CONFLICT OF INTEREST

(OCT 2020)

<*Revision History:*

*Revision 1 (DEC 2015)—IT Alternate VII has been updated to remove mandatory conflicts language (section c.1) and mandatory proposed restraints on future contractor activities (section c.2).  This mandatory language is now instructional and at the discretion of the Contracting Officer.*

*Revision 2 (APR 2017)—Changes made in Alternate II and Alternate VI for the QIN and ESRD contracts respectively; added Alternate VIII, Federally Funded Research and Development Contractor (FFRDC)*. A word version of this term and conditions and associated alternatives is located at the following ([link](http://agx.cms.gov/Libraries/DocumentDownloadHandler.ashx?LibraryDocumentID=90280)).

*Revision 3 (OCT 2020)—In OCT 2020, the entire COI policy with attachments were revised and updated.*

**H.1 - CONFLICT OF INTEREST**

**(OCT 2020)**

*<CO/CS –*

* *The following Section H. Contract terms and conditions shall be used for all CMS contracts above the simplified acquisition threshold.  The terms and conditions may be used for solicitations and resultant contracts below the simplified acquisition threshold at the discretion of the Contracting Officer.*
* *Designate these terms and conditions as your first in Section H.  Do not alter H.1 numbering.   However, for GSA contracts (TO/DO) or other non-CMS contracts, adjust numbering, as appropriate;*
* *Remove all blue italics instructions;*
* *Where references are identified in green highlighting, be sure to designate the appropriate cross reference, i.e.,* [*J.x*](https://agx.cms.gov/Libraries/DocumentDownloadHandler.ashx?LibraryDocumentID=90156)*– Identify the appropriate Section J attachment for your specific solicitation/contract; and,*
* *Specific CMS programs (e.g., MAC, ZPIC, QIO, etc.) may utilize the informational sample language to be inserted in paragraph c of the terms and conditions.   >*

**a.**      **General:**  The contractor and the services provided under this contract shallbe free, to the greatest extent possible, of all Organizational and Personal Conflicts of Interest.  Consistent with these terms and conditions, all references to Organizational and/or Personal Conflicts of Interests will be referred to individually or collectively, as Conflicts of Interest (COI).  Except as defined by these terms and conditions and in accordance with FAR 9.503, the Contracting Officer shall not maintain a contract with a contractor the Contracting Officer (CO) determines has, or has the potential for, an unresolved COI.

**b.**      **Definitions:**

**Actual COI**– The COI is either currently in existence as determined by the contractor or CMS.  This form of COI will require avoidance, neutralization or mitigation acceptable to CMS.

**Affiliates** –Associated business concerns or individual(s) if, directly or indirectly, either one controls or can control the other; or a third party controls or can control both.

**Apparent (Perceived) COI** – The COI on first observation appears to be an actual or potential COI, but may or may not be after analysis.

**Avoidance** – To prevent the occurrence of a COI through actions such as exclusion of sources or modification of requirements. Avoidance precludes the conflict.

**Contractor** – The term contractor is used synonymously with offeror.

**Financial Relationships** – A direct or indirect ownership or investment interest (including a stock option or non-vested interest) in any entity that exists through equity, debt, or other means and includes any indirect ownership or investment interest no matter how many levels removed from a direct interest.

**Mitigation**– To reduce the effects of a COI to an acceptable level of risk so

that the Government’s interest with regard to fair competition and/or contract performance are not impaired. The conflict remains but action was

taken that minimizes the impact of the conflict to an acceptable level

of risk.

**Mitigation Plan –** The contractor’s written approach to mitigating a COI as documented in J.x Section B.4.

**Neutralization** – To counteract, through a specific action, the effects of potential or actual COI. The conflict remains, but the impact of the conflict has been negated.

**Organizational Conflict of Interest** – Occurs when other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person’s objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

**Personal Conflicts of Interest** – A situation in which a person has a financial interest, personal activity, or relationship that could impair the person’s ability to act impartially and in the best interest of the Government when performing under this contract.

