



NNSA Supplement to the DOE Acquisition Guide

Pre and Post Award Guidance for Identifying and Documenting Contractor Organizational Conflict of Interest and Personal Conflicts of Interest

Overview:

This document supplements Chapter 9.1, Organizational Conflicts of Interest, of the DOE Acquisition Guide. It provides NNSA Contracting Officers (COs) with additional guidance for the avoidance, identification, and neutralization/resolution of actual or potential Organizational Conflicts of Interest (OCI) prior to and after contract award and for documenting the resulting decisions. In addition, this document provides guidance for identifying and preventing personal conflicts of interest involving contractor employees.

References:

This document is based on authority of FAR subpart 9.5, Organizational and Consultant Conflicts of Interest, and corresponding sections of the DEAR.

Background:

NNSA's mission is to "strengthen national security through the military application of nuclear energy and by reducing the global threat from terrorism and weapons of mass destruction." To accomplish this mission, NNSA needs contractors and contractor personnel providing services free from bias caused by other conflicting interests.

Over the past several years, OCI has become an issue of increasing concern at NNSA. Through competition, the profile of contractors providing support to NNSA is changing. Recently, FFRDC contracts have been awarded to Limited Liability Companies (LLC) made up of consortiums of separate companies including for-profit private firms. Because of the more complicated teaming arrangements, the shrinking industrial base, and the acknowledged concern in having many of the same contractors operating both our laboratories and plants, the NNSA is focusing increased attention on OCI as a contract management issue.

Definitions:

An Organizational OCI is the existence of a set of circumstances in which a contractor may be unable to render impartial advice to the government, or might have impaired objectivity in performing contracted work, or may obtain an unfair competitive advantage in the marketplace when competing for government work where that unfair advantage is obtained performing a government contract. This unfair advantage can be introduced when the contractor sets the ground rules of procurement, thereby biasing a future competition. The essence of OCI is divided loyalty between the best interests of a particular contractor and the best interests of the government. It is the government professional's duty to ensure that such divided loyalty is not permitted to occur or to continue when discovered. There are three broad categories of OCI: Unequal Access, Impaired Objectivity, and Biased Ground Rules. Each of these terms is defined as follows:

Unequal Access - An unfair competitive advantage typically surfaces when a contractor obtains information not generally available to competitors where such information would assist the contractor in winning the contract award. An unfair competitive advantage exists where a contractor competing for award of any federal contract possesses:

- Proprietary information that was obtained from a government official without proper authorization;
- Source selection information that is relevant to the contract but is not available to all competitors; or
- Any substantive information regarding the acquisition not equally available or provided to other potential offerors when such information would assist that contractor in obtaining the contract.

Impaired Objectivity - This may happen when a support contractor is performing duties that involve assessing or evaluating itself or a related entity. Examples include:

- Providing Proposal Evaluation Services as discussed in FAR 9.505-2;
- Reviewing the contractor's own or an affiliate's work product, or reviewing a competitor's work product as discussed in FAR 9.505-3;
- Providing advice in supporting the Government's decision making process; or
- Evaluating the contractor's own, an affiliate's, or a competitor's compliance with regulatory requirements.

Biased Ground Rules - This most often occurs when the contractor is writing the Statement of Work, performing systems engineering, or providing technical direction efforts. Examples include:

- Providing systems engineering as discussed in the Federal Acquisition Regulation (FAR) 9.505-1
- Preparing specifications and statements of work (SOW) as discussed in FAR 9.505-2

OCI may be either potential or real. The following definitions explain the difference:

Potential OCI – A contractor has a *potential* conflict of interest if the work to be performed under the contract places the contractor in a position where its objectivity might be called into question, however, no information has as yet come to light indicating that an actual motive for bias exists.

Actual OCI – A contractor has an *actual* conflict of interest if information has come to light that would cause a reasonable person to question the contractor’s objectivity. The term “actual OCI” is synonymous with the terms “real or apparent OCI.”

