

# Organizational Conflict of Interest

Presented by  
National Contract Management  
Association

16 February 2011

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# Agenda

- 8:30 – NCMA introduction
- 8:35 – Speakers introduction
- 8:40 – OCI Intro & essence
- 10:00 –break
- 10:15 –SB Perspective, Analysis & Mitigation
- 11:20 –Q&A, Discussion

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# PRESENTED BY:

- Anthony Ballard
- Christine Powell

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# Organizational Conflict of Interest

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# Organizational Conflict of Interest

- FAR 2.101 Defines OCI:
  - “Organizational Conflict of Interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Gov’t, or the person’s objectivity in performing the contract work is or might be impaired, or a person has an unfair competitive advantage.”
- FAR 9.502 further states:
  - “An OCI may result when factors create an actual or potential conflict of interest on an instant contract, or when the nature of the work to be performed on the instant contract creates an actual or potential conflict of interest on a future acquisition. In the latter case, some restrictions on future activities of the contractor may be required.”

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# When might an OCI arise?

OCIs are more likely to occur in contracts involving:

- ❑ Management Support Services
- ❑ Consultant or other professional services
- ❑ Contractor performance of or assistance in technical evaluations
- ❑ Systems engineering and technical direction work by a contractor who does not have overall responsibility for development or production
- ❑ Test and Evaluations, IV&V, System Certification

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# How do OCIs develop?

- New proposal opportunity for A&AS or SETA work
  - What if you are a large business and one of your subcontractors is in this role? Does it matter?
- New task under an existing contract
- Legacy company SETA or A&AS contract
- Subcontractor or teammate creates OCI

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# How do OCIs develop? (cont'd)

- Different NG businesses pursuing same opportunity
- Access to competitor data
- Hiring of consultant, or a former service member coming to industry
- Hiring or reassignment of conflicted employee
- Subject matter expert utilized across multiple contracts



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# Impaired Objectivity is Greatest Area of Concern

- Impaired Objectivity (also known as Inherent Bias) is the area of greatest concern
  - The concern being that while firewalls may restrict access; there is no way to ensure neutral and objective behavior or judgment
- Specific areas involving inherent bias concerns:
  - A&AS, SETA or SI work involving:
    - Capabilities or requirements/specifications generation (IPT support)
    - RFP generation and/or source selection support
    - Cost modeling
    - Independent Verification & Validation (IV&V)
    - Test and evaluation (T&E)

# What do our Customers think of OCI?

- Customers want access to all companies with Subject matter expertise
- Historically had a favorable view of OCI mitigation
- In 2009, shift towards more conservatism with some Customers
- Concerns:
  - **Congressional scrutiny**
  - **Third party protest**
  - **Effort related to mitigation**
    - **review/audit**
  - **Washington Post test**
  - **WSARA Legislation**



# What are our Customers doing?

- Contracting Officers are required to:
  - Analyze planned acquisitions for potential OCI
  - Identify and evaluate potential OCI as early in the acquisition process as possible
  - Avoid, neutralize or mitigate potential OCI before contract award
  - Obtain advice of counsel and assistance from technical experts
  - Before issuing a solicitation, recommend a course of action for resolving the OCI to the head of the contracting activity
- If it is in the best interests of the United States to award the contract notwithstanding the OCI concern, a request for waiver may be submitted to the Agency head, who may not delegate waiver authority below the head of the contracting activity

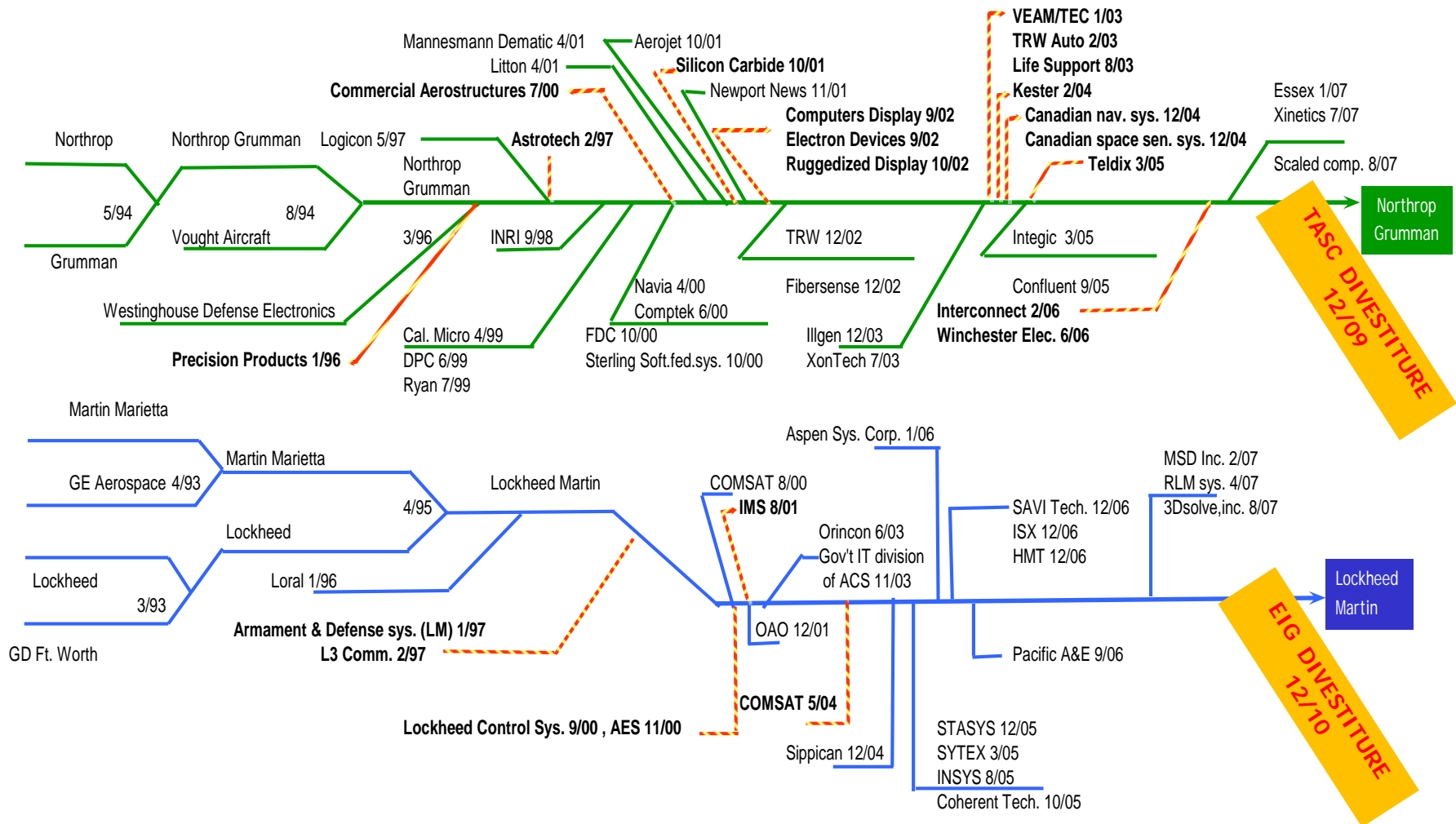
Even with 2009 WSARA legislation, our Customers still have great discretion

