

# Organizational Conflicts of Interest Guideline - 5.13.G (10/14/04)

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[Last Update: \(10/14/04\) ABachicha:kma - 5.13.G.0](#)

[OCI Exemptions and Mandatory Review - 5.13.G.1](#)

[OCI Evaluation Factors - 5.13.G.2](#)

[OCI Clauses - 5.13.G.3](#)

[Sandia OCI Officers - 5.13.G.4](#)

[OCI Final Determination - 5.13.G.5](#)

[OCI Procedure Table - 5.13.G.6](#)

[Applicable Clauses - 5.13.G.7](#)

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## Last Update: (10/14/04) ABachicha:kma - 5.13.G.0

This guideline was extensively revised to address administrative changes throughout the document.

### Definitions

**Organizational Conflicts of Interest (OCI)** - may be present when a relationship or situation exists where 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 Contractor) has past, present, or currently planned interests (financial, contractual, organizational, or otherwise) that either directly or indirectly through a client relationship relate to the work to be performed under a Sandia contract and which:

- may diminish its capacity to give impartial, technically sound, objective assistance and advice, or
- may result in it being given an unfair competitive advantage.

**Affiliates** - business concerns are affiliates of each other when 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.

**Architect-Engineering (A-E) Services** - work or effort of a professional nature associated with the study, test, design, supervision, and construction, alteration, or repair of real property including utilities and appurtenances thereto. Such services embrace conceptual design and Title I, Title II, and Title III work as defined in DEAR 936.605 (C).

**Contract** (for purposes of implementing policy on OCI) - any contract, agreement or other arrangement with Sandia.

**Contractor** - any person, firm, unincorporated association, joint venture, partnership, corporation or affiliates thereof, which is party to a contract with Sandia that is in writing and would purport to bind Sandia.

**Evaluation Services or Activities** - any work or effort involving the independent study of technology, process, product or policy.

**Offeror** - any person, firm, unincorporated association, joint venture, partnership, corporation or affiliates thereof, submitting a proposal, solicited or unsolicited, to Sandia to obtain a contract or modification thereof.

**Professional Person** - any person meeting the definition of employee (or individual) employed in a bonafide professional capacity. The term embraces members of those professions having a recognized status based upon acquiring professional knowledge through prolonged study. Examples of these professions include accountancy, actuarial computation, architecture, dentistry, engineering, law, medicine, nursing, pharmacy, the sciences (such as biology, chemistry, and physics), and teaching. To be a professional, a person must not only be a professional but must be involved essentially in discharging professional duties.

**Professional Services Contract** - contracts for expert service in such fields as accounting; management, economics, market and systems analyses; program evaluation; industrial engineering; or operations research. Upon completion of the contract, a report is normally furnished setting forth findings and recommendations for solutions to problems, suggestions for improving operations, evaluations of program results, suggestions for alternative means to achieve agency objectives, etc.

**Research and Development (R&D):** There are two categories of R&D, basic and applied R&D. Basic R&D is a feasibility or paper study which reports all possibilities or approaches of a given problem or area. Applied R&D is a study which will make recommendations or evaluations which narrow the field of possible approaches, and requires the Contractor to exercise independent judgment which must be unbiased.

Normally OCI does not apply to R&D where the principal purpose involves:

- theoretical analysis, exploration, or experimentation, or
- extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

**Exception:** OCI is more likely to apply to applied R&D where the Contractor will make recommendations or evaluations which narrow the field of possible approaches and require independent judgment which must be unbiased.

**Subcontractor** - a subcontractor of any tier which performs work under a contract.

**Technical Consulting and Management Support Services** - means any work to provide internal assistance to any program element or other organizational component of Department of energy/National Nuclear Security Administration (DOE/NNSA) or Sandia in the formulation or administration of its programs, projects, or policies which requires the Contractor to be given access to internal or proprietary data. Such services typically include assistance in the preparation of program plans; evaluation, monitoring or review of Contractor's activities or proposals submitted by prospective Contractor's; preparation of preliminary designs, specifications, or a Statement of Work (SOW); and may involve the Contractors being given access to data confidential to the department or proprietary data to others.

