



**DEPARTMENT OF THE AIR FORCE**  
AIR FORCE LIFE CYCLE MANAGEMENT CENTER  
WRIGHT-PATTERSON AIR FORCE BASE OHIO

22 Apr 13

MEMORANDUM FOR INTERESTED PARTIES

FROM: AFLCMC/PZI  
Building 16, Room 0047  
2275 D Street  
Wright-Patterson, AFB, OH 45433

SUBJECT: FA8604-13-R-7900, Organizational Conflict of Interest Mitigation Plans

1. An organizational conflict of interest (OCI) issue is a significant consideration that can prevent the government from awarding a contract to an offeror. It is possible through the submission of an acceptable mitigation plan, however, for an offeror to sufficiently reduce the risks associated with an OCI such that contract award can occur. Accordingly, industry is encouraged to discuss OCI issues as early as possible in the acquisition cycle. Based on information an offeror provides in response to a potential OCI situation, Air Force Life Cycle Management Center (AFLCMC) will advise the company what actions, if any, the company might want to take to ensure that it will be eligible for contract award. Hopefully, such advice will assist companies when deciding whether to participate in an acquisition.
2. When it is determined that an OCI is present, only companies submitting acceptable mitigation plans will be eligible for award. Therefore, every company that expects to submit an offer as a prime contractor or as a member of a contractor teaming arrangement for any AFLCMC/PZI acquisition should review the OCI discussion found at Federal Acquisition Regulation (FAR) Subpart 9.5 and determine the potential for an OCI. If a company determines that there is the potential for an OCI, it should next analyze the situation and decide whether the potential OCI can be mitigated through a particular course of action as stipulated in a mitigation plan. If so, such a mitigation plan should be drafted and submitted to the contracting officer (CO) who will review the proposed plan and assess its risk and content. AFLCMC/PZI expects such plans to address in detail the matter discussed below in a thoughtful and comprehensive manner.
3. An OCI mitigation plan should be based on the requirements of FAR Subpart 9.5, *Organizational and Consultant Conflicts of Interest*, clauses found in the Request for Proposal (RFP), and the language that is used in the evaluation criteria. When drafting a mitigation plan, please consider information provided in the paragraphs below.
4. The FAR directs COs to examine each potential OCI situation individually on the basis of its particular facts and the nature of the proposed contract to determine whether an OCI exists. See FAR 9.505; *Aetna Government Health Plans, Inc.; Foundation Health Fed. Servs., Inc.*, B-254397.15 et al., July 27, 1995, 95-2 CPD ¶ 129. In performing this role, a CO must have sufficient facts to determine whether an OCI is present. Accordingly, the CO cannot evaluate unspecified future efforts, and he or she cannot approve an OCI mitigation plan that is so prospective in nature as to be vague.
5. An OCI mitigation plan should be written to specifically address performance issues on a particular program or group of programs, as necessary. Since companies have unique corporate structures and different existing

contracts, mitigation plans should not be done in a boilerplate fashion. Instead, they should address all aspects of potential OCI issues related to an acquisition so that objectivity and integrity are preserved.

6. As discussed above, FAR Subpart 9.5 sets forth regulatory guidance governing OCIs. Per this subpart, a conflict of interest arises when, due to 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.” FAR 2.101. The two underlying policies of the FAR OCI rules are: (1) to prevent conflicting roles that might bias a contractor’s judgment, and (2) to prevent unfair competitive advantage. *See* FAR 9.505. Accordingly, contracting officials are to avoid, neutralize or mitigate potential significant conflicts of interest so as to prevent unfair competitive advantage or the existence of conflicting roles that might impair a contractor’s objectivity. *See* FAR 9.504(a), 9.505.