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# Why is OCI Important to Identify ?

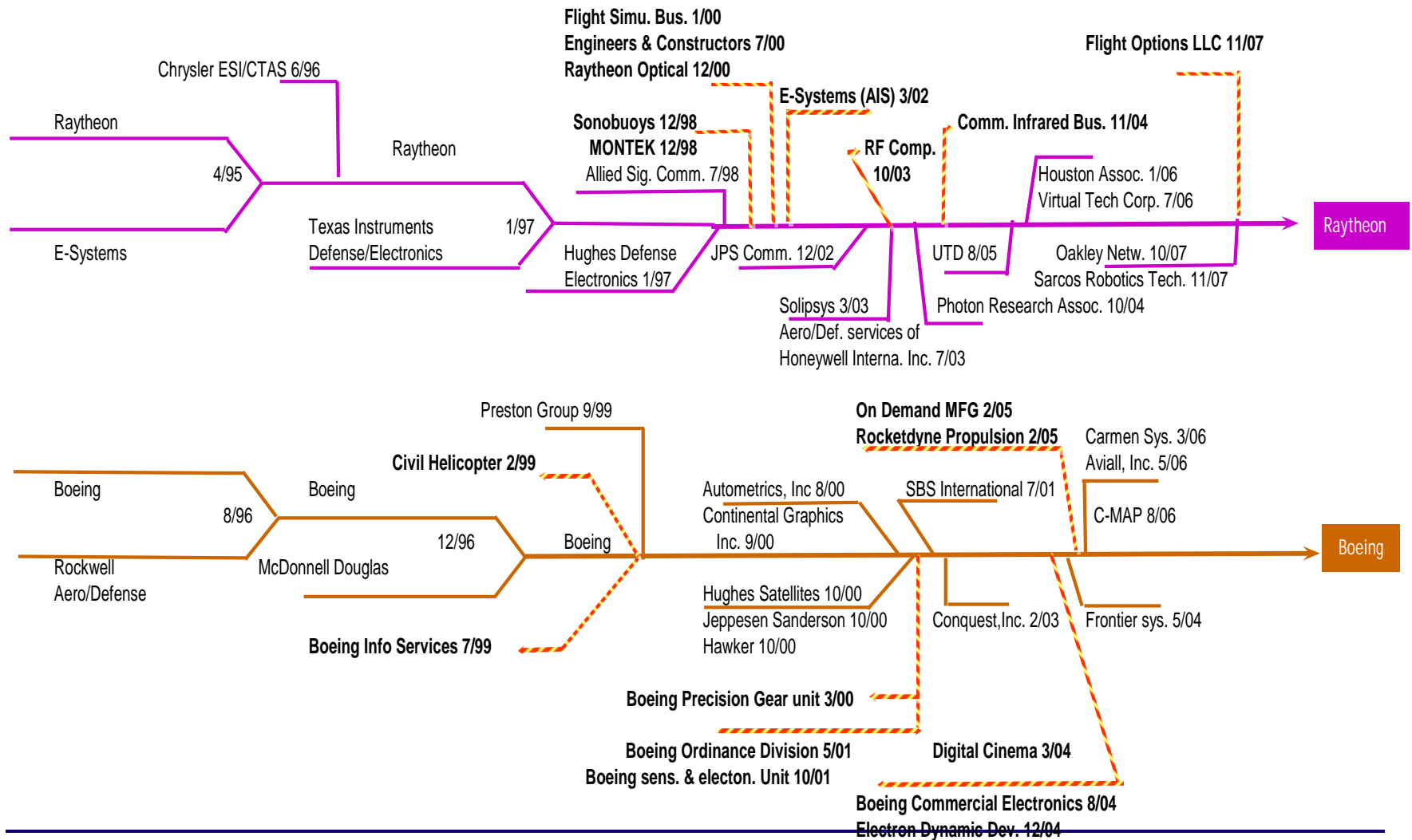
- Large companies carry an extra burden
  - Large number of contracts create complex portfolios
  - Contract may evolve to include advisory work performed at Customer's request
  - Numerous businesses pursuing the same Customers
  - Complimentary capabilities and technical expertise
- The cost of being conflicted out of a system or development contract could be quite high
  - Unfortunately, this is where the risk lies when a perceived OCI is not caught or mitigated
- Defense Industry Consolidation
  - A legacy of acquisitions creates an environment where real or perceived OCI exists

