

Reference C.8(c)(1)(C)

For preparing or assisting in preparing a statement of work to be used in competitively acquiring a system or services or providing material leading directly, predictably and without delay to such a work statement, the Contractor, either as a prime contractor or a subcontractor, may not supply the systems, major components thereof, or the services unless the system contract is let on a sole source basis, or unless the Contractor is a participant in the design and development work, or the Contractor is one of several contractors involved in preparation of the work statement.

Reference C.8(c)(2)

The Contractor agrees that, during the performance of this contract and for a period of three years after completion of performance of this contract, the Contractor, any subcontractor, consultant, or employee of the Contractor, any joint venture involving the Contractor, any entity into or with which it may subsequently merge or affiliate, or any other successor or assign of the Contractor, shall not furnish to the United States Government, either as a prime contractor or as a subcontractor, or as a consultant to a prime contractor or subcontractor, any system, component or services which is the subject of the work to be performed under this contract. ...

ETC.

- Mitigation of Organizational Conflict of Interest

Most Importantly:

All other UARCs exist as separate entities which are physically and operationally segregated from their host universities.

Other examples: RCUH Guidelines [posted on MFS UARC Website]

Special scrutiny is needed when a service ordered project or a direct project is for:

- a. management support services,
- b. consultant or other services,
- c. contractor performance of or assistance in technical evaluations, or
- d. systems engineering and technical direction work performed by a contractor that does not have overall contractual responsibility for development or production.

...to provide the services outlined above ... adequate firewalls [must be] established. The required firewall shall include at the minimum:

- a. segregation of employees from all other RCUH and UH employees,
- b. the execution of non-disclosure agreements by all employees on the project, and
- c. an annual briefing of project employees of their obligations and responsibilities regarding conflicts of interests.

Other examples: AF Space and Missile Systems Center [posted on MFS UARC Website]

- Separation: physical, organizational, electronic
- Non-disclosure agreements
- OCI training and briefing statements
- Restrictions on personnel assignments/transfers
- Data/documentation separation and control
- Softcopy documentation control

- **Fundamental Problem with the Proposed UH ARL UARC**

The UH UARC is proposed to be a “new kind” of UARC, integrated as a virtual center among the University’s other academic and research units.

...from the ARL Business Plan:

- A.1** [The UARC] reaches amongst several colleges and schools building upon the expertise of our faculty and researchers. The research under this contract vehicle will be performed by faculty, researchers and students in these units. ... Technical and professional staff, graduate, undergraduate and postdoctoral students will participate in the research projects as in any other project currently on campus.
- A.5** The proposed UARC will have no dedicated building or research facilities.

...from the ARL UARC Overview:

The UARC will leverage the research facilities of the Manoa campus for conducting unclassified research.

IMPLICATIONS

C.8(b)

Upon award of this contract, the Contractor warrants that to the best of its knowledge and belief, and except as otherwise set forth in the contract, the Contractor does not have any organizational conflict of interest(s) as defined in FAR 9.5 and consistent with this Special Contract Requirement stated herein.

There are only two possible means by which UH could make and uphold such a warranty:

- 1) Terminate all activities on the Manoa campus which are not compatible with the activities of the UARC, or
- 2) Establish the methods and structures necessary to explicitly manage organizational conflict of interest.

If UH establishes a "new kind" of UARC by integrating it with the rest of campus, then UH would either have to isolate those of our colleagues who might work within the UARC from the rest of us, or establish a firewall around the entire Manoa campus and discontinue all activities which are not compatible with the UARC.

In the absence of a specific and detailed plan to isolate the participants in the proposed UARC from their colleagues, the Contractor's ONLY other option would be to ultimately terminate existing programs which would create an organizational conflict of interest.

CONCLUSIONS

WHEREAS all UARC task orders must be consistent with at least one of the ARL core competencies, and

WHEREAS the ARL core competencies are so broadly defined so as to encompass essentially all of the applied sciences at UH, and

WHEREAS UH is prepared to warrant that the ARL has no organizational conflict of interest, and

WHEREAS the ARL is to be integrated with UH's other academic and research units, and

WHEREAS UH has not disclosed any plans to erect and maintain the required firewalls around the ARL for the faculty's review and approval, and

WHEREAS the otherwise necessary termination of activities not compatible with the UARC would be contrary to the educational and research mission of UH, it follows that

THE UARC PROPOSAL AND CONTRACT MUST BE REJECTED.