**Potential COI** – A future situation or circumstance that would create a conflict of interest.

**Three (3) Types of COIs include**:

|  |  |
| --- | --- |
| **Conflict Types** | **Definitions** |
| **Biased Ground Rules** | Consists of situations where a contractor and/or its affiliate(s), as part of its performance of a Government contract, has helped (or is in a position to help) set the ground rules for another Government contract by, for example, writing the statement of work or the specifications, or establishing source-selection criteria.  In these “biased ground rules” cases, the primary concern is that the entity could skew the competition, whether intentionally or not, in favor of itself and/or its affiliates. |
| **Impaired Objectivity** | Consists of situations where a contractor and/or its affiliate(s) has an interest (typically financial) that may conflict with the interest of the Government to whom the contractor has a contractual obligation, and where the entity’s work under the Government contract could give the contractor the opportunity to benefit its other business interests.  If the entity is providing recommendations, judgment or advice, and its other business interests could be affected by that recommendation, judgment or advice, it’s objectivity may be impaired.  An example is where the entity was evaluating itself or evaluating an affiliate or a competitor, either through an assessment of performance under another contract or an evaluation of proposals. |
| **Unequal Access to Information** | “Unfair” access to non-public information – Consists of situations where a contractor and/or its affiliate(s) has access to nonpublic information (including proprietary information and non-public source-selection information) as part of its performance of a Government contract and that information may provide the entity with a competitive advantage in a later competition for a Government contract.  In these “unequal access to information” cases, the concern is limited to the risk of the contractor and/or its affiliates gaining an unfair competitive advantage; there is no issue of bias.  Note:  Incumbency alone does not constitute “unequal access to information.” |

**c.**       **Significant Potential Conflict of Interest:**

1. Nature of Conflict:  Although not all inclusive, the following are considered to be an actual, potential or apparent COI with the work to be performed under this contract.  The contractor shall promptly notify the CO if it is an entity, or affiliated with an entity, where any of the following circumstances exist:

a)     Biased Ground rules, impaired objectivity or unequal access to information as explained in the definitions above and/or;

b) Within the three types of conflicts of interest, the CO has identified the following specific circumstances of conflicts:

*<fill in any Sample Program Specific COI language (See Attachment (5) H.1(c) Sample Program Specific COI language as necessary)>*

1. Proposed Restraint on Future Contractor Activities:  CMS is proposing to restrain future contractor activities as follows:

*<If no specific circumstances apply – state N/A>*

*OR*

*<fill in any Sample Program Specific COI language (See Attachment (5) H.1(c) Sample Program Specific COI language as necessary)>*

**d. Conflict of Interest Oversight and Mitigation Plan:**

1. Conflict of Interest Oversight Program: The contractor shall maintain an effective COI Oversight Program throughout the performance of the contract which includes procedures to monitor and disclose all Organizational and Personal Conflicts of Interest. A COI oversight program should include the monitoring of personal conflicts of interest such as, but not limited to:

a) Managers or Key Personnel who would be, or are involved with, the performance of this contract;

b) Governing Body Members (e.g., Board of Directors; Trustees); and

c) Principals of the organization as defined by FAR 52.203-13, Contractor Code of Business Ethics and Conduct.

2. Mitigation Plan: At any time during the performance of the contract if an actual, potential, or apparent COI is identified whether by the CO, the contractor or otherwise, the contractor shall submit a mitigation plan (J.x Contractor/Offeror COI Submission Template) within 30 days unless otherwise specified by the CO. It is the contractor’s responsibility under the terms and conditions to provide timely notification to the CO those COIs that are self-identified. The CO will notify the contractor regarding the specifics for submission. The Government will review the submission at which time a determination will be made whether a COI has been satisfactorily mitigated or if further action is necessary and will notify the contractor accordingly. In cases where a COI cannot be, or has not been, mitigated to the Government’s satisfaction, the Government may take the following actions (this list is not all inclusive):

1. Request a waiver in accordance with FAR 9.503 Waiver, from the Head of the Contracting Activity;
2. Make changes to the requirements of the contract;
3. Require a subcontractor change (if the conflict lies with the subcontractor); and/or
4. Terminate the contract in whole or in part.

**e. Subcontractor Flow-Down Terms and Conditions:** The prime contractor is responsible for avoiding, neutralizing and mitigating all actual, potential, or apparent COIs of its subcontractors, in accordance with these terms and conditions.  Therefore, the prime contractor shall flow-down terms and conditions H.1 Conflict of Interest and Compliance, of this contract in all subcontracts.  For subcontractors, wherever the term “contractor” is used, insert “subcontractor.”

**Sample Program Specific Language “H.1.c” begin here for**

**MACs, QIOs, ZPICs, QICs, RACs, ESRDs, IT Programs and FFRDC.**

**<-----------------------------------Sample I for MACs BEGINS------------------------------->**

**<Sample I – Medicare Administrative Contractor/Subcontractors (MAC)>**

**c. Significant Potential Conflict of Interest:** The Contracting Officer has determined that this contract may involve significant potential COIs/.

