

TMA Procedures, Guidance, and Information (PGI)

TMA PGI 209 – CONTRACTOR QUALIFICATIONS

(Revised May 21, 2012)

209.5 – Organizational Conflict of Interest

209.570-3 - Procedures

- (1) TRICARE Acquisition Directive 09-01 establishes the policy for Organizational Conflicts of Interest (OCI), including the use of the TRICARE Management Activity (TMA) OCI Provisions and TMA OCI Clauses.
- (2) Overview - The purpose of this policy is to identify and mitigate OCIs, which are becoming more common due to an increased reliance on contractors, blended workforces, industry and contract consolidation, and more frequent protests. OCIs are particularly important to TMA because they can pose mitigation challenges for contractors, create issues for the Government in source selection, factor in teaming arrangements, prevent or diminish the value of an acquisition, and become the basis to overturn an award.

OCIs are a subset of conflict of interest in general and can be defined as any situation in which an individual or organization is in a position to exploit a professional or official capacity for their benefit. An organization is defined as people associated with a company/entity, including, its agents, officers, employees, representatives, and affiliates, such as subsidiaries.

OCIs typically fall into three types:

Description	Example	Risk
<i>Unequal Access to Information:</i> When a company is being placed in a role enabling it to obtain unequal access to information.	A Budget Support Contractor who assists the Government with developing budget estimates and funding submissions.	The company may gain an unfair competitive advantage in the competition for the award of a TMA contract.
<i>Biased Judgment:</i> When a company is placed in conflicting roles that may bias the company's judgment.	Writing the statement of work or the specifications on a solicitation on which the company intends to bid.	The contractor could skew competition.
<i>Impaired Objectivity:</i> When a company has an impaired objectivity in the competition and/or during contract performance.	A company evaluating itself or a competitor, either through an assessment of performance under another contract or an evaluation of proposals.	The company's ability to render impartial advice to the Government could appear to be undermined by its relationship with the company whose work product is being evaluated.

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- (3) TMA has developed standard OCI provisions and clauses for inclusion in all TMA solicitations and contracts regardless of contracting office or vehicle. These provisions and clauses will be incorporated into templates and can be presently found as enclosures to TRICARE Acquisition Directive 09-01.
- (4) Contracting Officers (CO) shall identify significant potential conflicts of interest by recognizing situations when –
 - a. A contractor is in a position to set the ground rules for another Government acquisition;
 - b. A contractor's judgment and objectivity in performing tasks for the Government might be impaired because the substance of the contractor's performance has the potential to affect its other activities or interest; or
 - c. A contractor has access to non-public information –
 - i. As part of its performance of a Government contract, and
 - ii. That may provide the contractor with an unfair competitive advantage in a later competition for a Government contract.
- (5) COs shall coordinate with the requiring program office to identify all contractors that participated in the preparation of the statement of work or other requirement documents.
- (6) Within Section L.[X].3 of the TMA OCI Provisions, COs have the option to –
 - a. Insert one or both of the fill-in language, as applicable; and
 - b. List the companies or subcontractors, directly under the applicable fill-in language, that have a conflict of interest that either cannot be avoided or will require mitigation for teaming; and
 - c. Insert the number of days the contractor has to submit a mitigation plan; or
 - d. Delete in whole or part, if not applicable.
- (7) TMA OCI Clauses require COs to –
 - a. Insert Options 1-5 based upon the prescriptions listed below each Option;
 - b. Delete any Options, if not applicable;

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- c. Insert applicable fill-in language;
 - d. Delete the words, “fill-in;”
 - e. Delete brackets around any fill-in language;
 - f. Change all font used from italics to regular style; and
 - g. Consult with the TMA Office of General Council (OGC) before finalizing language.
- (8) The CO shall insert H.[X].5 and H.[X].6 of the TMA OCI Clauses into all contracts.
- (9) The CO shall insert L.[X].6 and L.[X].7 of the TMA OCI Provisions into all solicitations.
- (10) If the CO determines a contractor should be excluded from the competition, the CO shall include the following factors in the written determination and findings –
- a. The findings and analysis from the CO;
 - b. Recommendations from the requiring program office and OGC;
 - c. The full rationale of why the mitigation plan was unacceptable;
 - d. Documentation of correspondence with the contractor regarding the unacceptable mitigation plan, and their response.
- (11) The CO shall coordinate the review of OCI mitigation plans through the requiring program offices and OGC. Coordination includes –
- a. A routing signature sheet;
 - b. The proposed OCI mitigation plan; and
 - c. Generating a comments matrix, if applicable.
- (12) Acceptable mitigation plans may include –
- a. Prohibiting some subsequent or lateral work by the contractor (or subcontractor);

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- b. Placing constraints on what a contractor (or subcontractor) will be allowed to perform;
 - c. Requiring nondisclosure, confidentiality, and data protection agreements;
 - d. Excluding and segregating certain individuals or business units from participation in the work;
 - e. Limiting personnel transfers;
 - f. Establishing an employee OCI awareness/compliance program.
- (13) The CO is responsible for updating the contract file in the OCI Central Repository after the written determination and findings is complete.
- (14) The OCI Central Repository will be located on the TMA-Aurora AM&S Shared Drive under the OCI folder, and contract files will be stored by contractor name/title. The CO shall -
- a. Create a new folder for any contractor who does not already have one established;
 - b. Create separate folders for contractors who operate under a parent company, but with a different name;
 - c. Create a sub-folder in the contractor's main folder based upon the Options used in the solicitation and/or contract clauses. For example, the subfolder would be entitled Options 1, 2, and 4 if only those particular Options applied;
 - d. Insert all electronic copies of the analysis, determination, and a conformed copy of the contract in the Options sub-folders;
 - e. Delegate OCI Central Repository access to their Executive Assistants as needed.
- (15) The CO shall elevate to the contracting office division chief any disagreement with OGC or Competition Advocate, document the resolution, and place in the contract file.
- (16) As applicable, the CO will document the contract file with all correspondence from the –
- a. Requiring program offices;
 - b. OGC; and

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c. Contractor.

- (17) Requiring program offices shall provide the CO with assistance in identifying and evaluating organizations with potential OCIs as early in the acquisition process as possible.
- (18) Requiring program offices should –
- a. Research the companies bidding for work and the services that they currently provide and/or will provide;
 - b. Cross reference the name of companies against work completed or in progress on behalf of TMA;
 - c. Review whether those companies have an interest, financial or otherwise, in the services provided to TMA, as it relates to the proposed work;
 - d. Evaluate whether that interest may be at odds with a contractual duty or responsibility to the Government or a third party;
 - e. Identify OCIs before solicitation or during evaluation, and contact the CO and provide relevant information and/or analyses;
 - f. Provide the CO with assistance in reviewing the avoidance and mitigation plans to determine whether those plans adequately protect the interest of the Governments or third party.