7. The responsibility for determining whether an actual or apparent conflict of interest will arise and to what extent a firm should be excluded from a competition rests with AFLCMC/PZI. *SRS Technologies*, B-258170.3, Feb. 21, 1995, 95-1 CPD ¶ 95. In response to such a situation, AFLCMC/PZI may impose a variety of restrictions -- whether or not explicitly provided for in applicable procurement regulations -- where the needs of AFLCMC/PZI or the nature of the procurement dictates the use of such restrictions. *Nelson Erection Company, Inc.*, B-217556, April 29, 1985, 85-1 CPD ¶ 482. Such restrictions must be reasonable, however, and only will be imposed after a sufficient analysis of the facts. *Aetna Government Health Plans, Inc.; Foundation Health Fed. Servs., Inc.*, B-254397.15 et al., July 27, 1995, 95-2 CPD ¶ 129.

8. The situations in which OCIs arise can be broadly categorized into three groups. The first group consists of situations in which a firm has access to nonpublic information as part of its performance of a government contract and where that information may provide the firm a competitive advantage in a later competition for a government contract. *See* FAR 9.505-4. In these “unequal access to information” cases, the concern is limited to the risk of the firm gaining a competitive advantage.

9. The second group consists of situations in which a firm, as part of its performance of a government contract, has in some sense set the ground rules for another government contract. An example of this situation occurs where a firm provides systems engineering and technical direction for a system without having overall contractual responsibility for its development, its integration, assembly, and checkout, or its production. In these “biased ground rules” cases, the primary concern is that the firm could skew the competition, whether intentionally or not, in favor of itself. *See* FAR 9.505-1, 9.505-2. With regard to this matter, FAR 9.505-1 states:

In performing these activities, a contractor occupies a highly influential and responsible position in determining a system’s basic concepts and supervising their execution by other contractors. Therefore this contractor should not be in a position to make decisions favoring its own products or capabilities.

These situations may also involve a concern that the firm, by virtue of its special knowledge of the government’s future requirements, would have an unfair advantage in the competition for those requirements. *The Pragma Corp.*, B-255236, Feb. 18, 1994, 94-1 CPD ¶ 124.

10. The third group comprises cases where a firm’s work under one government contract could entail its evaluating itself, either through an assessment of performance under another contract or an evaluation of proposals. FAR 9.505-3. In these “impaired objectivity” cases, the concern is that the firm’s ability to render impartial advice to the government could appear to be undermined by its relationship with the entity whose work product is being evaluated. *Id.*; *see also* FAR 2.101 (definition of organizational conflict of interest).

11. While FAR 9.5 does not explicitly address the role of affiliates in the various types of OCIs, there is no basis to distinguish between a firm and its affiliates, at least where concerns about potentially biased ground rules and impaired objectivity are at issue. *See* *ICF Inc.*, B-241372, Feb. 6, 1991, 91-1 CPD ¶ 124. In addition, please note that while a firewall arrangement may resolve an “unfair access to information” conflict of interest,

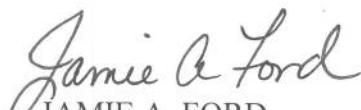
it is virtually irrelevant to an organizational conflict of interest involving potentially impaired objectivity or biased ground rules. *See Aetna Government Health Plans, Inc.; Foundation Health Fed. Servs., Inc.*, B-254397.15 et al., July 27, 1995, 95-2 CPD ¶ 129. Therefore, a mitigation plan needs to address how the contractor will overcome these concerns.

12. As mentioned earlier, the FAR requires COs to avoid, neutralize, or mitigate significant conflicts of interest before contract award. *See FAR 9.504(a)(2)*. In order to fulfill this requirement, it is the CO's responsibility to seek an OCI mitigation plan that addresses a multitude of concerns. As applicable, COs expect a mitigation plan to contain the following.

- a. Comparative organizational charts that show: the previous corporate structure, those elements of the company participating in the contract, where these elements will be transferred in the proposed new corporate structure, and how such elements will be isolated, if necessary.
- b. A clear discussion of how the contractor would propose to mitigate any perception that it would favor its own products or services.
- c. A clear discussion of how the contractor would preclude a perception of impaired objectivity by prohibiting transfer of existing personnel performing the existing contract to the division planned to support the proposed effort (precluding transfer of information).
- d. A clear discussion of how the contractor would counter an assertion that there would be unfair access to information by prohibiting transfer of personnel performing the existing contract to the division planned to support the new proposed effort (precluding transfer of information).
- e. A clear explanation of how management reporting chains will be restructured so that work is isolated in different elements of the company (precluding transfer of information).
- f. A clear explanation of how the contractor intends to organize itself such that all new work under the proposed new contract effort will be performed by a division that has no contract responsibilities or management of the existing contract that is causing the OCI (to assure objectivity).