# Mergers & Acquisitions Road Map / Aerospace & Defense



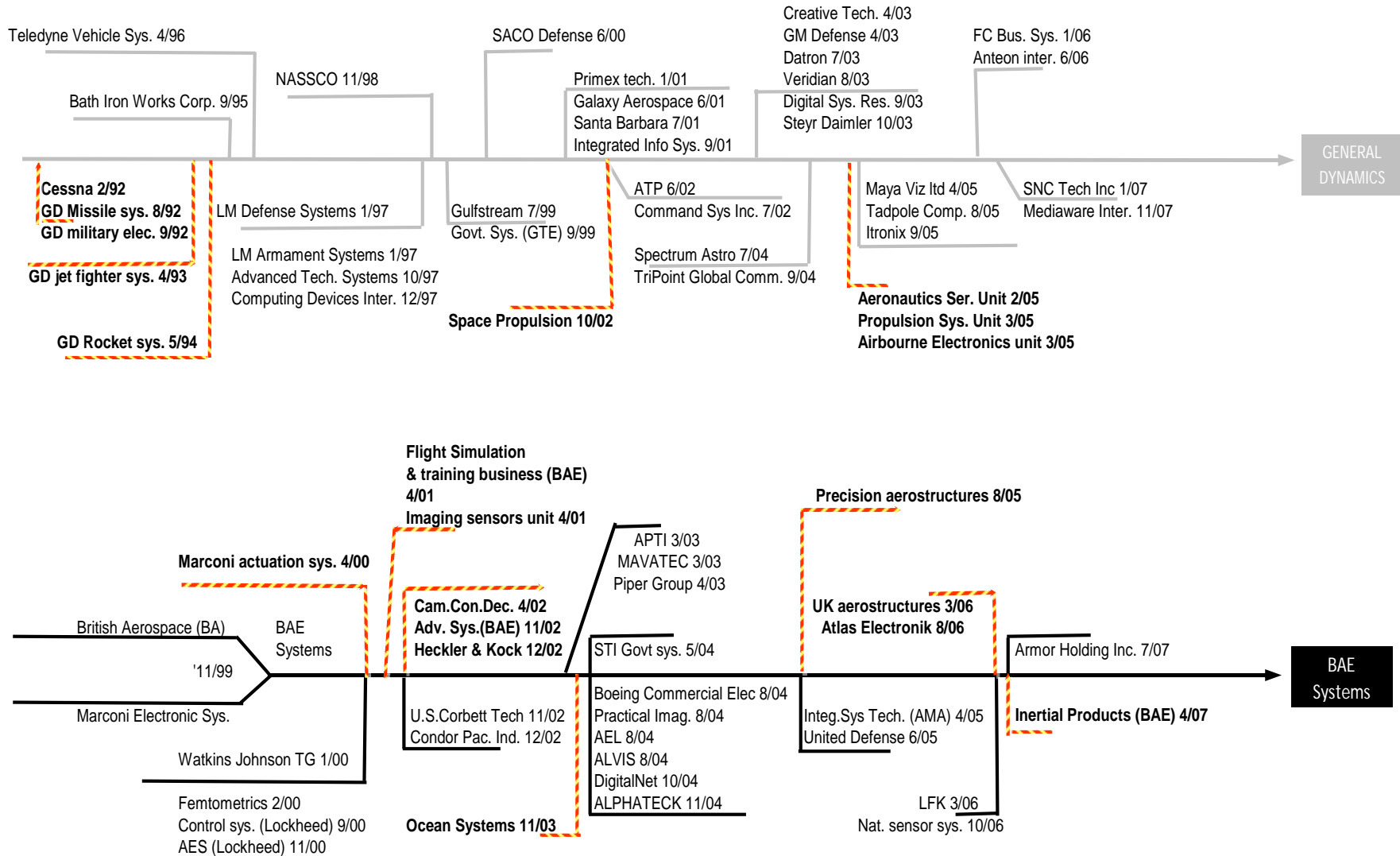
Red / Yellow Bar = Divestiture

# M&A Road Map / Aerospace & Defense



Red / Yellow Bar = Divestiture

# M&A Road Map / Aerospace & Defense



Red / Yellow Bar = Divestiture

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## GAO Decisions Govern

- The FAR and GAO case law require the Customer to perform due diligence (review of program tasking and potential impact; review of mitigation approach) before an award is made
- The GAO has established through bid protests:
  - Reviews the reasonableness of the Agency's actions – The GAO does not conduct a “de novo review” or substitute its judgment for that of the Agency's
  - Generally approves the use of firewalls to mitigate unequal access to information



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## GAO Decisions Govern (continued)

- The GAO has established through bid protests (cont'd):
  - Firewalls alone cannot mitigate Impaired Objectivity (Nortel Government Solutions Dec 30, 2008)
  - Endorsed the use of pass through subcontracts to mitigate Impaired Objectivity (Alion Sept 2006)
  - The Customer is encouraged to take into account the effort/cost/performance impact associated with a mitigation approach

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# WSARA Legislation

- The Weapon Systems Acquisition Reform Act of 2009
  - requires that the DoD seek advice from Federally Funded Research and Development Centers regarding systems architecture and systems engineering
  - requires tightened oversight of make or buy decisions by contractors in the acquisition of major weapon systems
  - prohibits advisory and SETA contractors and an organization **with a financial affiliation** from participating in the development or construction of the major weapon systems on which they are advising the DoD
  - requires DFAR revision to provide uniform guidance and tighten requirements no later than 270 days after WSARA enactment

***Firewalls are no longer sufficient for Inherent Bias Mitigation***

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# More than a year later...

