

## SE-2020 Guidance #1: OCI

### OCI

#### 1.0 Background

According to the FAA Acquisition Management System (AMS), Organizational Conflict of Interest (OCI) means that because of existing or planned activities, an offeror or contractor is unable or potentially unable to render impartial assistance to the agency, or has an unfair competitive advantage, or the offeror or contractor's objectivity is or might be impaired.

The SE-2020 Program is obligated to ensure that OCIs are thoroughly considered, and where applicable, that appropriate mitigation strategies are in place.

#### 2.0 Applicability

Each phase of the Task Order Request Package (TORP) Process provides an opportunity to consider potential OCIs:

- The Transition Advisor should ask if the Stakeholder is aware of any potential OCIs (Have any of the contractors on SE2020 performed work on this topic?)
- The TRT should search through the Current Contracts spreadsheet (updated periodically) and/or the FAA Contracts Opportunity database to determine if the any work on the topic has been performed.
- The AB should consider the work previously assigned and/or being reviewed for potential OCIs.
- The selected vendor should adhere to its OCI Mitigation Plan when asked to submit a proposal on a TORP.

#### 3.0 Reference Documents

FAA AMS

#### 4.0 Guidance Body

The following information on OCIs has been extracted from the FAA AMS. This information should serve as guidance when developing and evaluating a TORP.

##### **Contractor Participation in Preparing Specifications or Statements of Work**

When contractor support is used to prepare specifications or statements of work:

a. **If a contractor prepares and furnishes complete specifications covering nondevelopmental items, to be used in a competitive acquisition**, that contractor may have a conflict in furnishing these items, either as a prime contractor or as a subcontractor, for a reasonable period of time including, at least, the duration of the initial production contract. Therefore, a contractor who has prepared and furnished completed specifications for such items should be excluded from competition for that acquisition. However, an OCI may not exist in the following circumstances:

- (1) Contractors furnish, at Government request, specifications or data regarding a product they provide, even though the specifications or data may have been paid for separately or in the price of the product; or

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- (2) Situations in which contractors, acting as industry representatives, help Government agencies prepare, refine, or coordinate specifications, regardless of source, provided this assistance is supervised and controlled by Government representatives.

b. **If a single contractor drafts complete specifications for nondevelopmental equipment**, it should be eliminated for a reasonable time from competition for production based on the specifications. This should be done in order to avoid a situation in which the contractor could draft specifications favoring its own products or capabilities. In this way the FAA may be assured of getting unbiased advice as to the content of the specifications and may avoid allegations of favoritism in the award of production contracts.

c. There may be instances when contractor assistance is necessary in preparing statements of work. When contractor support is used, the contractor might be in a position to favor its own products or capabilities.

**If a contractor prepares, or assists in preparing, a statement of work to be used in competitively acquiring a system or services, or provides material leading directly and without delay to such a statement of work, that contractor may not supply the system, major components of the system, or the services unless:**

- (1) **It is the single source; or**
- (2) **It has participated in the development and design work; or**
- (3) **More than one contractor has been involved in preparing the work statement.**

d. **In development work, it is normal to select firms that have done the most advanced work in the field.** These firms can be expected to design and develop around their own prior knowledge.

Development contractors can frequently start production earlier and more knowledgeably than firms that did not participate in the development, and this can affect the time and quality of production, both of which are important to the Government. In many instances the Government may have financed the development. Thus, **while the development contractor has a competitive advantage, it is an unavoidable one that is not considered unfair, therefore no OCI mitigation would be necessary.**

### Potential OCI Situations

*Examples of Conflict Situations.* The following examples illustrate situations in which questions concerning organizational conflicts of interest may arise. They are not all inclusive, but are intended to help the Contracting Officer apply general guidance to individual contract situations:

(1) *Unequal Access to Information.* **Access to "nonpublic information" as part of the performance of an FAA contract could provide the contractor a competitive advantage in a later competition for another FAA contract.** Such an advantage could easily be perceived as unfair by a competing vendor who is not given similar access to the relevant information. If the requirements of the FAA procurement anticipate the successful vendor may have access to nonpublic information, all vendors should be required to submit and negotiate an acceptable mitigation plan.

(2) *Biased Ground Rules.* A contractor in the course of performance of an FAA contract, has in some fashion **established important "ground rules" for another FAA contract**, where the same contractor may be a competitor. For example, a **contractor may have drafted the statement of work, specifications, or evaluation criteria of a future FAA procurement.** The primary concern of the FAA in this case is that a contractor so situated could slant key aspects of a procurement in its own favor, to the unfair disadvantage of competing vendors. If the requirements of the FAA procurement anticipate that a contractor may have been in a position to establish important ground rules, including but not limited to

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those described herein, the contractor should be required to submit and negotiate an acceptable mitigation plan.

(3) *Impaired Objectivity*. A contractor in the course of performance of an FAA contract, is placed in a situation of **providing assessment and evaluation findings over itself, or another business division or a subsidiary of the same corporation, or another entity with which it has a significant financial relationship**. The concern in this case is that the contractor's ability to render impartial advice to the FAA 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. In these situations, where a "walling off" of lines of communication may well be insufficient to remove the perception that the objectivity of the contractor has been tainted. If the requirements of the FAA procurement indicate that the successful vendor may be in a position to provide evaluations and assessments of itself or corporate siblings, or other entity with which it has a significant financial relationship, the affected contractor should provide a mitigation plan that includes recusal by the vendor from the affected contract work. Such recusal might include divestiture of the work to a third party vendor.

### 5.0 Revision History

Revision History				
Revision Number	Date (mm/dd/yyyy)	Change Description/Purpose	Change made by	Approval
0	07/29/2010	Initial publication	Tip Fallon / John Raper	
1	08/06/2010	Update	Annette Chashin	