

3.1.7-3 Organizational Conflict of Interest SIR Provision (February 2003)

(a) The policy of the TSA is to avoid contracting with contractors who have unacceptable organizational conflicts of interest. An organizational conflict of interest 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.

It is not the intention of the TSA to foreclose a vendor from a competitive acquisition due to a perceived OCI. TSA Contracting Officers are fully empowered to evaluate each potential OCI scenario based upon the applicable facts and circumstances. The final determination of such action may be negotiated between the impaired vendor and the Contracting Officer. The Contracting Officer's business judgment and sound discretion in identifying, negotiating, and eliminating OCI scenarios should not adversely affect the TSA's policy for competition. The TSA is committed to working with potential vendors to eliminate or mitigate actual and perceived OCI situations, without detriment to the integrity of the competitive process, the mission of the TSA, or the legitimate business interests of the vendor community.

(b) Mitigation plans. The successful contractor will be required to permit a Government audit of internal OCI mitigation procedures for verification purposes. The TSA reserves the right to reject a mitigation plan, if in the opinion of the Contracting Officer, such a plan is not in the best interests of the TSA. Additionally, after award the TSA will review and audit OCI mitigation plans as needed, in the event of changes in the vendor community due to mergers, consolidations, or any unanticipated circumstances that may create an unacceptable organizational conflict of interest.

(c) 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 TSA contract could provide the contractor a competitive advantage in a later competition for another TSA 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 TSA 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 TSA contract, has in some fashion established a "ground rules" for another TSA contract, where the same contractor may be a competitor. For example, a contractor may have drafted the statement of work, specifications, or evaluations criteria of a future TSA procurement. The primary concern of the TSA 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 TSA procurement anticipate the successful vendor may be in a position to establish important ground rules, including but not limited to those described herein, the successful vendor should be required to submit and negotiate an acceptable mitigation plan.

(3) Impaired objectivity. A contractor in the course of performance of an TSA contract, is placed in a situation of providing assessment and evaluation findings over itself, or another business division, or subsidiary of the same corporation, or other 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 TSA 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, 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 TSA 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.

(d) Disclosure by offerors or contractors participating in TSA acquisition.

(1) Offerors or contractors should provide information which concisely describes all relevant facts concerning any past, present or currently planned interest, (financial, contractual, organizational, or otherwise) relating to the work to be performed and bearing on whether the offeror or contractor has a possible OCI.

(2) If the offeror or contractor does not disclose any relevant facts concerning an OCI, the offeror or contractor, by submitting an offer or signing the contract, warrants that to its best knowledge and belief no such facts exist relevant to possible OCI.

(e) Remedies for nondisclosure. The following are possible remedies should an offeror or contractor refuse to disclose, or misrepresent, any information regarding a potential OCI:

(1) Refusal to provide adequate information may result in disqualification for award.

(2) Nondisclosure or misrepresentation of any relevant interest may also result in the disqualification of the offeror for award.

(3) Termination of the contract, if the nondisclosure or misrepresentation is discovered after award.

(4) Disqualification from subsequent TSA contracts.

(5) Other remedial action as may be permitted or provided by law or in the resulting contract.

(End of provision)

PRESCRIPTION

Shall be used in all RFIs/RFPs where a potential or actual conflict could exist in the resulting contract.