



Recognizing, Avoiding and Mitigating Organizational Conflicts of Interest

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Agenda

- Introductions
- About Fedmine
- Presentation by Maria Panichelli: Organizational Conflicts of Interest
- Q & A – *please use the Q+A button to ask questions*

**We will send out the recording and slides following today's presentation*

Fedmine's mission is to bring accurate information, unmatched transparency and clear accountability to the world of government contracts. We provide the shortest path to conducting mutually beneficial relationships between government and industry.

Founded in 2004, we provide prime contractors, federal agencies and support firms convenient, simplified access to the most comprehensive federal contract data sets available anywhere.

Fedmine is now part of GovSpend, the largest provider of Purchase Orders within the SLED industry



ABOUT FEDMINE

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- Discover subcontractors at the task order level, with complete comprehension of what matters most
- Receive daily alerts based on awarded contracts within your addressable market
- Build a pipeline with addressable recompetes and newly forecasted solicitations
- Dissect competition, quickly view agency markets, drill down to key contacts and download information for marketing needs

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LANDSCAPE IN REAL TIME,
PROVIDING YOU THE
VISIBILITY YOU NEED INTO
YOUR ADDRESSABLE
MARKET OF BUSINESS
OPPORTUNITIES.





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For Fedmine

Meet the Presenter

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So, Why Are We Even Talking about OCIs?

- What Impact Can OCIs Have?
- What are the Consequences?
- What, Therefore are the Goals?
- How Do OCIs Relate to Bid Protests?

FAR Definitions, Section 2.101



Organizational Conflict of Interest means that because of 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 9.5 Organizational and Consultant Conflicts of Interest

- So, why are OCIs so bad?
- What is the government trying to prevent?
- What systems/regulations are in place?

FAR 9.502 - Applicability

(c) An organizational conflict of interest may result when:

- When factors create an actual or potential conflict of interest on an instant contract, or
- When the nature of the work to be performed on the instant contract creates an **actual or potential conflict** of interest on a future acquisition.

In the latter case, some restrictions on future activities of the contractor may be required.

FAR 9.502 - Applicability



- (a) OCI regulations in FAR Subpart 9.5 apply to all contracts using Government funds
- (b) Applicability is not limited to any particular kind of acquisition. However, organizational conflicts of interest are more likely to occur in contracts involving-
 - (1) Management support services;
 - (2) Consultant or other professional services;
 - (3) Contractor performance of or assistance in technical evaluations; or
 - (4) Systems Engineering and Technical direction work performed by a contractor that does not have overall contractual responsibility for development or production.



Three Types of OCIs

FAR 9.505 General rules

- Each individual contracting situation should be examined on the basis of its particular facts and the nature of the proposed contract.
- The exercise of common sense, good judgment, and sound discretion is required in both the decision on whether a significant potential conflict exists and, if it does, the development of an appropriate means for resolving it.
- *That said...*

FAR 9.505 General rules (cont.)

- The two underlying principles are-
 - (a) Preventing the existence of **conflicting roles** that might **bias** a contractor's judgment; and
 - (b) Preventing **unfair competitive advantage**. In addition to the other situations described in this subpart, an unfair competitive advantage exists where a contractor competing for award of any Federal contract **possesses information** such as
 - (1) Proprietary information that was obtained from a Government official without proper authorization; or
 - (2) Source selection information (as defined in 2.101) that is relevant to the contract but is not available to all competitors, and such information would assist that contractor in obtaining the contract.



One:
Biased Ground Rules

One: Biased Ground Rules

- This type of OCI arises when a contractor, as part of its performance on one Government contract, has set the ground rules or evaluation framework/criteria relating to the competition on another government contract, such that it could skew (intentionally or unintentionally) the competition in favor of itself.



Two:

Unequal Access to Information

Two: Unequal Access to Information

- This type of OCI arises when a contractor has access to non-public information as part of, or through, its performance on a Government contract, and that information may provide a competitive advantage in a later procurement competition.



*Three:
Impaired Objectivity*

Three: Impaired Objectivity

- An impaired objectivity OCI arises where a firm's ability to render impartial advice to the government could be undermined by the firm's competing interests.

General Rules

- 9.505-1 Providing systems engineering and technical direction.
- 9.505-2 Preparing specifications or work statements.
- 9.505-3 Providing evaluation services.
- 9.505-4 Obtaining access to proprietary information.

Examples in the Regulations

- 9.508 Examples



9.504 Contracting Officer Responsibilities

(a) Using the general rules, procedures, and examples in this subpart, contracting officers shall analyze planned acquisitions in order to

(1) Identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible; and

(2) Avoid, neutralize, or mitigate significant potential conflicts before contract award.

...

(c) Before issuing a solicitation for a contract that may involve a significant potential conflict, the contracting officer shall recommend to the head of the contracting activity a course of action for resolving the conflict (see 9.506).

9.504 Contracting Officer Responsibilities

(d) In fulfilling their responsibilities for identifying and resolving potential conflicts, contracting officers should avoid creating unnecessary delays, burdensome information requirements, and excessive documentation. The contracting officer's judgment need be formally documented only when a substantive issue concerning potential organizational conflict of interest exists.

9.504 Contracting Officer Responsibilities

- The contracting officer shall award the contract to the apparent successful offeror unless a conflict of interest is determined to exist that cannot be avoided or mitigated.
- Before determining to withhold award based on conflict of interest considerations, the contracting officer shall notify the contractor, provide the reasons therefor, and allow the contractor a reasonable opportunity to respond.
- If the contracting officer finds that it is in the best interest of the United States to award the contract notwithstanding a conflict of interest, a request for waiver shall be submitted in accordance with 9.503.
- The waiver request and decision shall be included in the contract file.

9.503 Waiver

- The agency head or a designee may waive any general rule or procedure of this subpart by determining that its application in a particular situation would not be in the Government's interest.
- Any request for waiver must be in writing, shall set forth the extent of the conflict, and requires approval by the agency head or a designee. Agency heads shall not delegate waiver authority below the level of head of a contracting activity

Mitigation Of OCIs

- Mitigation Strategies Depend on the Type of OCI
 - Restrictions, Firewall
 - ... or is it Un-Mitigatable?



*How to Mitigate:
Impaired Objectivity*



*How to Mitigate:
Unequal Access to Information*



*How to Mitigate:
Biased Ground Rules*

Mitigation Of OCIs

- Mitigation Not Unilateral - Requires Disclosure to and Approval by the Contracting Officer IAW FAR 9.5
- Timing of Mitigation
- Deference to CO/Mitigation Plan

A Refresher on Bid Protests of OCIs

- Pre-Award Bid Protests Alleging Errors in the Solicitation v. Post-Award Protests
- What is “Protestable”?



Questions?

Contact Information



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