Example: A contractor employee will have access to source selection sensitive information because he is assisting the Agency in evaluating competitive proposals. As discussed previously, this work creates a potential for impaired objectivity based solely on the nature of the work to be performed. The *potential* OCI would become an *actual* OCI if one of the offerors submitting a proposal turned out to be either an affiliate or competitor of the contractor employee’s firm.

There are three basic approaches available to contractors and the Agency for dealing with OCI issues, as follows:

Avoid - Prevent the occurrence of an actual or potential OCI through actions such as excluding sources from competition or eliminating a segment of work from a contract or task.

Neutralize - Negate, through a specific action, potential or actual OCI related to either a contractor’s objectivity during contract performance, or an unfair competitive advantage. Specific actions could include encouraging and facilitating support contractor recusal, excluding or severely limiting support contractor participation in source selection activities, and/or otherwise barring access to competition sensitive data.

Mitigate - Reduce or alleviate the impact of unavoidable OCIs to an acceptable level of risk so that the government’s interests with regard to fair competition and contract performance are not prejudiced. This is facilitated in developing an OCI mitigation plan and may include developing a firewall. An example of a firewall would be a contractor setting up divisions within a company that would isolate a certain sector technologically or geographically to avoid conflicts.

General Guidance:

1. Examples of OCI Situations.

The following paragraphs provide specific examples of OCI situations that could occur with contractors performing work for the NNSA:

Impaired Objectivity:

- An FFRDC, under a Work for Others (WFO) project, is providing technical oversight of work performed by one of the client agency's other contractors. A *potential* OCI exists because of the nature of the work being performed. The FFRDC would have an *actual* OCI if the contractor being overseen is an affiliate of one of the FFRDC's LLC members. In this case, the impartiality of the FFRDC can reasonably be questioned because it has a financial interest and can be biased in its oversight, favoring its affiliate. NNSA personnel have a duty to ensure that the contractor satisfactorily avoids, neutralizes, or mitigates the conflict.

Note: FAR 35.017(a)(2) states, "The FFRDC is required to conduct its business in a manner befitting its special relationship with the Government, to operate in the public interest with objectivity and independence, to be free from OCI, and to have full disclosure of its affairs to the sponsoring agency." This passage makes clear a FFRDC's responsibility for demonstrating that it is actively avoiding, neutralizing or mitigating potential or apparent OCI. The passage should not be construed as conferring a presumption that FFRDC's by definition operate in the Government's best interest and are therefore free from conflict.

- An NNSA contractor is tasked with providing support in evaluating proposals under a prime contract procurement. The contractor has a potential OCI based solely on the nature of work to be performed. As discussed previously, the contractor would have an actual OCI if one of its competitors or affiliates submitted a proposal. The impartiality of the contractor providing proposal evaluation services may reasonably be questioned because it has a financial interest in the outcome of the competition. In such a case, the NNSA personnel have a duty to ensure that the contractor satisfactorily avoids, neutralizes, or mitigates the conflict.

Biased Ground Rules:

The following examples of a contractor developing a specification or a statement of work, activities frequently performed by M&O contractors, are provided for illustration purposes.

- NNSA M&O contractor is tasked with designing a system. The NNSA will use the contractor's system design to award a prime contract for production of the system. If one of M&O contractor's affiliates will compete for the work manufacturing the system, the M&O contractor would have an unfair competitive advantage because the M&O

contractor (and therefore its affiliate) has unequal access to system design information, proprietary information or other non-public information. In such a case, the NNSA personnel have a duty to ensure that the contractor satisfactorily avoids, neutralizes or mitigates the conflict.

- The NNSA M&O contractor is tasked with *both* designing and manufacturing the system. The contractor chooses to have one of its affiliates manufacture the system based on the affiliate's unique capabilities as documented in a make/buy decision. In this case there is no OCI so long as the affiliate does not receive fee beyond sharing a portion of fee already contemplated under the M&O prime contract. Such a subcontract would be viewed as an intra-organizational transfer.
- A NNSA M&O contractor is tasked with designing and manufacturing a system. This time, the contractor competes the manufacturing effort as a subcontract opportunity. In such as case, the M&O contractor would have a potential OCI (unfair competitive advantage) should one of its affiliates compete for the work and that affiliate is entitled to fee beyond sharing a portion of fee already contemplated under the M&O prime contract. In such a case, the NNSA personnel have a duty to ensure that the contractor satisfactorily avoids, neutralizes or mitigates the conflict.

