Organizational Conflict of Interest Contract Clauses

| *Clause #* | *Text* | *Guidance on Use* |
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| 2A047-3 | **DISCLOSURE OF CONFLICTS OF INTEREST OR UNFAIR COMPETITIVE ADVANTAGE (JUL 2023)**  (“OCI FAQ for Contractors” is available at [www.procurement.sc.gov](http://www.procurement.sc.gov))  (a) You certify that, after reasonable inquiry, to the best of your knowledge and belief:  (1) your offer identifies any services that relate to either this solicitation or the work and that have already been performed by you, a proposed subcontractor, or an affiliated business or consultant of either; and  (2) there are no relevant facts or circumstances that may give rise to an actual or potential organizational conflict of interest, as defined in S.C. Code Ann. Reg. 19-445.2127, or that your offer identifies and explains any unfair competitive advantage you may have in competing for the proposed contract and any actual or potential conflicts of interest that may arise from your participation in this competition or your receipt of an award.  (b) If you, a proposed subcontractor, or an affiliated business or consultant of either, have an unfair competitive advantage or an actual or potential conflict of interest, the State may withhold award. Before withholding award on these grounds, the State will notify you of the concerns and provide a reasonable opportunity for you to respond. The State may consider efforts to avoid or mitigate such concerns, including restrictions on future activities.  (c) The certification in paragraph (a) of this provision is a material representation of fact upon which the State will rely when considering your offer for award. [02-2A047-3] | Mandatory. Use in all solicitations. |
| 4XXX | **ORGANIZATIONAL CONFLICT OF INTEREST - MITIGATION PLAN REQUIRED**  (a) The policy of the State is to avoid contracting with contractors who have unacceptable organizational conflicts of interest. The State has determined that this acquisition may give rise to an organizational conflict of interest (OCI). Accordingly, the attention of prospective Offerors is invited to S.C. Code Ann. Reg. 19-445.2127, Organizational Conflicts of Interest. Additional information is available at <http://procurement.sc.gov> (.) The State shall not award a contract until it determines any conflict of interest is reasonably resolved. It is not the State’s intention to foreclose a vendor from a competitive acquisition due to a perceived OCI. The Procurement Officer is fully empowered to evaluate each potential OCI scenario based upon the applicable facts and circumstances. The final determination of such action may be negotiated between the impaired vendor and the Procurement Officer. As such, the State may communicate with any Offeror at any time during the evaluation process concerning its OCI plan. The State is committed to working with potential vendors to eliminate or mitigate actual and perceived OCI situations, without detriment to the integrity of the competitive process or the legitimate business interests of the vendor community.  (b) Description of Potential Conflict. The nature of this organizational conflict of interest is…  *[Describe the nature of the conflict here.]*  (c) Mitigation Plans. The successful contractor may be required to permit a State audit of internal OCI mitigation procedures for verification purposes. The State reserves the right to reject a mitigation plan, if in the opinion of the Procurement Officer, such a plan is not in the State’s interest. Considerations that may lead to rejection include, but are not limited to, whether the State possesses sufficient resources to monitor the contractor’s compliance with the plan. Additionally, after award the State may review and audit OCI mitigation plans as needed, in the event of changes in the vendor community due to mergers, consolidations, or any unanticipated circumstances that may create an unacceptable OCI. | Use this clause with a description of the potential conflict to request submittal of an OCI mitigation plan. It should appear in Part 4 (Information for Offerors to Submit) of the solicitation. If you will evaluate the submitted plan, make sure you include the mitigation plan among the evaluation factors in Part 6. |
| 7A054-1 | **ORGANIZATIONAL CONFLICT OF INTEREST (JUL 2023)**  (a) The Contractor agrees to immediately advise the Procurement Officer if an actual or potential organizational conflict of interest is discovered after award, and to make a full written disclosure promptly thereafter to the Procurement Officer. This disclosure shall include a description of actions which the Contractor has taken or proposes to take, after consultation with the Procurement Officer, to avoid, mitigate, or neutralize the actual or potential conflict.  (b) The State may terminate this contract for convenience, in whole or in part, if it deems such termination necessary to avoid an organizational conflict of interest. Contractor’s failure to include an appropriate termination for convenience clause in any subcontract shall not increase the obligation of the State beyond what it would have been if the subcontract had contained such a clause.  (c) The disclosure required by paragraph (a) of this provision is a material obligation of the contract. If the Contractor knew or should have known of an organizational conflict of interest prior to award, or discovers an actual or potential conflict after award, and does not disclose, or misrepresents, relevant information to the Procurement Officer, the State may terminate the contract for default.  [07-7A054-1] | Mandatory. Use in all solicitations. |