13. The government will treat all OCI submissions as proprietary under 18 U.S.C. §1905 and protect the proposed information accordingly. The CO of record on a particular contract action should be contacted for any questions on this letter.

14. If you have any questions, please contact the contracting team; Adeline Reeder, Christina Lemoine or the undersigned at AFLCMC.AZZ.EPASS@wpafb.af.mil.



JAMIE A. FORD  
Contracting Officer  
AFLCMC/PZI

Attachments:

1. OCI Brief
2. OCI Mitigation Plan Template



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# OCI Mitigation at AF Life Cycle Management Center

Engineering, Professional, and  
Administrative Support Services  
(EPASS)



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## Organizational Conflict of Interest Definition



### ● FAR 2.101

Because of other activities or Relationships . . .

- a person is unable or potentially unable to render impartial assistance or advice, or
- the person's objectivity . . . is or might be impaired, or
- a person has an unfair competitive advantage.



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## Governing FAR Provisions



### ● FAR 9.504

- Potential conflicts of interest must be mitigated before contract award
- Contracting officers should obtain the advice of legal counsel and technical experts in evaluating potential conflicts



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## Governing FAR Provisions



### ● FAR 9.505

- Each individual situation should be examined on the basis of its particular facts and the nature of the proposed contract
- Evaluation requires the exercise of common sense, good judgment, and sound discretion



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## GAO Precedent



- Aetna Government Health Plans, Inc.,  
B-2254397.15 et al., July 27, 1995, 95-2  
CPD ¶ 129

- In some cases, an OCI cannot be mitigated



## Types of OCI

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- Biased Ground Rules

- Systems Engineering and Technical Direction (FAR 9.505-1)
- Preparation of Statement of Work; Requirements (FAR 9.505-2)

- Impaired Objectivity

- Providing Evaluation Services (FAR 9.505-3)

- Unequal Access to Information

- Access to Proprietary Information (FAR 9.505-4)



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## AFLCMC OCI Review Panel



- AFLCMC Process Guide, R107, 13 Mar 13
  - Established OCI Review Panel to ensure AFLCMC OCI policy is consistently applied
  - Chaired by Senior members of Contracting, the Legal Office, and the Acquisition Center of Excellence



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## OCI Review Process



- OCI Plan from prime contractor to Contracting Officer (prime contractor incorporates all subcontractor OCI plans)
- Contracting Officer to program team
- Those inputs go to Program Attorney
- Consolidated comments go to OCI Review Panel



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## OCI Mitigation



### ● Organization Charts (Prime & Subcontractors)

- One chart showing current organization and reporting chain up through parent company
- Second chart showing new corporate structure and reporting chain if restructure of Organization is proposed as mitigation
- Organization chart needed for each member of your team (Prime & Subcontractors)



## OCI Mitigation



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- Contract Types with Potential OCIs
  - Systems Contracts or Programs
  - Advisory & Assistance (A&AS) Contracts
    - (Program Office Support, PASS II, ETASS II, ACCESS, TEAS, TAMS, SCS, etc.)



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## OCI Mitigation



### ● OCI Firewalls (5 Factor Mitigation)

- Isolate Work in Separate Business Unit
- Geographic & Physical Separation
- Independent Management & Reporting Chains
- Prohibition Against Transfer of Personnel
- Prohibition Against Transfer of Information



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## OCI Mitigation Plans



- Administrative Section
  - Definitions
  - OCI Training for new and existing employees
  - Employee Transfer Rules
  - Information Transfer Rules
  - OCI Enforcement
    - Employee OCI reporting requirements
    - Consequences for OCI violations
    - Disclosure of violations to Government
  - OCI / Debriefing Certification
  - Nondisclosure Agreement



