



# Mission and Installation Contracting Command

## Organizational Conflicts of Interest (OCI)'s

Provided by:

**MICC Legal Counsel**



# *Purpose*

To Highlight Organizational Conflict of Interest (OCI) Issues and Facilitate Discussions with an Understanding of the Legal and Regulatory Restrictions pertaining to OCI's



# *Introduction*

FAR 2.101:..” 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.”



# *Introduction Con't*



## 2 Distinct Underlying Principles

- ✓ PROTECT GOVERNMENT-Objectivity in advice and performance; untainted in both facts and appearances;
- ✓ PROTECT BIDDERS-Level playing field with no unfair competitive advantage; integrity of competitive system.



# *Background*

OCI's increasing for many reasons:

- ✓ BRAC-Restructuring
- ✓ Downsizing
- ✓ Increased Reliance on Service Contracts
- ✓ Industry Consolidation

FAR 9.502(b), Applicability More Likely:

- ✓ Management Support Services
- ✓ Consultant or Professional Services
- ✓ Contractor Performance or assistance in Technical Evaluation
- ✓ Systems Eng & Technical Direction work



# Procedures



FAR 9.504 Contracting Officer has Broad Discretion

- ✓ Identify/Evaluate Conflict;

Avoid unduly burdensome or excessive bidder documentation-

- ✓ Avoid, Mitigate, Neutralize.

Tailored to the Issue using common sense, good judgment, sound discretion

Must allow bidder “reasonable opportunity to respond” if award to be withheld based on OCI



# Questions



- ✓ A prime contractor requests the subcontractor to certify they have no OCI's in performance of a specific task order under an IDIQ contract. If the subcontractor is not truthful, is the prime accountable?
- ✓ How can the prime gain access to additional information on OCI's?
- ✓ Why is it necessary to submit an OCI plan for an individual task order when one was already submitted with IDIQ proposal?



# Questions Con't

Large businesses with products and services divisions are commonly experiencing OCI mitigation concerns. Has the government considered the impact, including reduced competition?



# Questions, Con't

- ✓ Given the 3 types of OCI's that must be addressed in bid response decisions, how can bidders know government position before investing thousands in bid & prep costs?
- ✓ When should the government ask for or expect inputs such as white papers, or OCI mitigation plans?



# Questions, Con't

- ✓ What are the Main Points the Government looks for in an OCI Mitigation Plan?
- ✓ What information in the Plan would the Government view unfavorably?
- ✓ Are Firewall measures, physical document security, communications, confidentiality agreements, acceptable mitigation techniques?



# *Conclusion*

**COMMENTS?**



# *US v. SAIC, 555 F. Supp 2d 40 (D.D.C.) 2008*

*Civil Action No. 04-1543*



- ✓ SAIC liable under False Claims Act for failure to disclose OCI's under 1992 and 1999 NRC contracts. 1.9M X3; 577K civil penalties
- ✓ Contracts for technical assistance in rulemaking for clearance levels in recycling/reuse of radioactive metals.
- ✓ Contract had stringent OCI disclosure clauses and continuing obligation to disclose any relationships compromising objectivity, include advice in same technical area to entity regulated by NRC.
- ✓ SAIC officer also Bd member in trade assoc. advocating radioactive metal recycling;
- ✓ SAIC had teaming arrangement to decommission nuclear facilities, w metal recycling essential to profit and 2<sup>nd</sup> contract for advice on radioactive metal recycling .
- ✓ Terminated by KO in 2000 after conflicts discovered in public hearing on NRC rulemaking



# *Impaired Objectivity*



- ✓ Contract required objective, best disinterested efforts untainted in both fact and appearance. Clauses and Regulations required disclosure of ongoing industry and contractual efforts where they had potential of causing bias
- ✓ NRC rulemaking controversial and matter of public safety
- ✓ Credibility of NRC compromised
- ✓ Vouchers submitted for payment 1994-99 considered false statements & claims
- ✓ Government would never have paid invoices had proper disclosure been made. Advice/services deemed w/o value.
- ✓ As of September 14, 2009 US District Ct, D.C. motion for new trial denied –stay on judgment execution lifted.