- DFAR proposed rule released in December 2010
  - Federal Register / Vol. 75, No. 249 / Wednesday, December 29, 2010 / Rules and Regulations
  - Significant industry comment for and against language
- Interim DHS rule released July 15, 2010
  - Requests for comments due August 2010

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# More than a year later... (cont'd)

- Many agencies have moved out
  - NRO led the customer community in prohibiting inherent bias mitigation, leading to:
    - TASC divestiture
    - GD divestiture
    - Scitor/SAIC swap of programs
    - Lockheed divesting of advisory work

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# Recent Case Law

- **Turner Construction (July 2010)**

- reversed a GAO decision that sustained a protest based on unequal access to information and impaired objectivity OCI. The GAO decision had rested on a finding that an advisory services company that was in the process of being acquired by the awardee's key design subcontractor had a sufficient business nexus to warrant imputation of the OCI to the awardee.

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# Recent Case Law (continued)

- **PAI (August 2010)**

- denied an OCI-based protest based upon the discretion of the Contracting Officer to determine whether potential conflicts rise to the level of “significant potential conflicts.” Together with Turner Construction, PAI underscores the fact that the Court of Federal Claims is giving much greater discretion to agencies on OCI determinations than is GAO.

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# Recent Case Law (continued)

## ■ MCR Federal

- a recent GAO decision, is notable as one of the few reported decisions challenging an agency's OCI waiver decision. In this case, the agency determined that a waiver was appropriate corrective action in response to an OCI-based protest, after concluding that both bidders had OCI issues, thereby making award to an OCI-free bidder impracticable. The decision also affirms that a procedurally-proper waiver decision is entirely within the agency's discretion and essentially non-reviewable by GAO on the merits. Will be interesting to see whether this decision leads to greater use of waivers by agencies.

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# Challenges

- The FAR and case law requires the Customer to perform due diligence (review of program tasking and potential impact; review of mitigation approach):
  - The Customer is encouraged to take into account the effort/cost/performance impact associated with a mitigation approach
  - There is nothing which forces any decision to stand the test of time or personnel changes; an agency may rule differently on similar situations
  - The due diligence and mitigation plan must be put in place prior to the performance of work expected to pose OCI concerns/risks
  - It may be years before the system/hardware impact is understood
  - The Contracting Officer or other Customer leadership may not be aware or sensitive the risks created by their Statement of Work
  - The program may change agency hands subjecting it to different decision makers or different OCIs
  - Acceptance of a mitigation plan today is no guarantee for tomorrow



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# Organizational Conflict of Interest

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# OCI From a Small Business Perspective

- Contracts Manager's Role in OCI
- Issues with Priming
- Issues with Subcontracting
- OCI Policies and Mitigation

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## Contract Manager's Role in OCI

- Contracts in a small business is usually cradle-to-grave. OCI is cradle-to-grave as well. Know ahead of time that OCI will require contract administration pre-award and post-award.
- Plan to be involved in the proposal stage – you likely know your contracts better than the proposal team and you can help identify issues early.
- Review all existing contracts for OCI reporting requirements.
- Make sure your contracts include the necessary OCI reporting requirements.

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# Priming

- Issues when Priming:
  - New Business: Requires a thorough review of all new business opportunities to determine if the new work will result in an OCI with existing work and if the new work will preclude the business from pursuing more advantageous future work.
  - Teammates: Review of teammate capability matrix input and past performance input is key to make sure that each member of the team doesn't have an existing OCI with the acquisition.

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# Priming - Continued

- Issues when Priming (continued):
  - Consistency: Small business is usually synonymous with multi-hat job requirements. Having consistent work processes will help eliminate some risk in missing a key piece of information which can cause OCI issues to spiral out of control.
  - Preemptive Planning: Work with the COR on the acquisition and request a formal OCI Determination prior to RFP release if there is a suspected OCI issue. You can save a lot of B&P dollars if you know ahead of time if there is an OCI and what the mitigation requirements will be.

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# Priming - Continued

- Task Order Monitoring:
  - An OCI may not be apparent at the initiation of a Task order requirement but evolve during performance. Services requirements are particularly susceptible to these conditions
  - Must screen for potential OCI's at task order initiation and during performance.
  - Must have a process to screen potentially conflicting requirements including those of subcontractors.

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# Subcontracting

- Know your Prime!
  - This really is the key. Usually, OCI will not be an every day occurrence, but when it happens, being able to work efficiently with your prime will make the process easier.
  - Ask for Assistance – This is especially true with LB primes. They have resources smaller businesses do not and an incentive to help complete the OCI identification and mitigation process.

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# Subcontracting (continued)

## ■ Know your Prime! (continued)

- Be aware of all OCI reporting requirements detailed in subcontract agreements. Some primes will lessen more severe reporting requirements if the small business sub finds the requirement either too expensive or too time consuming. Negotiation is important right from the beginning.



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# OCI Policy

- At the very least, your company's OCI policy should include:
  - Identification and evaluation of all perceived, potential and actual OCI as early in the process as possible.
  - Mechanisms to meet all regulatory and contractual OCI reporting requirements.

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# OCI Policy (continued)

- Company's OCI policy (continued):
  - Plans and procedures for OCI mitigation which may include:
    - Firewalls
    - NDA Templates
    - Procedures for handling, storage and transfer of sensitive information
    - Subcontract templates which include built in clauses for subcontractor compliance and reporting
    - Planned internal audits

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## Identification of OCI? Analysis is key!

- Not every RFP is perfect and advisory work can slip into SOWs
- Be prepared – may not need to automatically reject work because it has a small advisory piece; however, it is a risk that needs to be evaluated and addressed (subcontracted for OCI avoidance)
- Understanding the nature of the work will further an analysis to determine whether we need a firewall? Whether or not mitigation will work?

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# Analysis (continued)

- Facts to consider in your analysis
  - Who is the incumbent / do they have any current OCI challenges
  - Is there a mitigation plan on the current contract? Why?
  - What is the SOW ?
  - Are there future product/system related to the work?
  - What other companies are involved/what types of companies?
  - Identification of teammates and their programs
  - Will it require access to proprietary or competition sensitive data ?
  - Is there inherent bias OCI involved ?
  - Is there restrictive OCI language, clauses, etc ?