Note: While firewalls between affiliates within the same corporate entity are sometimes sufficient to mitigate OCIs associated with unequal access, the Government Accountability Office (GAO) has consistently held that firewalls cannot mitigate OCIs associated with impaired objectivity and biased ground rules.

2. Handling OCIs Prior to Contract Award.

The Federal Acquisition Regulation (FAR) Subpart 9.5 requires COs to analyze planned acquisitions in order to: 1) identify and evaluate potential organizational conflicts of interest (OCIs) as early in the acquisition process as possible; and 2) avoid, neutralize, or mitigate significant potential conflicts before contract award.

A. Contracting Officer's OCI Course of Action Memorandum. COs should evaluate potential OCI issues early in the acquisition process to avoid having offerors unnecessarily incur proposal costs only to later be determined to be ineligible for award. In the event that the Contracting Officer (CO) does identify a substantive potential OCI based on the work to be performed, the CO is required to draft an action plan for resolving the potential conflict in accordance with FAR 9.504(c). A CO's evaluation should include potential OCIs at the subcontractor level as well as the prime contractor level. A sample Contracting Officer's OCI Action Plan Memorandum format can be found in the Attachment 1, entitled, "OCI Contracting Officer's Course of Action for Resolving Conflict Memorandum." An example of an actual Contracting Officer's OCI Action Plan Memorandum can be found at <http://scweb.na.gov/procurement/TAB9.shtm>. The format of the example varies slightly from the format contained in Attachment 1.

B. Early Agency Disclosure. Once the CO's OCI Course of Action Memorandum has been approved, the essential OCI requirements should be shared with industry. When an Agency's final OCI strategy is not disclosed early in the procurement process, contractors are disadvantaged when assessing their eligibility for award and in preparing competitive proposals. The Agency's OCI requirements can significantly impact contractor teaming arrangements. Late disclosure of the OCI requirements may leave insufficient time for prospective offerors to reform teams if an original team member will no longer be eligible for award. To ensure NNSA maximizes competition, COs are encouraged to share OCI issues with potential offers at the earliest opportunity.

C. DOE Acquisition Forecast Database Notices. For solicitations where no OCI issues have been identified, CO's should include this information in the Acquisition Forecast Database. For requirements involving potential OCI, all pertinent OCI information should be posted to or linked from the Acquisition Forecast Database.

D. DOE Solicitation Webpage. When the OCI strategy for applicable solicitations is known or when it changes after initial or subsequent announcements, all "pertinent and appropriate" conflict of interest information should be posted on the DOE webpage for Solicitations and Amendments.

E. Contractor's Mitigation Plan. Whenever the CO has determined that a substantive potential OCI exists, the solicitation should require each offeror to propose an OCI mitigation plan. Acceptability of the mitigation plan should be a special responsibility criteria. The mitigation plan details how the contractor will identify and resolve OCI issues. The Contracting Officer determines whether the proposed mitigation plan is sufficient to protect the government's interest. The mitigation plan should be included in the contract file and a copy should be provided to the contracting officer's representative (COR). A contractor's mitigation plan should include the elements listed in Attachment 2.

F. Contractor Disclosure. Prospective NNSA Contractors responding to solicitations or submitting unsolicited proposals should be required to provide information to the Contracting Officer for use in identifying, evaluating, or resolving potential organizational OCI. See DEAR 909.507 for appropriate use of OCI solicitation provisions and contract clause. The solicitations should contain:

- OCI Certification Requirements - A provision requiring offerors to certify whether they are or are not aware of information bearing on the existence of a potential, real or apparent OCI.
- Contractor OCI Disclosure - A provision requiring offerors, who certify they are aware of an OCI, to disclose all relevant facts concerning any past, present, or planned interests relating to the work to be performed of a potentially conflicting nature. As stated in FAR 9.507-1, the provision should be tailored to

describe the specific potential conflicts identified in the CO's OCI Action Plan. DEAR 909.507-2 requires the contracting officer to insert the clause at DEAR 952.209-72, Organizational Conflicts of Interest, in each solicitation and contract for advisory and assistance services expected to exceed the simplified acquisition threshold (\$100,000). Contracting officers may tailor the clause to address potential OCIs in individual contracts and determine the appropriate term which the contractor will be ineligible to participate in any capacity in NNSA contracts, subcontracts or proposals. In the usual case of a contract for advisory and assistance services, for example, a period of three, four, or five years is appropriate. However, in individual cases the contracting officer may insert a term of greater or lesser duration. The following is an example of a possible description of the potential conflict:

The company performing work under this contract will provide Resource Conservation and Recovery Act (RCRA) environmental remediation services. The contractor may have an OCI if it or its affiliate(s) provide regulatory development support to the Environmental Protection Agency (EPA) or to the State Government in promulgating RCRA regulations.

Based on this information, offerors would know to disclose any financial relationships that they may have with organizations providing RCRA regulatory development support to either the EPA or the State government where the site is located. The CO would then have information to judge the nature and extent of the relationships.

Offerors failing to provide full disclosure, certification, or other required information may be determined by the Contracting Officer to be ineligible for award. Nondisclosure or misrepresentation of any relevant information may also result in disqualification from award, termination of the contract for default, or debarment from Government contracts, as well as other legal action or prosecution. In response to solicitations, the CO may consider an inadvertent failure to provide disclosure certification as a "minor informality" (as explained in FAR 14.405); however, the CO should consult GC and require offerors to promptly correct the omissions. This may generally be done without establishing a competitive range and entering discussions because OCI is a contractor responsibility issue per FAR 9.5.

G. Consideration on a Case-by-Case Basis. When a contractor discloses OCI issues prior to award, each individual contracting situation should be examined on a *case-by-case basis*, taking into consideration the particular facts and the nature of the proposed contract. Common sense, good judgment, and sound discretion are required to determine whether a significant potential or actual conflict exists and, if it does, an appropriate solution for resolving it. The two underlying principles are:

- Preventing the existence of conflicting roles that might bias a contractor's judgment; and
- Preventing unfair competitive advantage.

The CO should make every attempt to resolve potential OCIs through steps to neutralize or mitigate potential OCIs without excluding offerors from competition. Offerors will be required to address issues related to OCIs in their proposals. In some situations, and after consultation with General Counsel (GC), potential offerors may be required to address safeguards against OCIs prior to submitting their proposals.

H. Elimination of Offerors from Award. The Contracting Officer may eliminate an offeror from consideration for award based either on significant potential OCI issues or significant actual OCI issues. The following example serves to illustrate this point:

- The NNSA has issued a solicitation which contemplates awarding a task order contract for Environmental Impact Statement (EIS) support. The OCI provisions of the solicitation advised prospective offerors that NNSA may order EIS support at up to 25 named locations. An offeror discloses in its proposal that it has a financial relationship with companies working at three of the 25 locations. If the Agency has a current need for EIS support at one or more of the three sites, then the offeror has an actual OCI and the CO might reasonably disqualify the offeror. If the Agency does not have a current need for EIS support at any of the three sites, then the offeror has only a potential OCI. Nevertheless, the CO might disqualify the offeror judging that the Government would be harmed by the inability to obtain timely support should a need materialize for support at one of the three sites. Thus, an offeror may be eliminated from consideration for award based on either a potential or an actual OCI. Please note, however, how the above analysis might change if the solicitation contemplated multiple awards. In such a case, the CO might reasonably judge that the offeror's OCI at just three sites does not pose an unacceptable risk to the Government given redundant contractor capability.

2. Handling Post Award Organizational Conflicts of Interest

At the pre-award stage, it may be difficult to identify OCI issues. Also, although no conflicts may have been present at time of award, contractors' financial and business relationships are constantly changing and a potential conflict may subsequently develop. This section provides NNSA Contracting Officers and program personnel with guidance for handling organizational and contractor personnel OCI issues arising after contract award.

