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# **ORGANIZATIONAL CONFLICTS OF INTEREST**

## **on the FTA PMO Contract**

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# FTA Priorities for PMOC

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- ❑ Obtain independent oversight of projects
- ❑ Preserve integrity of PMO program
- ❑ Avoid or eliminate organizational conflicts of interest

# WHAT IS AN ORGANIZATIONAL CONFLICT OF INTEREST?

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## □ FAR 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.

# Types of OCIs

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- Biased ground rules
- Unequal access to information
- Impaired objectivity

# Biased Ground Rules

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- Company A sets ground rules for future Government procurement:
  - Writes specifications, evaluation factors
  
- Mitigation: Company A prohibited from participating in future procurement, or establish organizational barriers (*i.e.* firewalls)

# Unequal Access to Information

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- Company A gains access to nonpublic information
  - Through performance of Government contract
  - Results in Company A having an unfair competitive advantage
- Mitigation: Organizational barriers (*i.e.* firewalls)

# Impaired Objectivity

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- Government contractor has conflicting obligations under different government contracts, that compromises the contractor's ability to render impartial judgment
- Entity is torn between duties (or loyalty) to two or more different parties
- Mitigation: Divestiture, disqualification or termination.

# OCI Contract Clause (current contract)

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## ■ G.12 CONFLICT OF INTEREST

Conflict of interest is defined as a relationship that exists whereby an offeror or a contractor (including his/her chief executives, directors, proposed consultants or subcontractors) has interests which (1) may diminish his/her capacity to give impartial, technically sound, objective assistance and advice or may otherwise result in a biased work product or, (2) may result in an unfair competitive advantage.

# OCI Contract Clause (current language)

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The Contractor is responsible for maintaining and providing up-to-date conflict of interest information. If, after award of this contract and/or the task orders, the Contractor discovers a conflict of interest with respect to task orders which could not reasonably have been known prior to award, or any additional conflicts or potential conflicts that arise after award, the Contractor shall give written notice to the Contracting Officer as set forth below.

# OCI Contract Clause (current language)

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The Contractor's notice called for in the above paragraph shall describe the actual or apparent conflict of interest, the action(s) the Contractor has taken or proposes to take to avoid or mitigate any conflict, and shall set forth any other information which the Contractor believes would be helpful to the Contracting Officer in analyzing the situation.

# OCI Contract Clause (current language)

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If the Contracting Officer in his/her discretion determines that the Contractor's actual or apparent conflict of interest remains, or measures proposed are insufficient to mitigate the conflict, and the parties fail to reach agreement on a course of action, the Contracting Officer will direct a course of action to the Contractor designed to avoid, neutralize, or mitigate the actual or apparent conflict of interest.

# OCI Contract Clause (current language)

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The contractor shall refrain from submitting qualifications, proposals, offers, solicitations, or similar documents to the Grantee it is supervising during the contract and task order performance periods. Management or conflict of interest by the Contractor will be a part of performance evaluations in accordance with the PG.

# CO Responsibilities

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## Pre-award

- Appropriate solicitation clauses
- Identify and analyze all actual or potential conflicts
- Avoid, neutralize or mitigate conflicts

## Post-award

- Identify and analyze all actual or potential conflicts
- Avoid, neutralize or mitigate conflicts

# Contractor Responsibilities

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## Pre-award

- Disclose information on affiliates and past, present or future business arrangements

## Post-award

- Disclose conflicts of interest that arise after award
- Develop mitigation plan
- Notify CO of any changes in above-disclosed information
- Refrain from seeking contracts with grantees

# Challenges for the Future

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- ❑ 5-Year commitment
- ❑ Mergers and Acquisitions
- ❑ Shrinking Pool of Non-conflicted contractors
- ❑ Difficulty in developing effective mitigation plans

# Follow-up

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- Please e-mail your questions, suggestions, and recommendations to the Acting Director Office of Procurement:

**[FTA.PMOrecompete2009@dot.gov](mailto:FTA.PMOrecompete2009@dot.gov)**