



1. PURPOSE

The purpose of this document is to provide SPAWAR Claimancy policy and procedures for the inclusion of the Organizational and Consultant Conflicts of Interest (OCI) clause and the process to mitigate any actual or potential OCIs. This document implements within the SPAWAR Claimancy the requirements of [FAR Subpart 9.5](#), [DFARS 209.5](#) and [NMCARS Subpart 5209.5](#).

Per [FAR 2.101](#), a conflict of interest occurs when:

1. A person is unable or potentially unable to render impartial assistance or advice to the Government; or
2. The person's objectivity in performing the contract work is or might be impaired; or
3. A person has an unfair competitive advantage. In other words, a contractor possesses (1) proprietary information that was obtained from a Government official without proper authorization; or (2) source selection information that is not available to all competitors and will assist that contractor in obtaining the contract.

Related guidance is available under CMPG [Ethics and Avoiding OCI](#).

2. POLICY

[FAR Subpart 9.5](#) prescribes responsibilities, general rules, and procedures for identifying, evaluating, and resolving OCIs. [DFARS 209.5](#) provides additional detail for (1) obtaining access to proprietary information (DFARS 209.505), (2) Contractors Acting as Lead System Integrators (DFARS 209.570), and (3) limiting OCI for Major Defense Acquisition Programs (DFARS 209.571).

It is SPAWAR Policy that the Contracting Officer (PCO) identifies potential OCIs and attempts to mitigate them prior to contract award. All SPAWAR contractor support (CS) is required to sign non-disclosure agreements (NDAs) and provide an OCI Plan, where applicable.

OCIs are more likely to occur in contracts involving:

1. Program management support services;
2. Consultant or advisory and assistance services;
3. Contractor performance of or assistance in technical evaluations;
4. Preparing Specifications or Statements of Work; or
5. Systems engineering and technical direction work performed by a Contractor that does not have overall contractual responsibility for development or production.

3. RESPONSIBILITIES

3.1 Head of the Contracting Agency (HCA)

May waive the FAR requirements for OCIs if it is determined that it is not in the Government's best interest. All requests for waivers must be in writing and describe the extent of the conflict. The HCA is the agency head's designee for approval, without power of re-designation ([NMCARS Subpart 5209.5](#)).

3.2 SPAWAR 2.0/2.OA

Shall approve, modify, or reject the PCO's recommendations, in writing.

3.3 Contracting Officer (PCO)

Determines whether there is potential for OCI and attempts to mitigate the conflict. The exercise of common sense, good judgment, and sound discretion is required in both the decision on whether a significant potential conflict exists and, if it does, the development of an appropriate means for resolving it.



1. Obtains the advice of counsel and the assistance of appropriate technical specialists in evaluating potential conflicts, developing any necessary solicitation provisions and contract clauses, and evaluating mitigation plans.
2. Resolves or mitigates the conflict or the potential conflict in a manner consistent with the approval or other direction by SPAWAR 2.3A before awarding the contract.

3.4 SPAWAR Legal Counsel

Advise the **PCO** on instances of potential OCIs. Where potential OCI exists, advise the **PCO** on the adequacy of the offeror's OCI mitigation plan or recommend changes to it.

3.5 Program Manager/Technical Originator

Assist the PCO on identifying potential OCIs. Assist in developing necessary SOW/PWS language, as well as the development of mitigation plans.

4. PROCEDURE

4.1 Developing the Solicitation and Contract

1. The **PCO** discovers a potential conflict of interest.
2. The **PCO** begins an investigation with the assistance of the **Program Manager/Technical Originator** to identify all actual and potential conflicts. If information concerning prospective contractors is necessary to identify and evaluate potential OCIs or to develop recommended actions, the Contracting Officer should first seek the information from within the Government or from other readily available sources.
3. The **PCO** resolves or mitigates the conflict in a manner consistent with the approval or other direction of SPAWAR 2.0/2.0A before awarding the contract.
 - a. Formally document judgment when a substantive actual or potential OCI exists. This document does not require SPAWAR 2.0/2.0A approval.
 - b. Document a course of action for resolving any significant actual or potential OCI (following procedures at [FAR 9.506](#)) and submits it to SPAWAR 2.0/2.0A for approval before issuing the solicitation. Included in the course of action should be a requirement for the potential Offeror/Contractor to submit a Mitigation Plan.
4. The **PCO** includes appropriate OCI clauses and provisions; may tailor portions of the clause to fit the acquisition, as long as the clause remains "substantively the same."
 - a. Significant potential OCIs shall contain a provision that:
 - i. Invites offerors' attention to this subpart;
 - ii. States the nature of the potential conflict;
 - iii. Describes the proposed restraint upon future contractor activities; and
 - iv. States whether the terms of any proposed clause are negotiable ([FAR Subpart 9.507-1](#)).
 - b. If contractors will access Navy Information Systems (e.g., NERP, EDA, WAWF), insert SPAWAR clause 5252.237-9603 Required Information Assurance and Personnel Security Requirements for Accessing Government Information Systems and Nonpublic Information.
 - c. If contractors will obtain access to third-party proprietary technical data or computer software, use the non-disclosure clause at [DFARS 252.227-7025](#) ([DFARS 209.505-4](#)).



