



DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS SPACE AND MISSILE SYSTEMS CENTER (AFSPC)  
LOS ANGELES, CA

27 December 2001

MEMORANDUM FOR SMC/AXD  
ATTENTION: MR. JONES

FROM: SMC/JA

SUBJECT: Use of Aerospace Personnel as PRAG Advisors With Access to CPARs Data

1. You have requested our advice regarding the use of Aerospace personnel as Performance Risk Assessment Group (PRAG) advisors. Your request was prompted by SMC/ADK's receipt of a positive response from AFMC/PKP dated 26 Jun 2001 based upon a specific, somewhat similar situation. As explained below, in our opinion, Aerospace personnel may be allowed to act as PRAG advisors and, as such, may be provided the same access to Contractor Performance Assessment Report (CPARs) data as Government personnel. If Aerospace personnel are used as PRAG advisors, we advise you to provide specific notice of such in any applicable solicitation. This notice will allow potential offerors to raise objections or discuss any concerns they may have and, ultimately, eliminate or reduce a protest issue.

2. FAR 15.305(c) refers to FAR 37.203(d) for restrictions applicable to use of support contractor personnel in proposal evaluation. FAR 37.203(d) is based on Section 6002 of the Federal Acquisition Streamlining Act, Pub. L. 103-355, 13 Oct 94, which created a new Section 419 in Title 41 of the United States Code. FAR 37.203(d)(2) makes FFRDCs an exception to the general rule that support contractors may not be used "to conduct evaluations or analysis of any aspect of a proposal for an initial contract award" unless Government personnel are unavailable. However, this exception for FFRDCs requires two conditions be met before using the FFRDC for proposal evaluation.

a. The first condition, admittedly a bit circular, is that the support contractor is an FFRDC "as authorized" at 41 U.S.C. Sect. 419. This language suggests that Section 419 contains specific authority for FFRDCs. It does not. The only statement with regard to FFRDCs in this statute is this:

(c) Rule of construction.—Nothing in this section is intended to affect the relationship between the Federal government and a federally funded research center.

Legal standards for statutory construction might not extricate FFRDC personnel from the same review process [FAR 37.203(d)(1) and 37.204] applied to use of other support contractors for proposal evaluation. However, the text of FAR 37.203(d)(2) specifically exempts FFRDCs from

the restriction on the use of support contractors for this purpose. Additionally, SAF/AQX, Air Force Advisory and Assistance Services (A&AS) Interim Policy Letter, as amended 26 Aug 1996, para F2b, also specifically exempts FFRDCs from this restriction. We thus see compliance with the first condition.

b. The second condition is that "the work placed under the FFRDC's contract," which in this context must mean the proposal evaluation effort, satisfies the criteria of FAR 35.017-3 for the particular FFRDC. We believe that proposal evaluation for SMC's source selections satisfies FAR 35.017-3's criteria, that is, that proposal evaluation effort is within the purpose, mission, general scope of effort or special competency of the Aerospace FFRDC. It should be noted that Aerospace FFRDC personnel have been advising SMC and NRO source selections for generations. They have performed in this role because of their space systems engineering expertise. This is documented in DDR&E's 1 December 1995 listing of core competencies for the Aerospace FFRDC in which two of the five competencies are directly relevant: Systems Development and Acquisition and Technology Application. We also note that proposal evaluation effort is specifically covered in the current Sponsoring Agreement for the Aerospace FFRDC, executed 12 November 1999, at Sects. II.B.2.2 and II.B.4.7.

3. We also note that AFFARS 5215.303-90(g) allows contractor advisors under specified conditions. No element of the Source Selection process is restricted from having contractor advisors. Advisory status is a traditional role for Aerospace personnel on SMC source selections, so with SSA approval, Aerospace personnel may advise the PRAG.

4. We discussed this opinion at some length with the legal staff at AFMC/JAQ. They were familiar and concurred with AFMC/PKP's earlier response to SMC/ADK. They strongly doubted that FAR 42.1503(b) was intended to restrict PRAG advisors from accessing CPARs data, but rather believed the restriction was probably intended to address only non-source selection release. AFMC/JAQ opined that Aerospace personnel acting as PRAG advisors with access to CPARs data was permissible with SSA approval because of the status of the Aerospace FFRDC, but agreed that specific notice of this new approach should be placed in the applicable solicitations.



SAMUEL S. BAGLEY, Colonel, USAF  
Staff Judge Advocate

cc:  
SMC/PK  
SMC/AXC