A. Basic Steps in Evaluating a Post-Award Organization Conflict of Interest Issue.

- 1) The Contractor discloses to the CO a potential or actual OCI resulting from a new business interest. (The CO should emphasize to the contractor that the CO is the sole NNSA point of contact regarding specific OCI issues.) It concerns

existing or planned work that is generally related to the work performed under the contract. The Contractor provides a plan as to how it proposes to avoid, neutralize or mitigate the conflict. Post award mitigation strategies could include:

- A contractor declines to seek award of a particular task order;
- If the OCI involves an affiliate, the prime contractor divesting itself of the financial relationship, e.g., selling a subsidiary; or
- In a case where a subcontractor has an OCI but the prime contractor does not, the prime contractor limiting the subcontractor to performing only those tasks under the contract not involving conflict.

Note: A prime contractor should never be allowed to implement a strategy to avoid its own conflicts by having a subcontractor perform its work. A subcontractor has a significant financial relationship with the prime contractor and is subordinate, being dependent on the prime contractor for obtaining contract work. Given this relationship, a reasonable person would question the subcontractor's objectivity when providing advice to the Government that might significantly harm the prime contractor's (including its parent company and affiliate) interests.

2) The CO evaluates the Contractor's disclosure and plan:

- CO conducts fact-finding, requests more information from the contractor if necessary
- CO evaluates new information
- CO requests evaluation of OCI information from program office. Generally, the program should always be consulted.
- CO requests assistance from OASM and GC whenever the CO determines assistance is needed and always when the CO has preliminarily decided an OCI cannot be avoided, neutralized, or mitigated. Further, the contractor must be notified and given a reasonable opportunity to respond.

3) CO makes final OCI decision and documents decision taking into consideration all information and recommendations.

4) CO issues final OCI decision in writing to the contractor.

B. Roles and Responsibilities in Post Award OCI Decisional Process.

1) Contracting Officers. The FAR and the DEAR clearly state that an OCI determination is the Contracting Officer's responsibility. However, all NNSA employees should be sensitive to identifying and avoiding OCIs.

The CO should evaluate OCIs on a case by case basis. Before making a determination regarding whether a potential OCI exists, the CO must thoroughly evaluate the facts based on program, legal, and public interest concerns, taking into consideration the best interest of the Government. In evaluating a potential OCI, the CO performs a risk analysis to determine whether a significant potential OCI exists. If one exists, the CO evaluates whether and how the OCI can be avoided, neutralized or mitigated and may request supplemental information from the contractor to aid in making a determination. The exercise of common sense, good judgment, and sound discretion is required to make a determination and to develop an appropriate means for resolving the issue. Some cases may be clear cut allowing the CO to evaluate the facts and make a quick decision based on common sense and knowledge. However, the majority of OCI determinations are more complex. Often, a CO does not initially have enough information to make an informed decision.

2) Program Offices. As part of the CO's decision-making process, COs should coordinate with the program and seek Program Office advice. Program personnel are in the best position to provide technical advice regarding the nature and relationships of the applicable work. Also, they may be aware of other issues the CO should consider in evaluating whether an actual or potential OCI exists.

3) Office of Acquisition and Supply Management (NA-63) and General Counsel. The Office of Acquisition and Supply Management (OASM) NA-63 and General Counsel are available to provide advice and assistance to the CO in evaluating and making OCI determinations. When an ordering document has been issued to a contractor and an OCI is later identified which cannot be avoided, neutralized, or mitigated, the CO should consult with the Office of Acquisition and Supply Management and General Counsel before canceling the work and issuing it to another contractor. This does not apply to situations where contractors have been issued an ordering document which is specifically for preliminary OCI screening only. The recommendation to consult with OASM is not necessary in any other post award OCI determinations.

Contracting Officers may find it helpful to obtain advice from OASM regarding remedies when an OCI exists. General Counsel review should be required if legal issues are raised by the CO, the contractor or the contractor's attorney.

