

Overview of Organizational Conflicts of Interest Requirement

Requirements placed on government contractors to prevent Organizational Conflicts of Interest (“OCI”) are on the rise in recent years, at times requiring contractors to hire independent auditors to review and report on compliance. The Federal Acquisition Regulation (“FAR”) describes an OCI as resulting from activities or relationships with other persons/contractors that may result in the contractor being unable to, or potentially unable to:

- Render impartial advice or assistance to the government,
- Perform contract work without impaired objectivity, and/or
- Bid or propose on potential work without having an unfair competitive advantage.

These types of OCI and related requirements are further described in FAR Subpart 9.5 – Organizational Conflicts of Interest, and in related Government Accountability Office (“GAO”) decisions. They are commonly referred to as unequal access to information, impaired objectivity, and biased ground rules.

As a result of greater GAO evaluation of federal agency OCI oversight, as well as higher OCI risk in certain industries and markets, federal agencies have increased scrutiny of contractors in this area, and are expanding contractor responsibilities to support compliance. For example, the Centers for Medicare and Medicaid Services (“CMS”) is becoming more sensitive to situations where contractors are reviewing provider (i.e., hospital) claims for payment on behalf of the government, while also maintaining a commercial relationship with the provider. As a result, we have noticed that CMS is including OCI clauses more often in their contracts. These clauses require contractors to certify that no OCI exists, that they have established control processes and procedures for identifying OCI, and that they have performed an independent review of relevant controls. These certifications are also subject to the False Claims Act, making compliance risk even greater.

Overview of Personal Conflicts of Interest Requirement

Personal Conflict of Interest (“PCI”) is defined in FAR Subpart 3.11 – Preventing Personal Conflicts of Interest for Contractor Employees Performing Acquisition Functions. The FAR describes PCI as occurring when a covered employee has a financial interest, personal activity, or relationship that could impair the employee’s ability to act impartially and in the best interest of the government when performing under the contract. A “covered employee” is an individual who performs an acquisition function closely associated with inherently governmental functions, and is:

- An employee of the contractor, or
- A subcontractor that is a self-employed individual treated as a covered employee of the contractor because there is no employer to whom such an individual could submit the required disclosures.

The PCI requirements described in FAR Subpart 3.11 (and 52.203-16 – Preventing Personal Conflicts of Interest) were made effective in December 2011 and require contractors to have certain procedures in place to screen for, and prevent, PCI when supporting government acquisition functions. These requirements may also apply to subcontractors, as there is a flow down provision for subcontracts valued at greater than \$150,000, when subcontractor employees are performing acquisition functions.

OCI and PCI Compliance

The size and complexity of a company’s business, as well as its contractual requirements with the government impact the amount of OCI/PCI risk to which a contractor will need to respond. In order to develop an appropriate response, contractors should assess relevant contract requirements and existing processes and controls. Chess Consulting (“Chess”) has years of experience in evaluating government contract compliance risk, developing action plans, and implementing them. Our approach in assisting clients with OCI and PCI is adaptable, but generally includes the following:

- Identify written policy and procedure gaps to assess implications and develop a work plan/approach to walkthrough the related processes and controls;

- Assess contractual OCI/PCI requirements to enable proper evaluation of compliance risk and control requirements;
- Perform walk-throughs of procedures, and develop a testing strategy using a risk based approach;
- Assess design of processes and controls supporting OCI/PCI compliance;
- Test effectiveness of existing controls supporting OCI/PCI compliance;
- Verify actual practices are consistent with written policies and procedures, and contractual requirements;
- Verify appropriate supporting documentation is filed and retained;
- Prepare recommendations to remediate identified weaknesses and provide implementation assistance;
- Report weaknesses and recommendations to process owners and company management; and
- Monitor regulatory agencies' trends, and ensure that clients appropriately address compliance risks.

improvements, and provided our independent assessment report to the contracting officer as required by the CMS contract.

Chess Consulting Differentiators

Deep industry knowledge and technical expertise which helps each client deal effectively with the complexities of the processes and issues facing its business.

Profitability focus concentrating on actions and solutions that create a competitive business advantage while fully complying with regulatory requirements.

Practical and creative solutions that effectively address difficult compliance and business issues.

Supportable positions that have been proven to withstand scrutiny from regulatory agencies such as the SEC, DCAA, DOJ, and GAO.

The Chess Consulting Advantage

Our highly experienced team of government contract accounting and regulatory compliance experts has worked with contractors and their external auditors on a multitude of government contract compliance matters over many years. Our clients have included some of the largest government contractors in the country spanning a wide variety of industries, including: aerospace and defense, healthcare, construction, technical services, and higher education. An example of recent OCI client engagements include:

- *A publicly traded, Fortune 100, government contractor.* An information technology division of the company was contractually required to have an independent review of their compliance with CMS OCI requirements, and related OCI controls. Chess reviewed the OCI requirements within the CMS contracts, walked through relevant OCI processes with process owners, and developed a plan for review. Samples were then selected and testing procedures were performed. A report was provided describing findings, observations, and recommendations for improvement; and an exit conference was held with Management.
- *A publicly traded, Fortune 500, engineering, technology, and management consulting firm.* The company provides numerous services and product offerings contracted under multiple contract types. Chess reviewed the company's contractual compliance with their CMS OCI mitigation plan requirements. Chess provided substantive recommendations for process control