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## What can companies do to mitigate OCI?

- **Structured process for highlighting OCI risks**
  - Vetting process for opportunities with OCI clauses as well as programs which possess OCI risk (with or without an OCI clause)
- **Mitigation Plans/Firewalls**
  - When is each appropriate?
  - What is the best way to involve your subcontractors / teammates?

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# Mitigation (continued)

- Employee OCI awareness and training
- Personal non-disclosure agreements
- Use of non-conflicted subcontractors
- Annual OCI audits

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## In Summary ...

- Just because an OCI clause is not present, doesn't mean its not a concern
- We cannot relax just because the Contracting Officer has not identified a concern
- Perceived OCI is just as critical as a real OCI
- Our Customers have discretion on how they view and treat OCI
- Vetting OCI risks is a corporate requirement

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# Sample OCI Plan

- It is critical that the plan be tailored to the business, the products, the processes, etc. of each company



<COMPANY LETTERHEAD / LOGO>

<Company Name>

## **Organizational Conflict of Interest Mitigation Plan**

**For**

**[Insert Name of Program]**

**[Date]**

### **APPROVALS**

To be signed upon contract award

\_\_\_\_\_  
Customer (Contracting Officer, Contractor, Subcontractor Representative)

\_\_\_\_\_  
<Company Name> Contract Administrator



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## OCI Mitigation Plan Revision Log

| OCI Mitigation Plan Revision Log |      |        |                |         |
|----------------------------------|------|--------|----------------|---------|
| Rev                              | Date | Rev By | Pages Affected | Remarks |
|                                  |      |        |                |         |
|                                  |      |        |                |         |
|                                  |      |        |                |         |
|                                  |      |        |                |         |
|                                  |      |        |                |         |

# CONTRACT NAME

## Organizational Conflict Of Interest Mitigation Plan

### 1 Introduction

[Insert Introduction]

#### 1.1 Background

<Company Name>, operating through its <corporate division> (hereinafter “<acronym>”), has prepared an Organizational Conflict of Interest (OCI) mitigation plan to address potential or perceived OCI relating to the [Program]. <ACRONYM> has conducted a search among the five sectors of the company to assess where any existing contracts may preclude, restrict, or limit participation, in whole or in part, under this competitive procurement.

[Describe nature of potential conflict(s) identified.]

To address potential or perceived OCI, this Plan imposes a number of mitigation techniques to enable [Program] to follow the letter and spirit of FAR 9.5 while partnering with <ACRONYM>. These mitigation measures, which apply to all work, performed by <ACRONYM> in support of [Program] activities, will involve organizational and physical isolation of the employees who support the [Program]. The baseline mitigation measures in sections 6.1-6.4 of this Plan include techniques to safeguard protected information, provide for regular audits, provides for intensive training for employee awareness of OCI issues, and allow only those personnel who have been trained and have signed Non-Disclosure Agreements to gain access to [Program] information. This Plan also includes a special mitigation measure (section 6.5) that involves a separate Government review when the contractor is involved in activities relating to preparation of specifications or a statement of work or when the contractor is evaluating or recommending its own systems, and another special mitigation measure (section 6.6) that allows <ACRONYM> to recuse employees from any efforts that might create the possibility of an unmitigatable OCI for <Company Name>.

#### 1.2 Purpose of the Plan

This Organizational Conflict of Interest (OCI) Mitigation Plan was developed pursuant to guidance contained in FAR 9.5, Organizational and Consultant Conflicts of Interest, as referenced therein, to ensure any potential organizational conflicts of interest arising from the performance of work are avoided or mitigated. The Plan, which applies to all employees of <ACRONYM>, focuses on two fundamental Government concerns: (1) to prevent conflicting roles that might bias the contractor’s judgment or objectivity, and (2) to preclude the contractor from obtaining an unfair competitive advantage in concurrent or future acquisitions.

This Plan describes the procedures that will be used by <ACRONYM> to prevent or mitigate an OCI during performance of [Program] activities. It shall be implemented upon award of a contract to <ACRONYM> and it shall remain in place and be applicable during the life of that contract.

### 1.3 Management Commitment to the Mitigation Plan

<Company Name> <ACRONYM> management is fully committed to the implementation of the Mitigation Plan and has the full support of <Company Name> Corporation senior management to accomplish the actions required by the Plan. The person with responsibility for the execution and implementation of this Plan is the Plan Designated Manager as identified in Section 5 below.

### 1.4 Corporate Structure

<CORPORATE INITIALS> is one of the top four defense contractors in the United States. <CORPORATE INITIALS> is organized into <describe org structure here>. The sectors are organizationally separate. Each of <CORPORATE INITIALS>'s five sectors is headed by a sector President who reports directly to <CORPORATE INITIALS>'s Chairman and Chief Executive Officer. <CORPORATE INITIALS>'s organization is depicted in Figure 1-1. <ACRONYM> is a part of the <immediate organization>.

# Insert Corporate Org Chart Here

**Note: Download the organization chart from the <company> website to have the most up to date org chart.**

#### **Figure 1-1, <Company Name> Corporate Organization**

The <corporate segment> does not report under or through other <CORPORATE INITIALS> sectors. Therefore, none of the other <CORPORATE INITIALS> sectors participate in business, technical, or program decisions made by the IS sector.

<Company Name> is divided into three divisions. The <Company Name> IS organizational structure is shown in Figure 1-2. <provide detailed description of org structure here>.

# Insert Sector Org Chart Here

**Note: Download the Sector organization chart from the intranet website to have the most up to date org chart.**

## **Figure 1-2, <Company Name> IS Organization**

<ACRONYM> reports as one of the <Company Name> IS divisions and does not report under or through the other divisions. <ACRONYM> makes its own business, technical and program decisions with respect to the business it conducts.

