

**ORGANIZATIONAL CONFLICTS OF INTEREST**

**REQUIREMENTS**

In compliance with Public Law 95-39 (Sec. 401) and 95-70 (Section 10), your offer must provide the information and assurances called for by the firms provided in this section.

The offeror must submit (as part of Volume I, Offer and Other Documents) the following documents from each of the entities <sup>1</sup>listed below:

1. Either the Organizational Conflicts of Interest (OCI)(a) Representation Statement or (b) the Organizational Conflict of Interest (OCI) Disclosure Statement. If the OCI Disclosure Statement is signed, provide an attachment showing the information required.
2. The OCI questionnaire; if you answer any questions "YES," provide an attachment showing the information requested in detail. Please do not reference any information to other sections of your proposal.
3. If applicable, a copy of the most current 10 K report submitted to the Securities and Exchange Commission (SEC) and the most current Annual Report.

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<sup>1</sup>The types of entities or individuals which are required to complete the forms listed above are as follows:

1. The prime contractor.
2. The subcontractor(s) (unless the subcontractor(s) is only providing supplies) and consultants at every tier.
3. All affiliates of the foregoing.
4. Any entities owned or represented by the chief executives or directors of: the prime contractor; any of the subcontractors, except for those only providing supplies; and any of the consultants.
5. Chief executives and directors - if they will be involved in performing the proposed work of: the prime contractor; the subcontractors at every tier (except for subcontractors which are only providing supplies); consultants at every tier; and all affiliates of the foregoing.

**NOTICE**

Apart from other remedies allowed by law or contract, any non-disclosure or misrepresentation of relevant facts required by the OCI regulations may result in the Commission disqualifying the violator from future Commission contracts.

Your attention is directed to Part II, Section H, Organizational Conflicts of Interest Clause.

**DISCUSSION**

It is the policy of the Commission to identify and avoid or mitigate OCI before entering into contracts.

Generally, to determine whether an OCI exists, the Commission considers these two questions:

- o Are there conflicting roles which might bias a contractor's judgment in relation to its work for the Commission?
- o Is the contractor being given an unfair competitive advantage based on the performance of the contract?

Commission personnel will examine with particular care proposed work that calls for advising, consulting, or evaluating in areas that will directly influence Commission decisions about future procurements and regulatory activities.

Using common sense and good business judgement, the Contracting Officer will determine whether an OCI exists after examining:

- o all relevant facts submitted by the offeror;
- o the statement of work; and
- o information gained from other sources.

If a OCI does exist, the Contracting Officer:

- o shall avoid any conflicts by including appropriate conditions in the contract; or
- o shall disqualify the offeror from award; or
- o may award the contract if the Chairman (or Chairman's designee) determines that awarding the contract--despite the conflict--is in the best interest of the United States. Circumstances justifying such a determination includes situations where

"the public exigency will not otherwise permit" and situations where the work or services cannot otherwise be obtained. In these cases, clauses are included in the contract to mitigate the conflict to the extent feasible and a notice of award is published in the Federal Register.

## **DEFINITIONS**

1. The term "organizational conflicts of interest" means that a relationship or situation exists whereby an offeror or a contractor (including chief executives and directors, to the extent that they will or do become involved in the performance of the contract, and proposed consultants or subcontractors where they may be performing services similar to the services provided by the prime) has past, present, or currently planned interests that either directly or indirectly (through a client, contractual, financial, organizational or other relationship) may relate to the work to be performed under a Commission contract and which (a) may diminish its capacity to give impartial, technically sound, objective assistance and advice, or (b) may result in it being an unfair competitive advantage. It does not include the normal flow of benefits from the performance of the contract.
2. The term "affiliates" means business concerns which are affiliates of each other when either directly or indirectly one concern or individual controls or has the power to control another, or when a third party controls or has the power to control both (See FAR 9.403).
3. The term "energy concern" as defined by Public Law 95-91, Section 601(b), includes:
  - (a) Any person significantly engaged in the business of developing, extracting, producing, refining, transporting by pipeline, converting into synthetic fuel, distributing, or selling minerals for use as an energy source, or in the generation or transmission of energy from such minerals or from wastes or renewable resources;
  - (b) Any person holding an interest in property from which coal, natural gas, crude oil, nuclear material or a renewable resource is commercially produced or obtained;
  - (c) Any person significantly engaged in the business of producing, generating, transmitting, distributing, or selling electric power;
  - (d) Any person significantly engaged in development, production, processing, sale or distribution of nuclear materials, facilities or technology; and

(e) Any person--

(1) significantly engaged in the business of conducting research, development, or demonstration related to an activity described in paragraphs (a), (b), (c), (d); or

(2) significantly engaged in conducting such research, development, or demonstration with financial assistance under any Act the functions of which are vested in or delegated or transferred to the Chairman of the Commission.