1. Nature of Potential Conflict: Although not all inclusive, the Contracting Officer has determined that the following activities are considered to be an actual, potential or apparent COI with the work to be performed under this contract.

The contractor shall promptly notify the CO if it is an entity, or affiliated with an entity, where any of the following circumstances exist:

a)   Biased Ground rules, impaired objectivity or unequal access to information as explained in the definitions above and/or;

b) Within the three types of conflicts of interest, the CO has identified the following specific circumstances of conflicts:

1. Would review or does review, under the AB-MAC contract, Medicare services furnished by a provider or supplier that is a direct competitor of the offeror or Contractor/Subcontractor;
2. Prepared work or is under contract to prepare work that would be reviewed under the AB-MAC contract;
3. Is affiliated or has a financial relationship, as these terms are explained above, with a provider or supplier to be reviewed under the AB-MAC contract.
4. Proposed Restraint on Future Contractor/Subcontractor Activities:

A MAC may not become a RAC, UPIC\*, QIC, QIO or ESRD at any time in the jurisdiction where it holds a contract to process Medicare claims.

\*For purposes of this proposed restraint, a “UPIC” is defined as any of the Jurisdictional task orders awarded under the UPIC IDIQ (e.g. Northeastern Jurisdiction, Midwestern Jurisdiction, etc.)

***<Sample I, MAC, paragraph 2: The CO may insert additional future restraint language here, as necessary. The above restraints are per statute and/or CMS policy. See also 3 types of COIs identified above which includes biased ground-rules, etc. when considering future restraints.>***

**<\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*MAC Sample I Ends\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*>**

**<-----------------------------------SAMPLE II for QIOs BEGINS------------------------------->**

**<Sample II – Quality Improvement Network (QIN) and Beneficiary and Family Centered Care (BFCC) Program Contracts>**

**c. Significant Potential Conflict of Interest:** The Contracting Officer has determined that this contract may involve significant potential COIs.

1. Nature of Potential Conflict: Although not all inclusive, the Contracting Officer has determined that the following activities are considered to be an actual, potential or apparent COI with the work to be performed under this contract.

The contractor shall promptly notify the CO if it is an entity, or affiliated with an entity, where any of the following circumstances exist:

1. Biased Ground rules, impaired objectivity or unequal access to information as explained in the definitions above and/or;
2. Within the three types of conflicts of interest, the CO has identified the following specific circumstances of conflicts:

1. QIN Only – Would review or does review, under the contract, services furnished by a provider or supplier within the state; or
2. BFCC Only – Has other contracts and/or grants with the Federal Government, including but not limited to, Medicaid, Health Information Exchange, Regional Extension Center, Health Information Technology, or the Beacon Community Program.
3. Both QIN and BFCC:
4. Prepared work or is under contract to prepare under the work that would be reviewed under the QIN or BFCC QIO contract; or
5. Is affiliated or has a financial relationship, as these terms are explained above, with a provider of services, payor organization or health plan as described in the Social Security Act [42 U.S.C. 1320c–2], Sections 1153(b) (2)(A) and (3)(A); or
6. Is a provider of services located inside of the area for which the QIN or BFCC QIO is required to perform services under the terms of this contract; or
7. Is a payor organization that has a contract with the Federal Government to perform services as a Medicare Administrative Contractor/Subcontractor or Qualified Independent Contractor inside of the area for which the QIO is required to perform services under the terms of this contract; or
8. Is a health plan located in the area for which the QIN or BFCC QIO is required to perform services under the terms of the contract; or
9. Proposed Restraint on Future Contractor/Subcontractor Activities: CMS is proposing to restrain future Contractor/Subcontractor activities as follows:
10. Limitations on QIN and BFCC QIOs:
11. Any entity holding a QIN contract or subcontract may not enter into an agreement to perform BFCC work either as a prime or as a subcontractor.
12. Any entity holding a BFCC contract or subcontract may not enter into an agreement to perform QIN work either as a prime or as a subcontractor.
13. A BFCC QIO may not become a MAC, RAC, UPIC\* formerly ZPICs, QIC or ESRD at any time in the jurisdiction where the BFCC holds a QIO contract.
14. A QIN QIO may not become a MAC, RAC or ESRD at any time in the jurisdiction where the QIN holds a QIO contract.