<ACRONYM> is comprised of <describe the corporate structure to the next lowest level>

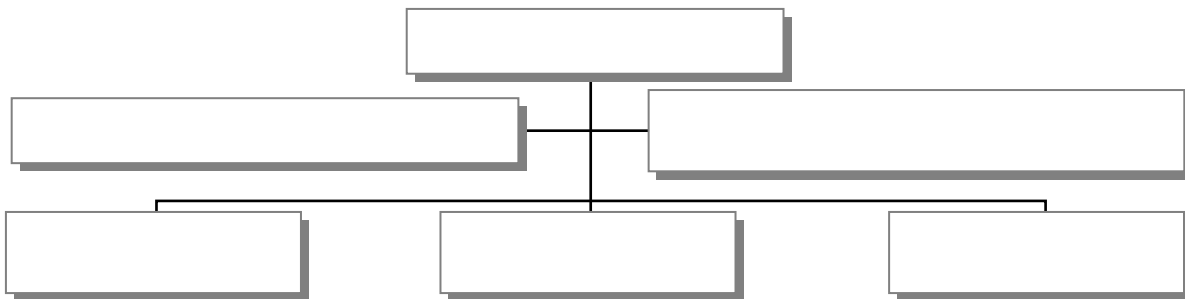
# Insert Division Org Chart Here

**Note: Download the organization chart from the NG website to have the most up to date org chart.**

**Figure 1-3, <company segment> Organization**

[Program] activities will be performed within the \_\_\_\_\_ business unit of <ACRONYM>. Within \_\_\_\_, this [Program] work will be performed, managed and contained within the \_\_\_\_\_ operating unit.

**Figure 1-4, [Replace with correct BU chart.]**



As described above, the management structure of <CORPORATE INITIALS>, <Company Name> IS and <ACRONYM> reinforces the organizational segregation of [Program] support efforts at the corporate, sector, business and operating unit levels. All [Program] work will be performed, managed, and reported within the [Name of Business Unit]. All technical and programmatic information will be controlled within the [Program] support staff as specified in Sections 5 and 6 below. No <CORPORATE INITIALS> employees outside of the [Program] support staff will have access to [Program]. All information is protected as defined in Section 2 “Protected Information” of this Plan. In fact, only those employees working on specific tasks, and who have a “need-to-know,” will have access to any specific Protected Information. This organizational separation ensures that Protected Information remains safeguarded within the [Program] support staff and that no other unit of <CORPORATE INITIALS> will obtain an unfair competitive advantage as a result of <ACRONYM> work for [Program].

### **1.5 Corporate Experience in Control of Sensitive Information**

<ACRONYM> has extensive experience supporting Government programs requiring the control and safeguarding of sensitive information. <ACRONYM> also has extensive experience in the control of classified information, and the majority of those applicable policies and procedures have been incorporated into this plan.

### **1.6 Corporate Policy for Identifying and Controlling Organizational Conflicts of Interest**

<ACRONYM>’s policy is to proactively seek to identify and mitigate potential organizational conflicts of interest prior to submitting bids or proposals for government work. When new or modified solicitations containing an OCI clause or provision are received by <ACRONYM>, a copy of the clause, the SOW and other applicable documentation are routed for review to business sectors and units throughout <CORPORATE INITIALS>. Based on the response received, <ACRONYM> either confirms that there is no identified organizational conflict of interest or undertakes to mitigate any potential conflicts. <ACRONYM>’s policy and procedures consist of:

- Written, formal <CORPORATE INITIALS> policy
- A defined organizational structure that oversees <ACRONYM> OCI decisions
- Organizational policies and procedures for evaluating and addressing OCI issues as they arise
- Organizational procedures for establishing OCI mitigation that are inherent in the <CORPORATE INITIALS> structure, ensuring proper controls on information flow
- Written procedures for ensuring implementation of this plan
- An employee ethics training program with annual individual certification that addresses, in detail, OCI avoidance requirements.
- <CORPORATE INITIALS> Ethics Hot Lines



## **2 Definitions**

[Insert definitions here]

### **2.1 Potential Organizational Conflicts of Interest**

A potential OCI may arise due to activities or relationships with other entities, where the performing operation is unable or potentially unable to render impartial, objective assistance or advice to the Government (“impaired objectivity”); an entity, as part of its performance of a government contract, has in some sense set the ground rules for another government contract by, for example, writing the statement of work or specifications for that contract in ways that may skew the competition in its favor (“biased ground rules”); or an entity has an unfair competitive advantage as a result of other activities or access to and possession of source selection information that no other potential bidder has access to (“unequal access to information”). Attachment 1 to this plan identifies the potential OCIs that may arise under this contract and classifies them as either “impaired objectivity” OCI “unequal access to information” OCI, or both, and then specifies which mitigation measures in this Plan will be applied.

### **2.2 Protected Information**

“Protected Information”, as used in this Plan, includes any nonpublic information that <ACRONYM> may gain access to or receives from the Government or other contractors involved in this contract by virtue of performance under this contract.

## **3. Scope**

All <ACRONYM> personnel who support [Program] activities shall comply with the procedures set forth herein.

## **4. Interpretations**

The <ACRONYM> Vice President of Contracts, Procurement and Pricing or his designee will make interpretations of this plan, as required, based on [Program] tasking.

## **5. Responsibilities**

The responsibilities associated with this plan are stated in Section 6 below.

The <ACRONYM> Contracts Manager assigned to [Program] activities (the Plan Designated Manager) is responsible for administration of this Plan. The <ACRONYM> Human Resources Manager shall provide assistance, as required, to implement this Plan, to include participation in the employee awareness program and conducting appropriate exit interviews as addressed in Section 6 of this Plan.