- d. If contractors are acting as Lead System Integrators in the acquisition of a major system ([DFARS 209.570](#)), use the following:
 - i. [252.209-7006](#) Limitation on Contractors Acting as Lead System Integrators
 - ii. [252.209-7007](#) Prohibited Financial Interests for Lead System Integrators
- e. For Major and Pre-Major Defense Acquisition Programs ([DFARS 209.571](#)):
 - i. If the solicitation includes the clause at [252.209-7009](#), Organizational Conflict of Interest—Major Defense Acquisition Program, use the provision at [252.209-7008](#), Notice of Prohibition Relating to Organizational Conflict of Interest—Major Defense Acquisition Program; and
 - ii. Use the clause at [252.209-7009](#), Organizational Conflict of Interest—Major Defense Acquisition Program, in solicitations and contracts for systems engineering and technical assistance.

Number	Title and Notes on Use
N/A	Notice of Significant Potential OCI Describes the nature of the potential conflict, the proposed restraint on future activities and/or mitigation plan, and states whether these terms are negotiable.
5252.237-9603	Required Information Assurance and Personnel Security Requirements for Accessing Government Information Systems and Nonpublic Information (Aug 11) Required for contractor personnel accessing Government Information Systems including but not limited to, the Navy Enterprise Resource Planning (N-ERP), Electronic Document Access (EDA) and Wide Area Workflow (WAWF) System.
252.227-7025	Non-Disclosure Use clause when the contractor will provide systems engineering and technical assistance.
252.209-7006	Limitation on Contractors Acting as Lead System Integrators Use when contractors will act as lead system integrators.
252.209-7007	Prohibited Financial Interests for Lead System Integrators Use when contractors will act as lead system integrators.
252.209-7008	Notice of Prohibition Relating to OCI – MDAP Use provision when the solicitation contains 252.209-7009 .
252.209-7009	OCI – MDAP Use clause when the contractor will provide systems engineering and technical assistance.
5252.209-9201	Organizational Conflict of Interest (Systems Engineering) Use when the contractor will provide systems engineering and technical direction.
5252.209-9202	Organizational Conflict of Interest (Specification Preparation) Use when the contractor will prepare specifications or work statements.



5252.209-9203	Organizational Conflict of Interest (Access to Proprietary Information) Use when the contractor will provide technical evaluation, advisory and assistance services, or when the contractor may obtain access to proprietary information.
5252.209-9204	Existing Organizational Conflict of Interest Use when necessary to avoid, neutralize or mitigate a potential organizational conflict of interest.
5252.209-9205	Organizational Conflict of Interest Use when (1) the contractor will provide support services (e.g., program management support services, budgeting or accounting services or , advisory and assistance services including consultant services, and a potential conflict exists.
L-339	Notice of Organizational Conflict of Interest Use a provision substantially the same as L-339 in solicitations that include one of the Organizational Conflict of Interest clauses in Section H.

5. The **PCO** advises **SPAWAR 2.0/2.0A** when a [SPAWAR OCI clause](#) will be included in the solicitation and contract, including any recommended alterations to the clause necessary to address the unique requirements of the Program, or to address areas in a Mitigation Plan.
6. The **PCO** considers information provided by prospective contractors in response to the solicitation or during negotiations.

5. APPROVALS

Approval of the requiring activity representative is required before GFP can be transferred.

6. TOOLBOX

1. [Company Information Access Agreement.docx](#)
2. [Employee Information Access Agreement.docx](#)
3. [Government Employee NDA \(Source Selection Team\)](#)
4. [Contractor No-Bid Sample Letter](#)
5. [NERP Access Process July 2011.ppt](#)

7. CHANGE HISTORY

Updated material is highlighted by *purple text* and an Alert/New  icon.

Date	Description of Changes
May 2016	Content updated and converted to new SCPPM format; title updated to include ref to consultants.
October 2011	Last version created in old format.