\*For purposes of this proposed restraint, a “UPIC” is defined as any of the Jurisdictional task orders awarded under the UPIC IDIQ (e.g. Northeastern Jurisdiction, Midwestern Jurisdiction, etc.)

***<Sample III, QIO, paragraph 2: The CO may insert additional future restraint language here, as necessary. The above restraints are per statute and/or CMS policy. See also 3 types of COIs identified above which includes biased ground-rules, etc. when considering future restraints.>***

**<\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*QIO Sample II Ends\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*>**

**<----------------------------------SAMPLE III for UPICs(formerly ZPICs) BEGINS------------------------------>**

**<Sample III – Unified Program Integrity Contractor/Subcontractors (UPIC)>**

**c. Significant Potential Conflict of Interest:**  The Contracting Officer has determined that this contract may involve significant potential COIs.

1. Nature of Potential Conflict: Although not all inclusive, the Contracting Officer has determined that the following activities are considered to be an actual, potential or apparent COI with the work to be performed under this contract.

The contractor shall promptly notify the CO if it is an entity, or affiliated with an entity, where any of the following circumstances exist:

1. Biased Ground rules, impaired objectivity or unequal access to information as explained in the definitions above and/or;
2. Within the three types of conflicts of interest, the CO has identified the following specific circumstances of conflicts:
3. Provides, insures, or pays for health benefits, with the exception of health plans provided as the entity’s employee fringe benefit; or
4. Conducts audits of health benefit payments or cost reports; or
5. Conducts statistical analysis of health benefit utilization; or
6. Would review or does review, under the contract, Medicare or Medicaid services furnished by a provider or supplier that is a direct competitor of the Contractor/Subcontractor; or
7. Prepared work or is under contract to prepare work that would be reviewed under the Medicare or Medicaid program integrity contract; or
8. Is affiliated or has a financial relationship, as these terms are explained above, with a provider or supplier to be reviewed under the contract.
9. Proposed Restraint on Future Contractor/Subcontractor Activities: CMS is proposing to restrain future Contractor/Subcontractor activities as follows:

A UPIC\* may not become a MAC, RAC, QIC, BFCC-QIO or ESRD at any time in the jurisdiction where it holds a UPIC contract.

\*For purposes of this proposed restraint, a “UPIC” is defined as any of the Jurisdictional task orders awarded under the UPIC IDIQ (e.g. Northeastern Jurisdiction, Midwestern Jurisdiction, etc.)

***<Sample III, UPIC, paragraph 2: The CO may insert additional future restraint language here, as necessary. The above restraints are per statute and/or CMS policy. See also 3 types of COIs identified above which includes biased ground-rules, etc. when considering future restraints.>***

**<\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*UPIC SAMPLE III ENDS\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*>**

**<----------------------------------SAMPLE IV for QICs BEGINS-------------------------------->**

**<Sample IV – Qualified Independent Contractors/Subcontractors (QIC)>**

**c. Significant Potential Conflict of Interest:** The Contracting Officer has determined that this contract may involve significant potential COIs.

1. Nature of Potential Conflict: Although not all inclusive, the Contracting Officer (CO) has determined that the following activities are considered to be an actual, potential or apparent COI with the work to be performed under this contract.

The contractor shall promptly notify the CO if it is an entity, or affiliated with an entity, where any of the following circumstances exist:

1. Biased Ground rules, impaired objectivity or unequal access to information as explained in the definitions above and/or;
2. Within the three types of conflicts of interest, the CO has identified the following specific circumstances of conflicts:
3. Would review or does review, under the QIC contract, Medicare services furnished by a provider or supplier that is a direct competitor of the Contractor/Subcontractor; or
4. Adjudicates claims that would be reviewed under the QIC contracts; or
5. Has other contracts and grants with the Federal Government such as a Medicare Administrative Contractor (MAC), Recovery Audit Contractor (RAC), Zone Program Intregrity Contractor (ZPIC)/Unified Program Integrity Contractor (UPIC), Beneficiary Family Centered Care-Quality Improvement Organization (BFCC-QIO) or End Stage Renal Disease Network (ESRD-NW) or is a Medicare Secondary Payer (MSP) in the same jurisdiction as a QIC. Operating as any of the entities previously discussed in the same jurisdiction that an entity would also be a QIC could result in that entity (contractor) reviewing an initial determination or redetermination it has made (or a subsidiary of the QIC has made).
6. Proposed Restraint on Future Contractor/Subcontractor Activities: CMS is proposing to restrain future Contractor/Subcontractor activities as follows:

A QIC may not become a MAC, RAC, UPIC\*, BFCC-QIO,ESRD-NW, or MSP at any time in the jurisdiction where it holds a QIC contract.

