

## Contract Formation

# Activity 27: Organizational Conflicts of Interest

*Examining potential or actual conflicts on the basis of the particular facts and the nature of the proposed contract.*

**Related Flow Charts:** [Flow Chart 27](#)

**Related Courses:** CLC 132: Organizational Conflicts of Interest

Tasks	FAR Reference(s)	Additional Information
1. Determine whether a possible organizational conflict of interest (OCI) exists.	FAR 2.101 Definitions [organizational conflict of interest]. FAR 9.502 Applicability.	<p>Organizational conflict of interest means—</p> <ul style="list-style-type: none"><li>• 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.</li></ul> <p>An organizational conflict of interest may result 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.</p> <p>OCIs are more likely to occur in contracts involving—</p> <ul style="list-style-type: none"><li>• Management support services;</li><li>• Consultant or other professional services;</li><li>• Contractor performance of or assistance in technical evaluations; or</li><li>• Systems engineering and technical direction work performed by a contractor that does not have overall contractual responsibility for development or production.</li></ul>

Tasks	FAR Reference(s)	Additional Information
		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 the development of an appropriate means for resolving it.
2. If information concerning prospective contractors is necessary to identify potential organizational conflicts of interest (OCI), seek information from within the Government or from other readily available sources.	FAR 9.506 Procedures.	Government sources include the files and the knowledge of personnel within the contracting office, other contracting offices, the cognizant contract administration and audit activities and offices concerned with contract financing. Non-Government sources include publications and commercial services, such as credit rating services, trade and financial journals, and business directories and registers.
3. Before issuing the solicitation, prepare written analysis on recommended course of action.	FAR 9.506(b) Procedures.	<p>If it is determined that a particular acquisition involves a significant potential organizational conflict of interest, before issuing the solicitation, submit for approval to the chief of the contracting office (unless a higher level official is designated by the agency)—</p> <ul style="list-style-type: none"> <li>• A written analysis, including a recommended course of action for avoiding, neutralizing, or mitigating the conflict, based on the general rules in FAR 9.505 or on another basis not expressly stated in that section;</li> <li>• A draft solicitation provision (see FAR 9.507-1); and</li> <li>• If appropriate, a proposed contract clause (see FAR 9.507-2).</li> </ul>
4. Obtain approval on course of action from higher level official.	FAR 9.506(b) Procedures.	<p>The approving official must—</p> <ul style="list-style-type: none"> <li>• Review the contracting officer's analysis and recommended course of action, including the draft provision and any proposed clause;</li> <li>• Consider the benefits and detriments to the Government and prospective contractors; and</li> <li>• Approve, modify, or reject the recommendations in writing.</li> </ul>

Tasks	FAR Reference(s)	Additional Information
5. Include the approved provision(s) and any approved clause(s) in the solicitation or the contract, or both.	FAR 9.506(b) Procedures. FAR 9.507-1 Solicitation provisions. FAR 9.507-2 Contract clause.	Affected solicitations must contain a provision that— <ul style="list-style-type: none"> <li>• Invites offerors' attention to this subpart;</li> <li>• States the nature of the potential conflict as seen by the contracting officer;</li> <li>• States the nature of the proposed restraint upon future contractor activities; and</li> <li>• Depending on the nature of the acquisition, states whether or not the terms of any proposed clause and the application of this subpart to the contract are subject to negotiation.</li> </ul> <p>If, as a condition of award, the contractor's eligibility for future prime contract or subcontract awards will be restricted or the contractor must agree to some other restraint, the solicitation must contain a proposed clause that specifies both the nature and duration of the proposed restraint.</p>
6. If a conflict of interest is determined to exist that cannot be avoided or mitigated, notify the contractor and allow a responsible opportunity to respond.	FAR 9.504 Contracting officer responsibilities.	The contracting officer must award the contract to the apparent successful offeror unless a conflict of interest is determined to exist that cannot be avoided or mitigated.
7. Determine whether it is in the best interests of the United States to award notwithstanding the conflict.	FAR 9.504 Contracting officer responsibilities.	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.
8. Request a waiver.	FAR 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, set forth the extent of the conflict, and require approval by the agency head or a designee. Agency heads cannot delegate waiver authority below the level of head of a contracting activity.
9. Include the waiver and decision in the contract file.	FAR 9.504 Contracting officer responsibilities.	The waiver request and decision must be included in the contract file.

Tasks	FAR Reference(s)	Additional Information
10. Resolve the conflict, if possible.	FAR 9.506 Procedures [resolving potential conflicts].	Before awarding the contract, the contracting officer must resolve the conflict or potential conflict.