

Subject: The ABCs of OCI

Date: April 20, 2021

Time: 9:00 a.m.

Teacher: Jerry Seemann

The ABCs of OCI

- True or false?
 - An organizational conflict of interest (OCI) is the same as an individual/personal conflict of interest.
 - Reference: FAR 52.203-16, *Preventing Personal Conflicts of Interest*

The ABCs of OCI

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FALSE

The ABCs of OCI

- True or false?
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The ABCs of OCI

- True or false?
 - Almost everything a person needs to know about OCIs can be learned from elementary school.

TRUE

The ABCs of OCI

- True or false?
 - A primary purpose of a contractor's OCI plan should be to protect sensitive information received from the government.
 - Reference: NFS 1852.237-72, *Access to Sensitive Information*

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The ABCs of OCI

- True or false?
 - A primary purpose of a contractor's OCI plan is to address business ethics and conduct.
 - Reference: FAR 52.203-13, *Contractor's Code of Business Ethics and Conduct*

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The ABCs of OCI

- Why is avoiding OCIs important?

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 - “Preventing unfair competitive advantage.”

The ABCs of OCI

- Why is avoiding OCIs important?
 - To achieve fair competitions.
 - “Preventing unfair competitive advantage.”
 - To get unbiased judgment from contractors.
 - “Preventing the existence of conflicting roles that might bias a contractor’s judgment.”

The ABCs of OCI

- How is an OCI identified?

The ABCs of OCI

- True or False?
 - In elementary school, one student in the class should be selected to take open-book exams and the other students should take closed-book exams.

The ABCs of OCI

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 - In elementary school, one student in the class should be selected to take open-book exams and the other students should take closed-book exams.

FALSE

The ABCs of OCI

- An “unequal access to information” OCI is created when a contractor has access to nonpublic information which may provide the firm with an unfair competitive advantage in a later competition for a government contract.
 - Risk of unfair competition.
 - No risk of bias.

The ABCs of OCI

- The test:
 - Whether the information was unavailable to potential offerers.
 - Whether the nonpublic information would be useful in responding to the solicitation.
 - Whether contractor would be afforded an unfair competitive advantage.

The ABCs of OCI

- FAR 9.505-4 provides one example of an “unequal access to information” OCI.
 - This relates to obtaining access to proprietary information.

The ABCs of OCI

- Before proposing on a future contract, a prospective offeror should ask: “Whether the performance of any current contract will create an *unequal access to information* OCI with respect to proposal activities related to the future contract?”

The ABCs of OCI

- True or false?
 - In elementary school, students should grade their own exams.

The ABCs of OCI

- True or false?
 - In elementary school, students should grade their own exams.

FALSE

The ABCs of OCI

- An “impaired objectivity” OCI is created when a contractor’s judgment and objectivity in performing the contract requirements may be impaired due to the fact that the substance of the contractor’s performance has the potential to affect other interests of the contractor.
 - No risk of unfair competition.
 - Risk of bias.

The ABCs of OCI

- The test:
 - Whether the contractor has to use subjective judgment.
 - Key personnel and/or educational requirements.
 - Words and phrases in work statements.
 - Whether the contractor has a financial interest in the outcome of its performance.

The ABCs of OCI

- FAR 9.505-3 provides one example of an “impaired objectivity” OCI.
 - This relates to providing evaluation services.

The ABCs of OCI

- Before proposing on a future contract, a prospective offeror should ask: “Whether the performance of any current contract (or the future contract) will create an *impaired objectivity* OCI with respect to performance of the future contract (or any current contract)?”

The ABCs of OCI

- True or false?
 - In elementary school, one student should be selected to create/write the exams for themselves as well as the other students.

The ABCs of OCI

- True or false?
 - In elementary school, one student should be selected to create/write the exams for themselves as well as the other students.

FALSE

The ABCs of OCI

- A “biased ground rules” OCI is created when a firm has in some sense set the ground rules for another contract.
 - Risk of unfair competition.
 - Risk of bias.

The ABCs of OCI

- FAR 9.505-2 provides one example of an “biased ground rules” OCI.
 - This relates to preparing specifications or work statements (i.e., an SOW or a PWS) for competitive acquisitions.

The ABCs of OCI

- Before proposing on a future contract, a prospective offeror should ask: “Whether the performance of any current contract will create a *biased ground rules* OCI with respect to proposal activities related to the future contract?”