| 7BXXX | **EXCLUSION FROM FUTURE AGENCY CONTRACTS—ORGANIZATIONAL CONFLICTS OF INTEREST**  (a) The State has determined that this acquisition may give rise to an organizational conflict of interest (OCI). Accordingly, the attention of prospective Offerors is invited to S.C. Code Ann. Reg. 19-445.2127, Organizational Conflicts of Interest. Additional information is available at <http://procurement.sc.gov> (.)  (b)The nature of this organizational conflict of interest is…  *[Describe the nature of the conflict here. For purposes of this clause, it should correspond to one of the conflicts described in Reg. 19-445.2127B, C, or D.]*  (c) Required OCI Resolution. In order to prevent a future OCI resulting from potential bias, unfair competitive advantage, or impaired objectivity, the Contractor will be subject to the following restrictions:  (1) The Contractor will be excluded from competition for, or award of any government contracts as to which, in the course of performance of this contract, the Contractor has received advance procurement information before such information has been made generally available to other persons or firms.  (2) The Contractor will be excluded from competition for, or award of any using agency contract for which the contractor actually assists in the development of the specifications or statements of work.  (3) The Contractor will be excluded from competition for or award of any State contract which calls for the evaluation of system requirements, system definitions, or other products supplied or developed by the Contractor under this contract.  (4) The Contractor will be excluded from competition for, or award of any government contract which calls for the construction or fabrication of any system, equipment, hardware, and/or software for which the Contractor participated in the development of requirements or definitions pursuant to this contract.  (d) This clause will not exclude the Contractor from performing work under any amendment or modification to this contract or from competing for award for any future contract for work that is the same or similar to work performed under this contract.  (d) The term “contractor” as used in this clause, includes any person, firm or corporation which has a majority or controlling interest in the contractor or in any parent corporation thereof, any person, firm, or corporation in or as to which the contractor (or any parent or subsidiary corporation thereof) has a majority or controlling interest. The term also includes the corporate officers of the contractor, those of any corporation that has a majority or controlling interest in the contractor, and those of any corporation in which the contractor (or any parent or subsidiary corporation thereof) has a majority or controlling interest.  (e) The agency may in its sole discretion, waive any provisions of this clause if deemed in the State’s interest, in accordance with Reg. 19-445.2127F. The exclusions contained in this clause will apply for the duration of this contract and for three (3) years after completion and acceptance of all work performed hereunder.  (f) If any provision of this clause excludes the Contractor from competition for, or award of any contract, the Contractor will not be permitted to serve as a subcontractor, at any tier, on such contract. | This clause should be used where the Procurement Officer has determined that an OCI described in Reg. 19-445.2127B, C, or D exists and that the regulation requires restraint on the awarded contractor’s eligibility for future contracts. It should appear in Part 7B (Terms and Conditions – Special) of the solicitation. Make sure you include an appropriate description of the nature of the conflict. |
| 7BXXX | **MITIGATION OF ORGANIZATIONAL CONFLICTS OF INTEREST**  (a) Mitigation plan. The Organizational Conflict of Interest Mitigation Plan and its obligations are hereby incorporated in the contract by reference.  (b) Changes. (1) Either the Contractor or the State may propose changes to the Organizational Conflict of Interest Mitigation Plan. Such changes are subject to the mutual agreement of the parties and will become effective only upon incorporating the change into the plan by contract amendment. (2) In the event that the State and the Contractor cannot agree upon a mutually acceptable change, the State reserves the right to make a unilateral change to the OCI Plan as necessary, subject to Contractor appeal as provided in the Disputes clause.  (c) Violation. The Contractor shall report any violation of the Organizational Conflict of Interest Mitigation Plan, whether by its own personnel or those of the State or other contractors, to the Procurement Officer. This report shall include a description of the violation and the actions the Contractor has taken or proposes to take to mitigate and avoid repetition of the violation. After conducting such further inquiries and discussions as may be necessary, the Procurement Officer and the Contractor shall agree on appropriate corrective action, if any, or the Procurement Officer shall direct corrective action.  (d) Breach. Any breach of the above restrictions or any nondisclosure or misrepresentation of any relevant facts required regarding organizational conflicts of interests to be disclosed may result in termination of this contract for default or other remedies as may be available under law or regulation.  (e) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (e), in subcontracts where the work includes or may include tasks related to the organizational conflict of interest. The terms “Contractor” and “Procurement Officer” shall be appropriately modified to reflect the change in parties and to preserve the State’s rights. | This clause incorporates the terms of a negotiated mitigation plan into the contract. It should only be used in contracts where a potential OCI has been identified prior to award and an OCI mitigation plan is involved in the resolution of the OCI. The clause should appear in Part 7B (Terms and Conditions – Special) of the solicitation. |