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## OCI Exemptions and Mandatory Review - 5.13.G.1

The following types of procurements are exempt from OCI:

- procurements with a total value (including all options) of \$100K or less,
- procurements from Government Sources of Supply (GSS) authorized by DOE/NNSA and Federal Agency Orders (FAOs),
- maintenance contracts,
- Per FAR 37.102 A&E related evaluation, technical consulting, or management support services and activities,
- contracts for commercial off-the-shelf items,
- contracts for routine laboratory analysis or testing (i.e., air samples, asbestos testing paint tests for lead, etc.), and

- orders placed with Integrated Contractors (ICs). These Contractors are required to accept orders under their prime contracts with DOE/NNSA. The OCI requirements have been met through their individual prime contracts with DOE/NNSA.

All procurements with Lockheed Martin Corporation (LMC) and its affiliates, except IC orders, must be reviewed and evaluated by DOE/NNSA for an OCI determination.

The table outlines requirements for LMC and affiliates.

**If LMC affiliate is...**

**Then the procurement is...**

commercial source, SOW meets criteria for OCI determination - all values, all actions,

subject to OCI determination which will be made by DOE/NNSA, Sandia Site Office (SSO).

commercial source, SOW does not meet criteria for OCI determination - all values, all actions,

not subject to OCI process, but Sandia Contracting Representative (SCR) must submit memo to DOE/NNSA/SSO Contracting Officer for approval justifying LMC source selection.

an IC - all actions,

not subject to OCI process, but the justification memo requires DOE/NNSA/SSO Contracting Officer approval.

## OCI Evaluation Factors - 5.13.G.2

The SOW should clearly describe (or be rewritten to do so) what work is to be performed. The SCR shall evaluate the SOW for potential OCI, and shall consider the following:

- Are there conflicting roles or relationships which might bias a Contractor's judgment in relation to their work?
- Is the Contractor being given an unfair competitive advantage based on the performance of the contract?

If the SCR determines that the SOW might be subject to OCI, then an OCI fact sheet is forwarded to the Requester for completion. Once the fact sheet is received, the SCR will review it, along with the SOW, to determine if the SOW meets the criteria for being exempt from an OCI determination. If the SOW and the fact sheet reveal that the requirement is exempt from an OCI determination, then the SCR will complete part two of the fact sheet and proceed with the award. If the review of the SOW and fact sheet reveal that an OCI exists or may exist, the SCR with concurrence of the Requester, may take steps to avoid the OCI. Such steps may include a revision to the SOW to limit the involvement of the Contractor, or a deletion of specific brand of

product to remove any unfair competitive advantage. If the potential OCI cannot be avoided, the SCR will include the appropriate OCI clauses in the solicitation.

After the proposals are received, the SCR will review the selected Contractor's certification and disclosure statement along with the fact sheet for any relevant facts. The SCR then will forward the file, with any applicable comments, to the OCI Officer who determines what measures need to be taken to mitigate/avoid an OCI. SCRs should not confuse mitigation with acquisition planning measures that the SCR can take to avoid an OCI. If the OCI cannot be avoided, the OCI Officer may request a waiver (see waiver procedures)

## **OCI Examples/Criteria - 5.13.G.2.a**

Some general examples where OCI might arise involve contract performance in the following areas:

- evaluation of other companies, contract proposals or products with a potential of a contract resulting from the recommendation;
- evaluation services or activities where any work or effort involves the independent study of technology, process, product, or policy;
- technical support services where such services typically include assistance in the preparation of preliminary designs, specifications, or SOWs, and may involve the Contractors being given access to data confidential to the department or proprietary to others;
- evaluation of LMC products or services, or the products or services of another party, where LMC is or has been substantially involved in their development or marketing;
- preparation and furnishing of complete or essentially complete specifications which are to be used in a competitive acquisition for the products and/or services;
- preparation and furnishing of a detailed plan for specific approaches or methodologies that are to be incorporated in a future competitive acquisition;
- evaluation of the Contractor's products or services, or the products or services of another party, which the Contractor is or has been substantially involved in their development or marketing;
- preparation and furnishing of advice to Sandia and/or DOE/NNSA in a technical area where the Contractor is also providing consulting assistance in the same area to any other organization;
- access to proprietary information which cannot lawfully be used for purposes other than those authorized by the owners; and
- revisions when the SOW is modified to add new work or the parties to the contract are changed.