\*For purposes of this proposed restraint, a “UPIC” is defined as any of the Jurisdictional task orders awarded under the UPIC IDIQ (e.g. Northeastern Jurisdiction, Midwestern Jurisdiction, etc.)

***<Sample IV, QIC, paragraph 2: The CO may insert additional future restraint language here, as necessary. The above restraints are per statute and/or CMS policy. See also 3 types of COIs identified above which includes biased ground-rules, etc. when considering future restraints.>***

**<\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*QIC Sample IV Ends\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*>**

**<------------------------------------SAMPLE V for RACs BEGINS------------------------------>**

**<Sample V – Recovery Auditor Contractor (RAC)>**

**c. Significant Potential Conflict of Interest:**  The Contracting Officer has determined that this contract may involve significant potential COIs.

1. Nature of Potential Conflict: Although not all inclusive, the Contracting Officer has determined that the following activities are considered to be an actual, potential or apparent COI with the work to be performed under this contract.

The contractor shall promptly notify the CO if it is an entity, or affiliated with an entity, where any of the following circumstances exist:

1. Biased Ground rules, impaired objectivity or unequal access to information as explained in the definitions above and/or;
2. Within the three types of conflicts of interest, the CO has identified the following specific circumstances of conflicts:
3. Prepared work or is under contract to prepare work that would be reviewed under this contract;
4. Is affiliated or has a financial relationship, as these terms are explained above, with a provider or supplier to be reviewed/evaluated under the contract: or
5. Has other contracts and grants with the Federal Government, such as a MAC, UPIC, QIC or claims processing system contractor.
6. Proposed Restraint on Future Contractor/Subcontractor Activities: CMS is proposing to restrain future Contractor/Subcontractor activities as follows:

A RAC may not become a MAC, UPIC\*, BFCC-QIO, QIN-QIO, QIC or ESRD at any time in the jurisdiction where it holds a RAC contract.

\*For purposes of this proposed restraint, a “UPIC” is defined as any of the Jurisdictional task orders awarded under the UPIC IDIQ (e.g. Northeastern Jurisdiction, Midwestern Jurisdiction, etc.)

***<Sample V, RAC, paragraph 2: The CO may insert additional future restraint language here, as necessary. The above restraints are per statute and/or CMS policy. See also 3 types of COIs identified above which includes biased ground-rules, etc. when considering future restraints.>***

**<\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*RAC Sample V Ends \*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*>**

**<---------------------------------SAMPLE VI for ESRDs BEGINS------------------------------->**

**<Sample VI – End Stage Renal Disease (ESRD) Network>**

**c. Significant Potential Conflict of Interest:**  The Contracting Officer has determined that this contract may involve significant potential COIs.

1. Nature of Potential Conflict: Although not all inclusive, the Contracting Officer has determined that the following activities are considered to be an actual, potential or apparent COI with the work to be performed under this contract. The contractor shall promptly notify the CO if it is an entity, or affiliated with an entity, where any of the following circumstances exist:

1. Biased Ground rules, impaired objectivity or unequal access to information as explained in the definitions above and/or;
2. Within the three types of conflicts of interest, the CO has identified the following specific circumstances of conflicts:
3. Would review or does review, under the contract, services furnished by a provider or supplier within the state; or
4. Prepared work or is under contract to prepare work that would be reviewed under the ESRD contract; or
5. Is affiliated or has a financial relationship, as these terms are explained above, with a provider of services, payor organization or health plan as described in the Social Security Act [42 U.S.C. 1320c–2], Sections 1153(b) (2)(A) and (3)(A); or
6. Is a provider of services located inside of the area for which the ESRD is required to perform services under the terms of this contract; or
7. Is a payor organization that has a contract with the Federal Government to perform services as a Medicare Administrative Contractor/Subcontractor or Qualified Independent Contractor inside of the area for which the ESRD is required to perform services under the terms of this contract; or
8. Is a health plan located in the area for which the ESRD is required to perform services under the terms of the contract; or
9. Has other contracts and grants with the Federal Government, including but not limited to, Medicaid, Health Information Exchange, Regional Extension Center, Health Information Technology, or the Beacon Community Program.
10. Proposed Restraint on Future Contractor/Subcontractor Activities: CMS is proposing to restrain future Contractor/Subcontractor activities as follows:

A ESRD may not become a MAC, RAC, UPIC\*, QIC, BFCC-QIO or QIN-QIO at any time in the jurisdiction where it holds an ESRD contract.