## 6. Procedures

In order to provide control of Protected Information, <ACRONYM> has established the following:

- Protected Information Safeguards:
  - Technical Separation
  - Management Separation
  - Communications Network Security
  - Personal Responsibilities
- Employee OCI Awareness Training Program
- Progress and Reporting Structure
- Plan Maintenance and Update Methodology

Details of these procedures follow.

### 6.1 Protected Information Safeguards

<ACRONYM> will take the following steps to ensure that any Protected Information, as defined in Section 2 of this plan, will be safeguarded from unauthorized personnel.

#### 6.1.1 Technical Separation

The <Company Name> <company segment> (<ACRONYM>) [Program] support staff resides within the \_\_\_ Business Unit of <company segment>. All technical issues/problems are contained and resolved within the \_\_\_ Business Unit. Further, should it be necessary to solicit technical assistance to respond to questions or issues from key personnel working on other contracts outside of the \_\_\_ Business Unit, not subject to a firewall, and not proposed under this contract shall be subject to the advance concurrence of the Contractor's Program Manager.

#### 6.1.2 Management Separation

[Program] activities will be managed solely within the \_\_\_ business unit and shall maintain separate management reporting lines for all program, schedule, financial, and technical performance of the Contract, which are separate from, and independent of, managerial reporting by <ACRONYM> for programs and procurements for systems where a perceived OCI exists.

Affected personnel share a single organizational objective, which is to provide unbiased, professional support services to the Government for [Program] activities. Personnel shall be prohibited from discussing information with anyone outside their organizational unit.

### **6.1.3 Communications Network Security**

<Company Name> <ACRONYM> employees supporting [Program] activities in <Company Name> facilities will have access to a server on the <ACRONYM> network. The security protections built into the Microsoft Windows 2007 operating system will be used to partition the storage areas on the server used by the [Program] support staff so they are physically and logically protected from access by other <ACRONYM> and <CORPORATE INITIALS> personnel. Within the [Program] partition, the security hierarchy will allow for restricted access by segregating data by individual task order.

### **6.1.4 Personal Responsibilities**

All personnel who may be required to work with Protected Information will sign a Non-Disclosure Agreement (the “NDA”) (Attachment 2) prior to working with such information and shall receive OCI Awareness Training. The NDA identifies personal responsibilities and binds the individual to keep in confidence all Protected Information to which access was granted under the Contract and stipulates that employees must certify that they are not aware of any information bearing on the existence of any potential OCI. Information, discussions and documentation obtained as a result of such support shall only be disclosed to [Program] personnel and other persons having a “need-to-know” and who have executed a nondisclosure statement or been approved by the Government. <ACRONYM> employees supporting [Program] activities will not discuss, disclose, or otherwise communicate Protected Information with any other person without a valid “need-to-know”. They are expressly prohibited from disclosure to other <CORPORATE INITIALS> personnel not working on [Program] activities. A list of persons who have signed the NDA will be maintained by the [Program] Program Manager at the <ACRONYM> facility and will be available for inspection at any time.

[Program] activity personnel will sign additional NDAs, such as NDAs with other [Program] contractors, if required in performance of this contract.

## **6.2 Employee OCI Awareness Training Program**

All Personnel will be instructed on the importance of maintaining the confidentiality of information they learn or create and on their responsibility to provide objective, unbiased, professional information to the Government. The training will include a requirement that each individual read this Plan and certify that he or she understands and will adhere to its contents as the document relates to their performance. All new hires will also be in-briefed on the requirements of this Plan. On an annual basis, all <ACRONYM> personnel supporting [Program] activities will be subjected to a review and recertification on the requirements of this Plan.

## **6.3 Progress and Reporting Structure**

All reporting within <ACRONYM> on the status of [Program] activities will be at a summary level, which will not contain any protected information. Protected Information shall never be part of any program reporting and shall never be distributed or discussed beyond those employees who have been authorized to access it. Issues pertaining to [Program] activities that

may require higher authority review within <ACRONYM> will be referred to the Vice President of Contracts or his designee and, if necessary, the <ACRONYM> Legal Counsel.

The <ACRONYM> [Program] Program Manager and the <ACRONYM> Contracts Manager shall be responsible for the implementation of, and adherence to, all aspects of this Plan. If any report of violation is made, the <ACRONYM> Contracts Manager shall promptly notify the <ACRONYM> Vice President of Contracts or his designee and the Task Order Manager for appropriate action.

#### **6.4 Plan Maintenance and Update Methodology**

The <ACRONYM> Vice President of Contracts is ultimately responsible for the conduct of this Plan. The Vice President may assign these duties to a direct reporting Contracts Manager. The Plan will be reviewed annually by the Vice President or his designee for currency and compliance with recent legislation, OCI directions, or changes in the FAR requirements. The review will determine whether the procedures are working satisfactorily. If these procedures are not working satisfactorily, the Vice President of Contracts or his designee will revise the procedures and resubmit the revised plan to the Task Order Manager for review and comment. The Plan will be identified with a configuration control number to distinguish the latest modification or revision.

#### **6.5 Use of a Government Reviewer**

<ACRONYM> strongly encourages the Government to designate a reviewer to oversee those tasks in which <ACRONYM> may be called upon to prepare specifications or statements of work as well as those tasks in which <ACRONYM> may evaluate or recommend systems supplied by affiliated <Company Name> entities. Although the particulars of the Government reviewer will be agreed upon after contract award, <ACRONYM> anticipates that this process will help mitigate OCIs of the “biased ground rules” or “impaired objectivity” variety by ensuring that such tasks are structured in a manner that minimizes the amount of subjective judgment required on the part of <ACRONYM> and by screening all work product associated with those tasks for evidence of potential bias.

#### **6.6 Recusal of <ACRONYM> from Certain Tasks**

As a last resort, if it is determined that a particular OCI cannot be adequately mitigated without jeopardizing <Company Name> Corporation’s ability to compete for future work, <ACRONYM> shall have the right to decline performing the conflict-creating work under this contract. In such a case, the Prime will ensure that the work is performed by a teammate that does not have an unmitigatable OCI.