**Note:** In development work it is normal to select firms that have done the most advanced work in the field. It is to be expected that these firms will design and develop around their own prior knowledge. Development Contractors can frequently start production earlier and more knowledgeably than can firms which did not participate in the development, and this affects the time and quality of production, both of which are important to the government. In many instances, the government may have financed such development. Thus, the development Contractor may have an unavoidable competitive advantage that is not considered unfair and no prohibition should be imposed.

## **Construction - 5.13.G.2.b**

When contracting for construction Sandia shall:

- Not award a contract for construction to the A-E firm or an affiliate that prepared the design. This prohibition does not preclude the award of a "turnkey" subcontract so long as the Contractor assumes all liability for defects in design and construction and consequential damages.
  - Not award both a Cost-Reimbursement (CR) contract and a fixed-price contract for construction or A-E services or any combination thereof to the same firm where those contracts will be performed at the same site.
  - Not employ the construction Contractor or an affiliate to inspect the firm's work. Sandia shall assure that the working relationships of the construction Contractor and any Contractor inspecting its work and the authority of the inspector are clearly defined.
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## **OCI Clauses - 5.13.G.3**

### **Solicitation Clauses - 5.13.G.3.a**

SC 824-DR is mandatory in the solicitation document when the SOW is for:

- evaluation services or activities where any of the work or effort involves the independent study of technology, process, product, or policy, or
- technical consulting, management support services where any work or effort provide internal assistance in the preparation of program plans; evaluation, monitoring, or review of other Contractors' activities; preparation of preliminary designs, specifications, or SOW; and where the Contractor is being given access to data confidential to the department or proprietary to others, or
- Consultants and other professional services provided by an officer of the company, or
- the SCR believes that an OCI exists or may exist. If in doubt, incorporate OCI clauses in

the solicitation.

## OCI Standard Clause Matrix - 5.13.G.3.b

The SCR shall include appropriate OCI clauses as follows:

<b>Incorporate...</b>	<b>If procurement action is a...</b>
SC 824-DR	solicitation.
SC 824-DR	solicitation on a contract revision and no OCI was previously included.
SC 824-DR	contract and there is a potential for an OCI.
DEAR OCI clauses automatic via Terms and Conditions (Ts&Cs), or other provisions as directed by the OCI Officer	contract or revision.

**Caution:** Orders issued under the Purchase Order System, including Accelerated Procurement System (APS), shall not be used for procurements where OCI might arise. (See Guidelines 2.2 – Contract/Purchase Order Systems and 5.3 – Accelerated Procurement System (APS).)

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## Sandia OCI Officers - 5.13.G.4

The Deputy Director of Procurement has been designated the Sandia OCI Officer by the Director of Procurement and Logistics. The Deputy Director may designate Procurement Department Managers as Deputy OCI Officers. The Deputy OCI Officers will make OCI determinations when the OCI Officer is not available. Both the OCI Officers and Deputy OCI Officers are required to complete OCI training. The OCI Officers duties are as follows:

- provide assistance to SCR's on mitigating/avoiding OCIs during solicitation process,
- review files which have been identified as having an OCI,
- make recommendation prior to contract award on mitigating/avoiding OCIs (i.e., suggest bans for participation on future procurements, suggest SOW changes, etc.),
- refer to Legal for nonstandard clause or special language, or
- prohibit contract award.

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## OCI Final Determination - 5.13.G.5

The SCR shall evaluate all relevant facts submitted by a Contractor in their OCI disclosure or certification and such other relevant facts as may be available concerning OCI. After evaluation of this information and prior to award, the SCR will forward the information to the OCI Officer who will determine whether an OCI exists or may exist with respect to the particular Contractor or whether there is little or no likelihood that an OCI exists.

If the finding indicates OCI exists, the OCI Officer will instruct the SCR to:

- disqualify the Contractor from award,
- avoid the OCI by the inclusion of appropriate Ts&Cs, suggested by Legal, in the resulting contract,
- make suggested changes to SOW, or
- if OCI cannot be avoided and the OCI Officer determines that award of the contract to the Contractor is in the best interest of the United States government, the SCR may award the contract with approval of the Procurement Operations Manager and DOE/NNSA/SSO.