**COMPLETE EITHER THE REPRESENTATION OR THE DISCLOSURE NOT BOTH**

**OCI REPRESENTATION STATEMENT**

I hereby certify (or as a representative of my organization, I hereby certify) that, to the best of my knowledge and belief, no facts exist relevant to any past, present or currently planned interest or activity (financial, contractual, personal, organizational or otherwise) which relate to the proposed work; and bear on whether I have (or the organization has) a possible conflict of interest with respect to (1) being able to render impartial, technically sound, and objective assistance or advice; or (2) being given an unfair<sup>2</sup> competitive advantage.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Name : \_\_\_\_\_ Organization: \_\_\_\_\_  
Title : \_\_\_\_\_

**OCI DISCLOSURE STATEMENT**

I hereby certify (or as a representative of my organization, I hereby certify) that, to the best of my knowledge and belief, all relevant facts--concerning past, present or currently planned interests or activities (financial, contractual, organizational or otherwise) which relate to the proposed work and bear on whether I have (or the organization has) a possible conflict of interest with respect to (1) being able to render impartial, technically sound, and objective assistance or advice, or (2) being given and unfair<sup>2</sup>//competitive advantage--are fully disclosed on the attached \_\_ page(s) and formatted to show:

- o For ease of presentation, divide following data into four parts: Organizational, contractual, financial, other;
- o The company, agency, organization in which you have a past, present, or currently planned interest or activity (financial, contractual, organizational, or otherwise);
- o A brief description of relationship;
- o A period of relationship;
- o The extent of relationship (e.g., value of financial interest of work; percent of total holdings, total work, etc.).

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_  
<sup>2</sup>An unfair competitive advantage does not include the normal flow of benefits from the performance of the contract.

Name : \_\_\_\_\_ Organization:  
Title : \_\_\_\_\_

Name of Person  
or Organization:

**OCI QUESTIONNAIRE**

1. Will you (or your organization) be involved in the performance of any portion of proposed work?  
  
 No.  
 Yes. The portion of the proposed work; the proposed hours and dollar value; and the type of involvement are fully disclosed on the attached pages.
2. What is (are) the major type(s) of business conducted by you (or your organization)? Please reply on the attached pages.
3. Do you (or your organization) have any affiliates <sup>3</sup>?  
  
 No.  
 Yes. The name and a description of the major type(s) of business that each affiliate conducts is disclosed on the attached pages.
4. Will any of the following be involved in performing the proposed work: (a) any entities owned or represented by you (or your organization); (b) your organization's Chief Executive; any of its directors; or (c) any affiliates 3//?  
  
 No.  
 Yes. A full disclosure and discussion is given in the attached pages.
5. Are you (or your organization) an energy concern 3//?  
  
 No.  
 Yes. A full disclosure and discussion is given on the attached pages.

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<sup>3</sup>See Definitions in this attachment.

6. Do you (or your organization) have a direct or indirect relationship (financial, organizational, contractual or otherwise) with any business entity which could be affected in any way by the proposed work?
- No.
- Yes. List the business entity(ies) showing the nature of your relationship and how it would be affected by the proposed work.

Name of Person  
or Organization:

7. What percentage of your total income for the current and preceding fiscal years resulted from arrangements with any of the entities identified in Question 6 above?
- \_% For the current fiscal year--from  / /  to  / / .
- \_% For the preceding fiscal year--from  / /  to  / / .
8. Do you (or your organization) currently have or have you had during the last six years any arrangements (for example, contracts and cooperative agreements) awarded, administered, or funded--wholly or partly--by the Commission or any other Federal Agency which relate to the proposed Statement of Work?
- No.
- Yes. A full disclosure and discussion is given on the attached pages.
9. Do you (or your organization) have or have you ever had any contracts, agreements, special clauses, or other arrangements which prohibit you (or your organization) from proposing work to be performed in this solicitation or any portion thereof?
- No.
- Yes. A full disclosure and discussion is given on the attached pages.
10. Do you (or your organization) have any involvement with or interest (direct or indirect) in technologies which are or may be subjects of the contract, or which may be substitutable for such technologies?
- No.
- Yes. A full disclosure and discussion is given on the attached pages.

11. Could you (or your organization) in either your private or Government business pursuits utilize information acquired in the performance of the proposed work; such as:

- (a) Data generated under the contract?
- (b) Information concerning Commission plans and programs?
- (c) Confidential and proprietary data of others?

- No.
- Yes. A full disclosure and discussion is given on the attached pages.

Name of Person  
or Organization:

12. Under the proposed work, will you (or your organization) evaluate or inspect you own services or products, or the services or products of any other entity that has a relationship (e.g., client, organizational, financial, or other) with you (or your organization). This could include evaluating or inspecting a competitor's goods and services.

- No.
- Yes. A full disclosure and discussion is given on the attached pages.

13. To avoid what you perceive as a possible organizational conflict of interest, do you (or your organization) propose to: exclude portions of the proposed work; employ special clauses; or take other measures?

- No.
- Yes. A full discussion is given on the attached pages.
- No possibility of an organizational conflict of interest is perceived. This answer is briefly justified on the attached pages.

I hereby certify that I have authority to represent my organization, if applicable, and that--to the best of my knowledge and belief--the facts and representations presented on the three pages of this questionnaire and on the \_\_\_ pages of the attachment to it are accurate and complete.

Signature: \_\_\_\_\_ Date:

Name : \_\_\_\_\_ Organization:



Title : \_\_\_\_\_