C. Examples of OCI Information to Request from the Contractor.

The following are examples of information a CO may find helpful to evaluate a post-award OCI issue. There may be new information to consider in evaluating an OCI situation. The purpose of this type of information is to assess the magnitude of a contractor's relationship with another party when evaluating potential OCI.

- Is the work to be performed for NNSA similar or related to the work performed, being performed/to be performed by the contractor for a commercial client?
- Could the contractor intentionally or inadvertently use the work under an existing contract to benefit and profit under another contract and thus impair its ability to perform without bias in the NNSA's or its WFO clients' best interest?
- Does the contractor have any contracts to perform work, as a subcontractor, for its parent, subsidiary, or affiliates?
- How much work (i.e., in dollars, percentage of business, and /or gross revenue) has the contractor performed or is in the process of performing for the commercial client(s)? What is the contractor's gross revenue for each of the past three years?
- When did the contractor perform the applicable work for the commercial client(s)?
- Is the work currently being performed for commercial clients? If yes, what work and how long is the work expected to continue?
- If the work in question involves an organizational relationship, what is the relationship between the parties? Does the work involve a parent, subsidiary, affiliate, etc?
- Is the contractor under contract or does it have some other arrangement with any relevant public or private clients to begin providing services/work efforts that may represent a potential OCI?
- Does the contractor (including its affiliates) own or have any financial interest in a specific technology, equipment, system, or software which will be evaluated under this contract?
- Request that the contractor provide any other pertinent information bearing on the OCI of which the contractor may be aware that has not been specifically requested by NNSA.

D. Examples of Basic OCI Information Available Within NNSA.

What is the value of the ordering document (work authorization, task order, task assignment, etc.)? Is it a significant amount of the contractor's business base? While this is useful information, often the dollar value is not as relevant to OCI decisions as the type of work to be performed.

Does the work relate to an existing NNSA contract?

Is the work objective and impartial in nature or does it involve some degree of judgment or discretion on the contractor's part?

E. Time Frame for Evaluating Post Award Conflicts. The Agency is committed to providing timely responses on OCI issues to contractors. Failure to deal with OCIs in a timely manner could cause contractors to lose business and delay implementation and work on NNSA programs and projects. As a general rule, COs should strive to resolve OCI issues within 20 working days of receipt of all relevant information. COs should coordinate with contractors and programs to establish specific response/decision timeframes for individual OCI issues.

F. Documenting OCI Decisions. COs should maintain records of OCI decisions and related correspondence in the official contract file. COs should forward an information copy of all OCI decisions to OASM. In turn, OASM will analyze OCI decisions to ensure consistency across the Agency and as a basis for developing additional guidance.

G. Waiver Procedures. In accordance with FAR 9.504(e) and DEAR 909.504(e), if a determination is made that a conflict cannot be avoided, neutralized, or mitigated but it is in the best interest of the Government to award or continue the authorized ongoing work, a request for waiver must be approved by the Head of the Contracting Activity (HCA). See FAR 9.503; DEAR 909.503; and NNSA Policy Letter: BOP-003.0334R5, Rev. 5, dated 08/08/2007. The waiver request and decision shall be included in the contract file.

3. Personal Conflicts of Interest.

A personal conflict of interest can be defined as a contractor employee, subcontractor employee, or consultant who is in a position to materially influence recommendations and/or decisions and, because of his/her personal activities, relationships, or financial interests, his/her objectivity may be impaired in performing contract work. A contractor employee may have a personal conflict of interest with respect to work he/she is performing even though the employing firm itself does not.

Unlike federal employees, there are few policies or laws in place to prevent contractor personnel personal conflicts of interest. Personal COIs are typically covered under ethics rules and prohibitions instituted by government agencies and contractors. Currently, the FAR does not address such conflicts. For this reason, it is prudent to include conflict of interest provisions or clauses in solicitations and contracts that require employees to

identify potential conflicts of interests and report them to their employer so they can be mitigated. Attachment 2, entitled, “Notification of Conflicts of Interest Regarding Personnel” contains some suggested language which could be used in a clause to address contract personal conflicts of interest.

