

Office of Naval Research
STATEMENT OF POLICY REGARDING
ORGANIZATIONAL CONFLICTS OF INTEREST

The Office of Naval Research (ONR) organizational conflict of interest (OCI) policy is based upon and guided by principles contained in Federal Acquisition Regulation (FAR) Subpart 9.5 and the decisions of the Government Accountability Office (GAO) and federal courts.

In recent years, corporate mergers and acquisitions have increased the frequency and risk of OCI situations. A traditional performer of research and development efforts may, for example, acquire another firm that provides both “in-house” support for a particular federal agency and research and development (R&D) work. Because the integration of research activities crosses departmental lines at ONR, the OCI issue requires particular attention. An ONR policy addressing how best to deal with such conflicting roles is therefore needed.

ONR’s strong preference is that all offerors that compete for ONR “in-house” systems engineering and technical assistance (SETA) or other support services contracts have no R&D work that would implicate OCI issues. Said another way, ONR prefers that a performer choose whether it wishes to serve as an R&D performer or as a support services contractor. Avoidance and neutralization of any potential OCIs are preferable to mitigation. While mitigation plans addressing conflicting roles will be considered in limited circumstances, they create considerable work both for the federal activity and the contracting community in ensuring that OCIs are adequately resolved by the time of contract award or the award of any affected task order. Consequently, members of the contracting community should resolve all OCI issues prior to either submitting proposals or teaming in connection with SETA or other support services.

The GAO has identified three general categories of OCIs. They are:

*Impaired Objectivity: A company's ability to render impartial advice to the Government may be impaired because the economic interests of the firm could be harmed if the company does provide impartial advice.

*Biased Ground Rules: Due to its performance of a government contract, the company is in a position to influence or set the ground rules for another government contract, which could skew the competition in its favor.

* Unequal Access to Non-Public Information: The company has access to non-public information, as part of its performance of a government contract, that may provide it with an unfair competitive advantage in a later competition for a government contract.

Of these three categories, impaired objectivity and biased ground rules are the hardest to mitigate. While “firewalls” can be an effective tool in mitigating informational-type OCIs, internal firewalls are seldom effective in mitigating biased ground rules and impaired objectivity OCIs. The difficulty of mitigating these two OCI types is made more difficult because there is no basis for distinguishing, for OCI purposes, between the economic interests of the proposing firm, its parent

company, its subsidiaries and its affiliates. Thus, for example, in its role as an "in-house" support contractor, a conflicted support contractor could influence the selection of technology investment choices away from technologies that compete with a corporate affiliate's technology. The mere existence of these conflicting corporate roles may bias a contractor's judgment despite the existence of a firewall.

ONR prefers that a company avoid such situations altogether by choosing to do only one type of work for ONR, i.e., either choose to be an R&D performer or else choose to provide support services. However, in certain circumstances, other means of mitigating potential conflicts may be available to support service contractors and R&D performers and will be considered on a case-by-case basis. In this regard, a common misconception is that impaired objectivity OCIs can be adequately mitigated through firewalls and separate corporate divisions. The GAO and court decisions cases are clear that these measures are insufficient to resolve impaired objectivity OCIs. The use of a separate corporate division to evaluate an R&D developmental effort which is being performed or directly supported by another division or affiliate of the same corporation will not resolve an impaired objectivity or biased ground rules OCI.

The following general OCI principles and procedures shall apply to ONR support services solicitations and contracts:

a. ONR is not in favor of mitigation plans as a method to resolve impaired objectivity and biased ground rules OCIs. Industry in its mergers and acquisitions and in responding to ONR solicitations should avoid creating these situations. ONR does not intend to grant waivers of OCIs as part of its support services acquisition process. However, the activity reserves the right to do so in very limited instances when in the government's best interest. Any such waiver requires review and approval by the Chief of Naval Research.

b. Prime contractors and subcontractors (to include all corporate divisions, subsidiaries and affiliates) that are performing S&T research projects will not be able to participate in procurements for SETA or other support services, except perhaps as limited support services subcontractors. In such cases the proposed prime contractor must submit a detailed mitigation plan that addresses and resolves all OCI issues to the satisfaction of the Contracting Officer. Such a tentatively approved mitigation plan must also be reviewed and approved by ONR's Executive Director for Acquisition Management (Code 02A) and the ONR Executive Director (Code 01) for formal acceptance of the plan.

Though the above principles and procedures focus on cases where a traditional R&D performer wants to expand into the area of providing in-house contractor support services to ONR, similar OCI problems can arise in the reverse situation—when an existing support services contractor wishes to apply to ONR for scientific research funding. Support service contractors should be equally aware of the possible OCI pitfalls. Whenever the range of work offered by a company expands through a merger or acquisition, care should be taken to avoid situations where OCI concerns may imperil the company's historic contracting base.

ONR appreciates the significant support that many companies provide to the Navy and the time and resources required to team and prepare proposals. We therefore urge contractors and contractor teams to contact the appropriate contracting officer to discuss possible OCIs. They can obtain an informal assessment of the likely outcome of any specific mitigation efforts. This informal assessment process should provide the prospective proposer with an early idea of the agency's probable response should the prospective proposer decide thereafter to come in formally with a mitigation proposal. The informal assessment process saves time and resources for both ONR and the companies involved.

All affected parties are encouraged to review FAR Subpart 9.5 and relevant GAO and court decisions in the area of OCI. ONR will not provide legal advice to its contracting community, but this activity will discuss its OCI policy during industry days and in one-on-one discussions.