## OCI Mitigation Plans



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- OCI Mitigation Section

- Separate Section for Prime and each Subcontractor
- Organization Chart
- Agree to Adopt Administrative Section  
(or explain any deviations)
- Identify and Mitigate Potential OCIs



# Identify & Mitigate Potential OCIs



- Identify All Divisions or Business Units  
(Combine within by Systems / A&AS Contracts)
  - Location
  - Explain the Management and Reporting Chain
- Identify & Explain Contracts in the Division or  
Business Unit with Potential OCIs



# Identify & Mitigate Potential OCIs



- Identify the Potential OCIs

- Analyze work under specific contracts for actual or potential conflicts of interest and conclude whether a conflict of interest exists



# Identify & Mitigate Potential OCIs



- Propose Mitigation Strategies

- Propose concrete solutions for mitigating any conflicts of interest that have been identified
  - Firewalls (5 Factor Mitigation Analysis)
  - Restructure of organization and reporting chains
  - Other steps the contractor will take to preclude the perception that it will favor its own products or services



## Conclusion



- AFLCMC OCI Review Process
- Review OCI Mitigation Plan Template
- Submit plans to the Contracting Officer
  - IAW FAR 9.504(a)(1), “....as early in the acquisition process as possible”

## Organizational Conflicts of Interest Template

1. Administrative Section.
  - a. Definitions.
    - i. Organizational Conflict of Interest (see FAR 2.101 definition and FAR Subpart 9.5).
    - ii. Biased Ground Rules.
    - iii. Impaired Objectivity.
    - iv. Unequal Access to Information.
    - v. Source Selection Sensitive Information (see FAR 2.101 definition).
    - vi. 3<sup>rd</sup> Party Contractor Proprietary Information (see FAR 3.104).
    - vii. Nonpublic Information (FOUO information; planning / budget / acquisition / contract information).
    - viii. Systems contracts / programs.
    - ix. A&AS contracts / Program Office Support.
  - b. OCI Training (initial and recurring).
  - c. Employee Transfer Rules.
  - d. Information Transfer Rules.
  - e. OCI Enforcement.
  - f. Attachment 1: OCI Certification.
  - g. Attachment 2: Non-Disclosure Agreement.
2. OCI Mitigation Section.
  - a. Prime Contractor Tab.
    - i. Organization Chart.
    - ii. Prime Contractor agreement to adopt Administrative Section.
    - iii. Systems Contracts / Programs.
      1. Identify the Potential OCIs.
        - a. Biased Ground Rules (explain if applicable).
        - b. Impaired Objectivity (explain if applicable).
        - c. Unequal Access to Information (explain if applicable).
      2. Business Unit / Sector (Identify Business Unit / Sector - Group Potential OCIs by Business Unit / Sector).
        - a. List Contracts / Programs
          - i. Identify Program location.
          - ii. Briefly explain reporting chain.
          - iii. Briefly explain / describe each contract.
        - b. Mitigation Analysis (narrative explanation of the following 5 factors; distinguish between the Prime Contractor Business Unit and the Business Unit with the potential OCI).
          - i. Isolate Work in Completely Separate Organizational Business Units.
          - ii. Geographic and Physical Separation.

- iii. Independent Management and Reporting Chains.
  - iv. Prohibition against Transfer of Personnel.
  - v. Prohibition against Transfer of Information.
  - vi. Other Unique Mitigation if applicable.
- 3. Business Unit / Sector (Repeat 2. above for additional Business Unit / Sectors with Potential OCIs resulting from Systems Contracts / Programs).
  - iv. A&AS Contracts / Program Office Support (follow same format as iii. above).
- b. Subcontractor Tab(s).
  - i. Organization Chart.
  - ii. Subcontractor agreement to adopt Prime Contractor Administrative Section 1 above.
  - iii. Identification and explanation of any deviations from Prime Contractor's OCI Mitigation Plan.
  - iv. Systems Contracts / Programs (same format as 2aiii. above).
  - v. A&AS Contracts / Program Office Support (same format as 2aiv. above).