The ABCs of OCI

- Situations that do not constitute OCIs.
 - Natural competitive advantage.
 - If bad faith has to be inferred.
 - Insignificant conflicts.

The ABCs of OCI

- Four methods of OCI resolution.
 - Avoid
 - Neutralize
 - Mitigate
 - Waive
- Best Practice: Resolve in the order listed.

The ABCs of OCI

- How to avoid OCIs?
 - Ensure the PWS/SOW does not require use of subjective judgment.
 - Ensure work (or portion of work) involving subjective judgment is performed by entity free from conflict.
 - Use more than one contractor to prepare PWS/SOW.
 - Exclude contractor(s) from competition.

The ABCs of OCI

- How to neutralize OCIs?
 - Limit future contracting opportunities where an entity has an “impaired objectivity” OCI and/or a “biased ground rules” OCI.
 - NFS 1852.209-71, Limitation on Future Contracting.
 - The prescription provides freedom to tailor.

The ABCs of OCI

- How to mitigate an OCI?
 - Use of “effective” firewalls.
 - Protect information from inappropriate use or disclosure.
 - Controlling the functional responsibilities of personnel having access to protected information.
 - Use of a subcontractor or different subcontractor without the conflict.
 - Release of information to the public.
 - Monitoring by Government.

The ABCs of OCI

- How to waive an OCI?
 - Cannot be delegated lower than HCA.
 - Assistant Administrator for Procurement.
 - Must be in writing.
 - Must set forth extent of the conflict.
 - Must be in Government's best interest.
 - i.e., a last resort for conflicts not otherwise mitigated.

The ABCs of OCI

- Don't forget to include company affiliates in the evaluation.

The ABCs of OCI

- True or False?
 - An “OCI Plan” is the same as an “OCI Mitigation Plan.”

The ABCs of OCI

- True or False?
 - An “OCI Plan” is the same as an “OCI Mitigation Plan.”

FALSE

The ABCs of an OCI Plan

1. Demonstrate an understanding of (1) OCI principles and (2) the full breadth of OCI issues and the types of harm that can result.
2. Define company roles, responsibilities, and procedures for (1) screening (i.e., identifying/recognizing, analyzing/evaluating, resolving, and reporting) existing and new business opportunities for actual/potential OCIs and (2) reporting all potential/actual OCIs that arise during performance of the contract.
3. Identify any affiliated companies/entities (e.g., a parent company or a wholly-owned subsidiary) and procedures for coordinating OCIs with such affiliated companies/entities.
4. Explain how subcontractors will identify, resolve, and report OCIs.
5. Establish and require entrance training for new employees, refresher training for existing employees, and exit training for departing employees.

The ABCs of an OCI Plan

6. Define organizational and employee sanctions for violations of established OCI procedures/requirements/guidelines.
7. Require periodic self-audits to ensure compliance with established OCI procedures/requirements/guidelines.
8. Define records related to the OCI plan (e.g., training and audit records) that will be made available to the Government upon request.

The ABCs of an OCI Plan

Note: The OCI Plan as outlined in paragraphs a through h above is not for the purpose of addressing other very important contractual obligations such as (1) the contractor's obligation to protect sensitive information in accordance with NFS 1852.237-72, *Access to Sensitive Information*, (2) the contractor's obligation to conduct business in an ethical manner in accordance with FAR 52.203-13, *Contractor's Code of Business Ethics and Conduct*, and (3) the contractor's obligation to prevent personal conflicts of interest in accordance with FAR 52.203-16, *Preventing Personal Conflicts of Interest*.

The ABCs of an OCI Plan

9. In an appendix to the OCI plan, identify the strategy (e.g., avoidance, limitation on future contracting, mitigation, etc.) for resolving each OCI that is either identified in the solicitation or created by the requirements of the solicitation/contract and explain the effect of such strategy on performance of the contract.

10. Submit a report for all potential/actual OCIs that arise during performance of the contract. An OCI report shall include (1) a description of the conflict, (2) the plan for avoiding, neutralizing, or mitigating the conflict, and (3) the benefits/risks vis-à-vis contract performance associated with plan approval/acceptance. Specific resolution strategies shall be appended to the plan upon approval by the Government.



"Under disclosure rules, I'm required to tell you I own stock in the company whose drug I'm prescribing."

The End