Note: When a contractor employee’s personal COI directly impacts work it is performing on a federal government contract, that conflict could result in an OCI for the contractor company because the contractor employee is acting as agent for that contractor company.

Attachment 1

Organization Conflict of Interest Contracting Officers Course of Action for Resolving Conflict Memorandum FAR 9.504(c)

1. Requirement.

The purpose of the CO's memo is to fulfill the requirements of FAR 9.504 (c) which states, "Before issuing a solicitation for a contract that may involve a significant potential conflict, the contracting offer shall recommend to the head of the contracting activity course of action for resolving the conflict."

2. Memorandum Format

- A. Introduction. Briefly introduce the document and what it is about.
- B. Background. Briefly state procurement information (competitive or sole source, dollar value, statement of work).
- C. Objective. State the objective or purpose of the document.
- D. Analysis. Provide a detailed analysis of the SOW requirements in relation to the actual or potential OCIs it may present. While stating what the actual and/or potential conflicts are that could evolve, also indicate what the ramifications will be if these conflicts are left unaddressed.
- E. Course of Action. Describe the actions planned to address the OCI.
 1. Solicitation Provisions. List and briefly describe the OCI related special solicitation provisions that are contemplated. Include clauses that restrict competition.
 2. Contract Clauses. List and briefly describe the OCI related special contract clauses that are contemplated.
 3. Contracting Officer's Evaluation. Provide a statement that the CO is making these determinations and state the basic steps that will be taken by the CO to address OCI during the pre and post award phases.
 4. Post Award Actions. List the post award actions that will be taken to prevent OCI situations, such as:

- a. Post award conference – At the post award conference the Contracting Officer will emphasize the sensitivity of the organizational conflict of interest issue and stress the importance of addressing actual or potential conflicts of interest prior to initiation of work on the contract.
 - b. Meeting with Project Officer – The Project Officer assigned to the contract will be advised by the Contracting Officer to be alert and sensitive to organizational conflict of interest issues when reviewing the work plan.
 - c. Periodic reminders to contractor -
- F. Recommendation. Summarize the overall recommendation of the plan.
- G. Signature Page. Include signature blocks for all required reviews/approvals.
- H. Attachments. Attach the statement of work and clauses in full text.

Attachment 2

MINIMUM STANDARDS FOR CONTRACTORS' COI PLANS

A. Corporate Structure

The COI Plan shall describe any parent relationship and list all affiliates, subsidiaries, and sister companies, etc. Generally, this need not exceed three corporate tiers, unless a relationship exists beyond three tiers that would potentially create a conflict. In such a case, relationships beyond three tiers should also be included in the COI Plan.

Contractors should report changes in its corporate structure to the Agency throughout contract performance. Contractors are invited to include under this section, a company profile. The profile should discuss all pertinent information relevant to COI including a summary of a contractor's primary business functions and activities. This background information will potentially be very useful to contracting officers and the Agency when evaluating whether or not a contractor has a COI.

B. Searching and Identifying COI

The COI Plan shall include a requirement describing when a COI search must be performed by company personnel and clearly identify the procedures to be followed. The searching requirement shall encompass all work related to all clients for whom work was performed over the past three years, all current work, all sites (if applicable), and any future work reflected in marketing proposals. Contractors must search their records over the past 36 months from time of receipt of the work from NNSA. However, NNSA encourages contractors to search back as far as a company's records cover.

C. Data Base

The COI Plan shall require a data base that includes all necessary information for a contractor to review its past work (at a minimum over the past 36 months), work in progress, and work the company may be pursuing under any marketing proposals. This requirement does not establish any particular type or kind of retrieval system, however, the data base shall contain, at a minimum, the following information and capabilities.

(1) a list of the company's past and public clients; (2) a description of the type(s) of work that was performed and any other pertinent information; (3) a list of the past sites (when applicable) a contractor has worked on; (4) a list of site name(s) (when applicable) related to any work performed; and (5) the ability to search and retrieve the information in the data base. If applicable, the COI Plan shall include provisions for supplemental searches of a parents, affiliates, subsidiaries, or sister company's records. The COI Plan shall also describe any cross-checks used by the company when searching COI issues.