#### **6.7 Implementation and Compliance**

The following procedures will be employed during the conduct of all <ACRONYM> efforts in performance of the contract:

- The mitigation measures set forth in Section 6 of this Plan will be implemented for all work performed under this subcontract.
  - All personnel supporting the subcontract tasking who may be required to work with Protected Information shall sign the Non-Disclosure Agreement (NDA) discussed in paragraph 6.1.4 above.
  - At the same time an individual signs the NDA; he/she will receive the formal OCI awareness training discussed in paragraph 6.2.
  
- If the determination is made for a specific task that an actual conflict does exist, <ACRONYM> will call this conflict to the Task Order Manager’s attention and work with the Government to determine whether additional mitigation procedures need to be implemented in addition to the baseline mitigation procedures that apply to all subcontract work. It is anticipated that the baseline mitigation procedures in this Plan (sections 6.1-6.4) will adequately mitigate actual conflicts of the “unequal access to information” variety but that additional mitigation steps (section 6.5 and possibly 6.6) may be necessary should conflicts involving “biased ground rules” or “impaired objectivity” arise.

## **7. List of Attachments**

**Attachment 1** Potential OCI Contracts List

**Attachment 2** Nondisclosure Agreement

**Attachment 3** Annual OCI Mitigation Plan Briefing Acknowledgment Form

**Attachment (1)**

**Potential OCI Contracts List**

| <b>Contract Name</b> | <b>Contract #</b> | <b>Task Order #</b> | <b>Contract Administrator</b> | <b>Customer</b> | <b>Potential OCI</b> | <b>Remarks</b> |
|----------------------|-------------------|---------------------|-------------------------------|-----------------|----------------------|----------------|
|                      |                   |                     |                               |                 |                      |                |
|                      |                   |                     |                               |                 |                      |                |
|                      |                   |                     |                               |                 |                      |                |

## Attachment (2)

### NON-DISCLOSURE AGREEMENT

[INSERT NAME OF PROGRAM]

I am an employee of <Company Name> <Company Segment> (<ACRONYM>) assigned to work for the \_\_\_\_\_ **CONTRACT** (herein after referred to as the "PROGRAM") under Contract \_\_\_\_\_ **TBD** \_\_\_\_\_. In consideration of my being provided access under the PROGRAM to confidential, business-sensitive or proprietary information that may belong to the Government, <Company Name> <Company Segment> (<ACRONYM>), other contractors or prospective contractors who have submitted such information in confidence to the Government, I hereby agree that during the period of my employment on this PROGRAM or thereafter, I shall not disclose any such information except in compliance with this Agreement or at the direction of the <Company Name> <company segment> (<ACRONYM>) \_\_\_\_\_ **CONTRACT** Program Manager.

Information subject to the nondisclosure obligations of this Agreement ("Protected Information") includes information, such as plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (Public Law 93-579), data that has not been released or otherwise made available to the public; and "Source Selection Information" and "Proprietary Information" of third party Contractors, as those terms are defined in Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423), the Procurement Integrity Act. Such Protected Information includes, but is not limited to information submitted to the Government on a confidential basis by other persons and covers such information whether or not in its original form (for example where the information has been included in subcontractor generated work or where it is discernible from materials incorporating or based upon such information.)

I agree that I shall not release, disclose or use in any way that would permit or result in disclosure to any party outside the Government any Protected Information provided to me during or as a result of my performance on the PROGRAM without permission from the <Company Name> <company segment> \_\_\_\_\_ **CONTRACT** Program Manager or the government. This prohibition applies to release of Protected Information to or between any affiliate of my employer or any other subcontractor, consultant, or employee of my employer or any joint venture involving my employer. In addition, Protected Information shall not be released, duplicated, used or disclosed, in whole or in part, for any purpose other than in the performance of the PROGRAM, unless so directed by the <Company Name> <company segment> \_\_\_\_\_ **CONTRACT** Program Manager or the government. I acknowledge that the <Company Name> <company segment> \_\_\_\_\_ **CONTRACT** Program Manager is the only person who is authorized by <Company Name> <company segment> to direct me to release or disclose Protected Information.

I agree not to participate in any manner in the preparation of any proposal or bid to be submitted by any person or organization involving Source Selection Information to which I was exposed in my work on the PROGRAM.

I agree to use and examine Protected Information exclusively in the performance of work required to carry out my duties within the PROGRAM, and agree to take suitable steps to prevent the disclosure of such information to any parties other than those authorized to have access to such Protected Information under the PROGRAM. At the conclusion of my performance on the PROGRAM, or at the request of the <Company Name> <company segment> \_\_\_\_\_ **CONTRACT** Program Manager, I agree to surrender all Protected Information in my possession or control. I will have no ownership or right to possess such Protected Information except to fulfill my specific PROGRAM work assignments.

I further agree that I will report to the <Company Name> <company segment> \_\_\_\_\_ **CONTRACT** Program Manager any known or suspected violations of the spirit or the intent of the procedures established for the protection of sensitive information.

I, the undersigned, having read and fully understood this Agreement, agree to abide by the provisions of this agreement.

**TYPE OR PRINT IN INK**

X  
Employee Signature \_\_\_\_\_ Date \_\_\_\_\_

---

Employee Typed Name

Employee Number



## Attachment (3)

### Annual OCI Mitigation Plan Briefing Acknowledgment Form

I hereby acknowledge that on this day, I was briefed by the <Company Name> Program Manager on the OCI Mitigation Plan which included an update to Attachment (1) reflecting an update of **[Insert potential OCI issue]**.

**TYPE OR PRINT IN INK**

X  
Employee Signature \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_  
Employee Typed Name \_\_\_\_\_ Employee Number \_\_\_\_\_