

OCI FAQ for Contractors

It is the policy of the State not to award a contract to an offeror with a significant actual or potential organizational conflict of interest that cannot be resolved to the State's satisfaction. This publication is intended to provide information about organizational conflicts of interest, or OCIs, to companies intending to do business with State.

What is an OCI?

An organizational conflict of interest occurs when, because of other activities or relationships with the State or with other businesses: (a) a business may be unable to render impartial assistance or advice to the State, or (b) the business' objectivity in performing the work might be impaired, or (c) the business may have an unfair competitive advantage. 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.

What kinds of OCIs are there?

Broadly speaking, OCIs fall into three categories.

Unequal Access to Information. The first category arises when a business or an intended subcontractor has access to nonpublic information that may provide it with a competitive advantage in a later competition for a State contract. Without limitation, such information would include nonpublic information about an upcoming procurement (e.g., an early copy of the specifications or scope of work) or access to the proprietary data of a potential competitor on an upcoming procurement. For purposes of identifying a conflict, the source of information is irrelevant. The State's concern is the risk of the business gaining a competitive advantage.

Biased Ground Rules. The second category arises when a business, as part of its performance of a government contract, has in some sense set the ground rules for another government contract. For example, a contractor may have drafted the statement of work, specifications, or evaluation criteria for a future procurement. The State's primary concern in these cases is that a contractor could draft key aspects of a procurement in its own favor, whether intentionally or not, to the unfair disadvantage of competing vendors.

Impaired objectivity. The third category arises when a business, as part of its work under one government contract, could involve evaluating itself, either through an assessment of performance under another contract or an evaluation of proposals. In these cases, the State's concern is that the contractor's ability to render impartial advice to the State could appear to be undermined by the contractor's financial or other business relationship to the entity whose work product is being assessed or evaluated.

How can OCIs arise?

An OCI may result when factors create an actual or potential conflict of interest on a current contract, or when the nature of the work performed on the current contract creates an actual or potential conflict of interest on a future acquisition.

OCIs can also result from activities of a business' affiliates—parent or related companies or subsidiaries. When analyzing whether an OCI exists, the State treats an offeror and any affiliated businesses as if they were a single organization.

Finally, OCIs can occur because of a business's consultant or proposed subcontractor. For OCI purposes these consultants or subcontractors are treated as if they were part of the contractor's business organization.

What does my business have to do?

Every solicitation you participate in requires you to identify any services related to the work described in the RFP that you, an affiliate, or any proposed subcontractor have already performed. Additionally, an offeror must either certify that there are no circumstances that may create an actual or potential OCI; or identify and explain any actual or potential OCIs. If you are awarded the contract, you are required to disclose to the procurement officer in writing any OCI arising after award.

Is my business automatically ineligible if it has an OCI?

Not necessarily. Much depends on the particular facts. The State seeks to maximize competition whenever possible.

Is there a way to resolve OCIs short of disqualification?

Yes. Other than a few circumstances directly addressed by regulation (R. 19-445.2127B, C, and D), the State may consider measures to avoid, neutralize, or mitigate an OCI.

Avoiding a conflict typically means modifying the scope of work so that performance does not create conflict on future work. OCIs can also be avoided by excluding specific sources with known and irreconcilable conflicts.

Neutralizing a conflict requires some limitation on future competition or contracting. For example, a consulting contract to prepare a statement of work for a specific acquisition should include a specific provision excluding the contractor from offering to provide the goods or services.

Mitigating an OCI means reducing the risk of the conflict to an acceptable level. It is the most complicated technique to resolve a conflict because it requires submittal and negotiation of a written plan, incorporating the plan into the contract, and monitoring compliance throughout contract performance.

Who decides if an OCI can be resolved?

The procurement officer is responsible for reviewing plans to avoid, neutralize, or mitigate significant potential OCIs before awarding the contract. The procurement officer is expected to exercise common sense, good judgment, and sound discretion when she makes these decisions. She will be guided by two underlying principles: preventing the existence of conflicting roles that might bias a contractor's judgment; and preventing unfair competitive advantage.