### Waivers - 5.13.G.5.a

A contract may be awarded when there is an apparent conflict of interest which cannot be mitigated or avoided when it is determined by the Deputy Director or the OCI Coordinator that it is in the best interest of the United States government and there is public exigency, or work cannot otherwise be obtained. The OCI Officer in conjunction with the SCR will prepare a memo justifying the need and reason for the waiver and submit to DOE/NNSA/SSO for approval.

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## OCI Procedure Table - 5.13.G.6

Use the following procedures to process a potential OCI.

<b>Step</b>	<b>Who</b>	<b>Action</b>
1	Requester	Prepares SOW.
2	SCR	Reviews SOW and determines if the type of work to be performed meets OCI criteria listed above. If yes, sends fact sheet to Requester. OCI fact sheet can be obtained

		from the “Guideline Documents” website.
3	Requester	Completes OCI fact sheet and returns to SCR.
4	SCR	Reviews fact sheet and evaluates SOW and determines if an OCI exists or may exist.
5	SCR	If OCI is not applicable, completes part two of fact sheet or documents the file and proceeds with procurement cycle. No further action is required.
6	SCR/Requester	Reviews SOW and incorporates any changes required to avoid any OCI.  <ul style="list-style-type: none"> <li>- If OCI is avoided, completes part two of fact sheet and proceeds with procurement process.</li> <li>- If OCI cannot be avoided, incorporates SC 824-DR and proceed with procurement process.</li> </ul>
7	Contractor	Complies with DEAR 952.209-8 disclosure requirements in the solicitation document Section II. Completes and returns OCI disclosure statement to SCR. <b>Note:</b> If the Contractor refuses to submit the required certifications or declarations to Sandia, the SCR may instruct the Contractor to submit the necessary information directly to DOE/NNSA/SSO for the OCI determination. The SCR will then submit the required information to DOE/NNSA/SSO for the OCI determination
8	SCR	Reviews selected Contractor's declaration, SOW, and OCI fact sheet for potential OCI. Prior to making the award, sends contract file along with any applicable comments to the OCI Officer with the following items:  <ul style="list-style-type: none"> <li>- solicitation Cover Page,</li> <li>- the SOW,</li> <li>- the Contractor's completed disclosure statement under DEAR 952.209-8,</li> <li>- biographical data sheets for individuals, if any,</li> <li>- the OCI fact sheet, and</li> <li>- the selected Contractor's declaration.</li> </ul> <p>If obtained from the Contractor for other purposes, submits the relevant portion of the Contractor's</p>

proposal which includes:

- description of Contractor's work for others,
- experience pertinent to the proposed Sandia effort,
- resumes of key personnel, and
- resumes of Consultants.

9	OCI Officer or designee	Provides direction to SCR by completing part two of the fact sheet. Such directives may include the following: <ul style="list-style-type: none"><li>- requests for additional information,</li><li>- incorporates nonstandard clause(s) or special language, suggested by Legal, in the contract, or</li><li>- prohibit contract award.</li></ul> <p><b>Note:</b> If OCI cannot be avoided, the OCI Officer in conjunction with the SCR, will prepare a memo to justify the need and reason for the waiver and forwards memo to DOE/NNSA/SSO for approval of the waiver of the OCI.</p>
10	DOE/NNSA/SSO	Approves or disapproves award of contract when an OCI exists.
11	SCR	Documents the contract file and follows the OCI Officer's instructions.

## Post Award - 5.13.G.6.a

If, after award, or as a result of a modification to the contract, a possible OCI is identified by the Contractor or other sources, the SCR shall:

- notify the OCI Officer as soon as possible,
- require the Contractor to complete a disclosure statement per DEAR 952.209-72 and forward the sealed disclosure statement to the OCI Officer, and
- follow the OCI Officer's directives to avoid or mitigate the effects of the conflict of interest.

**Examples:** Changes in the SOW, extending Period of Performance without options for periods exceeding six (6) months, and the ownership/control of the company, etc.

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# Applicable Clauses - 5.13.G.7

- SC 824-DR - Organizational Conflicts of Interest
  - DEAR 952.209-72 - Organizational Conflicts of Interest
  - DEAR 952.209-08 - OCI Organizational Conflicts of Interest-Disclosure
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Send feedback on ideas and information on this page to the Process Expert, Adolph Bachicha.



[Adolph Bachicha](#)



[Karen Archibeque](#)

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