D. Personal Certification

At a minimum, the COI Plan shall require ALL employees of the company performing work under an NNSA contract, to sign a personal certification. It should be noted

however, that it is the preference of NNSA that ALL employees of the company be required to sign such a certification rather than only those employees working under an NNSA contract. The certification shall require at a minimum, that the individual agrees to report to the proper company authority any personal COI the individual may have on any work that may result in an actual or potential COI. The certification shall also state the individual has read and understands the company's COI Plan and procedures. The employee certifications shall be retained by the company.

E. Work Authorization Notification and Certification

The COI Plan shall describe the process the company requires for notifying the Agency prior to beginning work, and for submission of its' Work Authorization certification within 20 days of receipt of the work from NNSA. NOTE: Work Authorization certifications are NOT required if the contract contains an annual certification requirement. Nevertheless, the contractor's COI Plan should address the procedures to be followed for Work Authorization certifications.

F. Annual Certification

The COI Plan shall describe the process the company requires for submission of its annual certification. NOTE: Annual certification is NOT required if the contract contains a work authorization certification requirement. Nevertheless, the contractor's COI Plan should address the procedures to be followed for annual certifications.

G. Notification and Documentation

The COI Plan shall clearly delineate who is the responsible official for making COI determinations within the company. Generally, this would be someone at a middle to upper level of management. The responsible official shall be free of any personal conflicts for the purpose of making COI determinations, e.g., a program manager who receives bonuses based on the total amount of sales may not be free of conflicts.

The plan shall clearly identify the process that is required when notifying the NNSA of any actual or potential COI and the actions that the company has taken or will take to avoid, neutralize or mitigate the conflict. In addition, a contractor shall document all COI searches related to NNSA work, whether or NOT an actual or potential COI has been identified.

H. Training

The COI Plan shall require all employees of the company to receive basic COI training, and that each employee receives COI awareness training, at least, on an annual basis. The company's COI Plan shall be available for all employees to review. Annual awareness training shall include, at a minimum, a review of the certification language and any change that may have occurred in the company's COI Plan. In addition, companies are encouraged to routinely disseminate to their employees current COI information.

I. Subcontractor's COI Plans

The COI Plan shall describe the process and mechanism by which the company will monitor its subcontractors to ensure all subcontractors are complying with the COI provisions in their contracts. It is important that subcontractors identify and report COI as well as submit Limitation of Future Contracting (LOFC) requests for approval.

Attachment 3

NOTIFICATION OF CONFLICTS OF INTEREST REGARDING PERSONNEL

a) In addition to the requirements of the contract clause entitled "Organizational Conflicts of Interest," the following provisions with regard to employee personnel performing under this contract shall apply until the earlier of the following two dates: the termination date of the affected employee(s) or the expiration date of the contract.

b) The Contractor agrees to notify immediately the NNSA Project Officer and the Contracting Officer of (1) any actual or potential personal conflict of interest with regard to any of its employees working on or having access to information regarding this contract, or (2) any such conflicts concerning subcontractor employees or consultants working on or having access to information regarding this contract, when such conflicts have been reported to the Contractor. A personal conflict of interest is defined as a relationship of an employee, subcontractor employee, or consultant with an entity that may impair the objectivity of the employee, subcontractor employee, or consultant in performing the contract work.

(c) The Contractor agrees to notify each Project Officer and Contracting Officer prior to incurring costs for that employee's work when an employee may have a personal conflict of interest. In the event that the personal conflict of interest does not become known until after performance on the contract begins, the Contractor shall immediately notify the Contracting Officer of the personal conflict of interest. The Contractor shall continue performance of this contract until notified by the Contracting Officer of the appropriate action to be taken.

(d) The Contractor agrees to insert in any subcontract or consultant agreement placed hereunder, except for subcontracts or consultant agreements for _____ (fill in) _____, provisions which shall conform substantially to the language of this clause, including this paragraph (d), unless otherwise authorized by the Contracting Officer.