\*For purposes of this proposed restraint, a “UPIC” is defined as any of the Jurisdictional task orders awarded under the UPIC IDIQ (e.g. Northeastern Jurisdiction, Midwestern Jurisdiction, etc.)

***<Sample VI, ESRD, paragraph 2: The CO may insert additional future restraint language here, as necessary. The above restraints are per statute and/or CMS policy. See also 3 types of COIs identified above which includes biased ground-rules, etc. when considering future restraints.>***

**<\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*ESRD Sample VI Ends\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*>**

**<-------------------------SAMPLE VII for IT CONTRACTS BEGINS------------------------>**

**<Sample VII – Information Technology (IT) Contracts>**

**c. Significant Potential Conflict of Interest:** The Contracting Officer has determined that this contract may involve significant potential COIs.

1. Nature of Potential Conflict: Although not all inclusive, the Contracting Officer has determined that the following activities are considered to be an actual, potential or apparent COI with the work to be performed under this contract.

The contractor shall promptly notify the CO if it is an entity, or affiliated with an entity, where any of the following circumstances exist:

1. Biased Ground rules, impaired objectivity or unequal access to information as explained in the definitions above and/or;
2. Within the three types of conflicts of interest, the CO has identified the following specific circumstances of conflicts:
3. Develop a system for which it wrote the requirements; or
4. Develop a claims processing system for the Government and is affiliated or has a financial relationship, as these terms are explained above, with an entity that pays claims; or
5. Design infrastructure under a systems development contract that it will be selling the Government under a hosting contract; or
6. Provide security testing or other testing on a system that it developed; or
7. Inspect deliverables on behalf of the Government that it submitted to the Government for inspection under a different contract.

2. Proposed Restraint on Future Contractor Activities: CMS is proposing to restrain future Contractor activities as follows:

Any entity holding a systems development contract or subcontract may not bid on a contract to perform work as a user of that system (either as a prime or as a subcontractor).

***<Sample VII, IT, paragraph 2: The CO may insert additional future restraint language here, as necessary. The above restraints are per statute and/or CMS policy. See also 3 types of COIs identified above which includes biased ground-rules, etc. when considering future restraints.>***

**<\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*IT SAMPLE VII ENDS\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*>**

**<-------------------------ALTERNATE VIII for FFRDC BEGINS------------------------>**

**<VIII. Federally Funded Research and Development Contractor (FFRDC)>**

**c.Significant Potential Conflict of Interest:**  The Contracting Officer has determined that this contract may involve significant potential COIs.

1. Nature of Potential Conflict:  Although not all inclusive, the Contracting Officer has determined that the following activities are considered to be actual, potential or apparent COIs with the work to be performed under this contract.  The Federally Funded Research and Development Contractor (FFRDC) shall promptly notify the Contracting Officer of any relationships, whether direct or indirect, with any of the following entities:

For the purpose of identifying entities with actual, apparent or potential COIs, at a minimum, the entity is one that-

(a)   Would review or does review, under the contract, Medicare and/or Medicaid services furnished by a provider or supplier that is a direct competitor of the FFRDC or subcontractor of the FFRDC; or

(b)   Prepared work or is under contract to prepare work that would be reviewed by the FFRDC under the contract; or

(c)    Is affiliated or has a financial relationship, as these terms are explained above, with an entity to be reviewed under the contract; or

(d)   Competes against private industry for work.

1. Proposed Restraint on Future FFRDC Activities:  CMS is proposing to restrain or is restraining, as the case may be, future FFRDC activities as follows:

The FFRDC:

(a)    Shall not compete against private industry for work;

(b)    May only perform work as defined in Section *III. Scope of Work* of the Sponsoring

Agreement;

(c)    May only respond to a Federal Government request for proposal or Broad Agency Announcement for other than a task order under the CAMH FFRDC contract with the express written permission of the Sponsor;

(d)    May apply for grants only when:

* No real or perceived conflict of interest exists between the execution of the grant and the current or planned work of the FFRDC.
* The principal purpose of the grant is to stimulate or support research and development in support of the Sponsors’ missions;

(e)    May not accept work developing specific components without written approval of the FFRDC Program Manager, who may approve the work when it is directly related to a specific critical government program; or

(f)     Shall not, unless authorized by legislation and the Contract, undertake quantity production or manufacturing.

**<\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*FFRDC ALTERNATE VIII ENDS\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*>**